FEDERAL MEDIATION AND CONCILIATION SERVICE
VOLUNTARY LABOR ARBITRATION PANEL

In the Matter of the Arbitration Between

BALTIMORE TEACHERS UNION, AMERICAN FEDERATION OF TEACHERS, LOCAL 340, AFL-CIO,

Union,

-and-

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,

Employer.

Re: Class-Action Grievance
Monarch Academy Teaching Schedule.

FMCS Case No. 180804-07101

My File No.: 180821-MON

Teacher Agreement – Violation of Article VII, § 7.2

Homer C. La Rue
Arbitrator

Decision & Award

APPEARANCES

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PROCEDURAL HISTORY

Pursuant to the collective bargaining agreement (the "CBA" or "Teacher Agreement") between the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO) (hereinafter the "Union" or the "BTU") and the Baltimore City Board of Commissioners (hereinafter the "Employer" or the "Board), the parties designated Homer C. La Rue to serve as the arbitrator to resolve certain issues arising pursuant to the CBA.

The parties presented evidence and arguments on December 17, 2018 and February 1, 2019. The Special Area Resource ("SPAR") teachers, "Grievants" or "SPAR teachers", and the Union were represented by legal counsel selected by the Union. The Employer was represented by legal counsel selected by the Board. The grievance and the arbitration were brought as a "BTU Class Action". The hearing was held in Baltimore, Maryland. There was a stenographic record of the hearing. The hearing was closed on February 1, 2019.

The record was left open for the submission of post-hearing briefs and other materials. The record was closed on March 11, 2019, with the Arbitrator's receipt of the closing briefs.

ISSUE

The parties agreed to the following issues in this proceeding:

1. Did the Baltimore City Board of School Commissioners violate Article 7, Section 7.2 of the … 2016-2019 agreement, between the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO, and the Baltimore City Board of School Commissioners, by scheduling SPAR teachers at Monarch Academy to 30 teaching periods per week during the 2017-2018 school year?

2. Should the SPAR teachers at Monarch Academy receive any additional compensation for their work in school year 2017-2018?

3. If the answer to Issue 1 is yes, then how much additional compensation are the SPAR teachers at Monarch Academy entitled to receive for school year 2017-2018?

4. If the answer to Issue 1 is no, what shall the remedy be?

(Tr., p. 16-; p. 22, L. 11-16).[1]

RELEVANT PROVISIONS OF THE CBA

AGREEMENT
BETWEEN
BALTIMORE TEACHERS UNION AMERICAN FEDERATION OF TEACHERS, LOCAL 340 AFL-CIO

AND

BALTIMORE CITY BOARD OF COMMISSIONERS

2016-2019
(Jt. Ex. 1)[2]

ARTICLE VII

Teacher Hours and Working Conditions

*** * ***

7.2 School Week
The school week for secondary teachers and those teachers in departmentalized and middle school shall be in accordance with the following chart showing various scheduling options and except in cases where school faculties indicate otherwise, five (5) forty-five (45) minute duty-free lunch periods.

Teaching Periods per week	Preparation Periods Per week
25 (8 period day)	10
25 (7 period day)	5
20 (5 period day)	5
15 (4 period day)	5

[1] "Tr., followed by "p", followed by "L" means: "Transcript page and lines of the transcript page."
[2] "Jt. Ex.", followed by a number means "Joint Exhibit" and the number thereof. "Co. Ex.", followed by a letter, means "Co. Exhibit" and the letter thereof. "Un. Ex.", followed by a number, means "Union Exhibit" and the number thereof.

BACKGROUND FACTS

A. The Employer and Grievants' Employment

Monarch Academy ("Monarch") is a public charter school in Baltimore City, part of the Baltimore City Public School System. (J. Ex. 2, at 11). Under the Maryland Public Charter School Act, the employees of Monarch are employees of the Board. Teachers assigned to Monarch are members of the BTU. (J. Ex. 2, at 11).

SPAR teachers are resource teachers who teach "non-core subject areas". In the case of Monarch, the subjects are art, music, physical education, foreign language, and media. (Tr. 68; J. Ex. 3). During the 2017-2018 school year, Monarch had eight (8) SPAR teachers. (J. Ex. 3). Each was assigned six (6) class periods per day, for a total of 30 class periods per week, allegedly in violation of the provisions of the Teacher Agreement. (J. Ex. 3). The SPAR teachers grieved the alleged violation of Article 7.2 of the CBA as a class action.[3] (Jt. Ex. 2, p. 3).

B. History of the Processing of the Instant Grievance

The BTU filed a Level ID class action grievance on December 7, 2017. (Jt. Ex. 2, at 11). The grievance was denied by Mary Ellen Quinn Johnson of the Board's Office of Employee and Labor Relations on December 20, 2017. (Jt. Ex. 2, at 11). The BTU moved the grievance to Level IV on December 22, 2017. (Jt. Ex. 2, at 14). The Board appointed Aaron T. O'Neil as Hearing Examiner, and an evidentiary hearing was held on May 31, 2018. (J. Ex. 2, at 14). Hearing Examiner O'Neil recommended that the grievance be denied, and on July 27, 2018, the Board adopted Hearing Examiner O'Neil's recommendation and denied the grievance. (Jt. Ex. 2, at 22).[4] The BTU moved the grievance to arbitration on August 1, 2018. (Jt. Ex. 2, at 25).

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[3] "At the start of the arbitration the Board conceded liability [i.e., that the Board had breached the CBA in assigning the SPAR teachers six (6) periods] with regard to Article 7.2 … Therefore issue #1 is not before the Arbitrator for determination …." (Board Brief at 2).

[4] The Conclusions of Law, contained in the Hearing Examiner's Recommendation (Jt. Ex. 2), recited the following:

> The core problem is that Monarch Academy services students Kindergarten to 8th graded coupled with the lack of resources teachers that decreased from nine (9) to seven and a

The Board, in its post-hearing brief, further clarified the Board's position as to the concession of liability in the instant matter. In pertinent part, the Board wrote:

> It is important to note that while the Board has conceded liability based on the new language of Article 7.2 in the 2016-2019 Teacher agreement (Joint Exhibit 1), the Monarch teaching schedule at issue (Joint Exhibit 3) was created in the summer, prior to the Teacher Agreement at Joint Exhibit 1 being signed. ***See Joint Exhibit 2.*** [Emphasis in original]. Thus, liability was conceded solely because the Teacher Agreement states at p. 97 that the agreement is retroactive to July 1, 2016. Which would retroactively include any actions taken with regard to the schedule that was appropriately created based on the then language of the 2013-2016 Teacher Agreement that was in effect, but subsequently change **retroactively** with the 2016-2019 contract that was signed on October 24, 2017 [Footnote omitted]. ***See Joint Exhibit 1 at p. 97***. [Emphasis in original].

(Board Brief at 2-3).

C. The Undisputed Facts of the Case

SPAR teachers, during the 2017-18 school year were assigned to and did teach thirty (30) classes per week. The contract maximum of classes to be taught by all teachers, including SPAR teachers, is twenty-five (25) classes per week. Article 7.2 of the CBA, in pertinent part, reads:

> **7.2 School Week**
> The school week for secondary teachers and those teachers in departmentalized and middle school shall be in accordance with the following chart showing various scheduling options and except in cases where school faculties indicate otherwise, five (5) forty-five (45) minute duty-free lunch periods.

Teaching Periods per week	Preparation Periods Per week
25 (8 period day)	10

> half (7.5) for the 2017-2018 school year. In order for the school to ensure that all its students were taught music and physical education, it relied on its Resources teachers to teach thirty (30) teaching periods per week while all other teachers were teaching twenty-five (25) teaching periods per week. This could have been resolved by hiring more teachers. Ms. Foster testified that financial constraints prevented monarh [sic] from acquiring more teachers. Scheduling was made to ensure that no more than 3 consecutive classes taught a time in accordance to section 7.5 and school time was not violated under section 7.3.

(Jt. Ex. 2, p. 19).

25 (7 period day)	5

* * *

(Jt. Ex. 1, CBA, Art. 7.2 School Week, p. 36).

The only issue in contention is whether the SPAR teachers are entitled to compensation for having taught thirty (30) classes per week instead of the twenty-five (25) required by the CBA. The Union contends that the teachers are entitled to an award of back pay in the amount of 20% of their 2017-18 salary because they taught 20% more classes during the workweeks in the 2017-18 school year.

The position of the Board is that working "6 teaching periods instead of 5 teaching periods did not amount to more work for the SPAR teachers at Monarch in school year 2017-18." (Board Brief at 5). According to the Board, the Union presented no evidence that the SPAR teachers "… worked harder or longer than the other teachers at Monarch who did not have 6 teaching periods." (*Id.* at 7). According to the Board, the Union has the burden of ultimate persuasion and has failed to show that

> "… "teaching 30 periods per week, in addition to obviously having an extra class per day, requires extra preparation every day, because they're required to prepare for another class every day, which required her [Sena Robinson] and other teachers on the SPAR team to come to work earlier, before clock-in time, so to speak … And because these teachers at Monarch were required to do something that no other teacher under the contract was required to do, it's our position that they should be entitled to extra compensation for that time, **and that the extra compensation ought to be 20 percent more of their annual pay because they had to work 20 percent harder than any other teacher.**" ***See Tr. at pp. 25-27***. [Emphasis in the original].

(*Id.* at 3).

D. The Essential Contentions of the Parties

1. <u>The Union's Position</u>

The Union's position is set forth in its post-hearing brief. In pertinent part, it reads:

> SPAR teachers were assigned to teach 20% more classes than is permitted under the Teacher Agreement.[2] They had to prepare 20% more lesson plans, grade 20% more assignments, set up for and clean up after 20% more classes, and do 20% more work than was bargained for and agreed

> to in the teacher agreement. Testimony from the administration at Monarch Academy to the contrary is without basis, not credible, and insulting to teachers. The appropriate resolution is the proportional one: SPAR teachers worked 20% more over the 2017-2018 school year and are therefore entitled to 20% of their annual salary as a back pay award.

(Un. Brief at 5).

The footnote numbered "2", included in the above-cited language from the Union's Brief, explains how the Union reached its compensation figure of 20%. That footnote reads:

> The 20% figure is reached by dividing the number of classes SPAR teachers were assigned per week (30) by the maximum number of classes provided in the teacher agreement (25). 30 divided by 25 is 1.2, or 120% of 25. Therefore, SPAR teachers were scheduled to teach 20% more classes than the maximum course load provided in the teacher agreement. Another method of determining percentage is to take the following mathematical steps: 30 - 25 = 5; 5/25 = .2; .2 X 100 = 20%.

(*Id.*).

The Union went on to produce evidence, as a part of its case, that

> SPAR teachers had "more lessons to plan for, more students to plan for," which required "more planning periods, more time." (Tr. 40.) Those SPAR teachers stayed later and arrived earlier.3 (Tr. 41-43.) They prepared activities for more classes, (Tr. 190.), they put out supplies for and cleaned up after more classes, (Tr. 192), they graded more assignments from more students, (Tr. 192.), and they evaluated the skill level and developmental needs of, and designed lessons taking those into account for, more students. (Tr. 193.) Both teachers produced lesson plans for the 2017-2018 school year, showing that each teacher independently prepared lesson plans for each and every class they were assigned to teach. (U. Ex. 2; 4.) Further, Monarch Academy did not even provide curricula for its SP AR teachers, as Ms. Nicholson testified that "[w]e do not have a comprehensive curriculum, we left that to the teaching practices of the instructor." (T. 302.) Monarch Academy left it to its SP AR teachers to seek curricula and devise lesson plans without guidance from school administration.

(Un. Brief at 8).

The Union's position also includes its argument that the testimony of the Monarch administrators was not credible. That is, that the SPAR teachers, assigned to do more work (i.e., teach six (6) rather than five (5) class periods, did not actually have to do more work. The Union, therefore, asserts that the Board's position, that the SPAR teachers are not entitled to any back-pay compensation, is without any foundation in

fact. The Board, according the Union, has failed to rebut the Union's argument that 20% more teaching periods equates to 20% more work for the SPAR teachers.

2. <u>The Board's Position</u>

The Board's position is set forth in its post-hearing brief. In pertinent part, it reads:

> In its case in chief BTU only put forth testimony from one (1) SPAR teacher at Monarch 7. It was only after the Board put on its case that BTU recognized the weaknesses in its own case and argued for an opportunity to have additional time to shore up its case and regroup to respond to the compelling evidence presented by the Board. ***See Tr. at pp. 137-139***. Even then, notwithstanding, when BTU subsequently presented its rebuttal case almost two (2) months later, it still only presented Ms. Robinson's newly found purported lesson plans and the testimony of one (1) additional SPAR teacher Amy Scott in an attempt to refute the information presented by the Monarch Chief Academic Officer (CAO) and Principal on behalf of the Board. ***See Board Exhibits Band C and Tr. at pp. 89-101 am/ 110-123***. However, BTU did not refute the testimony of CAO Nicholson or Principal Hargrove or the lesson plans submitted and supported by the testimony of CAO Nicholson and Principal Hargrove. On the contrary, BTU's rebuttal evidence only served to support that the SPAR teachers did weekly lesson plans at Monarch. ***See Board Exhibits Band C and Union Exhibits 2 and 4***. Nor did BTU establish by testimony or evidence that Ms. Robinson, Ms. Scott or the other SPAR teachers worked 20 percent harder or outside of heir 7h 5m school work day to prepare any lesson plans. The only testimony provided by Ms. Scott was "more of everything. So, more work, more grading, more preparation of materials, more transition of classes, more organization, more use of actual materials." ***See Tr. at p.192***. However, that testimony by Ms. Scott does not necessarily establish that she worked beyond her regular 7h 5m workday. There was no testimony by Ms. Scott that any of her work on lesson plans and preparation for class was done outside of the school work day or daily provided planning period. 20 percent more time cannot be assumed by BTU without any presentation of evidence or testimony to that effect. ***See Tr. at 25-27***. In fact, BTU concedes that "all teachers are FLSA-exempt and do not clock in and clock out for purposes of their hours" … and that teachers "as professionals always work longer than their administrative duty day." ***See Tr. at p. 26***. [All emphasizes in original].

(Board's Brief at 5-6).

The Board also argues that the testimony of Sena Robinson ("Ms. Robinson), "the only witness presented by BTU before it rested its case [footnote omitted] … "cannot

support the class in this matter [footnote omitted]." (Board Brief at 3). Essentially, the Board contends that the failure of the Union to present the "… the specific group of persons as the class aggrieved in this matter" (*Id.* at 4) should require the Arbitrator to draw a negative inference as to the testimony of Ms. Robinson in support of a class grievance. "Nothing from the other five (5) SPAR teachers was ever produced at this arbitration or at the Step 4/ Level IV hearing before the Board and its Hearing Examiner. (Jt. Ex. 4). According to the Board, "[b]ased on the lack of showing [of the class of SPAR teachers], it should be fair to conclude that the absentee SPAR teachers chose to opt out of the "class" as they clearly did not feel aggrieved or support the relief being sought." (*Id.*).

According to the Board, the testimony of Ms. Robinson on the first day of hearing, and the testimony of Amy Smith ("Ms. Smith") during the Union's rebuttal, was insufficient to represent the other five (5) SPAR teachers represented in the grievance. The Board insists that these deficiencies in the Union's case "… essentially turn[s] this matter from a class action to a grievance on behalf of Sena Robinson and Amy Scott [footnote omitted]. Therefore, it is requested that this matter be considered as such, ie. [sic] an individual grievance matter and not a class action [footnote omitted]." (*Id.* at 5).

ANALYSIS AND DECISION

A. Introduction—Arbitrator's Jurisdiction and Role

The instant case involves a matter of contract interpretation for which the arbitrator is called upon to determine the meaning of some portion of the collective bargaining agreement between the parties. The essential role of the arbitrator is to interpret the collective bargaining agreement with a view to determining what the parties intended when they bargained for the language. The validity of the award is dependent upon the arbitrator drawing the essence of the award from the language and meaning of the collective bargaining agreement. It is not for the arbitrator to fashion the Arbitrator's own brand of work-place justice. In a matter involving contract

language interpretation where the Union has asserted a violation, as is this case, the Union has the ultimate burden to establish that the Employer, through its action or inaction, violated the agreement.

B. The Board's Position, If Sustained, Would Negate a Provision of the CBA and Would Lead to a Result That Is Illogical and Contrary to Reason or Common Sense.

1. <u>The Language of Article VII Section 7.2 Entitles the SPAR Teachers to Compensation for Teaching Six (6) Instead of Five (5) Class Periods.</u>

The analysis begins, as it must, with the intent of the parties in entering into an agreement on the relevant provisions of the CBA. Article VII, Section 7.2 of the CBA establishes the school week. It mandates that teachers, including SPAR teachers, are to have twenty-five (25) periods of teaching per week or five (5) periods per day. The language of the Agreement is a mandated maximum. Indeed, during the 2017-18 school-year, all other teachers at Monarch had five (5) teaching periods per week.

If the Board's position were to be sustained, the result would be an outcome that ignores the intent of the parties when they agreed on the teacher work-week. In coming to that agreement, the Board agreed to pay the teachers the salary that is set forth in the CBA for five (5) teaching periods per week. In doing so, the Board agreed to pay the teachers for what the Board considered to be necessary tasks for a teacher to teach a class period. It is reasonable to conclude that the Board, in paying the teachers whatever salary was agreed upon, knew that it was paying the teachers for: (a) class-preparation with a lesson plan; (b) the evaluation of the skill-level and developmental needs of the students to be taught; (c) putting the needed supplies in place for student-use in the class; (d) the delivery of the lesson plan to the students; (e) the clean-up of the classroom after class; and (f) the evaluation and grading of student assignments. This list may not be exhaustive; it, however, does represent the tasks discussed at the hearing that are a part of what is encompassed in teaching a class period by a SPAR teacher.

The intent of the parties, in coming to an agreement that teachers would have five (5) class periods per week, was that the teachers would be required to perform certain tasks (i.e., those enumerated above) associated with teaching that contract-mandated number of class periods. The Board cannot now take the position that the tasks, for which the Board agreed to compensate the teachers under the label of *teaching a class period*, are now fewer or are de minimus because compensation is now being sought for the teachers having taught an additional class period over the maximum required by the contract. The compensation being sought is for work that the Board required over the contract-mandated number of class periods. In requiring the additional class period, the Board did not reduce the number of tasks the Board expected the teachers to perform in conjunction with teaching the additional class period. Indeed, it is very unlikely that the Board would have had any such expectation of the teachers since the Board, presumably, expected the teachers, as professional educators, to perform the tasks necessary to teach each of the class periods. That the amount of time to perform some tasks related to teaching an additional class period may have been lessened, an assertion that is far from clear on this record, is, nonetheless, beside the point. The contract work-week includes the tasks associated with teaching a class period; irrespective, of whether the workload on the SPAR teachers may have been lessened because of previously prepared lesson plans, etc., an assertion by the Board, but not a finding of fact by this Arbitrator.

To further illustrate the lack of contract foundation for the Board's position, the Arbitrator only needs to note that the CBA does not provide for any diminution in salary if a SPAR teacher is required, within the five (5) periods per week, to teach more than one section of a grade. For example, the Board does not, as part of its rebuttal to the Union's case, contend that if *SPAR Teacher A* teaches three (3) sections of 4th grade, that SPAR teacher's salary is reduced to represent the purported reduced preparation required for the second and third sections of that 4th grade class. Likewise, the Board points to no contractual provision that supports its diminution argument in the instant matter.

2. The Board's Position Would Result in Its Unjust Enrichment for the Board's Breach of the CBA and Would Result in an Illogical Outcome Contrary to Reason or Common Sense.

There is an equitable principle in contract law that recognizes that no person should be allowed to profit at another's expense without making restitution for the reasonable value of any property, services, or other benefits that have been unfairly received or retained. In the instant matter, this concept of *unjust enrichment* is not strictly applicable because here there is an express contract provision supporting the Union's claim for compensation on behalf of the SPAR teachers. Ordinarily, in the application of the equitable principle of unjust enrichment, there is no written agreement, as there is in the instant case, to support the claim for relief. The concept of *unjust enrichment*, however, further demonstrates the lack of merit of the Board's position in the instant matter.

The Board's position is a clear example of an argument for the application of the principle of unjust enrichment. Unjust enrichment has three elements. First, the employee must have provided the employer with something of value while expecting compensation from the employer in return. Second, the employer must have acknowledged, accepted, and benefited from whatever the employee provided. Third, the employee must show that it would be inequitable or unconscionable for the employer to enjoy the benefit of the employee's actions without paying for it. Finally, the arbitrator must examine the facts of each case before making a finding of unjust enrichment, and such a finding must not be in contravention of public policy or violate any applicable law.

All the elements for the application of the principle of unjust enrichment exist in the instant matter. The SPAR teachers provided the Board with an additional period of teaching each week during the 2017-18 school year. Under the contract, the teachers are entitled to compensation commensurate with the number of teaching periods over the contract-mandate. In the instant case, the Board presented no evidence to rebut the Union's calculation that the SPAR teachers worked 20% more than the contract required of them as evidenced by Article VII, Section 7.2. The

Arbitrator already has addressed and dismissed the Board's diminution-of-work argument.

There is no doubt on the facts in this record that the Board not only suffered the SPAR teachers to work the additional period per week, the Monarch administration required them to do so. That the Board and Monarch benefited from the additional teaching period cannot be gainsaid. The Recommendation of the Hearing Examiner explained quite explicitly the benefit to Monarch and to the Board. Monarch was able to meet its staffing needs by requiring that the existing SPAR teachers teach an additional class period per day.

> [Monarch's … [resources teachers decreased from nine (9) to seven and a half (7.5) for the 2017-2018 school year. In order for the school to ensure that all its students were taught music and physical education, it relied on its Resources teachers to teach thirty (30) teaching periods per week while all other teachers were teaching twenty-five (25) teaching periods per week. This could have been resolved by hiring more teachers. … [F]inancial constraints prevented monarh [sic] from acquiring more teachers ….

(Jt. Ex. 2, p. 19).

The final element of the unjust enrichment principle is reached without resorting to equitable principles of contract law such as unconscionability or inequity. There is a clear contract provision mandating the maximum number of class periods per week that a SPAR teacher was to have worked in the 2017-18 school year. The Arbitrator need not, therefore, rely on quasi-contract principles to find an entitlement to relief. The Board violated the clear agreement between itself and the Union. That breach of contract requires that the arbitrator formulate a remedy for that breach based on the language of the CBA.

Finally, the Board makes no argument that the formulation of a remedy for the admitted breach of the CBA is in contravention of public policy or some law. Nor is there any contractual, public policy, or legal basis for arguing that the Arbitrator is prohibited from formulating a remedy for the instant breach. It is axiomatic that the Arbitrator has broad remedial powers upon the finding of a breach of the CBA. *See Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

For all the reasons stated hereinabove, the Arbitrator concludes that the Union has sustained its burden of proving that the SPAR teachers are entitled to compensation for the breach of the CBA. Furthermore, the Arbitrator finds that the Union has established that the appropriate amount of compensation for each SPAR teacher is 20% of the SPAR teachers' annual salary for the 2017-18 school year. Any other decision by the Arbitrator would run contrary to the intent of the parties in their CBA and would result in an illogical outcome contrary to reason or to common sense.

C. The Board's Contention That the Instant Arbitration Is Not a Class Grievance Is Without Merit.

The Board argues that this matter should "… be considered … an individual grievance matter and not a class action [footnote omitted]." (Board Brief at 5). The Arbitrator rejects this contention by the Board. The Board's argument on this point is first raised in its post-hearing brief. The Board, however, acknowledges that it was on notice during the grievance procedure as to how the Union would proceed in pursuit of its class grievance. That the Board was on notice is indicated by the Board in its brief, which reads "… nothing from the other five (5) SPAR teachers was ever produced … at *the Step 4/ Level IV hearing before the Board and its Hearing Examiner*. [Emphasis added]." (*Id.* at 4). The Hearing Examiner's Recommendation does not show that the Board raised any objection to the class grievance during the processing of the instant grievance. The objection not having been raised at that time, the Board is estopped from raising the issue for the first time in its post-hearing brief.

Even if considered by the Arbitrator, the Board's objection to the class grievance is without merit. The Board's argument rests on an inferred "opt-out" choice on the part of the SPAR teachers who did not testify at the hearing. The Board argues that the testimony of one witness on behalf of the purported class during the Union's case-in-chief, and one other witness during the Union's rebuttal, provided insufficient facts to find that the two Union fact-witnesses adequately represented the SPAR teachers who did not testify at the hearing. The Board argues at length about the inability to conclude that the testifying witnesses could have known the arrival and departure

times of the other SPAR teachers. Similarly, the testifying witnesses, according to the Board, could not testify with any credibility as to what the other SPAR teachers did to prepare for the additional class period.

The Board's argument misses the point. The Union prevails in this matter at the point that it substantiates (a) that there is a breach of the CBA; and (b) that the amount of time worked in excess of the contract mandate is calculable based on the language of the CBA. The efficacy of the Union's case does not depend on the details concerning what individual SPAR teachers may have done to prepare for the unpermitted additional class period; nor, does the persuasiveness of the Union's case depend on the arrival and departure times of the SPAR teachers. The Board, in its argument against this matter being a class grievance, like its argument for no compensation, attempts to transform this breach-of-contract case into a workload-impact case. There is no basis, however, in the contract language of the CBA for the Board to make a persuasive argument that this case is anything more than the Board's impermissible requirement that the SPAR teachers were required to work in excess of the contract mandate. The SPAR teachers involved here, having provided 20% more class periods than was required under the contract, are similarly situated and are adequately represented by the witnesses called by the Union.

There is no basis, on the facts of this case and the applicable provision of the CBA, to infer that the SPAR teachers, who did not testify at the hearing, had "opted out" of this grievance which had been classified as a *class action* from its initial filing on December 7, 2017. (Jt. Ex 2, p. 3). As noted above, at no point during the processing of the instant grievance did the Board raise any objection to this matter being processed as a "BTU Class Action". (*Id.*).

CONCLUSION

The Arbitrator has considered all the evidence, arguments and authorities set forth by both parties. The Arbitrator, however, may not have repeated every item of

documentary evidence, nor may the Arbitrator have repeated completely all the arguments or specifically cited all the authorities presented in the respective briefs.

AWARD

Having heard the evidence and the arguments of the parties, the Arbitrator awards as follows:

1. The Baltimore City Board of School Commissioners, by admission by the Board at the hearing, violated Article 7, Section 7.2 of the ... 2016-2019 agreement, between the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO, and the Baltimore City Board of School Commissioners, by scheduling SPAR teachers at Monarch Academy to 30 teaching periods per week during the 2017-2018 school year.

2. The SPAR teachers are entitled to compensation for the Board's breach of the CBA.

Order of Remedy

3. All the class of SPAR teachers at Monarch Academy during the 2017-18 school year shall receive additional compensation for their work in school year 2017-2018?

4. The class of SPAR teachers at Monarch Academy during the 2017-18 school year are entitled to receive and shall receive 20% of their salary for school year 2017-2018 as compensation for teaching six (6) periods per week, rather than the contract-mandated five (5) periods per week?

Retention of Jurisdiction

5. The Arbitrator retains jurisdiction over this matter for the sole purpose of resolving any issue(s) pertaining to the Order of Remedy.

6. The retention of jurisdiction shall not be expanded to encompass an interpretation or reconsideration of the decision or the rationale on which the Award is based.

7. Such retention of jurisdiction shall be for a period of sixty (60) calendar days following the date of this Award.

8. Absent a request for an extension of the sixty (60)-day period, any request for the exercise of the Arbitrator's jurisdiction over this matter shall be deemed untimely, and no further proceedings shall be had before this Arbitrator.

9. The Arbitrator's retention of jurisdiction may be extended by agreement of the parties and/or upon application by a party to the Arbitrator made within the sixty (60)-calendar-day period set forth above.

10. A request to the Arbitrator to exercise jurisdiction shall be made in writing to the Arbitrator with a copy to the other party, and the request shall state specifically the issue(s) in dispute.

11. It is within the sole discretion of the Arbitrator to determine whether the issue(s) presented by the party or parties is/are within the jurisdiction of this provision pertaining to the retention of jurisdiction.

Dated: June 20, 2019
Columbia, MD

Homer C. La Rue
Arbitrator

AFFIRMATION

I, Homer C. La Rue, being admitted to practice in the courts of New York, Maryland, and the District of Columbia, understand the penalties for perjury, and I affirm that this document is my Decision and Award, and that the signature affixed above is mine.

Date: June 20, 2019

Homer C. La Rue