STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO, AND ITS AFFILIATED LOCAL 587, Complainant, vs. MILWAUKEE AREA TECHNICAL COLLEGE, Respondent.	Case 248 No. 35499 MP-1753 Decision No. 23013-A

Appearances:

Podell, Ugent, & Cross, S.C., Attorneys at Law, by Ms. Nola J. Hitchcock Cross, 207 East Michigan Street, Milwaukee, WI 53202, appearing on behalf of the Complainant.

Quarles & Brady, by Mr. David B. Kern, 780 North Water Street. Milwaukee, WI 53202-3589, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 587, having on August 15, 1985 filed a petition with the Wisconsin Employment Relations Commission alleging that Milwaukee Area Technical College had committed prohibited practices by retaliating against an employe for exercising rights guaranteed in Sec. 111.70(2), Stats., and violating Sec. 111.70(3)(a) 1, 3, 4 and 5, Stats.; and the Commission having on October 29, 1985 appointed Edmond J. Bielarczyk, Jr., an examiner on the Commission's staff, to conduct a hearing on said Complaint, and to make and issue Findings of Fact, Conclusions of Law and Order; and hearing in the matter having been held on December 10, 1985 in Milwaukee, Wisconsin; and a stenographic transcript of the proceedings having been prepared and received by the Examiner on December 30, 1985; and the parties having filed post hearing arguments by February 14, 1986; and the Examiner, having considered all of the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 587, hereinafter referred to as the Complainant, is a labor organization and maintains its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That Milwaukee Area Technical College, hereinafter referred to as the Respondent, is a municipal employer maintaining its offices at 1015 North Sixth Street, Milwaukee, Wisconsin; and, that amongst its various functions the Respondent operates a Registration and Records Department.

3. That the Complainant and the Respondent are parties to a collective bargaining agreement, effective July 1, 1983 to June 30, 1985; that said agreement contains the following pertinent provisions:

. . .

Article I - Recognition
Section 1 - **Bargaining Unit Definition**

> The Board recognizes the Union as the exclusive bargaining representative for all employees of the Board as described in the Wisconsin Employment Relations Commission certification submitted under date of December 2, 1968, Case 3, Number 12399, ME-407, Decision 8736 and as later modified. The classifications included are listed in Appendix A.

Section 2 - **Non-Discrimination**

The Board and Union recognize that it is the established policy of both parties that they will not discriminate against any employee because of race, creed, religious belief, sex, age, color, national origin, union activity, or handicap.

Section 3 - **Representation**

The provisions of this Agreement shall apply only to employees who are scheduled to work 1,040 or more hours annually, or Food Service Workers and other employees who are regularly scheduled to work twenty (20) hours or more per week on a school year basis.

Employees who work less than 1,040 hours annually, or Food Service Workers and other employees who are regularly scheduled to work less than twenty (20) hours per week on a school year basis, shall be covered only by the complaint procedure of this Agreement and those benefits required by law.

The Union shall represent all employees in the bargaining unit at all employee-employer conferences related to wages, hours, and conditions of employment;

. . .

that on September 17, 1984 the parties filed with the Commission a joint stipulation of facts clarifying the instant bargaining unit 1/; that said stipulation of facts reads in pertinent part as follows:

. . .

4. The parties agree that employees who work in temporary registration related positions, whether in the registration department or elsewhere, solely during "peak periods" and who perform no other work performed by bargaining unit employees shall be excluded from the unit as casual or temporary employees, but that those employees who work beyond the "peak periods" shall be accreted into the bargaining unit if they satisfy the "minimum hours" test defined below.

4a. The "peak periods" during which such casual or temporary employees may be scheduled to work are defined as follows:

The period beginning four working weeks before the start of the first school year semester through three working weeks after the start of the first school year semester, and the period five working weeks before the start of the second school year semester through three working weeks after the start of the second school year semester.

4b. The following current employees shall be accreted to the unit on the basis of their scheduled performance of work performed by bargaining unit employees beyond the "peak periods" defined above and in excess of the "minimum hours" defined below:

(1) Shirley Cira (Book Store)

(2) Karen Bartels (Book Store)

1/ Milwaukee Area VTAE District No. 9, Dec. No. 8736-E (WERC 10/84).

(Continued from Page 2)

(3) Elizabeth Brown (Book Store)

(4) Betty Fortson Pittman (Book Store)

(5) Regina Harris (Evening School)

. . .

That thereafter the Complainant and Respondent entered into negotiations to determine how said collective bargaining agreement would be applied to said accreted employes; that on March 25, 1985 the Complainant and Respondent reached a tentative agreement in said negotiations; that by April 1, 1985 the Complainant and Respondent ratified said tentative agreement and said agreement reads in pertinent part as follows:

> "Section 4. d. Regular hourly employes shall not be laid off or have their hours reduced for the sole purpose of avoiding the accrual of pro-rata benefits or meeting the minimum hour test.";
>
> . . .
>
> Article VI Seniority
>
> Section 8: Add Regular Hourly Employees shall be laid off prior to any full time employees. Non Regular hourly employees who are scheduled for layoff may, at their option, displace the least senior hourly employee in the same classification. The termination of an employee's normal employment schedule shall not be considered a layoff.

That thereafter the Complainant and Respondent reached agreement on a successor collective bargaining agreement, effective July 1, 1985 through June 30, 1987; and, that said successor agreement included said Section 4. d. and the addition at Article VI, Section 8.

4. That since 1980 the Respondent has employed Regina Harris as a clerk in evening school registration for the Respondent's fall and spring semesters; that thereafter Harris worked the following total hours in the following years:

Hours Worked	Year
104	1980
458.25	1981
901.50	1982
789.05	1983
890.00	1984

That Respondent's fall semester occurs from September through December and Respondent's spring semester occurs from January through May; that prior to the commencement of a semester Harris would work a full-time, 7:45 a.m. to 4:15 p.m., work schedule until registration slowed or most of the classes offered by the Respondent were filled; that Harris would work said schedule for four (4) to six (6) weeks; that thereafter Harris would work approximately twenty-five (25) hours per week during evening hours for the remainder of the semester; that on January 18, 1985 Harris filed a grievance alleging the Respondent's failure to provide her with fringe benefits and seniority as she worked twenty (20) hours or more per week on a school year basis violated said collective bargaining agreement; that Associate Registrar Ray Lauerman initially denied said grievance; that there is no evidence Lauerman participated in the processing of said grievance after its initial denial; that on July 10, 1985 the Complainant and Respondent voluntarily resolved said grievance; that during calendar year 1985 the

Respondent for the first time had a summer semester; that on May 29, 1985 Lauerman submitted a Personnel Requisition for a temporary Clerk 1, evening summer school to work the period June 3, 1985 through July 19, 1985 including in said request that either Harris or Joan Robinson be offered said position; that said position was offered to Robinson; that Robinson has less seniority than Harris; that Lauerman was not informed as to why Robinson was offered the position rather than Harris; that Respondent's Department of Employe Services normally informed Lauerman as to why an employe Lauerman recommended for a position was not offered the position; that Harris contacted Lauerman by telephone to find out why she was not offered said position and Harris testified Lauerman informed her she was not offered the position because she had worked over six hundred (600) hours; that Lauerman testified he informed Harris she was not offered the position because of the number of hours she had already worked; and, that prior to the commencement of the 1985 fall semester the Respondent did not employ Harris full-time, 7:45 a.m. to 4:15 p.m., until classes were filled or registration slowed.

5. That on August 15, 1985 the Complainant filed the instant petition; that at the commencement of the hearing in the instant matter the parties agreed to conform the complaint to the evidence elicited at the hearing; that the Complainant alleges the Respondent's refusal to employ Harris to work the 1985 summer evening school session and registration violated the Municipal Employment Relations Act as discrimination against Harris and/or the Union for protected, concerted activity and that the Respondent violated the collective bargaining agreement when it failed to provide certain pro rata benefits to Harris and other such employes.

6. That the Respondent contends the Complainant has failed to demonstrate that Harris was denied work opportunities in ratiliation for her filing of a grievance, that the Respondent's decision not to offer Harris more work in order to prevent Harris's hours from exceeding 1040 hours did not constitute a prohibited practice, that the pro rata benefits referred to in said Section 4. d, are those benefits provided to the accreted regular hourly employes and not those provided to employes who exceed 1040 hours, that even if said pro rata benefits include benefits given to employes who work more than 1040 hours there was no violation of the agreement since Respondent's motive was not solely to avoid the accrual of benefits, that the Respondent did not reduce Harris's hours or lay off Harris, and that the Complainant is attempting to renegotiate the agreement pertaining to said accreted employes.

7. That prior to 1985 Harris had not worked any hours during the summer; that the summer semester registration work sought by Harris was hours of work in addition to the hours normally worked by Harris; that the decision not to offer Harris the summer semester registration work was made by Bernice Wenthur, Executive Secretary, Office of Student Services; that Wenthur routinely monitors the hours of work of part-time employes to insure part-time employes do not accumulate more than 1040 hours per year; that Wenthur denied Harris the opportunity to work the summer semester registration work because the number of hours scheduled for said position would have resulted in Harris accumulating more than 1040 hours; that Wenthur must have prior approval from Respondent's Board of Education before allowing a part-time employe to work more than 1040 hours; that there is no evidence Wenthur was hostile towards the Complainant or Harris for their participation in a protected concerted activity; and, that the Respondent's decision to deny Harris the summer semester registration work she sought did not result in either a reduction of Harris's hours of work or in a layoff of Harris.

8. That prior to the commencement of Respondent's 1985 fall semester the Respondent automated its registration process; that Respondent's 1985 fall semester began later than usual; that as a result of said automation Harris's services prior to the commencement of said semester were not needed by the Respondent; that there is no evidence the Respondent employed another employe to perform the duties normally performed by Harris prior to the commencement of a semester; that at the commencement of Respondent's 1985 fall semester Harris began her normal evening school registration work schedule; that Harris's normal hours of work for a fall semester were reduced by the Respondent; that said reduction of hours was not for the sole purpose of avoiding the accrual of prorated fringe benefits; and, that there is no evidence that Respondent's said reduction of Harris's hours was motivated by hostility toward Harris and/or the Union's participation in a protected concerted activity.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issue the following

CONCLUSIONS OF LAW

1. That Complainant Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 587, is a labor organization as defined by Section 111.70(1)(h), Stats.

2. That Respondent Milwaukee Area Technical College is a municipal employer as defined by Section 111.70(1)(j), Stats.

3. That Regina Harris was, at all times material to this matter, a municipal employe as defined by Section 111.70(1)(i), Stats.

4. That the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)(1), Stats.

5. That the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)(3), Stats., by its failure to offer Harris work for the 1985 summer semester and its reduction of Harris's hours of work at the commencement of the 1985 fall semester.

6. That the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)(4), Stats.

7. That the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)(5), Stats., by its failure to offer Harris work for 1985 summer semester and its reduction of Harris's hours at the commencement of the 1985 fall semester.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

That the instant complaint be, and the same hereby is, dismissed. 2/

Dated at Madison, Wisconsin, this 21st day of April, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By: Edmond J. Bielarczyk, Jr.
Edmond J. Bielarczyk, Jr., Examiner

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

On August 15, 1985 the Complainant filed the instant petition alleging that the Respondent had committed prohibited practices by retaliating against Regina Harris for exercising her protected rights and that the Respondent had violated Sec. 111.70(3)(a)1, 3, 4 and 5, Stats. During the course of the hearing the Complainant moved and the Respondent agreed to conforming the complaint to the evidence elicited at the hearing. In its brief, Complainant states the essential issues before the Examiner are as follows:

> "(1) Did MATC's refusal to allow Regina Harris to work during the 1985 Summer Evening School session and registration violate MERA as discrimination against her and/or the Union for protected, concerted activity?
>
> (2) Did MATC violate the parties' collective agreement when it failed to provide certain pro rata benefits to Regina Harris and other such employees?"

Accordingly, as the Complainant has not argued that the Respondent has refused to bargain in good faith or refused to execute a collective bargaining agreement previously agreed to, and, as the record does not demonstrate any violation of Section 111.70(3)(a)4, Stats., the Examiner has dismissed this portion of the Complaint. In addition, as the record does not demonstrate any independent violation of the Section 111.70(3)(a)1, Stats., the Examiner has also dismissed this portion of the Complaint.

POSITION OF THE PARTIES:

The Complainant's argument is structured in the following manner.

The parties recently agreed to accrete certain additional employes into the existing bargaining unit. Thereafter, they reached agreement on how the terms of the agreement would apply to the newly accreted employes, and in particular Section 4, (d) 3/. Since 1980 employe Regina Harris had been scheduled to work evening school registration and session hours. Harris normally worked full days when registration work began, then her hours would taper off to just her part-time night hours.

In January, 1985 Harris filed a grievance complaining as a group that she was entitled to certain additional benefits. As a result the Complainant argues the Respondent refused to schedule Harris to work the next semester period, summer, 1985. The Complainant asserts the Respondent either retaliated against Harris for filing the grievance or violated the agreement because the Respondent consciously was attempting to deny Harris pro rata benefits by laying her off because she was approaching "too many" hours necessary for certain pro rata benefits. In either case, the Complainant contends the Respondent committed a prohibited practice.

The Complainant points out that it is undisputed that Harris requested the summer hours, that Harris's supervisor recommended that she and/or a co-worker get the hours; that Harris was more experienced than the co-worker; and that the Respondent essentially laid Harris off for the summer of 1985 and beyond while the less senior, less experienced co-worker continued to work.

The Complainant argues that during this same time frame the Respondent resisted the Harris grievance and did not settle it until mid-August 1985, with considerable monetary repercussions to the Respondent.

3/ See Finding of Fact 3.

The Complainant asserts that the Respondent admits it laid off Harris because her hours were reaching a certain level and that the Respondent was actively resisting Harris's grievance when it reduced her hours.

The Complainant also argues that Harris's supervisor admitted he could have hired Harris had he wanted to. The Complainant asserts that Harris's supervisor laid off Harris in the midst of her grievance, which the supervisor initially denied. The Complainant also points out that the supervisor was not given, as usually done, a reason by Employee Services as to why Harris was not hired. Further, that the supervisor apparently made up a cover-up reason and informed Harris that it was because she had gone over 600 hours. The Complainant asserts that, after considering the totality of the supervisor's testimony it is impossible to believe he did not ask why Harris was not hired and that he was trying to hide the real reason (retaliation) when he informed Harris of the 600 hours story because the supervisor had the authority to hire Harris if he wanted to.

The Complainant would have the Examiner find that the Respondent committed prohibited practices and order appropriate relief.

The Respondent's arguments are structured in the following manner.

The Respondent contends that the Complainant has the burden of proof in the instant matter and that the Respondent has failed to demonstrate that Harris was denied work opportunities in retaliation for her filing a grievance. The Respondent points out that Lauerman, at the time he submitted the personnel requisition for either Harris or Robinson, was unaware of the pending grievance. Further, that Wenthur, the individual who deleted Harris's name was unaware of the grievance and deleted her name because of the number of hours she had already worked. Thus, the Complainant asserts there is no evidence of retaliation. The Respondent also points out that the registration work was automated at the start of the 1985 fall semester and as a result Harris did work less hours at that time. The Complainant points out that Harris never worked both day and evening school registration, there was no day school registration in advance of the 1985 fall semester, and there was a later start of the fall semester in 1985. The Respondent asserts that due to automation there was less work and, as such, Harris commenced working her customary evening school registration hours at the start of the 1985 fall semester. Therefore, the Respondent argues the allegations of retaliation must be dismissed.

Turning to the breech of contract question the Respondent also asserts the Complainant's claims must be rejected. Here, the Respondent asserts that the "pro rata" benefits in Section 4.(d), only refers to the pro rata benefits identified in Section 4(c) and (e). The Respondent points out that the Complainant drafted these sections and argues any ambiguities must be resolved against the Complainant. The Respondent also asserts that it did not seek to avoid the accrual of pro rata benefits identified in Section 4(c) and (e), but sought to avoid payment of benefits only enjoyed by employes who worked 1040 hours or more. The Respondent points out that the benefits enjoyed by employes who work 1040 hours were never discussed when the parties negotiated the agreement concerning the accreted employes.

The Respondent also argues, should the Examiner construe the phrase "Pro Rata" benefits to include the benefits given to employes who work 1040 hours, that there was no violation since the Respondent's motive was not solely to avoid the accrual of pro rated benefits. Here the Respondent points out that prior approval must be obtained in order for an employe to work more than 1040 hours. The Respondent had no budgeted position for Harris to work more than 1040 hours and thus Wenthur deleted her name. Here the Respondent points out that employes who work more than 1040 hours receive full health, dental and sick leave benefits and that these benefits are not pro rated for employes who work less than 1040 hours.

The Respondent also asserts that as the summer school work was new work, Harris's hours could not have been reduced and she could not have been laid off within the meaning of the amended agreement. The Respondent also argues that as the registration process was computerized, Harris was not needed to work day registration at the commencement of the 1985 fall semester. The Respondent contends this operational change did result in a reduction of Harris's hours, but the Respondent points out that such a reduction is permissable under the negotiated amendment to the agreement. The Respondent also points out that under said amendment the cessation of a normal employment schedule is not considered a layoff.

The Respondent also contends the Complainant is attempting to renegotiate the amendment to the agreement. The Respondent asserts the thrust of the Complainant's argument is to eliminate the terms "sole" and "pro rata" from the amended agreement.

The Respondent would have the Examiner, based upon the above and foregoing, dismiss the Complaint in its entirety.

DISCUSSION:

Discrimination

The Complainant herein has the burden of proof to demonstrate by a clear and satisfactory preponderance of the evidence that the Respondent and/or its agents' actions were motivated at least in part by anti-union considerations. 4/ Specifically, such a conclusion rests upon the following factual conclusions:

1.) That the employe was engaged in protected concerted activity.

2.) That the employer was aware of the employe's involvement in the activity.

3.) That the employer was hostile toward such activity.

4.) That the employer's actions were at least in part motivated by the hostility toward the protected concerted activity. 5/

While the Complainant has demonstrated that Harris was engaged in a protected activity, there is no evidence that the Respondent or its agents were hostile toward such activity, or, that the Respondent's actions were in part motivated by hostility toward the protected activity.

The record demonstrates that Harris filed a class action grievance on January 18, 1985 and that it was voluntarily resolved on July 10, 1985. There is no dispute that Harris was involved in a protected activity nor did the Respondent dispute that Ray Lauerman, Harris's supervisor, initially denied this grievance. However, the Complainant's contentions concerning Lauerman's role in the instant matter cannot support a finding that Harris and/or the Union were discriminated against. First, Lauerman testified he recommended either Harris or Robinson be hired for the summer registration work because he considered both qualified for the position. 6/ Second, Harris's testimony confirmed that Lauerman recommended her for the position without even asking her if she wanted the position. 7/ Third, Lauerman did not make the decision to strike Harris's name from the personnel requisition form, Bernice Wenthur did. And fourth, regardless of whether Lauerman informed Harris she was denied the summer registration work because of her having worked 600 hours or having worked too many hours, Lauerman did not make the decision and could only surmise as to why she did not get the position. However, the fact that Lauerman recommended Harris or Robinson for the position because he thought both were qualified to perform the work and the fact that Lauerman did not make the decision to strike Harris's name from the personnel requisition form results in a conclusion that Lauerman had no hostility towards Harris or the Union for filing and pursuing of the grievance.

In addition, the Complainant's assertions that the role played by Respondent's Employee Relations Department in the instant matter is evidence of discrimination is also rejected by the Examiner. While the Respondent did not dispute that Employee Services was both aware of the Harris grievance and actively resisting it, the record demonstrates that Wenthur struck Harris's name from the personnel requisition form before Employee Services received the form. Thus Employee Services did not make the decision to strike Harris's name nor could it

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4/ City of Brookfield, Dec. No. 20691-A (WERC 2/84).

5/ Fennimore Community Schools, Dec. No. 18811-A (Malamud 1/83).

6/ Transcript, p. 68.

7/ Transcript, p. 10.

inform Lauerman as to why she was not selected for the position. Therefore, the record demonstrates there is no evidence of discrimination by Respondent's Employee Services Department.

Finally, the record clearly demonstrates that Wenthur made the decision to strike Harris's name from the personnel requisition form. Wenthur did so because after a review of the hours worked by Harris over the previous twelve (12) months she determined that the additional summer registration work would increase Harris's hours to more than 1040 hours. As there was no budget approval for a 1040 hour or more position in Registration for this type of work, Wenthur crossed out Harris's name. 8/ The Complainant presented no evidence that Wenthur was aware of Harris's involvement in a protected activity and that Wenthur, an agent of the Respondent, was hostile towards that activity. As Wenthur's activity, at most, was a clerical decision, the Examiner has concluded there is no evidence of discrimination by Wenthur in this matter.

The record herein does demonstrate that Harris's hours were reduced at the commencement of the 1985 fall semester. The Respondent pointed out that the 1985 fall semester began later than usual, and, due to automation of its registration process, night school registration began concurrently with day school registration. Thus, Harris began working her normal night school work schedule at the commencement of the 1985 fall semester and did not work a day schedule for approximately one month until registration slowed or classes were filled as she had in previous years. The Complainant did not present any evidence that some other employe worked the day schedule hours normally worked by Harris at the commencement of the 1985 fall semester. Therefore, the Examiner has concluded there is no evidence of discrimination by the Respondent when it reduced Harris's hours at the commencement of the fall semester.

Based upon the above and foregoing the Examiner has concluded that the Respondent did not discriminate against Harris and/or the Union when it denied Harris the summer registration work. Therefore, the Examiner has dismissed the 111.70(3)(a)3 portion of the Complaint.

Breech of Contract

The Complainant also asserts that the Respondent violated the collective bargaining agreement when it denied Harris the summer registration work. The parties agreed to conform the Complaint to evidence and testimony presented at the hearing. Both parties presented evidence, testimony, and arguments concerning the breech of contract issue. Therefore, the Examiner invoked the jurisdiction of the Commission to determine this question.

The parties amended agreement in Section 4,d 9/ clearly prohibits the Respondent from either laying off or reducing the hours of regular hourly employes for the sole purpose of avoiding the accrual of pro rata benefits. The Complainant points to this provision and asserts the Respondent violated it when it failed to employ Harris to work summer school registration. However, in order to determine whether the Respondent violated this provision, the Complainant must first demonstrate that Harris ' hours were reduced or that Harris was laid off.

The record demonstrates that Harris had worked for the Respondent since 1980 performing evening school registration work. Normally, at the commencement of either the fall or spring semester she would work a day schedule until registration slowed or classes began to fill. Then Harris would work evening school registration for the remainder of the semester. During calendar year 1985 the Respondent, for the first time, determined to have a summer semester. There was no evidence presented by the Complainant which demonstrated that during the fall of 1984 or the spring of 1985 that Harris's hours were reduced from the hours she normally worked during those fall and spring semesters. The summer semester work hours sought by the Complainant thus would have increased the total hours worked by Harris. Therefore the Examiner concludes that the Respondent's failure to employ Harris to work summer school registration did not result in a reduction of Harris's work hours.

8/ Transcript, p. 76.

9/ Finding of Fact No. 3.

The record also demonstrates that Harris was not laid off when the Respondent failed to employ Harris to work the summer school registration. As the Respondent points out, Article VI, Seniority, Section 8, clearly states the termination of an employe's normal employment schedule shall not be considered a layoff. Herein, the record demonstrates Harris's normal employment schedule terminates at the completion of the spring semester. Therefore, when Harris's normal work schedule was completed at the end of the 1985 spring semester, her normal work schedule terminated and the parties have clear and unambiguous language that such a termination is not a layoff. While the Complainant is correct in that Harris had worked every semester previous to the 1985 summer semester, Harris normally did not work during the time frame between the end of the spring semester and the commencement of work for the fall semester. Although Harris was qualified to perform this work and more senior than the employe who performed it, the Complainant did not present any evidence which demonstrated the Respondent was required to offer the more senior employe the summer registration work. Therefore, as Article VI, Section 8 clearly states that the termination of an employe's normal work schedule does not constitute a layoff, and, as Harris normally did not work between the end of the spring semester and the commencement of work for the fall semester, the Examiner concludes the Respondent did not lay off Harris when it failed to employ her to work the summer semester.

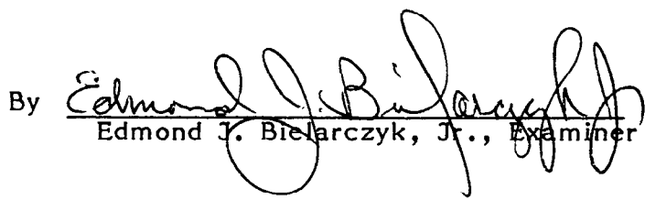
The record does demonstrate that Harris's hours were reduced at the commencement of the 1985 fall semester. However, the Complainant did not present any evidence to dispute the Respondent's evidence and testimony that the reduction in Harris's hours was due to automation of the Respondent's registration process and that the Respondent's 1985 fall semester began later than usual. Nor did the Complainant present any evidence that the work normally performed by Harris at the commencement of the 1985 fall semester was performed by some other employe. Therefore, the Examiner concludes the Respondent's reduction of Harris's hours at the commencement of the 1985 fall semester did not violate the parties agreement.

Based upon the above and foregoing the Examiner concludes the Respondent did not violate the parties' collective bargaining agreement. Therefore, the Examiner has dismissed the Section 111.70(3)(a) 5 portion of the Complaint.

Having found that the Respondent's actions did not violate Section 111.70(3)(a) 1, 3, 4, or 5, the Examiner has dismissed the Complaint in its entirety.

Dated at Madison, Wisconsin, this 21st day of April, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Edmond J. Bielarczyk, Jr., Examiner