STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BLACKHAWK TECHNICAL FACULTY FEDERATION, LOCAL 2308, AFT, WFT, AFL-CIO, Complainant,

vs.

BLACKHAWK TECHNICAL COLLEGE, Respondent.

Case 71
No. 59968
MP-3739

Decision No. 30221-A

Appearances:

Mr. Steve Kowalsky, Staff Representative, Wisconsin Federation of Teachers, AFL-CIO, 1334 Applegate Road, Madison, Wisconsin, appearing on behalf of the Complainant.

LaFollette, Godfrey & Kahn, by **Attorney Jon E. Anderson,** One East Main Street, P.O. Box 2719, Madison, Wisconsin, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Blackhawk Technical Faculty Federation, Local 2308, AFT, AFL-CIO, filed a Complaint with the Wisconsin Employment Relations Commission on May 22, 2001, alleging that Blackhawk Technical College had committed a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats,. when it refused to arbitrate a grievance filed by John Norland. The Respondent filed an Answer on October 4, 2001, denying that it had violated Sec. 111.70(3)(a)5, Stats., and alleging affirmative defenses. The Commission issued an order on September 25, 2001 authorizing Examiner Lauri A. Millot to make and issue findings of fact, conclusions of law and order as provided in Sec. 111.07(5), Stats.

Hearing on the Complaint was held on November 6, 2001, at Janesville, Wisconsin. A stenographic transcript of the proceedings was made and received by November 26, 2001. The parties' initial briefs were received by April 25, 2002, and the Examiner was advised on May 3, 2002, that neither the Complainant nor Respondent intended to file reply briefs, whereupon the record was closed.

The Examiner, having considered the evidence and arguments of Counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Blackhawk Technical Faculty Federation, Local 2308, AFT, WFT, AFL-CIO, (hereinafter Federation or Complainant) is a labor organization and at all times material herein has been the exclusive bargaining representative of:

> . . . all full-time teaching personnel of the Blackhawk Technical College excluding clerical, custodial and supervisory personnel, but including the positions of Student Counselor, Librarian, and Federally Funded Teacher. (Reference: Certification by the Wisconsin Employment Relations Board Case II No. 16618 ME-898 Decision No. 11726-A.) The board further recognizes the Federation as the exclusive bargaining representative of all full-time Federally Funded Teachers, defined as being teachers who teach more than 50% of their time in projects which are numbered federal projects that are contingent upon annual funding by the Federal Government.

The Federation's principal office is located at 1334 Applegate Road, Madison, Wisconsin, 53713-3184.

2. Blackhawk Technical College (hereinafter College or Respondent) is a municipal employer and maintains its principal office at 6004 Prairie Road, P.O. Box 5009, Janesville, Wisconsin 53547.

3. At all times material herein, the Federation and the College have been parties to a series of collective bargaining agreements. The July 1, 1997–June 30, 1999 collective bargaining agreement (relevant herein) contained, in pertinent part, the following provisions:

ARTICLE II MANAGEMENT RIGHTS AND RESPONSIBILITIES

> The District Board, unless otherwise herein provided, hereby retains and reserves unto itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right:
>
> . . .

2. To hire all employees and, subject to the provisions of law, to determine their qualifications and the conditions of their continued employment, to relieve from duty because of lack of work, to discipline, demote or dismiss as deemed necessary or advisable by the Board.

. . .

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the District Board, the adoption of policies, rules regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and Wisconsin Statutes; Section 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the State of Wisconsin, and the Constitution and Laws of the United States.

ARTICLE III FAIR PRACTICES

Section A

The Board shall not discriminate against any employee on the basis of race, creed, national origin, sex, age, handicap, marital status, political affiliation, or membership in or association with the activities of any employee organization.

Section B

The principle of equal pay shall be observed for all employees for comparable work and duties, and all fringe benefits shall apply to all employees in the same manner, and all employees shall have equal opportunity for advancement within the organization.

ARTICLE V GRIEVANCE PROCEDURE

Section A – Definitions

1. A grievance is a complaint by an employee in the bargaining unit or by the Federation where there has been an alleged violation, misinterpretation, or misapplication of this agreement, or any other written agreement between the parties relating to wages, hours and conditions of employment.

. . .

Section B – Procedures for Adjustment of Grievance

Grievances shall be presented and adjusted in accordance with the following procedures:

STEP ONE

An aggrieved party shall promptly attempt to resolve a grievance by oral discussion with his/her immediate supervisor above bargaining unit level, either directly or accompanied by a Federation representative, within twenty (20) school days of the time when the aggrieved party knew or should have known of the cause of such grievance. In the event of a grievance, the aggrieved party shall continue to perform his/her assigned task and grieve the dispute later.

STEP TWO

If the grievance has not been resolved satisfactorily under Step One, the grievance shall be reduced to writing and submitted to the Administrator of Human Resources no later than seven (7) working days after the oral grievance set forth in Step One. Within seven (7) working days after receiving such written grievance, the Administrator of Human Resources shall communicate his/her decision, in writing, to the aggrieved party, with a copy of such decision being also provided [sic] the duly authorized representative of the Federation.

. . .

STEP FIVE

If the aggrieved party is not satisfied with the decision of the Board, the Federation, within twenty (20) working days after the decision by the Board, may request the Wisconsin Employment Relations Commission supply a panel of five (5) arbitrators, from which the parties will alternately strike names and the final name shall be the arbitrator.

(a) The arbitration shall be held under the rules of arbitration of the Wisconsin Employment Relations Commission.

(b) The decision of the arbitrator shall be binding upon both parties and shall be final except for a decision that would reduce or eliminate aids provided for school purposes and operation from the state or federal governments, or other sources, or change or abridge a mandatory school law.

(c) Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, substituting, subtracting from or adding to the provisions of this Agreement.

(d) In the event that there is a charge for the services of an arbitrator, or for a transcript of proceedings, the parties shall share the expense equally. Each party shall bear the expense of preparing and presenting its own case.

ARTICLE IX SALARY AND TEACHER WELFARE

Section A - Salary Schedule

1. The 1997-98 and 1998-99 Salary Schedules, as shown in Addendum "C" to this Agreement shall take effect and be in force as of the first contract teaching day of each respective school year.

2. All teachers shall be paid according to the schedule shown on Addendum "C," and the rates contained thereon during the 1997-98 and 1998-99 school years.

3. All credits earned by a current staff member under the credit reimbursement program of the District shall be recognized and his/her salary shall be adjusted accordingly upon receipt of an original transcript prior to the last pay period in October and/or March.

4. All teachers who change classifications (i.e. from Bachelor to Master) shall move from the Bachelor to Master classification at the commencement of the school term.

5. All teachers shall receive increments as indicated on the salary scheduled, as such increments are earned by time of service or classification change of degrees. Teachers may only advance vertically for time spent teaching in the District, on approved sabbatical leave or on a leave for work experience if such advancement has been approved in advance.

. . .

ARTICLE XII ENTIRE MEMORANDUM OF AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no verbal statements shall supercede any of its provisions. Any amendment supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

FACULTY SALARY SCHEDULE **July 1, 1997 to June 30, 1998**

Step	. . .	M+0	M+6	M+12	M+18	M-24
1	. . .	32,133	32,778	33,424	34,075	34,724

. . .

4. On August 4, 1997, John C. Norland signed an "Acceptance of Appointment" which constituted the written contractual appointment of Norland to a position with the College for the 1997-98 school year for a salary of $31,197. This salary was the Masters Lane, Step 2 salary from the prior agreement between the parties because the 1997-99 Agreement was under negotiation at the time Norland was offered and signed the document.

5. On November 12, 1999, Norland submitted the following memorandum addressing "My Experience and The Pay Scale" to Terry Simmons, Mona Antonelli and Brian Gohlke, College Director of Human Resources:

. . .

Thank you for taking the time to help with this difficult matter.

During my accelerated training this past August, I learned that some instructors start higher than step one on the pay scale based on their experience. When I was hired, Karen Knox simply said, "You will start here," as she pointed to the masters plus one, step one box. For two years before coming to Blackhawk, I taught the same subject ***full-time***, (emphasis in original) and had related business experience for several years before that.

I called Brian Gohlke, whom I thought would be considered my supervisor on this matter, as soon as I found out. He explained that no decision could be made until the new Vice President was hired. Out of consideration for Brian and the school, I was happy to agree to extend the seven-day window required for a response by our agreement Article V, Section B, STEP ONE. Now it seems the appointment of a new vice president won't happen soon, so we need to proceed.

I respectfully request that my position on the pay scale be adjusted to accurately reflect my experience and that the college issues a clear statement explaining how experience has been and will be determined.

Thank you for your time and help.

Antonelli responded to Norland's memorandum on or about November 16, 1999, stating that Norland's placement on the salary schedule was consistent with his educational preparation, credits earned and years of experience.

6. On November 17, 1999, Norland sent a memorandum, which constitutes the grievance in this matter, to Brian Gohlke addressing "My Experience and the Pay Scale" which read as follows:

. . .

> Thank you for your help. I'm thankful that the people here are big enough to treat this issue professionally and understand that it isn't personal. I continue to enjoy and respect the people at Blackhawk although we disagree at times.
>
> In response to Mona Antonelli's memo of November 16, 1999, I have three issues.
>
> 1 I taught full-time. Teaching was my only income. I had a teaching load equal to that of the non-adjunct faculty at the institutions where I taught. Certainly, one wouldn't equate teaching one course during a semester to teaching five or six. The "step" portion of the pay chart is based on experience, not pay, not benefits, and not title. The pay and the title may have been described as part-time, but the experience was full-time. Experience is accurately reflected through contact hours or credits taught, not an arbitrary title.
>
> 2 I don't believe I was credited with one year of experience when I started. I started at step 1 and am currently being paid at step 3. There is no step 0, so step 1 must mean zero years of experience.
>
> 3 Claiming that General Education instructors have no applicable work experience is capricious, discriminates against them unfairly, and circumvents the negotiated pay scale. Pay-scale positioning should be applied to each instructor fairly and equally. On page five of the contract, (Article III, Section B) it says, "Equal pay will be observed for comparable work and duties…and all employees shall have equal opportunity for advancement within the organization."
>
> We need a fair, clear, and concrete policy from the college explaining how a Federation member's position on the pay scale was, is, and will be determined.
>
> Please consider this step two of the grievance procedure.

On a related issue, the '98 – '99 pay scale shows me at $36,847.00

36,847.00*3.1% (fall '99 raise)= 1142.26

36,847.00+1142.26= 37,989.26

But my last check showed a gross of 1460.23

1460.23*26=37,965.98 which is short of the amount above.

7. On November 29, 1999, Norland, Antonelli, Gohlke and Rick Dehring, Federation Representative, met regarding Grievance 99-01. Gohlke provided Norland a written response dated December 13, 1999, which read as follows:

. . .

This is in response to our meeting on November 29, 1999 regarding Grievance #99-01. I have reviewed the situation regarding this grievance submission; the following is my response:

Grievance #99-01 Section(s) of the Contract allegedly violated:

Article IX, Section A and Article III, Section B.

Issue #1. "I taught full-time…The pay and the title may have been described as part-time, but the experience was full-time…"

Issue #2. "I don't believe I was credited with one year of experience when I started. I started at step 1 and am currently being paid at step 3. There is no step 0, so step 1 must mean zero years of experience."

Issue #3. "Claiming that General Education instructors have no applicable work experience is capricious, discriminates against them unfairly, and circumvents the negotiated pay scale. Pay-scale positioning should be applied to each instructor fairly and equally."

Relief Sought: "We need a fair, clear, and concrete policy from the college explaining how a Federation member's position on the pay scale was, is and will be determined."

Response:

Issue #1. Although you state that the teaching load assigned to you through various institutions was "full-time," your status at each institution was "part-time." BTC uses the determination to equate four semesters of part-time instruction employment as one year of full-time instructional employment. In review of your application, the Teaching Experience you listed corresponds to four semesters of part-time instructional experience. There was no violation of the BTC/BTFF Agreement on this issue.

Issue #2. Upon your hiring at BTC, you were placed at Master's Degree +0 credits and 1 year of experience on the salary schedule. Dr. Karen Knox informed you of this placement in your job offer. You are correct in stating that there is no Step 0; the appropriate placement for one (1) year of experience is Step 1. This action is consistent with the placement on the salary schedule. There was no violation of the BTC/BTFF Agreement on this issue.

Issue #3. Occupational experience that is directly relevant to the program area of instruction is included in determination of the salary schedule placement. In our conversation on November 29, I stated that the occupational experience you listed did not appear to be relevant occupational experience for consideration. Although you stated that you performed activities relative to "communications," you agreed that the experience listed on the application does not support relevant occupational experience. There was no violation of the BTC/BTFF Agreement on this issue.

Based on the information reviewed, I determined that there was no violation of the BTF/BTFF Agreement. This grievance is denied.

. . .

8. Grievance 99-01 was processed through Step 4 of the grievance procedure and Eric A. Larson, President, responded on behalf of the College as follows:

. . .

You, Rick Dehring, and I met on Wednesday, January 5, 2000, to discuss the merits of faculty grievance 99-01 in which you contend:

> BTC has not credited you for your experience and has not followed the pay scale outlined in the contract; and

> BTC has not followed the fairness clause of the contract (Article III, Section B), because it has not used the same criteria to assess each instructor's experience; and
>
> BTC has not followed the fairness clause of the contract (Article III, Section B), because it uses an inaccurate and discriminatory policy when assessing "part-time status" teaching experience.

From our discussion, the heart of the issue deals with your initial placement on the salary schedule as a result of the documents you provided at the time of your hire in 1997. Initial placement on the salary schedule at the time of hire is not an appropriate subject for grievance as there is no contract clause violated and "the hiring of all employees" is specifically a management right (Article II, Subparagraph #2).

Your further contention that the College has not followed the fairness doctrine of the contract (Article III, Section B) in the assessment of experience, specifically part-time instructional experience, is not the meaning of the fairness clause. Clearly, Article III, Section B stipulates that the College will provide equal pay and benefits for equal work by all instructional faculty. Through the use of a negotiated faculty salary schedule and the benefits package offered to all instructional faculty, the College does provide equal pay and benefits for equal work.

For these reasons, the grievance is denied.

. . .

A representative for the Federation submitted a request for a panel of five arbitrators from the Wisconsin Employment Relations Commission on March 14, 2000. The Commission supplied the parties with a panel from which an arbitrator was selected. The arbitrator scheduled the matter for hearing to occur on December 18, 2000.

9. On or about December 13, 2000, the Attorney for the College sent a letter to the Federation Representative, which read in pertinent part

. . .

As you know, arbitration is a consensual process and is predicated on resolving disputes, which the parties themselves have agreed to resolve. The Norland grievance involves the matter of initial placement of Mr. Norland on the salary schedule. Such determinations are management determinations that are not

> subject to the collective bargaining agreement and in the opinion of the College, are not matters over which the College has agreed to arbitrate. Accordingly, the College will not participate in the arbitration concerning this matter and is canceling the arbitration hearing scheduled for Monday, December 18, 2000.
>
> . . .

10. The parties' dispute as to Grievance 99-01 is arguably covered by Article III and Article IX of the collective bargaining agreement and is not expressly excluded by any provision of the Agreement. Therefore, it cannot be said with positive assurance that the arbitration clause in the parties' Agreement is not susceptible of an interpretation that covers this dispute.

11. The College has refused, and continues to refuse, to proceed to arbitration on Grievance 99-01.

Based upon the foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

1. The District has violated Sec. 111.70(3)(a)5, Stats., by its refusal to arbitrate questions arising as to the meaning or application of the terms of a 1997-1999 Collective Bargaining Agreement between Blackhawk Technical College District Board and the Blackhawk Teachers' Federation Local 2308, AFT, WFT, AFL-CIO.

ORDER

The Respondent, Blackhawk Technical College, its officers and agents, shall immediately:

(1) Cease and desist from refusing to proceed to arbitration on Grievance 99-01.

(2) Take the following affirmative action which the Examiner finds will effectuate the purposes of the Municipal Employment Relations Act:

(a) Participate in the arbitration of the grievance noted above.

(b) Post the notice attached hereto as Appendix "A" in conspicuous places in the College's buildings where notices to College employees are posted. The Notice shall be signed by a representative of the College and shall be posted immediately upon

(c) receipt of a copy of this Order and shall remain posted for a period of thirty (30) days thereafter. Reasonable steps shall be taken to ensure that the Notice is not altered, defaced or covered by other material.

(d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order what steps have been taken to comply with this Order.

Dated at Wausau, Wisconsin, this 30th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/

Lauri A. Millot, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

WE WILL NOT violate Section 111.70(3)(a)(5) of the Municipal Employment Relations Act by refusing to participate in the arbitration of grievances, which raise contractual issues not specifically excluded from the contractual arbitration process.

WE WILL participate with BLACKHAWK TECHNICAL FACULTY FEDERATION, LOCAL 2308, AFT, WFT, AFL-CIO in the arbitration of Grievance 99-01.

Dated this _____ day of _____, 2002.

BLACKHAWK TECHNICAL COLLEGE

By:

_____

THIS NOTICE WILL BE POSTED IN THE LOCATIONS CUSTOMARILY USED FOR POSTING NOTICES TO EMPLOYEES FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE HEREOF. THIS NOTICE IS NOT TO BE ALTERED, DEFACED, COVERED OR OBSCURED IN ANY WAY.

BLACKHAWK TECHNICAL COLLEGE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

POSITIONS OF THE PARTIES

The Complainant

The Complainant asserts that the College's refusal to proceed to arbitrate Grievance 99-01 which the Complainant refers to as the Pay Scale Grievance, is a violation of Wisconsin law and seeks an order requiring the College to arbitrate the grievance.

The Complainant begins by reviewing the decision issued in MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 23592-B (WERC, 12/88), wherein the Commission set forth the principles it would apply in cases alleging a refusal to bargain. The Complainant notes that the parties have five-step grievance procedure that culminates with arbitration for "an alleged violation, misinterpretation or misapplication of this agreement, or any other written agreement between the parties relating to wages, hours and conditions of employment." The complainant asserts that this definition of a grievance is "broad" and thus, using the Commission articulated standard concludes that there is a construction of the parties' arbitration clause that covers the Pay Scale Grievance.

The Complainant argues that the Pay Scale Grievance arises out of an interpretation and application of Article IX, Section A. The Complainant notes that Section A states that "teachers shall be paid according to the schedule" and that the salary schedule references "step." The Complainant asserts that the grievance alleges that an instructor was not properly placed on the salary schedule based on his prior teaching experience. The Complainant asserts that past practice and bargaining history would give meaning to the terms “teachers shall be paid according to the schedule” and “step.”

The Complainant next argues that the grievance raises issues of interpretation and application of Article III, Fair Practices. The Complainant relies on the response of College President who informs Norland that Norland’s contention “is not the meaning of the fairness clause” and asserts two parties disagreeing over the interpretation of a contract clause is a classic grievance matter.

Finally, the Complainant asserts that there is no clause of the labor agreement that would exclude arbitration of this subject matter.

The Respondent

The Respondent argues that the arbitration clause of the parties labor agreement is not susceptible to an interpretation that covers the matter referenced in the grievance filed by John Norland, and as such, it is not arbitrable. The Respondent relies on the law grounded in the Steelworkers Trilogy and the adoption of its principles by the Wisconsin Supreme Court in DENHART V. WAUKESHA BREWING COMPANY, INC. 17 WIS.2D 44 (1962) and later in JT. SCHOOL DISTRICT NO. 10 V. JEFFERSON EDUCATION ASSOCIATION, 78 WIS2D 94 (1977).

The Respondent argues that the Union has not identified nor is it able to identify any specific clause of the collective bargaining agreement that has been violated. The Respondent notes that the Grievant has not alleged that he was not paid in accordance with the salary schedule or any term of the parties' agreement. Rather, the Grievant has alleged that he was not appropriately placed on the salary schedule. The Respondent asserts that the parties have not reached an agreement as to where on the salary schedule newly employed teachers will be placed. Further, the Respondent argues that Rich Dehring, a Union witness, not only testified that management determines the placement of teachers on the salary schedule, but that he did not recall a time when the College and the Union had bargained to agreement as to where new hires would be placed on the salary schedule. Given that there is not a specific clause that expresses the right to which the grievance is based, Respondent asserts that a claim alleging a violation is not arbitrable.

The Respondent next addresses the "strained attempt to fit Norland's grievance into the language of the contract." The Respondent argues that the Union's assertion in the Norland grievance that Article III, Section B, has been violated is a misapplication of this article and section. The Respondent argues that Article III, Section B, address the parties' agreement that men and women will receive equal pay for comparable work. Thus, even though the grievance alleges a violation of Article III, Section B, the section does not apply to the grievant's dispute.

In response to Union assertion's that a practice exists which the College violated thus giving rise to the grievance, the Respondent points out that the complete agreement between the parties can be found within the confines of the collective bargaining agreement. Thus, the Union cannot establish a contractual violation and arbitration is not appropriate.

Finally, looking to the collective bargaining agreement, the Respondent asserts that the Management Rights clause is a reserved rights clause and therefore unless a right is specifically expressed in the agreement, then the matter is not arbitrable. The Respondent next refers the Examiner to the Entire Memorandum of Agreement clause and concludes that this clause establishes that the second standard used to determine arbitrability has been met because by reading the reserved rights clause in conjunction with the complete agreement clause the parties have specifically excluded the arbitration of the initial placement of a teacher on the salary schedule.

DISCUSSION

This is a case where the parties agreement provides for binding arbitration and the complaint alleges that the College has refused to process a grievance to arbitration in violation of the grievance and arbitration clause of the collective bargaining agreement and thereby in violation of Sec. 111.70(3)(a)5, Stats. Pursuant to Section 111.70(3)(a)5, it is a prohibited practice for a municipal employer:

> To violate any collective bargaining agreement previously agreed upon by the parties..., including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award where the parties have agreed to accept such award as final and binding upon them.

The law to be applied when addressing a refusal to arbitrate complaint was explained by the Wisconsin Supreme Court in JEFFERSON where it stated:

> The court has no business weighing the merits of the grievance. It is the arbitrators' decision for which the parties bargained . . . The court's function is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it.
>
> ID at 111.
>
> An order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.
>
> ID. at 113.

Thus, analysis begins with the arbitration clause of the collective bargaining agreement. Article V, Section A, defines a grievance as a "complaint by an employee in the bargaining unit or by the Federation where there has been an alleged violation, misinterpretation, or misapplication of this agreement, or any other written agreement between the parties relating to wages, hours and conditions of employment. As the College correctly cites, the mere allegation of a contract violation does not constitute a matter appropriate for arbitration. Rather, it is necessary that the Federation ". . . must point to specific contract language that arguably expressly covers the subject of the grievance." ID at 112.

Grievance 99-01 alleges that Article IX, Section A, and Article III, Section B, have been violated. The College asserts that the Management Rights clause affords it the sole right to "hire" and that this section and the absence of language that "governs the initial placement of teachers on the salary schedule" controls in this instance. The grievance does not challenge the right of the College to either hire employees or to determine where an initial teacher is placed on the salary schedule. Rather, the grievance alleges that the College, in exercising its rights, did so in a manner inconsistent with what the Federation believes "step" to mean as it is used on the Salary Schedule which is referred to in Article IX, Section A. The Salary Schedule considers three criteria when determining placement; education, credits and step. The record establishes that the vertical column on the Salary Schedule which is labeled "step" represents "years experience." The grievance alleges that the experience criteria was not correctly calculated in that the College determined that Norland's four semester teaching in part-time capacity equaled one year of experience for purposes of determining Norland's "step" on the salary schedule. The grievance further alleges that the College failed to recognize Norland's past business experience for purposes of the salary schedule. Given that "step" is contained in a specific provision of the collective bargaining agreement and that there is an arguable relationship between "step" and experience, it cannot be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers this dispute.

With respect to Article III, Section B, the College and Federation differ in their interpretation of the meaning of the section. Section B, provides that "the principle of equal pay shall be observed for all employees for comparable work and duties, . . ." The Complainant construes the clause to ensure equitable compensation among and between all teachers while specifically protecting a teacher from the College disparately crediting experience based on the specific discipline of the teacher (i.e. general education versus a specialized field) or based on their teaching status (part-time or full-time). In contrast, the College asserts that the section's purpose is to ensure that men and women are paid the same amount when doing the same or comparable jobs. This is a dispute about the proper interpretation of Article III, Section B, which belongs before an arbitrator.

The record is clear that this is a dispute regarding the term "step" as it appears in Article IX, Section A, and the Salary Schedule and the manner in which the College evaluates experience in relation to fairness and equal pay. The grievance involves specific provisions of the collective bargaining agreement. It therefore follows that, on its face, the grievance arguably raises issues involving "an alleged violation, misinterpretation, or misapplication" of the parties agreement, and therefore meets the first element of the JEFFERSON test.

Having found that the first test of JEFFERSON has been satisfied, the next question to address is whether any section of the collective bargaining agreement specifically excludes arbitration of this dispute. I find no section does so.

The Respondent's argument that Article XII, in conjunction with the Management Rights clause, specifically excludes the grievance is not persuasive. The College argues that the reserved rights clause of the agreement forecloses this grievance because the parties have not bargained regarding where a new hire shall be placed on the salary schedule. However, it does not automatically follow from the Respondent's arguments that the this forecloses a grievance challenging where the College places a teacher. In as much as there is not a specific clause that negates arbitration, the second element of the JEFFERSON test has been met.

Accordingly, the Examiner has concluded that the College refused to arbitrate Grievance 99-01 in violation of Sec. 111.70(3)(a)5, Stats., and has issued a conventional Order to remedy that violation.

Dated at Wausau, Wisconsin, this 30th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/
Lauri A. Millot, Examiner

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