

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
NORTHEAST WISCONSIN :
TECHNICAL COLLEGE : Case 73
and : No. 43576
: MA-6007
NORTHEAST WISCONSIN TECHNICAL :
COLLEGE FACULTY ASSOCIATION :
- - - - -

Appearances:

Mr. Dennis W. Muehl, Executive Director, Bayland Teachers United, 1136 North Military Avenue, Green Bay, Wisconsin 54303, appeared on behalf of the Union.
Mr. Robert W. Burns, Mulcahy & Wherry, S.C., Attorneys at Law, 414 East Walnut Street, P.O. Box 1103, Green Bay, Wisconsin 54305, appeared on behalf of the College.

ARBITRATION AWARD

On January 31, 1990 Northeast Wisconsin Technical College (NWTC) and Northeast Wisconsin Technical College Faculty Association jointly requested the Wisconsin Employment Relations Commission to provide an Arbitrator to hear and issue a final and binding award on a pending grievance. A hearing was conducted on May 16, 1990 in Green Bay, Wisconsin. A post-hearing exhibit was submitted and received on May 21, 1990.

At hearing, the parties waived presentation of evidence through examination and cross-examination of witnesses and instead Counsel presented evidence narrative style. Exhibits were admitted by stipulation. The parties requested an expedited award which they agreed to treat as non-precedential.

The issue involved herein is the correct amount of discipline to be applied to the Grievant, John Gaie.

BACKGROUND

Mr. Gaie has been employed by NWTC, as a member of its faculty, for a number of years. His terms and conditions of employment are governed by the parties collective bargaining agreement. Mr. Gaie exercised rights under that agreement to teach extra-curricular courses in the evening. During the Fall of 1989 Gaie was scheduled to work Monday - Thursday evenings in extra-curricular assignments.

Mr. Gaie was suspended from work by letter of August 28, 1989, which contained the following passage:

Given the expanded nature of the investigation, as well as the expanded nature of the information which has been developed, and until this matter is resolved, continued classroom and student contact assignments would be inappropriate. You are, therefore, suspended with full salary from classroom and direct student contact activities. You are expected to continue to be at work and to provide full aid and support to a substitute Chemistry/Science instructor as we locate such an individual.

Both day and evening classroom instruction were suspended by this letter. According to Mr. Gaie's proffered testimony, he provided support and aid to both the substitute day and evening instructors.

The Association and the College entered into a negotiated disposition of the discipline to be invoked. Relevant provisions of that agreement include the following:

LETTER OF AGREEMENT

This letter represents an agreement between NWTC, John Gaie and the NWTC Faculty Association. This agreement represents the sole and complete terms and conditions resolving the District's investigation of sexual harassment complaints and concerns with respect to John Gaie and any and all employee and union challenges in that regard. The purpose of this agreement is to assist Mr. Gaie in the elimination of practices which are injurious to students, their learning environment and NWTC itself.

. . .

5. Mr. Gaie shall serve a thirty calendar day disciplinary suspension, commencing September 16, 1989, and ending October 15, 1989. Fifteen days of this suspension shall be deemed served by virtue of his paid suspension; however, for disciplinary purposes the suspension shall be treated as a 30-day suspension.

. . .

Following execution of this agreement, Gaie served a 15 day unpaid suspension and was reinstated by a memo dated October 16, 1989 which states, in relevant part:

Please find attached a memo which I provided the three sub's. We look forward to your returning to actual class instruction as early as possible. I do understand the difficulties of transition, however. To that end, I would suggest that you meet as early as possible with the sub's to determine the status of the present classes, obtain their grade book materials, etc.

For the purposes of transition, it is the District's position that you are in the process of completing a curriculum project and will be moving into the classroom this week or next Monday. If there are any particulars which you feel need be stated or additional information that you feel would be helpful with the class, please let me know.

At this point, it's our expectation that you will be in the classroom next Monday, October 23rd at the latest. If you do plan on starting to teach either day or evening classes before that, please be sure to get together with the sub and let me and the sub know that.

. . .

The dispute in this proceeding is whether or not Mr. Gaie is due extra contract pay for the period September 1 - October 15, 1989. The amount in dispute is \$1,454.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE IV Conditions Applicable to Teaching Duties

Section M Extra-Contractual Appointments
(Field Services, etc.)

1. Staff appointments to extra-contractual activities (under Field Service program) shall continue to be on a voluntary basis and shall continue to be excluded from the terms of this agreement except as noted in this section. For work performed under this section, the rate of remuneration shall be 1/1400 of the teacher's current contract salary for each class period.
2. However, it is understood that the administration will continue to make lists of such positions available to the staff as soon as determined. Openings for extra-contractual appointments shall be posted in the campus administrative office areas so as to be accessible to the staff. Teachers will express

in writing their preference for extra-contractual appointments by August 1 for the fall term and first semester, by November 7 for the spring term, or within five (5) school days of the initial posting, whichever is later. In instances where less than five (5) school days occur between the initial posting and the first session, teachers shall have at least 24 hours to express their preferences.

3. Regular teachers who have similar assignments under this agreement shall have first preference by campus for these positions on a seniority basis, except where consideration must be given to requests for special instructors made by business or industry.
4. Any teacher who, without mutual agreement, fails to complete his/her extra-contractual activity shall lose the right of first preference to such appointments for the subsequent time the activity is offered.
5. A teacher who accepts an extra-contractual assignment shall not be disciplined or dismissed with regard to that assignment without just cause.
6. Disputes regarding Items 1 through 5 above shall be subject to arbitration by a mutually agreed upon arbitrator.

DISCUSSION

Mr. Gaie was entitled to his extra-curricular assignment by virtue of his seniority and past teaching performance. As an extra-contractual teacher Mr. Gaie may be disciplined for just cause. The question raised by this proceeding is not whether cause existed; the parties resolved that question in the memorandum. The question to be answered here is what the parties agreed to be the discipline. Specifically, the parties disagree on whether the extra-contractual suspension which occurred between September 1 and October 15, 1989 was in paid or unpaid status.

I believe it was to be in paid status. Gaie was suspended from student contact. Such a suspension was as appropriate for evening students as it was for day students. The single document suspending him indicates that initially the suspension would be in pay status. There is no distinction drawn between day and evening classes. Gaie is directed to work and provide support to the substitute instructor. Gaie indicated that he did work and provide support to both day and evening substitute instructors. The letter of agreement, which sets forth a stipulation as to discipline in this matter refers only to a "thirty calendar day disciplinary suspension", two weeks of which were deemed already served in pay status. That left two week to be served in unpaid status. There is no distinction drawn between day and evening work. Finally, the rein-statement document draws no day/evening distinction, and reinstates Gaie to both day and evening work. What the parties have written is an unpaid suspension of two weeks duration. There is no written proviso calling for an unpaid eight week extra-contractual suspension.

I do not regard the distinction between contractually regulated day work and the largely contractually unregulated evening work to be dispositive. For purposes of this proceeding both are governed, for disciplinary suspension, by a common standard, just cause.

AWARD

The grievance is sustained.

RELIEF

The Grievant is to be paid \$1,454.

Dated at Madison, Wisconsin this 29th day of May, 1990.

By _____

William C. Houlihan, Arbitrator