BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WISCONSIN FEDERATION OF TEACHERS
LOCAL 395, AFT, AFL-CIO

and

WISCONSIN INDIANHEAD TECHNICAL COLLEGE

Case 59
No. 57161
MA-10534

Appearances:

Mr. William Kalin, Representative, Wisconsin Federation of Teachers, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stephen L. Weld**, appearing on behalf of the College.

ARBITRATION AWARD

Wisconsin Federation of Teachers Local 395, AFT, AFL-CIO, hereinafter referred to as the Union, and Wisconsin Indianhead Technical College, hereinafter referred to as the College, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the College, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Shell Lake, Wisconsin, on April 8, 1999. The hearing was not transcribed and the parties submitted post-hearing briefs, which were exchanged on June 11, 1999.

BACKGROUND

The basic facts underlying the grievance are not in dispute. During the Fall 1996 semester, the grievant Gene Lorenz was scheduled classes over an eight-hour span on

Tuesdays and had only a six-hour span on Fridays. (Ex-7). The grievant filed a request for one hour of overload compensation because he was required to teach beyond the seven-hour span. (Ex-4). Asserting that the grievant did not exceed the standard 22 hours/week contract and that the College could average such hours within the semester, the College denied the requested compensation. (Ex-3). The grievance over the overload was expanded to cover similarly situated instructors and appealed to the instant arbitration.

ISSUE

The Union stated the issue as follows:

Did the College violate Article IV, Section G.1. when it scheduled the grievant a work day beyond a 7-hour span without paying overload?

If so, what is the appropriate remedy?

The College stated the issue as follows:

Did WITC violate Article IV, Section G.1. when it assigned Gene Lorenz to classes over an eight-hour span on Tuesdays during the entire 18 weeks of the first semester of the 1996-97 school year? If so, must it compensate him for an overload if his teaching load did not exceed the applicable teaching load parameter (22 hours) or the total assignments per week parameter (35 hours), particularly in light of the fact that, to offset the eight-hour span on Tuesdays, he was scheduled to work over a six-hour span on Fridays?

The undersigned adopts the College's statement of the issue.

PERTINENT CONTRACTUAL PROVISION

ARTICLE IV – WORKING CONDITIONS

. . .

Section G. School Day and Assignments

1. Teachers will have their regular teaching days scheduled within a span of seven (7) working hours at all attending centers, except nursing instructors in

the ADN program may be scheduled a span of 8 ½ working hours on regular teaching days, providing however, that such schedule shall not increase the number of their actual working hours beyond those worked by other teachers.

a. Evening classes conducted by the adult education administrative units which are not part of state approved full-time programs shall not be considered part of the regular teaching day. This clause does not apply to teachers hired for specifically funded positions or projects.

2. Class hours of teaching shall be scheduled so that three (3) hours of consecutive lecture teaching or four (4) hours of consecutive lecture/lab combination teaching shall be maximum.

3. When more than one (1) section of class is scheduled, the senior teacher shall have their choice of section assignment.

4. All teachers shall be entitled to one (1) duty-free lunch period during this regular teaching day.

5. Teachers shall express in writing preference in teaching assignments. Such requests shall be submitted at least twenty (20) school days prior to the completion of the proceeding semester. If the instructor does not receive the assignment, they shall be notified in writing of the reasons.

6. Teachers may express in writing preferences for extracurricular assignments.

7. Emergency or temporary substituting by a contracted teacher beyond the regular work day shall be voluntary and shall be reimbursed at an hourly rate of contracted salary divided by 1330.

8. Teacher contract hours shall be as follows:

a.

Class Type	Periods Per Week
Lecture, Demonstration and Discussion	22
Lecture and Lab	25
Skill, Laboratory and Shop	25
Cosmetologist Instructors	30 (60 minute periods)

b. No more than three (3) communication preparations shall be assigned to a teacher in any given semester.

c. A teacher should be assigned no more than (5) preparations.

9. A full-time teaching schedule shall be for a 38-week duration upon classroom assignment of 22-25 hours per week in their area except for Cosmetology (30) in their area.

10. Section G-1 does not apply to Farm Training, Production Agriculture, and Circuit Teachers teaching non-credit courses.

11. Sections G-2, G-8, and G-9 do not apply to Farm Training instructors, Production Agriculture instructors, Circuit teachers, and Librarians teaching non-credit courses.

UNION'S POSITION

The Union contends that four previous Arbitration awards and the College's brief in the arbitration before Arbitrator Burns support the Union's position. It submits that the practice of the College in compensating for seven-hour span violations as well as the Mawhinney award denies the College the right to average the work span. It points out that the testimony supported the conclusion that the College paid overload for work outside the seven-hour span until the 1996-97 school year. It insists that the College in this case is continuing its pattern of attempting to obtain in grievance arbitration what it has been unable to obtain at the bargaining table.

The Union claims that the College attempts to dispute the existence of the practice of compensating for seven-hour span violations and clouds the issue by presenting schedules of employes that allegedly reflect an averaging of the workload within the semester with seven-hour span violations, but the College could not answer whether these employes waived the seven-hour span or were paid for the span violation.

In conclusion, the Union argues that all the "hard" indisputable evidence presented at the hearing supports the conclusion that the College cannot violate Article IV, G.1. without compensating for that violation. It admits that the College may average the workload (22-25 hours) within the semester without overload payment provided the seven-hour span is not violated. It maintains that the contract language, past practice, previous arbitration awards, and the College's admissions in those arbitrations prohibit the College from averaging the seven-hour span and require overload payment when assignments are made beyond the seven-hour span. It asks that the grievance be upheld and the employe made whole.

COLLEGE'S POSITION

The College contends that employes are not entitled to overload pay for hours in excess of a seven-hour span where there is an offsetting six-hour span on another day as long as the contact and total hours for the week and semester do not exceed the contractual parameters. The College argues that the contract is silent with respect to overload pay. It notes that Article IV, Sec. G.1. states that "regular teaching days" will be scheduled with a span of seven (7) working hours, but the contract does not address what happens if the College schedules beyond the seven-hour span one day and offsets it by reducing the span on another day that week or other weeks within the semester. It alleges that the College has the right to schedule hours beyond the seven-hour span. It insists that it makes every effort to schedule within the span, but the changing needs of students has resulted in changed programs and deliveries requiring more flexible scheduling. It observes that 4, 6, 9 and 12 week courses require it to schedule overloads some weeks which are offset by underloads in other weeks. It states that the practice of averaging hours on a semester basis has been upheld in arbitration. The College insists that averaging should be employed when determining overload compensation for hours outside the regular work day just as it is for hours outside the normal work week and work year.

The College insists that the practice of providing overload pay for hours scheduled beyond the applicable contract load has been consistent. It is the College's position that employes are not entitled to overload pay for hours in excess of the seven-hour span unless their contact hours exceed the applicable 22-25 hours per week on a semester basis. The College insists that this has been its interpretation since 1975 or earlier. The College reiterates that because of the flexible and non-captive nature of its students, it is difficult to assign exactly 22-25 contact hours per week and those assigned less receive full pay. It notes that some teachers exceed the 22-25 limit and may or may not be paid depending on whether the semester average exceeds the contractual limit. The College contends that the practice of providing overload pay for hours scheduled beyond the seven-hour span has been administered consistently.

The College claims that when a teacher is assigned an increased load for part of the semester, which is offset in another part of the semester, the increase load weeks nearly always include violations of the seven-hour span. It points out the semester averaging does not require overload pay and neither should it be required to pay overload to an instructor whose schedule includes a six-hour span to offset an eight-hour span in one week. It claims that it is not possible to average on a semester or annual basis without exceeding the seven-hour span and it points to the "Fred Johnson grievance" decided by Arbitrator Bielarczyk. It points out that Johnson was scheduled for 24 hours the first nine weeks and 18 hours the second nine weeks and was paid for an average of 21 weeks over the semester. It states that Johnson had two eight-hour spans on Monday and Tuesday but that was not addressed in the Bielarczyk award, rather, he held overload pay was not appropriate. The College refers to the Administrative Procedures drafted to assist the campus administrators and their deans which provides that overloads and substitutes should not be scheduled during the seven-hour span except due to

convenience and/or necessity and then the slot must be rescheduled. The College included schedules in the Johnson case where the seven-hour span was exceeded but no overload was paid including those of Ed Dombrock, Carolyn Larson-Cowles and Ann Curtin.

The College asserts that after Arbitrator Bielarczyk's award, it continued to make overload payments pursuant to its administrative policy and questioned whether it could average annually but Arbitrator Tyson rejected this approach and upheld the semester averaging. It claims that Arbitrator Tyson understood the practice of averaging workload included the need to average the seven-hour span.

The College alleges that it averaged the grievant's hours for the first semester of 1996-97 and it claims that the eight hours on Tuesday and six hours on Friday must be averaged. It insists that the grievant was not entitled to overload because he did not exceed the 22 or 25 hours on average over the semester and thus the grievant is not entitled to overload pay. The College seeks dismissal of the grievance on its merits.

DISCUSSION

Article IV, Section G.1. provides that teachers will have their regular teaching days scheduled within a span of seven (7) working hours. This language is plain and unambiguous. Arbitrator Mawhinney in an arbitration decision between the parties found the District violated the contract by claiming a teacher was a "circuit teacher" such that Section G.1. did not apply. Arbitrator Mawhinney stated the following:

> While the District did make an attempt to give Hagen time off on Friday afternoons to accommodate him for teaching outside the seven-hour span, the attempt was unsatisfactory to Hagen and to the Union. Sabatke testified that he attempted to keep Hagen within a 35-hour workweek. However, the contract does not call for a 35-hour workweek, while it does call for a seven-hour span. Where the District violated the contract by assigning Hagen outside the seven-hour span, it could not rectify the violation by adhering to a 35-hour workweek.

Here, instead of using the 35-hour week, the District is attempting to use the 22 or 25 contact hours limits set forth in Section G.8. It makes no difference. The seven-hour span cannot be violated by staying within the weekly contact hour limit.

The District relies on the Johnson grievance heard by Arbitrator Bielarczyk, which held that semester averaging of the contact hours was permissible. Arbitrator Tyson did not allow averaging beyond the semester period. The District asserted that Johnson exceeded the seven-hour span, so the Bielarczyk award by inference allowed weekly averaging of the seven-hour span. A review of Johnson's schedule fails to show any hours outside the seven-hour span. (Ex-10). Johnson had five (5) contact hours, an office period and a lunch period on Monday during a seven-hour span, on Tuesday he had four (4) student contact hours, two office periods and a lunch period, Wednesday was the same as Monday, Thursday involved five (5) contact

hours, an office and an activity hour and Friday involved five (5) contact hours, an office and a lunch period for a total of 24 contact hours which was 2 over the 22 limit. All were within the seven-hour span. (Ex-10). The 24 contact hours for the first 9 weeks was offset by 18 contact hours during the second nine weeks for a total of 21. (Ex-10). Thus, the reliance on the Bielarczyk award is misplaced. Also, Arbitrator Bielarczyk found Section G.8. to be "poorly written" and semester averaging was supported by past practice. The same cannot be said for Section G.1. Furthermore, there is nothing in Section G that provides that paragraph 8 has any control over or greater weight than paragraph 1.

The College's reliance on the administrative procedures is misplaced because it is a unilateral document not agreed to by the Union and cannot take precedence over the plain language of the parties' collective bargaining agreement. Also, the examples given by the College fail to support its position. Ed Dombrock and Carolyn Larson-Crowles appear to be agricultural and diary herd management instructors which appears to fall under Section G.10. From the record, Rich, Richter, and Curtin are unclear. It appears that Rich was a 25 hour instructor and that Richter was too but exceeded the 4 hour limit on a lab in Section G.2. Curtin had hours at night and it is unclear whether they fell within the Section G.1.a. exception.

In any event, the plain language of Section G.1. does not permit averaging the seven-hour span over a week. Otherwise, the College could assign a span of 14 hours on Monday and Wednesday, have no schedule on Tuesday and Thursday and a seven-hour span on Friday. The 22 hour limit would not be exceeded by averaging but there is no evidence that the parties agreed to such unusual scheduling without any consequence and there is no evidence of past practice to support such averaging. The clear language of the contract establishes the parameter of a seven-hour span and although the College can make assignments beyond it, it must pay overload if it does so. Any change in the seven-hour span must be negotiated at the bargaining table.

Based on the above and foregoing, the record as a whole and the arguments of counsel, the undersigned issues the following

AWARD

The College violated Article IV, Section G.1. when it assigned Gene Lorenz to classes over an eight-hour span on Tuesdays during the entire 18 weeks of the first semester of the 1996-97 school year even if it did not exceed the 22 contact hours limit. It must compensate him for an overload and the College is directed to make him and similarly situated teachers whole.

Dated at Madison, Wisconsin, this 12th day of July, 1999.

Lionel L. Crowley /s/

Lionel L. Crowley, Arbitrator

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