BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NICOLET AREA TECHNICAL COLLEGE

and

NICOLET AREA TECHNICAL COLLEGE FACULTY ASSOCIATION

Case 16
No. 56592
MA-10341

SUPPLEMENTAL ARBITRATION AWARD

BACKGROUND

My initial award in this matter was issued on April 19, 1999. In that award I found the Gloria Bass grievance alleged facts that constituted a continuing condition and therefore found the grievance to have been timely filed. I further found the College had violated Article XX, N.1.b. of the parties' Collective Bargaining Agreement.

For a remedy I directed the College to 1) grant the grievant retroactive bargaining status effective April 10, 1998 (10 days prior to the date the grievance was filed) and 2) make the grievant whole both as to seniority recognition and monetarily (including benefits) from said date to the present.

I attributed the delay in filing the grievance to both the Association's mistake or ignorance of fact as well as a mistake of law on the part of the College. Thus, the remedy had the effect of each party sharing in the responsibility for what hindsight proved to be a belated inquiry in the grievant's bargaining status.

POSITIONS OF THE PARTIES

The College now writes to request that I clarify a portion of my award. It asserts that the Association joins it in making such request. The College describes the area of clarification as concerning the amount of compensation owed the grievant for the Spring semester, 1999. The College states that the grievant worked less than half time during that semester, and asks for clarification as to the compensation owed the grievant for that period.

By way of background, the College notes that the hearing of this matter took place in October, 1998. In December, 1998, College representatives met with the grievant and her

Association representative and proposed that in the event my award started the three-semester clock running in Spring, 1998, the grievant would agree that the Spring semester, 1999 would not be counted towards fulfilling the three-semester rule.

The parties did not reach agreement to this proposal. Accordingly, in an effort to contain its potential monetary losses, the College reduced the grievant's workload to less than a 50% work status for the Spring, 1999 semester.

The College argues that at the time it determined the grievant's workload for the Spring, 1999 semester the grievant was not a member of the bargaining unit. It contends that since the grievant was not a faculty bargaining unit employee in December, 1998 that the College had the unfettered right to lay her off or reduce her workload. The College sees the grievant's failure to pay any union dues in December, 1998 and January, 1999 as proof that the grievant was not a member of the faculty bargaining unit.

The College asserts that it attempted in good faith to address both the grievant's concerns about continuing to work on a full-time basis and its own concerns as to being in immediate violation of the bargaining agreement on the date the arbitration award was issued. The College believes it made a fair offer to the grievant to continue her full-time employment. It asserts that the grievant was fully aware that if she refused the proposal made to her by the College ". . . her appointment would be reduced to less than 50% time in order to protect the Employer's interests concerning being in immediate violation of the arbitration award if the three semester rule was begun in the Spring semester 1998."

In summary, the gist of the College's concern as to when the grievant became a member of the faculty bargaining unit appears to focus on its apprehension that the compensation owed her for the Spring semester, 1999 is contingent on her status at the time it reduced her workload for that semester to less than 50%. Put another way, although the College asserts that it has properly paid the grievant for that reduced workload, it appears to harbor anxieties that if it reduced her workload while she was a member of the faculty bargaining unit the parties' Collective Bargaining Agreement may require it to pay her additional compensation. This, according to the College, would constitute "unjust enrichment."

The Association does not share these anxieties. It responds to the College's concerns by noting that the arbitration award made the grievant a bargaining unit member as of April 10, 1998. Accordingly, the Association believes that from that time forward the grievant should have been afforded all rights under the Collective Bargaining Agreement. Although the College contended it was jointly seeking a clarification of my earlier award, in its written response, the Association now asserts that ". . . no further clarification is needed with respect to the arbitrator's award."

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DISCUSSION

The question presented here thus turns on the remedial application of my award.

My initial award found Gloria Bass to be a member of the faculty bargaining unit effective April 10, 1998. It directed the College to grant her retroactive bargaining unit status effective on said date and further to make her whole both as to seniority recognition and monetarily (including benefits) from said date.

It is true I had not yet determined the bargaining unit status of Ms. Bass in December, 1998 or January, 1999. Indeed, the briefing schedule to which the parties had agreed had not yet been entirely completed during much of that two-month period. But when the award was issued some three months later it was unambiguous in directing the College to grant the grievant bargaining unit status retroactive to April 10, 1998. That status was unbroken by any hiatus or gap in the grievant's faculty bargaining unit membership between April 10, 1998 and the date the award was issued.

Understandably, the College wishes to avoid the risk of paying the grievant for time she did not work. At the same time, I note that the risk taken by the College when it reduced the grievant's workload for the 1999 Spring semester was a calculated one, voluntarily assumed.

The good faith of the College in creating this risk need be neither questioned nor determined. Inasmuch as I have already found the grievant to be a member of the faculty bargaining unit during the period that the College unilaterally reduced her 1999 Spring semester workload, all that now seems germane is whether such action is permitted or prohibited by the parties' Collective Bargaining Agreement.

That issue, however, has been neither addressed by the parties nor is before me for determination.

APPLICATION

The grievant continues to be a member of the faculty bargaining unit. The grievant has been a member of the faculty bargaining unit for a continuous period without gap or interruption since April 10, 1998.

I am retaining jurisdiction in this matter for an additional 30 days in the event either party has any further questions.

Dated at Madison, Wisconsin this 27th day of July, 1999.

A. Henry Hempe /s/

A. Henry Hempe, Arbitrator

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