BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MID-STATE TECHNICAL COLLEGE FACULTY ASSOCIATION

and

MID-STATE TECHNICAL COLLEGE

Case 74
No. 56695
MA-10383

(Gale Jackson Grievance)

Appearances:

Mr. Thomas Ivey, Jr., Executive Director, Central Wisconsin UniServ Councils, appearing on behalf of the Association.

Mr. Thomas Scrivner, Michael, Best & Friedrich, Attorneys at Law, appearing on behalf of the College.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and Mid-State or the College, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was transcribed, was held on January 21, 1999 in Wisconsin Rapids, Wisconsin. Afterwards, the parties filed briefs and reply briefs. The record was closed on July 22, 1999. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Association framed the issue as follows:

> Does the reduction in hours of Ms. Jackson from full-time to part-time fall under Article VI – Working Conditions of the Master Contract? If so, did the College's actions, reducing her from full-time to part-time violate the terms and conditions of the layoff provisions of the Master Contract?

The College framed the issue as follows:

> Was the layoff provision set forth in Article VI of the 1996-1999 CBA violated when the College changed the grievant's faculty appointment for the 1998-1999 academic year from 35 hours to 18 hours and did not allow the grievant to displace other faculty members? If so, what remedy, if any, is appropriate?

Having reviewed the record and arguments in this case, the undersigned finds the College's issue appropriate for purposes of deciding this dispute. Consequently, the College's issue will be decided herein.

PERTINENT CONTRACT PROVISIONS

The parties' 1996-1999 collective bargaining agreement contained the following pertinent provisions:

ARTICLE II

BOARD RESPONSIBILITY

> 1. Development, implementation and maintenance of an educational environment within the Mid-State Technical College District jurisdiction requires that all personnel employed by the Board have a clear understanding of rights, authority, and responsibilities vested in the Board by the Constitution of the United States, and the laws and Constitution of the State of Wisconsin. The rights, authority, and responsibilities of the Area Board of Mid-State Technical College District Organizational Manual, Chapter I, page 2, adopted January 14, 1979 by official Board action are as follows:
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> c. To employ all personnel, subject to the provisions of laws, and determine their qualifications, the conditions of their continued employment, promotion, dismissal or demotion, or to transfer or reassign personnel for the educational welfare of the District.

d. To create, develop, combine, or eliminate any or all employee positions deemed necessary or advisable.

. . .

g. To determine class schedules and classroom assignments, hours of instruction and duties, responsibilities, and assignments of all employed District professional personnel including non-teaching activities within the total District program, and to terms and conditions of employment.

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ARTICLE VI

WORKING CONDITIONS

Section A – Retention – Dismissal

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4. Non-Probationary Staff Layoff Procedures

a. Criteria

(1) For the purpose of layoff, displacement, and recall under this section, an employee must be certified or certifiable by the state and qualified in the discipline of the occupational program or academic courses in the instructional assignment for which he/she is to work and to be eligible for displacement or recall.

. . .

(3) Academic Assignment. An employee is certified or certifiable and qualified in an academic instructional assignment if he/she holds or qualifies for a Life, a Five-Year, or a Provisional Certification.

. . .

b. Selection Procedure

Whenever the District decides to reduce staff in an occupational program or academic instructional assignment, the selection of employees to be laid off shall be according to the following procedure:

(1) To the extent feasible, a reduction in staff shall be accomplished through normal attrition in the occupational program or academic instructional assignment.

(2) If the reduction in the occupational program or academic instructional assignment cannot be achieved through normal attrition, then part-time employees, provided that their qualifications are equal to full-time employees in the occupational program or academic instructional assignment, shall be laid off before full-time employees.

(3) If further reduction in the staff of the occupational program or academic instructional assignment is made, then the layoff of full-time employees, provided that their qualifications in the occupational program or academic instructional assignment are equal, shall be on a seniority basis.

(4) If two or more instructors hired before May 1985 have letters from the district verifying employment and the dates on the letters are the same, then qualifications shall prevail. For all instructors hired after May 1985 the District shall establish seniority at the time of hiring. The District shall notify the new employee of his/her particular seniority standing in the initial letter of employment.

The practice of pro-rating seniority for part-time employees in the association shall continue.

c. Notification

The initial employee selected for layoff after April 15 shall, based on Board option be given layoff notice or a conditional contract by May 1. A layoff notice indicates final notice that internal or external factors require a reduction in teaching staff. . .

. . .

d. Displacement

(1) A full-time employee who receives notification of layoff may displace any full-time or part-time employee(s) with less seniority in an occupational program or academic instructional assignment for which he/she is certified or certifiable and qualified.

(2) An employee who receives a notice of layoff has twenty (20) working days from the notification date to notify the District President whether he/she wishes to displace another employee with less seniority in an occupational program or academic instructional assignment for which the employee is certified and qualified. A full-time employee who is displaced by this procedure shall have twenty (20) working days to notify the District President whether he/she wishes to displace another employee(s) with less seniority.

(3) If displacement notices are received by the District Office, and if the District displaces an employee, then the displaced employee may be issued their layoff notices after the notification dates stated in Section A, Paragraph 1, (c).

(4) An employee who displaces another employee shall be considered on probationary employee status for the duration of the first two (2) contract years after assuming the new position within a different academic discipline in which the employee has never taught before. This employee has full association membership status.

(5) Any one employee has a possibility of displacement only twice in a contract year.

BACKGROUND

A. Introduction

Mid-State operates a technical college. The Association represents a bargaining unit of "all full-time teaching personnel who teach 50% or more of a full teaching schedule. . ." Unit members work 17.5 or more hours per week. The instructors who work under 17.5 hours per

week are known as adjunct/call faculty. Adjunct/call faculty are not in the faculty bargaining unit and are not covered by the collective bargaining agreement (hereinafter CBA).

Mid-State has the management right to designate certain courses as adjunct courses, and bargaining unit members have no contractual claim to teach those (adjunct) courses. Nevertheless, bargaining unit members sometimes take on adjunct teaching assignments. When this happens, the unit members are advised by management that the CBA does not govern the terms and conditions of these adjunct teaching assignments.

B. Bargaining History

The Association and the College have been parties to a series of CBAs, one of whose provisions deal with layoffs.

The present layoff provision has existed in essentially the same form since the 1985-86 agreement. The only witness who testified about the adoption of the layoff provision was Association negotiator James Prochnow. By his own admission, he did not attend the committee meetings during which the parties developed that layoff language. Nevertheless, he testified that "the main concern of the faculty negotiators was to secure some strong seniority rights and some protections from layoffs or reduced hours." 1/ The layoff language which the

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1/ Tr. p. 70.

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parties ultimately agreed on, and included in the CBA, allowed a laid-off person to bump into a position if he/she was "certified or certifiable" for that position, provided for the assignment of faculty into the evening hours to maintain full-time status, and required part-time employes to be laid off before full-time employes. Prochnow testified that when the layoff language was being negotiated, there were no joint discussions concerning the meaning of the term "layoff", or the parties' mutual intentions with respect to the meaning of that term.

In 1995, the parties jointly developed and adopted a document entitled "Letter of Explanation". That document clarified what would happen with full-time and part-time people if layoffs occurred. In pertinent part, that document established that there are two seniority lists (one for full-time employes and one for part-time employes) and explained the order of priority for layoffs and the exercise of bumping rights. When this document was jointly developed and adopted, the parties did not discuss the meaning of the term "layoff", or reach any agreement concerning same.

GOAL Program

In 1975, the College established the Goal Oriented Adult Learning program (GOAL). GOAL is a tuition-free program in which students work at their own individual pace. GOAL includes several components, such as English as a Second Language (ESL), Career Awareness and Exploration, and Citizenship Training. GOAL instructors also provide assistance to students seeking high school equivalency diplomas, admission to a technical college or university system, or improvement in their academic performance and basic skills. GOAL courses are taught by both bargaining unit members and non-bargaining unit members. Historically, the College has offered GOAL instruction at its Stevens Point, Wisconsin Rapids, Marshfield, and Adams Center Campuses, as well as at certain outreach centers affiliated with these campuses.

The first 17 years that the GOAL program operated, the enrollment levels in the program allowed the College to appoint new GOAL faculty members and to increase the appointments of faculty members within the GOAL program. However, the institution of the statewide "Welfare-to-Work" (W2) program greatly impacted the College's GOAL program. Because of W2, a large number of GOAL students obtained employment, which thereby limited their availability for continued participation in GOAL. Thus, for the College, W2 has resulted in major unabated decreases in GOAL enrollment. The biggest decline in enrollment has been in ESL. As a result, those campuses with the primary ESL focus, Stevens Point and Wisconsin Rapids, experienced the largest decreases in enrollment. At the Stevens Point campus, the number of student hours in the ESL component dropped 86% from 1993 to 1997. The dropoff in enrollment was greatest in the afternoon.

In the spring of 1997, Mid-State determined that given the decrease in GOAL enrollment, it could not maintain the same GOAL staffing level for the upcoming 1997-1998 academic year. Mid-State therefore decided to reduce GOAL's staff by three and eliminate their positions. The three GOAL instructors who were laid off were part-time instructors. One of the positions eliminated in these staff reductions was the only appointed ESL position in the Mid-State system other than Gale Jackson's. None of these layoffs were grieved.

The declining enrollment in the GOAL program continued into the 1998-1999 academic year, and caused the College to take certain staffing steps. The College's actions relative thereto will be reviewed in the **FACTS** section.

FACTS

The grievant, Gale Jackson, has worked for the College since 1983. Her employment history relative to this case is as follows.

Jackson began working part-time at Mid-State's Opportunity Development Center in 1983. At that time, she also periodically filled in as a substitute teacher in the GOAL program. In 1988, Jackson received an 18-hour, part-time faculty appointment to GOAL at Mid-State's Wisconsin Rapids campus. This appointment involved some ESL work. In 1991, Jackson sought, and obtained, a 30-hour part-time appointment to teach ESL in Stevens Point's GOAL program. She had this 30-hour appointment for three years. From the time of her 30-hour appointment to the present, Jackson has been the only ESL instructor at the Stevens Point campus. In September, 1996, Jackson became a full-time GOAL instructor. This happened after she and four other GOAL faculty members received full-time (35-hour) appointments. In the 1997-98 academic year, Jackson again had a 35-hour appointment as a GOAL instructor. However, due to declining enrollment, Jackson did not have enough ESL work to fill her teaching assignment, so GOAL Coordinator Christie Weseloh gave Jackson "substantial" extra assignments in the form of curriculum work to keep her (Jackson) at 35 hours a week.

When GOAL Coordinator Weseloh began assessing GOAL's staffing needs for the 1998-99 academic year, she found that the afternoon ESL enrollment at Stevens Point was just one or two students. From her perspective, these low numbers virtually eliminated the need for afternoon ESL instruction at the Stevens Point campus. Weseloh's supervisors agreed that these low numbers did not warrant having a full-time GOAL/ESL instructor at the Stevens Point campus. The only person who had a full-time GOAL/ESL appointment at the Stevens Point campus, or any other campus, was Gale Jackson. Management therefore decided to reduce Jackson's appointment from 35 to 18 hours per week.

On February 18, 1998, William Lindroth, the Dean of General Education, and Robert Beckstrom, the Director of Human Resources, and Weseloh met with Jackson and Association representative Volker Gaul. At this meeting, Jackson was notified that her appointment for the upcoming 1998-1999 academic year would be reduced. Beckstrom explained that declining enrollments, particularly in the ESL component at the Stevens Point campus, necessitated the action.

Mid-State formally notified Jackson of her modified teaching appointment by letter dated March 6, 1998. This letter indicated in pertinent part that "due to declining enrollments in your area of instruction, it will be necessary to reduce your teaching contract next year to 18 hours" [per week from 35 hours per week].

On April 8, 1998, Association President Pat Kubley notified College President Brian Oehler that in the Association's view, the College was partially laying off Jackson for the 1998-99 school year and, as a result, Jackson was contractually entitled to assert her seniority rights to displace a less senior employe. The letter stated that Jackson had seniority over GOAL instructors Bruce Bell, Alan Smith, Joann Weiler, and Cheryl Demers.

On April 14, 1998, College President Oehler denied the Association's request that Jackson be permitted to displace a less senior employe. Oehler indicated that in the College's view, Jackson was not being (partially) laid off, and therefore the displacement procedure in the CBA did not apply.

The grievance followed. At all steps in the grievance procedure, the Association adhered to its position that Jackson was partially laid off, and Mid-State adhered to its position that a reduction in hours is not a layoff.

After the grievance was processed through the contractual grievance procedure, the Association filed an "amended grievance". The "amended grievance" alleged that the College had also violated the CBA when it did not offer Jackson the opportunity during the fall, 1998 semester "to teach. . . various courses or assignments at the College." At the hearing, Association President Kubley characterized the amended grievance as asserting a violation of Jackson's "recall rights". The amended grievance further alleged that Jackson had the right to teach various courses that Mid-State had either designated and staffed as adjunct courses, or had assigned to other Association-represented faculty members.

In the 1998-99 academic year, Jackson worked as a part-time GOAL instructor and taught a College Survival Skills course in the General Education Department. The Survival Skills course is an adjunct course that is not covered by the CBA.

The record evidence concerning the employes which Jackson seeks to displace is as follows.

Cheryl Demers and Joann Weiler are part-time GOAL instructors. Both have less seniority than Jackson. Demers teaches part-time primarily in the mornings at the Stevens Point campus and Weiler teaches part-time in the morning hours at the Wisconsin Rapids campus. The Association asserts that Mid-State should have changed some ESL hours of instruction to the afternoon in Stevens Point, and allowed Jackson to take either Demers' or Weiler's morning hours.

Alan Smith and Bruce Bell are full-time GOAL instructors. Both have less seniority than Jackson. Smith and Bell both hold positions which Jackson had applied for several years ago, and not received. The full-time position which Smith holds requires 20 college credits in

mathematics, and the full-time position which Bell holds requires "level 3 credentials" in science. Jackson does not possess the foregoing math and science credits/credentials. When Mid-State informed Jackson that she had not been selected for either of the full-time positions which were given to Smith and Bell, it indicated that she (Jackson) did not have the necessary qualifications. Thus, management found she was not qualified for those positions. Jackson did not grieve the fact that she was not given either of the full-time GOAL positions which were given to Smith and Bell.

Jackson holds a bachelor's degree in elementary education. She possesses the following certifications from the Wisconsin Department of Public Instruction: 809 – Social Science, 801 – Communication, 861 – English as a Second Language, 862 – Career Education, and 850 – GOAL/Basic Skills.

All of the College's existing GOAL instructors possess an 850 certification.

POSITIONS OF THE PARTIES

Association

The Association's position is that the grievant's reduction from full-time to part-time violated the CBA.

The Association's first main argument is that a reduction in hours constitutes a layoff, so the employe who is so affected (by a reduction in hours) has displacement rights. It makes the following arguments to support this contention.

First, it avers that a reduction in hours of an instructional assignment is expressly contemplated by the language of the contractual layoff procedure. Said another way, the Association contends that the reduction in the grievant's hours fell within the scope of the layoff provision. To support this premise, the Association relies on that portion of Article VI, A, 4, b(2) wherein it refers to "reduction in the . . .academic instructional assignment". The Association parses this language as follows. First, it notes that the word "reduce" is used here. It asserts that the word "reduce" does not mean "eliminate" as the College reads it. Next, the Association avers that the phrase "academic instructional assignment" refers to an individual employe's assignment. Building on both these points, the Association reasons that "reducing" or lessening an (individual's) instructional assignment from full-time to part-time is contemplated as a layoff by this language. As further support for the premise that a reduction in hours is a layoff, the Association notes that when the three part-time GOAL instructors were laid off in 1997, Human Resources Director Beckstrom told Association President Kubley that the College needed to layoff a total of one and one-half positions. As the Association sees it,

this statement implied the potential of reducing a full-time employe to half-time. The Association also cites the 1995 "Letter of Explanation" as an example that the parties contemplated a reduction in hours to be a partial layoff.

Second, the Association contends that the bargaining history which it proffered supports the conclusion that a reduction in hours constitutes a layoff. To support this premise, it cites two aspects of Prochnow's testimony concerning same. First, it notes that he testified that when the current layoff language was developed in 1985, "the main concern of the faculty negotiators was to secure some. . .strong protection from. . .reduced hours." Second, it notes that when Prochnow was asked if there was any joint discussion about limiting layoff to a total separation of employment, he answered "no". According to the Association, this testimony establishes that the parties intended a broad application of the term "layoff". Responding to the bargaining history submitted by the College, the Association argues that the bargaining history which the College proffered is irrelevant. It also asserts that the other labor agreements from other vocational-technical districts in the state "sheds no light on this case."

Third, the Association asserts that "extensive discussions between the parties" and the District's practice from the 1997 GOAL layoff support the Association's position that a reduction in hours constitutes a layoff. The "extensive discussions" just referenced refers to the discussions which Beckstrom and Kubley had in 1994 when the "Letter of Explanation" was drafted. The Association places considerable reliance on that Letter. According to the Association, Beckstrom never indicated during the discussions concerning same that a layoff required a total separation of employment. That being so, the Association believes there was a "meeting of the minds" on the matter of layoff.

Fourth, the Association claims that a "reduction in hours should be considered a partial layoff unless expressly defined otherwise in the contract." This contention is based on the premise that a reduction in hours has the same characteristics as a layoff. The Association notes in this regard that both are caused by layoff type reasons such as declining enrollment, lack of work, etc., and both eliminate a full-time position and create a part-time position. The Association asserts that not to consider a reduction in hours as a layoff would undermine the concept and purpose of seniority. As the Association sees it, the College, by manipulating hours and schedules, could compel any teacher to take a part-time position, thereby destroying the purpose of seniority (which it notes is to ensure that reduction in available work impacts on the least senior full and part-time employes.) The Association submits that this type of harsh, absurd and nonsensical result should not be tolerated by the arbitrator.

Fifth, the Association maintains that while there are differing opinions among arbitrators, the overwhelming weight of arbitral opinion supports the conclusion that a reduction in hours constitutes a layoff. To support this premise, it cites the following cases:

EVANSVILLE SCHOOL DISTRICT (Hutchinson, 1982); CHILTON SCHOOL DISTRICT (Schiavoni, 1983); LANCASTER SCHOOL DISTRICT (Rothstein, 1981); MENASHA SCHOOL DISTRICT (Mueller, 1981); MORRIS MACHINE WORKS, 40 LA 456 (Williams, 1963) and FAULTLESS RUBBER CO. (Teple, 1963). Responding to the arbitration awards cited by the College which reach a contrary result, the Association distinguishes these awards as having different facts and different contract language.

Sixth, the Association suggests that public policy favors clearly defining (involuntary) reductions in hours as layoffs. It claims that if the College is allowed to reduce instructors' contracts without any restrictions and in spite of negotiated seniority rights, this will totally undermine the whole concept of seniority and job security, and partial layoffs in the form of reduction of hours will affect employe morale and create unnecessary anxiety as to "who will be the next to go".

Finally, the Association believes that finding a reduction in hours to be a layoff is consistent with, and gives full meaning to, all parts of the labor agreement. It argues that the College's interpretation (whereby a reduction in hours is not a layoff) renders the seniority, displacement and just cause protections of the Agreement meaningless. This argument is built on the following basic elements: seniority is an important employe right; the layoff provision recognizes certain seniority rights: all contract terms should be interpreted to preserve this right; and seniority will be abrogated if this rule of interpretation is not followed. The Association contends that the College's claims of administrative difficulties with complying with the seniority provisions are disingenouous.

The Association's second main argument is that pursuant to the layoff provision, Mid-State improperly targeted the grievant for a reduction in hours in the fall of 1998. In other words, the Association believes the grievant was not the appropriate employe to be laid off. It makes the following arguments to support this contention.

First, the Association claims that the part-time or other full-time GOAL instructors should have been reduced instead of the grievant. Thus, the Association believes the grievant should have remained at full-time status. The Association asserts in this regard that the grievant was certified and qualified to instruct in the GOAL lab settings and in the other GOAL areas held by the part-time and less senior full-time GOAL instructors.

Second, the Association avers that the College could have met its identified instructional needs and allowed Jackson to retain her full-time status by adjusting instructional assignments on the Stevens Point campus. According to the Association, it does not have to show precisely how the College could have restructured instructional assignments to maintain Jackson at 35 hours per week; rather, all it has to show is that it was possible for the College

to maintain Jackson at 35 hours per week and cover the College's instructional responsibilities. The Association believes it did so. To support this premise, it notes that Harriet Soukup, a senior GOAL instructor, offered a suggestion that Jackson could take the afternoon GOAL lab instead of Alan Smith, a full-time GOAL instructor with less seniority than Jackson. Under this scenario, Smith would have had his hours reduced and have been assigned to work in the morning, five days a week, at Stevens Point. As the Association sees it, this would have satisfied the College's claims that the highest demand for instructors is in the morning on the Stevens Point campus, and Jackson could have been kept full-time ESL in the morning and assigned to the GOAL lab in the afternoons. The Association submits that Soukup's suggested schedule for Stevens Point would have met all the educational requirements stated by the College, all the certification requirements of the State, and given full meaning to the CBA's layoff and displacement language. It also avers that Soukup's configuration provides a larger variety of teaching styles for the GOAL students because the regular GOAL students would have Smith as an instructor in the morning and Jackson in the afternoon. The Association submits that if the College had reduced Smith's hours and assigned Jackson to the afternoon GOAL lab on the Stevens Point campus, this would have preserved the concept of seniority in layoff.

Third, the Association contends that Jackson was certified and qualified to do the work performed by less senior full-time or part-time employes, so her seniority status should have been recognized and a less senior full-time or part-time employe should have been laid off instead of her. To support this premise, it asserts that Jackson is "certified and qualified" to work/instruct in the afternoon GOAL lab, and it notes that she has previously instructed in all the areas and levels offered by the GOAL program.

The Association's third main argument is that Mid-State's actions have damaged the grievant's employment status. According to the Association, the College's failure to treat the grievant's reduction in hours as a layoff has effective destroyed her seniority rights as a full-time faculty member. Elaborating further on this point, the Association contends that a reduction in hours could also be used to effectively circumvent the just cause provision in the contract. Finally, since the Association's basic theory in this case is that a layoff occurred, it submits that "a claim for recall rights is implicit in the Union's original grievance and claims for relief." Building on this premise, the Association reasons that its amended grievance dealing with the grievant's recall rights is properly before the arbitrator. The Association submits that in fashioning a remedy, the arbitrator needs to know what classes and/or positions are available for the grievant to fill. The Association avers in this regard that there have been 11 different (adjunct) courses that the grievant is certified and qualified to teach. The Association contends that the College's failure to recall her to any of those courses has damaged her recall rights.

In sum, the Association asks that the arbitrator sustain the grievance and amended grievance and fashion a remedy.

College

The College's position is that no contract violation occurred when it reduced the grievant's hours.

The College's first main argument is that a reduction in hours does not constitute a layoff. It makes the following arguments to support this contention.

First, while the College acknowledges that the term "layoff" is not contractually defined, it asserts that that term, as commonly understood, does not include a reduction in hours. In its view, the ordinary definition of the term "layoff" entails an indefinite or temporary severance or separation from employment. The College maintains that under this definition, if an employe still has a job, then no layoff has occurred. Building on this premise, the College reasons that a reduction in hours does not constitute a layoff because no separation or break from employment has occurred. It avers that numerous arbitrators have accepted this reasoning and it specifically cites the following cases: MADISON MUTUAL INSURANCE CO., 81 LA 519 (Mangeot, 1983); OSCAR MAYER & CO., 75 LA 555 (Eischen, 1980); SCHOOL DISTRICT OF MARION, Case M-81-275 (Haferbecker, 1981); and SHEBOYGAN SCHOOL DISTRICT, DEC. NO. 5722 (Burns, 1998).

Second, aside from the widely accepted definition of layoff just noted, the College argues that the plain, clear and unambiguous language of the layoff provision compels the conclusion that the term "layoff" in this contract has the same common sense meaning previously referenced (i.e. a severance or separation from employment). It notes in this regard that the layoff provision uses the phrase "to reduce staff". According to the College, a reduction in "staff" entails the type of individual separation from employment contemplated by the ordinary understanding of a layoff. It further notes that the CBA never mentions a reduction in hours, nor does it reference a "partial layoff". The College therefore avers that under the language of this agreement, a reduction in hours from full-time to part-time status does not constitute a layoff. It believes that the Association's contention to the contrary (i.e. that the layoff provision does encompass hour reductions) "rests on a tortured reading of the CBA's plain terms" and therefore lacks a contractual basis.

Next, the College argues that even if the reference to "reduction in staff" in the layoff clause is ambiguous and requires an interpretive guide, the parties' bargaining history and past practice confirms that the parties intended to embrace the meaning that a "layoff" does not encompass a reduction in hours.

Attention is focused first on the parties' bargaining history. The College submits that when the parties negotiated the existing layoff provision in the mid-1980's, they did so against the backdrop of 1) the "growing body of arbitral authority dealing with the precise meaning of the term 'layoff'" and 2) other VTAE labor agreements. With regard to the latter (i.e. other VTAE labor agreements), it submits that the CBAs from other VTAEs introduced at the hearing establish that faculty unions in Wisconsin routinely negotiate language concerning partial layoffs and reduction in hours when they intend the term "layoff" to cover those actions. It further notes that the CBA covering the clerical bargaining unit at Mid-State contains a provision stating that a reduction in hours must be accomplished through the layoff procedure, and that the CBA at issue here contains no such provision. According to the College, these CBAs belie the Association's contention that the terms "layoff" and "reduction in staff" include a reduction in hours. The College suggests that if the Association wanted the layoff provision to cover a reduction in hours, it should have done what other unions have done and that is obtain clear and explicit contract language to that effect.

Aside from that, the College characterizes the bargaining history cited by the Association as vague and misplaced. The College contends that Prochnow's testimony concerning same was simply his "subjective characterization of the Association's goals" in negotiations.

With regard to the Letter of Explanation which the Association relies on, the College asserts that the parties never addressed the scope of the term "layoff" when they drafted that document. That being so, the College believes it sheds no light on the meaning of the term "layoff".

Finally, the College responds to the Association's assertion that Beckstrom's comment to Kubley in 1997 that the College had to layoff "one and one-half positions" reflects that Mid-State understood that a reduction in hours constituted a layoff. The College asserts that since Beckstrom spoke in terms of a reduction in positions, not a reduction in hours, this supports Mid-State's interpretation of the contract.

Turning next to the parties' past practice, the College contends that "the record lacks any evidence concerning the parties' past practice with regard to hour reductions." That said, the College asserts that in 1996, Mid-State increased the part-time appointment of five employes, including the grievant, from 30 to 35 hours. It notes that it did so without posting the positions as vacancies. According to the College, this fact "undermines the argument that the layoff provision was intended to cover other kinds of hour modifications, such as hour reductions."

Fourth, the College contends that the Association's proffered interpretation of the layoff provision would lead to absurd and detrimental results plainly inconsistent with Mid-State's educational mission and the CBA's terms. It notes in this regard that to "make the layoff language work" and keep the grievant at full-time status, the Association believes Mid-State should have moved certain ESL hours of instruction to the afternoon and then allowed the grievant to assume either Demers' or Weiler's part-time morning appointments. The College asserts that under this argument, Mid-State would need to shuffle course schedules and bump other employes to accommodate the rights of the displaced employe. According to the College, "this process would continue down the line of seniority – with each affected instructor picking and choosing the course assignments he or she desires – until the least senior instructor was reached." The College also avers that with regard to recall rights, the Association's position is that Mid-State must designate any vacant position as a faculty, as opposed to adjunct, course and offer that position to the employe with reduced hours. From the College's perspective, that determination is a fundamental management right. The College believes that the logical consequence which flows from the Association's position is that the employe with the reduced load could demand that a patchwork of hours of instruction be crafted into a full appointment. As the College sees it, this chaos would occur whenever Mid-State reduced an instructor's hours below the 35-hour per week mark, because the Association has never identified a "magic number" of reduced hours that would amount to a layoff. The College opines that "the bumping and recall dominoes would begin to fall regardless of whether Mid-State reduced an instructor's weekly assignment by one, five, ten or seventeen hours." The College also notes that since the contract's displacement and recall rights allow an employe to bump into a position for which he or she is certified or "certifiable", following any reduction in hours Mid-State could be left with a faculty in place lacking the credentials necessary to teach the classes in their care. The College argues that while these consequences might be justified by a total employment separation, they weigh against an interpretation of the layoff provision that would set the chain of events just noted in motion with each and every hours reduction. The College argues that unreasonable results necessarily flow from the Association's interpretation of the layoff clause, and therefore make that interpretation untenable. In the College's opinion, the Association's interpretation of the layoff clause places a stranglehold on Mid-State's right and duty to operate an educational facility attuned to the needs of its student body. In its view, the decision regarding who should teach a course, what should be taught, and where and when it should be taught are determinations involving substantial management rights that cannot be abrogated without a clear contract provision saying that a reduction in hours constitutes a layoff.

The College also responds to the Association's assertion that a "reduction in hours should be considered a partial layoff unless expressly defined otherwise in the contract." As the College sees it, this view flatly contradicts a basic principle of contract interpretation, namely that management retains all rights which are not bargained away or limited by the contract. According to the College, it is "management's unfettered right to control its

operations, not seniority, [that] occupies the 'default' position when interpreting a contract." That being so, the College believes that management rights control the interpretive task herein.

Finally, Mid-State argues that since no layoff occurred when it reduced the grievant's appointment for the 1998-1999 school term, the grievant could not exercise the displacement and recall rights that only attend an actual layoff. The College therefore contends it did not violate the CBA when it reduced the grievant's teaching appointment without recognizing any displacement or recall rights.

The College's second main argument is that even if the layoff provision can be read to encompass reductions in hours, the grievant's claims that Mid-State wrongfully denied her displacement and recall requests are without merit. This contention is based on the premise that the grievant could not displace full-time GOAL instructors Bell and Smith because the grievant was not certified, certifiable and qualified for those positions. With regard to the part-time GOAL instructors which the grievant sought to displace, the College calls attention to the fact that bumping those employes would require a schedule change placing some ESL hours in the afternoon. The College avers that nothing in the contract's displacement procedures establishes an employe's right to require this type of accommodation. The College also submits that the Association has not produced any evidence that such accommodations have ever been made. The College maintains that the contract's broad management rights provisions entrust such decisions solely to Mid-State. It therefore maintains that in denying the grievant's right to displace the part-time instructors, Mid-State acted squarely within these rights.

The College responds as follows to the Association's proposal to reduce Smith from full-time to part-time and assign the grievant Smith's GOAL lab hours from 8 a.m. to 9 a.m. and from 1 to 3 p.m. The College calls this proposal "baffling" because it flies in the face of the Association's interpretation of the CBA that part-time employes are to be laid off before Mid-State reduces the hours of a full-time employe. Taking the Association's argument at face value, Mid-State asserts that it could not reduce Smith's hours because it would first have to eliminate either Demers' or Weiler's position. The College believes that the Association's proposal does not show that it was possible for the College to maintain Jackson at 35 hours per week and cover the College's instructional responsibilities. As the College sees it, far from solving anything, the Association's proposal merely shifts the present grievance one step down the ladder of seniority, reproducing all of the same absurd results and even creating new ones.

The College responds as follows to the Association's assertion that the grievant should have been allowed to utilize her recall rights to obtain various course assignments given to adjunct staff. Putting aside the issue of the grievant's qualifications for some or all of these courses, the College maintains that recognizing such a recall entitlement would eliminate Mid-

State's repeatedly exercised management right to determine when and how to use call staff. It specifically notes in this regard that faculty members have no contractual claim under the CBA to adjunct courses. It avers that "allowing the grievant to dictate the designation of particular courses as faculty appointments and demand assignment to a collection of such courses would effectively strip Mid-State of this recognized, and routinely exercised, right." It contends that nothing in the contract compels this unreasonable result.

The College further argues that the grievant's recall requests do not fall within the scope of the right to recall following a layoff. As the College sees it, recall involves a return to a specific position; it does not afford a laid-off employe the opportunity to request a collection of unrelated tasks, or, in this case, courses, so that she can construct a position for her to fill. That being so, the College asserts that the grievant seeks to exercise a right that does not exist under the contract.

Finally, the College raises several arguments which do not fit within any of the categories noted above. These arguments are addressed below.

The College contends that the original grievance is the only grievance properly before the arbitrator. In its view, the amended grievance presents materially different allegations concerning Mid-State's purported violation of the grievant's right to teach various courses or assignments. Mid-State characterizes it thus: "What began as a limited dispute concerning reductions in hours and displacement rights has now metamorphized into an expansive battle over recall rights and the College's right to utilize adjunct staff."

The College also asks that the arbitrator strike the unpublished decisions from the Association's brief because of lack of notice.

In sum, the College believes that the grievance, and if it is before the arbitrator, the amended grievance, should be denied and dismissed.

DISCUSSION

My discussion begins with a review of the following pertinent facts. In the 1997-98 school year, the grievant did not have enough ESL work to fill her full-time appointment, and as a result, the College had to give her extra duties to perform to keep her at full-time status. When the College was analyzing its staffing needs for the 1998-99 school year, it was faced with a continued enrollment decline in the ESL component of the GOAL program. The enrollment decline virtually eliminated the need for afternoon ESL instruction at the Stevens Point campus. The grievant was directly affected by this enrollment decline because she was the only ESL instructor at Stevens Point (or any other Mid-State facility). Mid-State

decided to deal with this situation by reducing the grievant's hours from 35 to 18 per week. Thus, it reduced her from full-time to part-time status.

The grievance which was subsequently filed contends that the grievant's reduction from full-time to part-time status constitutes a partial layoff subject to the layoff clause. The College disputes that assertion. This grievance further alleges that since the grievant was partially laid off, she should have been allowed to use the displacement (i.e. bumping) rights found in the layoff clause to displace other less senior faculty. The College also disputes that assertion. The amended grievance contends that the College violated the CBA by not offering the grievant "the opportunity to teach. . . various courses or assignments at the College." The College likewise disputes that assertion. This amended grievance essentially involves both the grievant's "recall rights" and the College's utilization of adjunct staff.

While the College contends that the original grievance is the only grievance properly before the arbitrator, it is assumed for the purpose of discussion herein that the amended grievance is too. Thus, in the analysis which follows, I will resolve both the original grievance and the amended grievance.

The threshold question raised by the original grievance is whether the grievant's reduction in hours constitutes a "layoff" within the meaning of the CBA's layoff provision. If it does, then the layoff provision applies here; if it does not, then the layoff provision is inapplicable and the College can reduce an employe's hours without resorting to the procedure established in the layoff provision.

In the discussion that follows, attention will be focused first on the applicable contract language. If the language does not resolve the matter, attention will be given to evidence external to the agreement. The undersigned characterizes that evidence as involving the parties' interactions and practices, and the parties' bargaining history.

Both sides agree that the contract language applicable here is found in Article VI, Section A, 4 (which is entitled "Non-Probationary Staff Layoff Procedures"). That provision is over three pages long. Since the crux of this dispute is whether a reduction in hours constitutes a "layoff" within the meaning of that provision, I have decided to begin my interpretive task by determining what that word (i.e. "layoff") means. Obviously, it would make my task easier if the word "layoff" was contractually defined. However, the fact of the matter is that the word "layoff" is not defined in either that provision or anywhere else in the contract. The contract simply uses the term "layoff" without defining it. This means that the interpretive task presented here has to be accomplished without the benefit of a contractual definition.

It is a general principle of contract interpretation that when a word is not contractually defined, the word is to be given its generally understood or ordinary meaning. In accordance with this principle, arbitrators usually give words their ordinary meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special meaning. Oftentimes, a dictionary is used to supply the usual and ordinary meaning for a term. The dictionaries which the undersigned consulted for the definition of a "layoff" define it, overall, as an indefinite or temporary severance from employment. The following shows this. *Roberts' Dictionary of Industrial Relations* (3d ed. 1986) defines a layoff as "a temporary or indefinite separation from employment." *The American Heritage Dictionary* defines it as "to separate from employment, as during a slack period." *Webster's Third New International Dictionary* (1986) defines it as "a period of being away from or out of work." One thing that is common to all these dictionary definitions is that a "layoff" involves a complete separation, suspension, or break from employment; if an employe still has a job, then no "layoff" has occurred. It is implicit from these dictionary definitions that the required break from employment does not occur with a reduction in hours or with a change from full-time to part-time status because the employe still has a job.

Having reviewed dictionary definitions for the meaning of the term "layoff", the focus now turns back to the language contained in the layoff provision to determine if it supports the dictionary meaning or has a different meaning. I begin my analysis by looking at the first part of Article VI, A, 4, b (entitled "Selection Procedure") which provides thus: "Whenever the District decides to reduce staff. . .the selection of employes to be laid off shall be according to the following procedure." The layoff procedure which follows applies only "whenever the District decides to reduce staff". In the paragraphs which follow, the words "reduce" and "reduction" are used several times. When those terms are used, they refer to reduction in "staff". This point is of critical importance herein. The language does not say reduction in "hours", or reduction in "workload"; it says reduction in "staff". Like the word "layoff", the word "staff" is also not contractually defined. That being so, the undersigned will apply the same contract interpretation principle to the word "staff" as was applied to the word "layoff" (namely, that the word will be given its generally understood meaning.) Once again, a dictionary was consulted to supply the usual and ordinary meaning of the term. *The American Heritage Dictionary* defines "staff" as "the personnel who carry out a specific enterprise." A common synonym for the word "personnel" is "employe". Applying this generally understood meaning to the word "staff" means that the phrase "reduction in staff" can also be read as reduction in personnel or reduction in employes. When there is a reduction in personnel or employes, this typically means that there are fewer employes afterwards than there were before the reduction. For example, if an employer has 100 employes and then it has a "reduction in staff", it will have less than 100 employes afterwards. Like the word "layoff", the phrase "reduction in staff" contemplates a separation or break from employment. That is not the case with a reduction in hours or a reduction in workload. In those situations, the employe still has a job, albeit at a reduced level.

The conclusion that the contract language supports the previously-noted dictionary definition is buttressed by the absence of any contract language indicating that a layoff could occur with anything less than a total break from employment. It is specifically noted in this regard that the CBA never mentions a reduction in hours, nor does it speak in terms of a "partial layoff".

The Association nevertheless contends that the layoff procedure "expressly contemplates" that a reduction in hours is a layoff. According to the Association, this "express contemplation" manifests itself through the phrase "reduction in the occupational program or academic instructional assignment. . ." in Article VI, A, 4, b (2). The Association contends that the phrase just quoted supports an expansive interpretation of the term layoff, specifically one which encompasses reductions in hours.

If the phrase just quoted is looked at standing alone, it can be construed, as the Association reads it, to encompass reductions in hours. This is because what arguably happened here is that the grievant had her individual "academic instructional assignment" reduced when she went from full-time to part-time status.

However, in order to determine if this phrase should be read that way, and given that particular meaning, it is necessary to consider it in the context of the entire layoff provision. The reason is this: it is a basic principle of contract interpretation that a single word or phrase cannot be isolated from the rest of the agreement and taken out of context. Instead, the meaning of each word or phrase must be determined in relation to the contract as a whole.

That being so, the focus turns to an examination of Article VI, A, 4, b (the subsection entitled "Selection Procedure"). It reads as follows:

> b. Selection Procedure
>
> Whenever the District decides to reduce staff in an occupational program or academic instructional assignment, the selection of employees to be laid off shall be according to the following procedure:
>
> (1) To the extent feasible, a reduction in staff shall be accomplished through normal attrition in the occupational program or academic instructional assignment.

(2) If the reduction in the occupational program or academic instructional assignment cannot be achieved through normal attrition, then part-time employees, provided that their qualifications are equal to full-time employees in the occupational program or academic instructional assignment, shall be laid off before full-time employees.

(3) If further reduction in the staff of the occupational program or academic instructional assignment is made, then the layoff of full-time employees, provided that their qualifications in the occupational program or academic instructional assignment are equal, shall be on a seniority basis.

As previously noted, the first paragraph of subsection b expressly provides that the layoff provision only applies when Mid-State decides "to reduce staff". The words "reduce" and "reduction", which are used throughout the above-noted "selection procedure" concern the reductions in "staff" that are to be accomplished through attrition or "layoff" as set forth in the first and third clauses. While the second clause does not have the words "in staff" after the word "reduction", I find that those words (i.e. "in staff") are nonetheless implicit. My rationale for so finding is that every other paragraph in subsection b contains the words "staff" or "in staff" after the words "reduce" or "reduction". The following shows this: the introductory paragraph says "to reduce staff" and the first and third clauses say "reduction in staff". While the second clause simply says "reduction", there is nothing in the language which follows which leads me to believe that the parties somehow intended a different meaning for the second clause. I therefore conclude that the second clause, like the first and third clauses, applies to a "reduction in staff". When looked at in this context, the second clause does not have the meaning espoused by the Association. Since the Association has taken the phrase "reduction in. . .academic instructional assignment" in the second clause out of its overall context, and given it a meaning which was not intended, that meaning will not be applied herein.

The Association raises several arguments which, in its view, should be sufficient to establish that the parties meant the term "layoff" to encompass a reduction in hours notwithstanding the conventional meaning noted above. These arguments are addressed below.

First, the Association places considerable reliance on the 1995 "Letter of Explanation" entered into by Mid-State and the Association. As was noted in the **BACKGROUND** section, that document clarified what would happen with full-time people and part-time people if layoffs occurred. Insofar as the record shows, in drafting this Letter, the parties never addressed what the scope of the term "layoff" was in the CBA's layoff procedure. That issue was simply not discussed. Since this Letter did not constitute a renegotiation or even a consideration of the

CBA's layoff language, I conclude that the Letter sheds no light on the meaning of the term "layoff" and certainly does not alter the conventional meaning of the term "layoff" noted above.

Second, the Association relies on the fact that in 1997, Beckstrom told Kubley that the College had to lay off "one and one half positions". The Association claims that this comment reflects that Mid-State understood that reductions in hours were covered by the layoff language. I disagree. In my view, Beckstrom's comment supports Mid-State's interpretation of the CBA because he spoke in terms of a reduction in positions, not a reduction in hours. In equating a "layoff" to a reduction in positions, Beckstrom used the traditional definition of the term "layoff" noted above (meaning a total separation of employment). Mid-State's subsequent actions lend further support to this interpretation, because Mid-State completely laid off three part-time instructors. In doing so, it eliminated their positions and reduced Mid-State's "staff". Given the foregoing, I find the Association's reliance on Beckstrom's comment to Kubley to be misplaced.

Third, the Association claims that "a reduction in hours should be considered a partial layoff unless expressly defined otherwise in the contract". The problem with this view is that it flatly contradicts a basic principle of interpreting labor agreements. That basic principle is that management generally retains, via the contractual management rights clause, those rights which are not bargained away or limited by the CBA. The Association's contention turns this basic principle on its head. Suffice it to say here that this CBA contains substantial management rights and relatively modest seniority protections. What the Association essentially asks me to do is find that notwithstanding those substantial management rights, the importance of seniority creates an interpretive presumption that a reduction in hours constitutes a layoff. I decline to do so. Specifically, I decline to find that a reduction in hours is a partial layoff unless defined otherwise in the contract.

Fourth, attention is turned to the bargaining history which the Association relies on. Bargaining history is a form of evidence arbitrators commonly use to help them interpret contract language and ascertain the parties' intent regarding same. The Association contends that when the parties negotiated the layoff language in 1985, they agreed on a meaning of the term "layoff" that was atypical from the dictionary definition noted previously. According to the Association, the parties agreed that the word "layoff" would include/cover a reduction in hours. If the Association had proposed in bargaining that the term "layoff" covered a reduction in hours, and the parties engaged in meaningful discussion on the scope of the term, and the College actually agreed with that proposed meaning, then the undersigned would certainly accept the meaning proposed by the Association. However, all the foregoing points are lacking here. The following shows this. While the Association no doubt wanted protection from reduced hours when it negotiated the layoff language, that fact, in and of itself, proves nothing. This is because when arbitrators use bargaining history, what they rely on is a

manifested intent (i.e. what the parties communicate to each other about their understandings of a proposal); not undisclosed intent. Here, though, it is clear that the Association's desire in that regard was not disclosed to the College. In point of fact, the Association never told the College in negotiations that it wanted the word "layoff" to cover a reduction in hours, and it never proposed that the term "layoff" was to have that particular meaning (i.e. the meaning they are proposing it be given herein). The record also indicates that the parties did not have any joint discussions at all as to the meaning of the term "layoff". Since they did not, the College could not have agreed to an unstated and undisclosed meaning that the terms "layoff" and "reduction in staff" include a reduction in hours. It can therefore be said with absolute certainty that both sides did not mutually contemplate that the word "layoff" would include/cover a reduction in hours. If the parties had agreed that the term "layoff" would cover a reduction in hours, it is logical to assume that they would have adopted clear and explicit language to show that was their intent. For example, they could have used the terms "partial layoff", "reduction in hours", or "reduction in workload". However, none of these terms are found in the layoff language. Given the foregoing, I conclude that the bargaining history contained in this record does not establish that the parties agreed on a meaning of the term "layoff" that was atypical from the dictionary definition noted previously. Specifically, the bargaining history does not show that the parties mutually adopted a meaning to the term "layoff" that included/covered reduction in hours.

Having addressed the Association's arguments that the parties meant the term "layoff" to encompass a reduction in hours notwithstanding the conventional meaning, and found them unpersuasive, the focus now turns to the Association's contention that in reducing hours, the CBA obligates Mid-State to reduce hours of part-time employes before full-time employes. I find this contention lacks any foundation in the CBA. As has already been noted, the CBA contains no reference whatsoever to reductions in hours. Although the CBA and the Letter of Explanation require Mid-State to layoff part-time employes before full-time employes, this provision applies to layoffs and to layoffs alone; it does not apply to reductions in hours.

Finally, attention is turned to the question of whether Mid-State targeted the correct individual for an hours reduction. It is noted at the outset that this CBA places no limits on Mid-State's authority to identify which faculty members will receive a reduction in hours (i.e. a reduced appointment). Additionally, the management rights clause allows Mid-State to adjust staffing in accordance with student needs. In this case, Mid-State had a specific problem (declining enrollment) in a specific education program (the ESL component of the GOAL program) which impacted on a specific individual (the grievant, who was the only ESL/GOAL teacher). Mid-State responded to this situation by reducing the hours of the affected person in the affected position. That was their call to make, and their call did not violate the CBA.

In sum then, it has been concluded that this CBA's layoff provision does not cover a reduction in hours. The Association's contention to the contrary (i.e. that the layoff provision does encompass hours reductions) is not supported by the overall contract language, the parties' interactions and practices, or the parties' bargaining history. Since this CBA's layoff provision does not apply to a reduction in hours, an employe who has their hours reduced does not have displacement and recall rights. Said another way, a reduction in hours is not a layoff under this CBA, so a reduction in hours does not trigger bumping or recall rights which follow a layoff. As no layoff occurred here, the grievant could not exercise the displacement and recall rights that only accompany an actual layoff. That being so, Mid-State did not violate the CBA's layoff provision when it reduced the grievant's teaching appointment without recognizing any displacement or recall rights. Having so found, the undersigned need not decide whether the grievant should have been allowed to displace certain GOAL instructors or teach certain adjunct classes. Accordingly, no comments are made concerning same. The undersigned has also decided to not comment on the numerous arbitration awards which were cited by the parties. Any matter which has not been addressed in this decision has been deemed to lack sufficient merit to warrant individual attention.

In light of the above, it is my

AWARD

That the layoff provision set forth in Article VI of the 1996-99 CBA was not violated when the College changed the grievant's faculty appointment for the 1998-99 academic year from 35 hours to 18 hours and did not allow the grievant to displace other faculty members. Therefore, both the grievance and the amended grievance are denied.

Dated at Madison, Wisconsin this 22nd day of September, 1999.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
5939