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 70
No. 62476
MA-12306

(Mary Williams-Greene Grievance)

Appearances:

William Kalin, Staff Representative, Wisconsin Federation of Teachers, appeared on behalf of the Union.

Christopher Bloom, Attorney, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, appeared on behalf of the College.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and College or WITC, respectively, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the above-captioned grievance. A hearing was held on September 25, 2003, in Shell Lake, Wisconsin at which time the parties presented testimony, exhibits and other evidence that was relevant to the grievance. The hearing was not transcribed. The parties filed briefs by November 21, 2003, whereupon the record was closed. Having considered the evidence, the arguments of the parties, the applicable provisions of the agreement and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Did the College violate the parties' collective bargaining agreement when it refused to pay the grievant overload pay based on the amount of preparations during the 2001-2002 school year? If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2001-04 collective bargaining agreement contains the following pertinent provisions:

ARTICLE IV – WORKING CONDITIONS

. . .

Section G. School Day and Assignments

. . .

8. Teacher contact hours and preparations shall be scheduled as follows:

Effective Date	Periods/Week	Preparations	Averaging
July 2001	25	5	0
July 2002	23	6	2
July 2003	22	7	3

A preparation shall consist of a 3, 4, or 5 credit non-fractionalized course. A one-credit course shall be 1/3 of a prep, a two credit course shall be 2/3 of a prep. The parties recognize that it is desirable to schedule a faculty member to as few preparations as possible.

Faculty members scheduled to no more than 22 hours of contact time under a prior collective bargaining agreement shall not have their contact time increased beyond 22 contact hours as a result of this agreement.

Cosmetologist instructors may be scheduled to thirty (30) sixty-minute periods per week.

The reduction of student contact hours during the term of this contract provides time for faculty members to maintain currency in their professions, to follow trends in their industry and in technology, to improve teaching competencies, and for other similar uses.

The number of hours that may be averaged within a semester or between two semesters in an academic year shall be as in the chart above.

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

10. 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.

. . .

Section S. Management Rights

. . .

2. Board Functions: The Board possesses the sole right and responsibility to operate the school system and all management rights repose in it, subject to the express provisions of this agreement. These rights include, but are not limited to the following:

. . .

i. The determination of the size of the working force, the allocation and assignment of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employment performance.

. . .

k. The right to establish hours of employment, to schedule classes and assign workloads; and to select textbooks, teaching aids and materials.

. . .

Exercise of Management Rights: The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board; the adoption of policies, rules, regulations and practices in furtherance thereof; and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement.

BACKGROUND

A. Introduction

WITC operates a technical college with several campuses in Northern Wisconsin. The Union represents a bargaining unit of all teachers of WITC's campuses teaching "at least 50% of a full teaching schedule." The grievant herein, Mary Williams-Greene, is a member of that bargaining unit.

B. Bargaining History

The following bargaining history is pertinent to this case.

The parties' 1998-2001 collective bargaining agreement had a provision, Section G in Article IV, entitled "School Day and Assignments". Paragraphs 8 through 11 of Section G provided thus:

8. Teacher contact 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 based 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.

When the parties negotiated the current collective bargaining agreement (i.e. 2001-2004), they changed the contract provision noted above. The new language is not set forth here because it is contained elsewhere (namely, the section of this Award entitled "Pertinent Contract Provisions"). When they negotiated the new contract language, what the parties did was phase in new workload parameters over the life of the contract. Specifically, they decreased the number of contact periods per week, increased the number of preparations and increased averaging between semesters. While this new language increased the number of preparations, there was no change in the number of preparations for the time period entitled "July 2001". It stayed at five (which was the number contained in the 1998-2001 collective bargaining agreement). The new language also specified that "a preparation shall consist of a 3, 4, or 5 credit non-fractionalized course." The old language did not contain that sentence.

C. Past Overload Payments

The record indicates that Instructor Alex Birkholz was paid overload pay for his teaching schedules in the fall of 1999, spring of 2000 and fall of 2000. On those occasions, he was paid overload pay because he taught more than five preparations at a time.

While there have been other teachers who were paid overload pay because they taught more than five preparations at a time, the specifics of those situations are not contained in the record.

The record further indicates that Instructor Mary Williams-Greene has been paid overload pay in the past. When that happened, it was not because she had more than five preparations at a time; instead, it was because her contact periods exceeded 25 in a week.

D. Accelerated Teaching Schedule

The College offers several alternative delivery learning models. One of them, and the one pertinent herein, is teaching students via an accelerated schedule. Students who take

accelerated classes complete a program in less time than it normally takes. It requires more preparation for a teacher to teach an accelerated class than a traditional class because the accelerated class covers more subject material. Mary Williams-Greene, who teaches accelerated classes, testified that when she taught a traditional (i.e. non-accelerated) class, it took her between three to five hours to prepare for one hour of class, whereas it takes her between 10 to 15 hours to prepare for one hour of an accelerated class.

There currently is no contract language which deals with pay for teaching accelerated classes.

FACTS

Grievant Mary Williams-Greene is an Early Childhood Educator teacher at the College's New Richmond campus. Since the 1997-98 school year, she has taught accelerated classes. Specifically, she takes a semester's worth of material and teaches it in half a semester. A full semester is 16 weeks long, so Greene completes a semester's worth of material in eight weeks. The students who take Greene's accelerated classes can complete a two-year Child Care program in one calendar year, rather than two. The course work for Greene's classes consist of traditional class study, coupled with practicums which provide practical learning experience.

As was just noted, Greene has taught accelerated classes since the 1997-98 school year. While her number of preparations for each eight-week session varied, it was always between three and five. As an example, in the fall of 1997, she had three preparations for the first half of the semester and four for the second half of the semester. She never requested nor received additional pay (specifically, overload pay) for teaching these schedules.

Greene taught an accelerated schedule in the 2001-02 school year. Her schedule for that year was as follows: During the first eight weeks of the fall semester (August 27 – October 19, 2001), she taught the following courses:

Course #	*Title of Course*	*Credits*	*Preps*
890-100	College Success Strategies	1	.33
307-106	Child Growth & Development	3	1.00
307-108	Health, Safety, & Nutrition	3	1.00
307-105	Foundations of Early Childhood	3	1.00
	Total	10	3.33

In the second eight weeks of the fall semester (October 22 – December 21, 2001), she taught the following courses:

Course #	*Title of Course*	*Credits*	*Preps*
307-109	Early Childhood Curriculum I	3	1.00
307-119	Guidance of Young Children	2	.67
307-111	Early Childhood Practicum I	3	1.00
307-115	Early Childhood Seminar I	1	.33
	Total	9	3.00

In the first eight weeks of the spring semester (January 21 – March 15, 2002), she taught the following courses:

Course #	*Title of Course*	*Credits*	*Preps*
307-107	Child Growth & Development II	3	1.00
307-110	Early Childhood Curriculum II	3	1.00
307-112	Early Childhood Practicum II	3	1.00
307-116	Early Childhood Seminar II	1	.33
	Total	10	3.33

In the second eight weeks of the spring semester (March 25 – May 17, 2002), she taught the following courses:

Course #	*Title of Course*	*Credits*	*Preps*
307-113	Early Childhood Practicum III	3	1.00
307-117	Early Childhood Seminar III	1	.33
809-196	Introduction to Sociology	3	1.00
307-121	Child Care Operations I	2	.67
	Total	9	3.00

Overall, in the 2001-02 school year, Greene taught a total of 16 different classes. She did not teach the same class twice during that calendar year. The schedule that she taught in the 2001-02 school year was similar to what she taught in the previous four years.

On May 25, 2002, Greene submitted a request to the Dean of General Education and Early Childhood Education, Larry Gee, to be paid overload pay for the schedule she taught during the 2001-02 school year. The record indicates that requests for overload pay are made at the end of the school year. Sometime in the fall of 2002, Gee signed and processed a time sheet granting Greene's request for overload pay. Several months later, the College's Vice-President of Human Resources, Perry Palin, directed Gee to deny Greene's request for overload pay. Gee did as Palin directed, and on January 16, 2003, Gee responded to Greene's request for overload pay by indicating that her highest preparation at any time was 3.33, which

was under the contractual maximum of five preparations. As a result, Gee denied Greene's request for overload pay.

On January 26, 2003, Greene filed a grievance which alleged she was entitled to overload pay for her schedule for the 2001-02 academic year. The College denied the grievance. The grievance was processed through the contractual grievance procedures and was ultimately appealed to arbitration.

The record indicates that another teacher taught a schedule similar to Greene's. In the fall semester of 1999, Instructor Alex Birkholz taught a course which ran for the first eight weeks of the semester and another course which ran for the second eight weeks of the semester. Thus, during that time, he taught two different courses. The College counted these two separate courses as one preparation, not two. The same thing happened in the fall semester of 2000.

At the time the instant hearing was held, the parties were in negotiations for a successor labor agreement. One item which was being discussed in negotiations was alternative delivery learning models. As previously noted, one alternative delivery learning model is teaching students via an accelerated schedule.

POSITIONS OF THE PARTIES

Union

The Union contends the College violated the collective bargaining agreement when it failed to pay the grievant overload pay for the 2001-02 school year. It elaborates as follows.

The grievant acknowledged at the hearing that her teaching schedule in 2001-02 was essentially the same as it was in prior years. She further acknowledged that previously, she had not received overload pay based on her number of preparations. She further acknowledged that this was because previously, the Employer had not added the number of courses she taught in the first half of the semester together with the number of courses she taught in the second half of the semester.

The Union avers that while the grievant's workload did not change in 2001-02, what did change was the contract language relating to her workload. The Union notes in this regard that when the parties negotiated the 2001-04 collective bargaining agreement, they changed paragraph 8 in Article IV, Sec. G and phased in new workload parameters over the life of the contract. The Union summarizes the changes thus: the new contract language decreased the number of contact periods per week, increased the number of preparations and increased averaging between semesters. The Union emphasizes that while this new language increased

the number of preparations, there was no change in the number of preparations for the time period of July, 2001 which, of course, is the school year involved in this case. The Union asks the Arbitrator to enforce this language exactly as it is written.

The Union argues that when that language is interpreted as written and applied to the grievant's workload for the 2001-02 school year, it should be readily apparent that the grievant had 6.33 preparations in each 16 week semester. To get that figure, the Union adds her 3.33 preparations from the first half of the semester together with her three preparations from the second half of the semester for a total of 6.33. The Union maintains that 6.33 preparations is obviously higher than the normal workload referenced in paragraph 8 (i.e. five preparations), so overload pay is owed the grievant.

The Union therefore asks the Arbitrator to sustain the grievance and award the grievant overload pay for the 2001-02 school year.

College

The College contends it did not violate the collective bargaining agreement when it failed to pay the grievant overload pay for the 2001-02 school year. It elaborates on that contention as follows.

First, the College avers that the schedule which the grievant taught in the 2001-02 school year did not exceed the contractual limitation for the number of preparations, namely five. As the College sees it, the grievant had 3.33 preparations or less at any one time that year. The College disputes the Union's contention that in counting the number of preparations, the number from the first eight weeks should be added to the number from the second eight weeks. According to the Employer, the contract language does not say that. To support that premise, the Employer calls attention to the fact that the third column in paragraph 8 averages a teacher's schedule, and a subsequent sentence in paragraph 8 states that the number of hours may be averaged "within a semester or between two semesters in an academic year. . ." The Employer argues that while the "averaging" column references a semester basis, the "preparations" column does not. Building on that point, the Employer submits that since the preparations column does not specify the time period while the averaging column does, it cannot be inferred that a semester time period applies to the column governing preparations.

Second, the College contends that the parties' past practice has been to calculate preparations based on classes taught at the same time in a week. To support this premise, the Employer cites the grievant's own personal experience. It notes in this regard that she has essentially taught the same schedule since the 1997-98 school year: specifically, she taught one set of classes in the first half of the semester and another set of classes in the second half

of the semester. It further notes that she never requested nor received overload pay for having more than five preparations. The Employer also cites the experience of teacher Alex Birkholz, who also taught one course in the first half of a semester and another course in the second half of a semester. The College notes that these two courses were counted as one preparation – not two. According to the College, these instances show that the past practice has been to count preparations based on the number of courses taught at any one time in a week.

The College therefore asks the Arbitrator to deny the grievance. The Employer contends that if the Arbitrator sustains the grievance, he would be giving the Union a benefit it has not attained at the bargaining table.

DISCUSSION

At issue herein is whether the College violated the collective bargaining agreement when it failed to pay the grievant overload pay for her schedule for the 2001-02 school year. The Association contends that it did, while the College disputes that assertion. Based on the analysis which follows, I find no contract violation occurred.

Notwithstanding the ultimate conclusion just noted, I begin my discussion with the initial inference that the grievant is entitled to overload pay. Here's why. The grievant teaches accelerated classes. Specifically, she teaches a year's worth of material in one semester. She covers the entire fall semester's material in the first eight weeks of the semester, and the entire spring semester's material in the second eight weeks of the semester. The classes that the grievant teaches in the second eight weeks of each semester are not simply a repeat of the classes taught in the first eight weeks of each semester. Instead, the material that she covers is completely different. It stands to reason that it takes the grievant longer to prepare to teach an accelerated class than it does to teach a traditional, non-accelerated class because more material is covered in the accelerated class. Given the foregoing, the grievant's accelerated class schedule results in her having a workload that is greater than if she was teaching a traditional, non-accelerated class schedule. Said another way, the grievant has historically had a workload that is greater than her fellow teachers who teach traditional, non-accelerated classes.

Like most teacher contracts, this particular contract gives the Employer the right to schedule teachers as it pleases, so long as it pays them overload pay for workloads which exceed certain parameters. The parameters which the parties have negotiated and agreed upon are contained in Article IV, Section G, paragraph 8. That contract provision compensates teachers who have higher workloads than what the parties have decided, via the negotiating process, constitutes a normal workload.

As was noted above, my initial inference herein was that the overload provision would apply to the grievant to compensate her for teaching accelerated classes. However, there is a problem with this inference. The problem is that the overload provision does not deal with pay for teaching accelerated classes. The following discussion shows this.

As previously noted, the overload provision is subsumed into Article IV, Section G, paragraph 8. In paragraph 8, the parties specify the number of periods per week and the number of preparations that a teacher was to teach. The portion of the chart applicable here is the part which follows the date "July 2001." That line specifies thus: "25 (Periods/Week), 5 (Preparations) and 0 (Averaging)." Under this language, a teacher who teaches more than 25 periods per week is entitled to overload pay. Additionally, a teacher who teaches more than five preparations is entitled to overload pay. The amount of the overload pay is not in issue, so there is no need to identify it here.

The parties agree that since the grievance involved here covers the grievant's workload in the 2001-02 school year, the portion of the chart in paragraph 8 that is applicable here is the part which references "July 2001." The parties further agree that while the chart references both periods per week and preparations, this case involves just the grievant's preparations, not her periods per week. Once again, the "preparations" column specifies that as of July, 2001, teachers can be scheduled for five preparations. The sentence which immediately follows the chart specifies that "A preparation shall consist of a 3, 4, or 5 credit non-fractionalized course." The phrase "non-fractionalized" has no applicability in this particular case. The paragraph goes on to say that a one credit course shall be 1/3 of a preparation and a two credit course shall be 2/3 of a preparation. This language essentially establishes a formula for calculating the amount of preparations that a teacher has.

That formula will now be applied to the grievant's schedule for the 2001-02 school year. During the first eight weeks of the fall semester, she had 3.33 preparations. During the second eight weeks of the fall semester, she had three preparations. The grievant's preparations in the spring semester were identical. Specifically, she had 3.33 preparations in the first eight weeks of the spring semester, and three preparations in the second eight weeks of the semester.

The question to be answered herein is whether the five preparations (that are referenced in paragraph 8) refer to five preparations in a semester, or five preparations at any one time. The Union argues it is the former, while the College argues it is the latter. If it is the former (i.e. five preparations in a semester), then the grievant's 3.33 preparations from the first eight weeks of each semester should be combined with the grievant's three preparations from the second eight weeks of each semester, giving her a total of 6.33 preparations for the semester and thus an overload. However, if it is the latter (i.e. five preparations at any one time), then the numbers from the two separate eight-week sessions should not be added together to determine the number of preparations.

I find there is no contractual basis for adding the grievant's numbers from the first eight weeks of the semester together with her numbers from the second eight weeks of the semester, as proposed by the Union. Here's why. The Union's proposed interpretation is obviously premised on preparations being determined on a semester basis. The problem with that premise is that the contract language does not say that. First, the chart in paragraph 8 does not say in the "preparations" column that it refers to a semester basis or that the number of preparations are determined on a semester basis. Second, while the same chart does not say in the "averaging" column that it refers to a semester basis, it is clear from the text that follows the chart that that is what the parties intended. The last sentence in paragraph 8 deals with averaging of a teacher's schedule and it states that the number of hours may be averaged "within a semester or between two semesters in an academic year. . ." Thus, for the "averaging" column, the time period is specifically defined as a semester. If the parties had intended the "preparations" column to also refer to a semester basis, they could have adopted language similar to what they did for the "averaging" column. They did not. Since the "averaging" column specifies that the time period is a semester, while the "preparations" column does not, it cannot be inferred that the parties intended that a semester time period applies to the "preparations" column. Thus, the Union's proposed interpretation lacks a contractual basis. In contrast, the College's proposed interpretation of paragraph 8 (i.e. that "preparations" refers to the number of classes taught at any one time or at the same time) is not inconsistent with anything in paragraph 8.

The College's interpretation of how preparations are determined is also consistent with the way preparations have been counted in the past. The following shows this. Attention is focused first on the grievant's own personal experience. As previously noted, the grievant has essentially been teaching the same schedule since she started teaching accelerated classes in the 1997-98 school year. Each semester she taught one block of classes in the first eight weeks, and another block of classes in the second eight weeks. If these two blocks were added together, as the Union proposes to do here, they were always higher than the number five. However, the College never counted preparations that way and therefore never paid her overload pay for having more than five preparations. Additionally, she never requested it. While she did request overload pay for the 2001-02 school year, the schedule which she taught that year was essentially the same as what she had taught the previous four years. Aside from the grievant's own personal experience, the record indicates that another teacher, Alex Birkholz, was similarly situated to the grievant and treated the same way by the Employer. In the fall of 1999, Birkholz taught a course which ran for the first eight weeks of the semester and another course which ran for the second eight weeks of the semester. The Employer counted these two courses as one preparation, not two. The same thing happened in the fall of 2000. That semester, Birkholz taught one course for the first eight weeks of the semester and another course for the second eight weeks of the semester. Once again, the Employer counted the two courses as one preparation – not two. These instances show that the Employer previously counted preparations by looking at the number of courses taught at any one time, not by looking at the total number of courses taught in a semester.

Finally, the Union calls attention to the fact that the language in Article IV, Section G, paragraph 8 changed when the parties negotiated the current collective bargaining agreement. That is true. However, as the above discussion shows, just one small part of that provision is applicable to this case. I am referring, of course, to the word "preparations" and whether that word refers to preparations in a semester or preparations at any one time. There is nothing in the parties' bargaining history that indicates that when they negotiated the new language in paragraph 8, they mutually intended to give the word "preparations" the meaning ascribed to it now by the Union (i.e. preparations are to be determined on a semester basis). That being so, that meaning will not be applied herein. Instead, the meaning that is applied is the one supported by the contract language and how that language has been applied in the past.

In conclusion then, I find that the College did not violate the collective bargaining agreement when it refused to pay the grievant overload pay for the 2001-02 school year. In order to qualify for overload pay under Article IV, Sec. G, paragraph 8, the grievant had to have more than five preparations at a time, not five preparations in a semester. She did not. Since she did not meet that threshold (i.e. more than five preparations at a time), the College did not have to pay her overload pay for her schedule that year.

In so finding, I am well aware that the grievant taught more total classes in the 2001-02 school year than her fellow teachers did who taught traditional, non-accelerated classes. One would think that she would get overload pay as a result. However, as I explained above, she does not qualify for overload pay based on the existing language of Article IV, Sec. G, paragraph 8. Since she does not qualify for overload pay for that schedule, this means that the grievant received the same pay as her fellow teachers did who taught traditional, non-accelerated classes. While that result seems inequitable to the undersigned, it is not my task to do equity here. Instead, my task is to enforce the contract as written. The contract does not currently contain language dealing with pay for teaching accelerated classes. That is for the parties to remedy – not me.

In light of the above, it is my

AWARD

That the College did not violate the parties' collective bargaining agreement when it refused to pay the grievant overload pay based on the amount of preparations during the 2001-02 school year. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 27th day of January, 2004.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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