BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHEAST WISCONSIN TECHNICAL COLLEGE FACULTY ASSOCIATION

and

NORTHEAST WISCONSIN TECHNICAL COLLEGE

Case 106
No. 63087
MA-12495

(Larry Przybylski Grievance)

Appearances:

David A. Campshure, UniServ Director, United Northeast Educators and Bayland, on behalf of the Northeast Wisconsin Technical College Faculty Association.

Davis & Kuelthau, S.C., Attorneys at Law, by **Robert W. Burns**, on behalf of the Northeast Wisconsin Technical College.

ARBITRATION AWARD

The Northeast Wisconsin Technical College Faculty Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission provide a panel of staff arbitrators from which the Association and the Northeast Wisconsin Technical College, hereinafter the College, could select an arbitrator to hear and decide the instant dispute in accord with the grievance and arbitration procedures contained in the parties' collective bargaining agreement. Thereafter, the parties selected the undersigned, David E. Shaw, to arbitrate in the dispute. A hearing was held before the undersigned on August 10, 2004 in Green Bay, Wisconsin. A stenographic transcript was made of the hearing. The parties submitted post-hearing briefs by November 26, 2004.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there are no procedural issues, but were unable to agree on a statement of the substantive issue and agreed the Arbitrator will frame the issues to be decided.

The Association would state the issues as follows:

> Did the College violate the parties' collective bargaining agreement when it denied request by the grievant, Larry Przybylski, to honor a commitment issued by administrators of the college and consider his full-time workload to include a maximum of 18 student contact hours per week? If so, what is the appropriate remedy?

The College would state the issues as follows:

> Did the College violate the collective bargaining agreement when it assigned grievant's workload for the spring '03 academic term? If so, what is the appropriate remedy?

The Arbitrator concludes that the issues to be decided are as follows:

> Did the College violate the parties' Collective Bargaining Agreement when it assigned the Grievant a workload for the Spring 2003 academic term based upon the maximum of 20 student contact hours with a ¼ hour of preparation time per contact hour and denied his request to reduce his workload to a maximum of 18 student contact hours with a ½ hour of preparation time per contact hour and extra-contractual pay for contact hours over 18? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 2002-2005 Agreement are cited, in relevant part:

ARTICLE VII

GRIEVANCE PROCEDURES

SECTION A. DEFINITIONS

1. A grievance is a complaint by an employee in the bargaining unit, or the Association, where a policy or practice is considered improper, or unfair; where there has been a deviation from, or the misinterpretation or

misapplication of a practice or policy; or where there has been a violation, misinterpretation or misapplication of any provision of any agreement existing between the parties hereto.

. . .

SECTION C. PROCEDURE FOR ADJUSTMENT OF GRIEVANCE

Grievances shall be presented and adjusted in accordance with the following procedures:

. . .

STEP 3 If the decision of Step 2 is rendered unsatisfactory to the aggrieved party, the Association may, within forty-five calendar days, appeal the decision of the Board directly to the Wisconsin Employment Relations Commission for arbitration.

a. The decision of the arbitrator shall be in writing and shall set forth his/her opinions and conclusions of the issues submitted to him/her at the hearing and in writing.

b. The decision of the arbitrator, if made in accordance with his/her jurisdiction and authority under this agreement, will be accepted as final by the parties to the dispute and both parties will abide by it.

c. Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, subtracting from, or adding to the provisions of this agreement.

. . .

ARTICLE IX

CONFORMITY TO LAW, SAVING CLAUSE

. . .

CONFORMITY TO LAW; NON-DISCRIMINATION

It is agreed that both parties to this contract shall support non-discriminatory employment practices and that nothing in this agreement shall violate the rights

of any individual based on sex, race, creed, religion, handicap, or other protected status.

. . .

ARTICLE X

BENEFITS OF THE TEAM SYSTEM

. . .

College-Wide Team Guidelines

Determining Work

The work team shall by consensus (defined as "all can live with it") determine the allocation of work for its members. Standards to be used are certification and other license needed, qualifications as mutually agreed upon (consensus) by the team, **WRITTEN** stated preferences of the faculty *6 months prior* to the start of the semester. These preferences shall be on file with the team and administration. The team shall determine the match between work and individuals. If the team cannot achieve consensus, then seniority shall be used to resolve any disputes. The ultimate goal is that the team will achieve consensus of work.

Work teams will take responsibility for allocating their own work. However, the team may petition the Vice-President of Learning for assistance to reach consensus.

Teams will have the authority to invite and include adjunct faculty in their decision-making process as to how work is going to be assigned.

All work assignments, instructional and non-instructional, shall be adequately defined and recognized. Such criteria may include, but are not limited to:

- the amount of teaching experience that a teacher has
- whether a teacher has taught the course previously
- is this a new course/program
- class size
- stacked classes
- have there been changes in equipment/technology
- number of preparations

- method of presentation (lecture, discussion, shop, lab, self-paced, TV, team teaching, work-based learning, ITV, internet, accelerated learning, etc.)
- composition of students in class (EEN, at-risk, independent study, newly returned to school, adult learners)
- paperwork (amount of written work to be evaluated, grading requirements, teaching strategies, etc.)

Instructors within the same department may vary in workload due to experience, course changes, skills, assignments, and other criteria as appropriate. Work allocations at this level do not set precedent for the College but should be given consideration in similar fact situations in the College.

It is important that all faculty have work assignments, which allow them, time to adequately meet the responsibilities of their position and customer needs.

Flexibility to meet customer needs must be maintained. There must be efficient and cost effective use of resources.

The recommendations of the team cannot be ignored. Manager/s will consult with the team, make decisions, and share criteria for the decisions with departmental teams. If the team recommendations cannot be implemented, the associate dean/dean will request alternatives from the team if feasible based on reasonable time constraints.

Instructors providing substitute instruction for a period of two weeks or less shall be paid a substitute rate equal to their hourly rate. Instructors providing substitute instruction for a period greater than two weeks shall be paid a substitute rate equal to their hourly rate plus ¼ hour for preparation.

. . .

Student Contact Hour Parameter

A team may assign a maximum of 20 student contact hours (learning delivery hours), unless the individual and the team agree to modification of the 20:15 ratio of work allocation. A minimum of one-quarter hour for each learning delivery hour shall be designated for course learning delivery preparation. A team may petition to the Vice-President of Learning to have the maximum assignable hours for the team as a whole reduced.

Contact hours which average 20 hours per week in a semester will be considered extra-contractual. Extra-contractual hours for course learning delivery

preparation include ¼ hour prep per hour of instruction. For those faculty

covered under the master contract, all extra-contractual work for a full semester will be paid on a regular bi-weekly basis.

Each semester, instructors may express, in writing six months prior, to the individual/team responsible for work determination, their particular preferences of subject areas and also extra curricular assignment(s), if any. Qualifications being equal, seniority shall prevail; seniority shall prevail on selection of schedules because of extended workday or extension of week. The rights to request teaching and extra-curricular assignments does not extend to instructors on probationary status.

Guidelines for Work

Given the same set of circumstances, the goal of the parties is that these guidelines are applied uniformly within a department, within a division, and across the College.

Work teams or their designee shall utilize these guidelines which also permit them to exercise flexibility within certain defined parameters.

For a given instructor, DSDEO activities can range from 0 to 35 hours per week.

. . .

ARTICLE XIII
AGREEMENT

SECTION A.

This agreement covers wages, hours and working conditions for the period listed and any other statements, policies, rules, or regulations conflicting with this agreement are subject to the terms of this agreement.

. . .

BACKGROUND

The Association is the collective bargaining representative for the bargaining unit consisting of "all certified personnel teaching at least 50% of a full teaching schedule. . ." at the College. The Grievant was employed as an "adjunct instructor" (non-bargaining unit) for five years prior to being hired as a full-time Business Administration Credit instructor effective in August of 1999.

The Association and the College were parties to an agreement covering the term of August 16, 1997 through August 15, 1999. That agreement contained a workload formula. The parties were in negotiations for a successor agreement when the Grievant began his employment with the College. The parties continued the terms and conditions of employment contained in their 1997-1999 agreement until they reached agreement on their 1999-2002 agreement, which was retroactive to August 16, 1999. The parties agreed to go to a team concept with a new workload formula; however, as it would take time to train instructors in the team concept, their 1999-2002 agreement contained both the old workload formula (for those instructors not yet on a team) and the new workload formula (for those instructors on a team). The team concept was implemented in stages, the first teams beginning in the second semester of the 1999-2000 academic year. Teams consist of faculty members and an associate dean.

After agreement was reached on the 1999-2002 agreement, but before it was signed by the parties, complaints arose among instructors who taught primarily lecture courses that they would be disadvantaged by the change to 20 student contact hours and 1/4 hour of prep time for each student contact hour under the new workload formula. The Association leadership took these concerns to the College's President, Dr. Rafn, who told them that no one would be hurt by the conditions of the new contract. Under the old workload formula, instructors who taught lecture classes (Group IV generally) had a full load at 18 student contact hours and received 1/2 hour of prep time for each student contact hour. A full-time instructor's work week under both the old and the new workload formula was, and is, 35 hours per week.

The Communications Skills team was the first team to petition the Vice-President of Learning, Lori Weyers, to have its instructors' student contact hours reduced to 18, along with supporting rationale for their request. Their request was granted and instructors on that team receive extra contractual pay for student contact hours over 18 and prep time of 1/2 hour for each hour of contact time. This is also true of the Social Studies team; however, according to Weyers, she had never received a petition from that team and when it was brought to her attention, around the same time this grievance was filed, she met with that team and they agreed to follow the 20 student contact hours maximum for purposes of determining when extra contractual pay would be paid.

The Grievant did not begin teaching on a team until the Spring semester of 2001. For the three semesters he taught prior to that, he was assigned 19, 17 and 15 student contact hours, respectively. In addition to the student contact hours, he was also assigned "new faculty in-service" each semester, plus training for team preparations in the Fall, 2000 semester.

The Grievant was placed in the Business Administration Credit/Financial Institutions Management team beginning with the Spring 2001 semester. Since that time, he has been assigned 20 or more student contact hours each semester and has been paid the extra contractual rate for those hours over 20. The team consists of the Grievant, Instructor Betty Messenger and Associate Dean in the Business Information Division, Lori Fisher.

Fisher testified that she has seven teams and that she attempts to have all of the members of her teams assigned 20 student contact hours each semester. In the Fall of 2002, the Grievant indicated his unhappiness to Fisher with being assigned 20 hours or more of contact time, with only 1/4 hour of prep per contact hour, while other instructors in lecture courses were at 18 student contact hours with 1/2 hour of prep time and receiving extra-contractual pay for anything over the 18 hours, instead of over 20 hours. According to the Grievant, Messenger shared his feelings in this regard and they brought it up at team meetings on numerous occasions. Fisher told the Grievant to go ahead and put his concerns in writing to Weyers. However, Fisher also indicated she would be submitting rationale in opposition to his request to reduce the team to a maximum of 18 contact hours.

The Grievant sent Weyers a letter of October 31, 2002, in which he stated his concerns with being assigned 20 contact hours and the number of preps they had and the impact he felt that had on the efficiency of the organization. The Grievant followed up his request of October 31, 2002, with the following memorandum to Weyers dated November 12, 2002:

To: Lori Weyers, Vice President of Learning

From: Larry M. Przybylski, Instructor

cc: Team Members

Date: 11/12/02

Re: Instructional Workload

Dear Lori Weyers:

I presented the following workload proposal to Lori Fisher, my Associate Dean of Business and Technology on behalf of my colleague, Betty Messenger, and myself. Lori Fisher gave me the authority to forward you our concerns. As the senior faculty member for both the Business Administration Credit and Financial Institutions Management programs I feel responsible for guiding our resources in the most efficient way possible.

Therefore, I am requesting that you consider granting our team eighteen student contact hours per week rather than the current twenty hours. With this extra time we will be able to become more efficient and add value to the college by being a more productive team. This added value will include internal and external training. However, there is an important element that may have been overlooked within our department in assisting the College and department in meeting the College's vision.

> Currently, the number of different courses I've taught since I have been at the college is approximately fifteen of nineteen. Betty and I usually end up with five different preps per semester. In one particular semester, my workload consisted of eight prep. To challenge and benefit the learners in my classes, I use specific techniques that require several hours of prep. I realize this is my professional choice, but I am concerned about the academic accomplishments the learners achieve within my classes and at NWTC, supporting a "Learning Organization" for our communities.
>
> I would like to meet with your at your earliest convenience concerning this proposal. If you have any questions, please call me at extension 5569.

Weyers testified that when she received the Grievant's letter, she contacted Fisher and asked if the request was being submitted on behalf of the team, and that Fisher told her there was not agreement on the request by Messenger and herself. Weyers then asked Fisher to have the team discuss the request before she went forward on the request, and explain to the team that she wanted to know where the whole team stood on the request, what their concerns were and what their position really was.

According to Association Grievance Chair, Melvin Jennings, there were several meetings in the Fall, 2002 semester regarding the Grievant's request, without any headway being made. In the Spring, 2003 semester, there was a meeting between Weyers and Fisher and the Grievant, Messenger and Jennings, at which the Grievant made a formal proposal to reduce the team's contact hours to 18, along with the rationale that they needed time to work on curriculum and wanting to work on a credit union proposal. Weyers indicated she was receptive to a proposal reducing their workload to 18 contact hours for the duration of those projects, but not to a long-term commitment to keep their workload at 18 contact hours after those projects ended. There is some dispute as to whether Weyers also stated that there were economic reasons for not reducing their workload. As a result of that meeting, on June 17, 2003, Jennings filed a grievance on the Grievant's behalf, which stated, in relevant part:

> Aggrieved person: Larry Przybylski
>
> . . .
>
> Dates facts became known: Continuing Problem, May 15, 2003 meeting with Lori Weyers
>
> | | | | |
> |---|---|---|---|
> | Article I X | Section A | Paragraph | Allegedly Violated |
> | X | Guidelines for Work, page 34 | | |
>
> What previous action has been taken to resolve problem:

Larry Przybylski, Betty Messenger and M. Jennings met with Lori Weyers and Lori Fischer on May 15th to discuss problems concerning the reduction of required classroom work hours per week. Larry presented a written and oral proposal as to the history of the Business Administrate Credit & Financial Institution Programs and the respective workloads associated with these programs.

Larry maintains that he started teaching at NWTC prior to the arrival of Ms. Weyers and had a workload of 18-19 hours per week based on the number of preparations. Faculty were informed by Administration that no instructors were to be penalized when the District went to 20 hours per week in the classroom as a maximum. This statement has resulted in some faculty retaining 18 hour as a maximum assignment while other faculty must work 20 hours in the classroom.

Ms. Weyers stated should (sic) would not reduce the number of assigned hours because of economic reasons and that she believes Larry started working after the oral commitment was made to the FA. Lori is willing to reduce the assigned classroom hours providing Larry and Betty develop program/curriculum projects that must be approved by Administration. These projects will then reduce the number of assigned classes for that semester but will not result in a permanent reduction of 20 to 18 classroom hours per week.

Grievant Explanation of alleged violation:

Larry maintains that he started teaching before the District's oral commitment was made and the new workload formula was bargained. Therefore Larry, like other instructors who have maintained 18 hours as a maximum, strongly believes the status quo applies to him. Thus the maximum hours in class for him should not be determined by projects but be limited to 18.

Relief requested:

Larry shall be assigned a maximum of 18 classroom hours per week. Any projects assigned to Larry shall constitute extra contractual work or be used to reduce class hours below 18.

Then-Director of Human Resources for the College, Sandy Ryczkowski, responded by denying the grievance on June 27, 2003 and, in part, asserting that, as to any oral commitment that no instructors would be penalized by going to the 20 contact hours maximum, the Grievant was not a member of the faculty bargaining unit prior to the commencement of the new workload language in Article X, and therefore had no basis from which he would be penalized, as he had no experience working under the old workload formula. Ryczkowski also asserted that the Grievant had been working 20 hours per week on average in any semester since he started in August of 1999.

The parties were unable to resolve their dispute and proceeded to arbitrate the grievance before the undersigned.

POSITIONS OF THE PARTIES

Association

The Association asserts that the College violated not only the parties' collective bargaining agreement, but the promise of its President that no instructors would be harmed in the transition from the old workload formula to the workload formula for the instructional team. It is telling that the administrators of the College have not disputed that President Rafn made the statement, either in Ryczkowski's written denial of the grievance or in the testimony at hearing of Ryczkowski or Dr. Weyers. Therefore, the College should be estopped from assigning the Grievant a schedule that includes more than 18 student contact hours per week. As President of the College, Rafn is an agent of the College and his statement that no one would be harmed by the change in the methods for determining workload must be honored by the College. That promise must be honored for all instructors and not only selected groups of faculty. The Association cites a number of arbitration awards for the proposition that the legal concept of equitable estoppel may be applied in grievance arbitration. The doctrine requires that the following elements be established in order to apply: (1) That the employer made a promise to the Grievant which could reasonably be expected to induce action or forbearance on the Grievant's part; (2) the Grievant reasonably relied on the promise and acted or refrained from acting to his detriment; and (3) the injury suffered by the Grievant can only be avoided by enforcing the promise.

Here, the President made the statement that no one would be harmed by the move from the old workload formula to the team concept of work allocation, which statement is inconsistent with the College's current position that Dr. Weyers must approve all requests to have a weekly schedule of less than 20 contact hours. The Grievant relied on the President's statement to plan his workload and estimate his compensation once he became a member of the Business Administration Credit team. To his disadvantage, he was required to work a schedule that included 20 student contact hours, while instructors in areas of Communication Skills and Social Sciences, who also taught lecture-only courses, had their workloads limited to 18 contact hours per week. Also, whereas the Grievant received ¼ hour of prep time for each contact hour, and extra-contractual pay for anything over 20 contact hours, the instructors in Communication Skills and Social Sciences received ½ hour prep time for each hour of contact and extra-contractual pay for all contact hours over 18. The only way to correct this injustice would be to treat the Grievant in the same manner as those other instructors by similarly capping his student contact hours at 18, increasing his preparation time, and compensating him at the extra-contractual rate for all contact hours over 18 per week.

The principle of equitable estoppel does not require written documentation, and can be applied where it involves an oral statement by the agent of an employer. Further, the doctrine is rooted in fairness and good faith. Here, the College did not act in good faith when it failed

to uniformly honor President Rafn's statement that no instructors would be harmed by the move from the old workload formula to the team concept. It was also blatantly unfair that some instructors had their contact hours reduced and prep time increased as a result of the statement, while the Grievant did not.

The Association also asserts that the College violated the parties' Agreement when it did not apply the work guidelines consistently across the College. Article IX provides, in part, that ". . .both parties to this contract shall support non-discriminatory employment practices. . ." Under the subheading "Guidelines for Work", Article X states "Given the same set of circumstances, the goal of the parties is that these guidelines are applied uniformly within a department, within a division, and across the College." The College violated both of these provisions when it treated the Grievant differently than other instructors in the same situation. He worked three semesters under the old workload formula, teaching lecture-only courses and averaged 17 student contact hours per week in those three semesters. Since transitioning to the Business Administration Credit team, his schedule each semester has contained no less than 20 contact hours, with ¼ hour of prep time for each hour of contact. While instructors in the areas of Communication Skills and Social Sciences, who also teach lecture-only courses, had less contact time and more preparation time.

Last, the Association disputes a number of factual assertions in Ryczkowski's written denial of the grievance. The assertion that the Grievant was not a member of the bargaining unit prior to the commencement of the language noted in Article X and that he therefore had no previous basis from which to be "penalized", since he had no experience working under the former workload structure, is contrary to the facts. The Grievant was hired as a full-time instructor and became a member of the bargaining unit in August of 1999 and worked three full semesters under the old workload formula before transitioning to the team concept. The written denial also stated that the Grievant worked 20 hours per week on average any semester since he started full-time in August of 1999. Because the teams were created and phased in over a three-year period, the 1999-2002 Agreement contained both the old method for determining workload as well as the present Article X. Thus, the fact that the 1999-2002 Agreement was in effect when the Grievant was hired does not mean he immediately fell under Article X and the team concept. To the contrary, he worked three semesters under the old workload formula before joining a team in January of 2001. Further, the evidence demonstrates that the Grievant's schedule for his first three semesters as a full-time instructor did not include 20 contact hours; rather, his schedule included 19, 17 and 15 student contact hours, respectively, over those initial three semesters. The errors contained in the denials of the grievance are evidence that the College summarily dismissed the Grievant's request without adequate investigation of the facts and did not consider it in good faith, nor was it fairly weighed.

In its reply brief, the Association agrees that a collective bargaining agreement must be interpreted in a manner that gives meaning and effect to all of its terms and that clear and unambiguous contract language needs no interpretation, but asserts that the College has chosen to disregard words contained in the Agreement, thus resulting in a failure to give meaning and

effect to all terms. Specifically, the College disregards the words "maximum" and "minimum" used in Article X to describe the workload allocation by teams. That provision states that "a team may assign a maximum of 20 student contact hours. . .", and also provides that "a minimum of ¼ hour for each learning delivery hour shall be designated for course learning delivery preparation." By denying the Grievant's request for a workload that includes less than 20 contact hours, the College has demonstrated that it considers 20 contact hours to not be the ceiling, but the floor. Conversely, it treats the ¼ hour of preparation time as not the floor, but the ceiling, for his schedule. The College not only conveniently ignores Dr. Rafn's statement, but the words "maximum" and "minimum" in Article X when allocating the Grievant's work under the team concept.

The Association disputes the College's assertion that Dr. Rafn's statement is parol evidence that cannot be considered given the clear contract language. The Association cites Elkouri and Elkouri, *How Arbitration Works*, (Sixth Edition) in asserting that it is appropriate to consider oral statements and other parol evidence for the purpose of ascertaining the meaning of contractual provisions, but that it must be excluded if it in any way alters the terms of the Agreement. It also cites FORS FARMS, INC., 112 LA 33 (Arbitrator Cavanaugh) for the proposition that such evidence may be considered for the purpose of determining the meaning of contract language and that once the meaning has been determined, the parol evidence rule may preclude use of such evidence to alter or vary those terms. Courts have also ruled that parol evidence is admissible, and may be relied upon, as long as it is not inconsistent with the matters stated in writing. ELKINS V. SUPER-COLD SOUTHWEST STORAGE CO., TX. Cid. App. 157 S.W. 2D, 946-947.

Here, Dr. Rafn's statement does not conflict with the language of the Agreement. Article X establishes 20 contact hours as the maximum and ¼ hour preparation time as the minimum. Thus, a workload containing 18 contact hours with ½ hour of prep time per contact hour, as requested by the Grievant and worked by the instructors in the Communication Skills and Social Sciences teams, would not violate or be inconsistent with the Agreement. The fact that the oral statement does not contradict the clear language of the parties' Agreement also negates the College's reliance on Article XIII, Section A.

The Association also argues that, despite the College's assertions, the Grievant is not arguing that he is subject to the terms of the 1999-2002 Agreement, nor is he and the Association contending that he should continue to have his schedule determined using the old workload formula because that was the method in place at the time he was hired. Similarly, the Grievant is not, as the College has phrased it, "attempting to selectively freeze one provision of the old contract." Rather, the grievance is based on the oral statement that no instructors would be penalized in the move from the workload formula to the team concept of workload allocation. Following the transition to teams, instructors on the Social Sciences and Communication Skills teams continued to work schedules that included 18 student contact hours with ½ hour of prep time for each contact hour. Their schedules after the transition were not based on any prior master agreement or the old workload formula; rather, their schedules were based on the statement that no instructors would be penalized in the transition

to teams, and were consistent with the terms of the Agreement. Unlike the instructors on those teams, the Grievant was disadvantaged by the move to the team concept and the instant grievance seeks to remedy the disparate treatment he received from the College as a result of that move.

Finally, the Association asserts that the Grievant's testimony rebuts two factual assertions made by the College. The College relies on Employer Exhibit 1 to assert that the Grievant and other candidates were made aware of the movement towards the team approach and that it was discussed with the Grievant. However, the Grievant testified that he did not meet with Dr. Weyers when he was hired, as she claimed, and that no one discussed with him the issue of workload under the team concept. Further, the College also erred in claiming that none of the other team members agreed with the Grievant's request to have student contact hours reduced to 18 per week. The Grievant testified, and his October 31, 2002 letter to Dr. Weyers demonstrates, that his request for a reduction in contact hours and an increase in prep time for the team had the support of Messenger. That request was based on Dr. Rafn's oral promise, was not in conflict with the terms of the Agreement, and was consistent with workloads of other instructors teaching lecture-only courses. Accordingly, the request should have been granted.

The Association requests that the Arbitrator sustain the grievance and order the College to limit the Grievant's weekly student contact hours to 18 with ½ hour of preparation for each contact hour beginning with the next semester. Additionally, the Association requests that the College be required to make the Grievant whole by retroactively compensating him at the extra-contractual rate for all contact hours in excess of 18, for each semester since he joined the Business Administration Credit team in January of 2001.

College

The College first asserts that the language of Article X of the Agreement is clear and unambiguous. A principle of contract interpretation is that the collective bargaining agreement must be interpreted in a fashion that gives meaning and effect to all terms. Further, a primary rule in construing a written agreement is to determine the true intent of the parties and to interpret the meaning of the questioned word not from a single word or phrase, but from the contract as a whole. It is only when the language of the Agreement is not clear that an arbitrator can look to other areas to ascertain the parties' intent.

In this case, the College has applied the clear and specific terms of Article X to the Grievant. The Grievant is subject to the terms and conditions of the Agreement which has been bargained between the Association and the College, and there is no special standing of the Grievant which would relieve him from the current terms and conditions of the Agreement, nor does he have any special standing to assert any prior agreements or alleged representations as they relate to workload.

As the language of the Agreement is clear and unambiguous, parol evidence cannot be relied upon to determine the parties' intent. The grievance in this case appears to be based on a non-contractual belief that faculty were informed by the administration that no instructors were to be "penalized" when the College moved toward the team approach to teaching requiring a maximum of 20 hours per week in the classroom. The Association's Grievance Chair testified that the President of the College made an oral statement to the effect that no one would be hurt by the change to the team approach to teaching, and the Grievant testified as to how he feels he has been hurt by the change. However, even if made, such an oral statement prior to consummation of the contract has no impact upon a review of the clear language of the contract. The College cites arbitral precedent for the principle that it is inappropriate to consider parol evidence, such as oral statements, in determining what clear language means. The parol evidence rule forecloses any inquiry into the give and take of negotiations leading to an agreement that was ultimately reduced to writing for the purpose of varying the meaning of that written agreement. Elkouri and Elkouri, *How Arbitration Works*, (Fifth Edition), p. 598-99.

Article X contains clear language that "a team may assign a maximum of 20 student contact hours. . ." It is clear that the maximum number of student contact hours for all instructors is 20, not 18. It also does not require that everyone be at 20, but establishes 20 as the maximum. Therefore, the Grievant's attempt to argue disparity by referring to other teams at less than 20 hours has no merit under the language of the Agreement.

Further, the parties have expressly adopted the principle of not relying on extraneous statements to vary the terms of their agreement. Article XIII, Section A, specifically states that, "any other statements. . .conflicting with this Agreement are subject to the terms of this Agreement." As the attempt to utilize the oral statement to sustain this grievance clearly conflicts with the language of Article X, Article XIII renders that oral statement meaningless.

Further, a universally-accepted principle is that arbitrators should give clear and unequivocal contract language no meaning other than that expressed within the four corners of the Agreement. To suggest otherwise requires the arbitrator to go beyond the terms and conditions of the Agreement, which would be contrary to the limitations on the role of the arbitrator as provided in Article VII, Section C, Step 3(c)., which precludes the Arbitrator from amending, changing, subtracting from, or adding to, the provisions of the Agreement.

Next, the College asserts that the Grievant cannot selectively choose between past and present agreements to develop his own compensation, hours and conditions of employment. This grievance arises from his Spring, 2003 assignment, which is clearly within the current contract language permitting assignments up to 20 contact hours before incurring extra-contractual liability. The language is clear with respect to the number of student contact hours the team may assign. However, because the Grievant previously worked 18 contact hours under the old workload system, he believes the College violated the Agreement by increasing his contractual workload to 20 hours, even though his own bargaining unit agreed otherwise. By the Grievant's own testimony, he is relying on the contract he was hired under in August of

1999. In other words, he wants to selectively freeze one provision of the old contract and remove it from the dynamics of the collective bargaining process. This defies common sense.

Although there was a great deal of discussion with respect to the change to the team approach, the parties agreed the contract would be effective for the period beginning August 14, 1999 through August 16, 2002. The Grievant's argument that his hours should be governed by a prior agreement which has expired is illogical. Further, his justification for reducing his workload based upon an expired contract totally ignores the other favorable changes which have occurred through bargaining, such as increased compensation. Although he agrees work assignments are controlled by the new contract, as shown by his testimony, he somehow believes he is an exception as it relates to his workload, acknowledging that if he were paid for contact hours over 18, he would be an exception to the language of the current agreement. As a member of the bargaining unit, the Grievant is subject to the terms and conditions of the Agreement that was collectively bargained between the Association and the College. There is no evidence of any specific standings or exceptions that are created for individuals who were hired under any prior collective bargaining agreement as relates to workload. The Grievant cannot pick and choose his contract provisions so as to have a workload that is based upon a prior contract, yet be paid a salary based upon a current agreement.

The College also asserts that the Grievant was made aware of his workload based upon the new team concept. The current Agreement defines the work determination of the team and the allocation of that work. The team centers around the work to be accomplished, inclusive of those who are responsible for delivering the learning opportunities. Fisher testified that she is responsible for 33 instructors in seven different areas, and explained the process of the team approach. Further, Fisher worked with Human Resources as part of the hiring process. In a memo dated April 16, 1999 from Fisher to then-Director of Human Resources, Sandy Ryczkowski, regarding the Business Administration Credit interviews, she indicated that she felt it was necessary to remind applicants that the College was moving to a team concept, which allowed for greater flexibility and a work schedule that would expand potentially into evenings. Fisher testified that when the Grievant would have started in August of 1999, the College was in transition to the teams and that was something the administration would have informed new employees about, i.e., that they would be transitioned to a team. Fisher talked to the Grievant at the time the decision was made to hire him about the classes he would be teaching in the Fall of 1999. Vice-President of Learning, Lori Weyers, was hired in September of 1998 at the beginning of the transition to the team approach. Her duties with respect to the implementation of the new concept was to work with new faculty hires, discuss the team structure, workload, and the team commitment to perform team activities as part of the 35-hour commitment. Weyers recalled discussing the College's movement towards the team approach and the College's expectations for the team in an interview with the Grievant. There is nothing in the testimony that contradicts the fact that the workload and the College's movement towards the team approach was discussed with the Grievant. That he worked under the old workload for three semesters is not sufficient to justify the argument that he is entitled to continue under the old system, especially given the fact that the Grievant was himself aware that the College was transitioning in a new direction.

The College asserts that it was justified in denying the Grievant's request for a reduction in hours to 18. The Grievant talked to Fisher about the reduction and she directed him to the contract regarding the procedure for reducing hours. She testified that she did not see any compelling reason to have a workload other than 20, but that she respected the team's exercise of their contractual rights and informed the Grievant and Messenger that they could write a letter requesting a change in work hours. She also informed them that she would be presenting information opposing that request. As a result, the Grievant wrote a letter to Weyers dated October 31, 2002, and stated in support of his request that the extra time would allow a more efficient and productive team atmosphere and added value to the organization as a whole. On November 12, 2002, he forwarded a proposal to Weyers to reduce the contact hours to 18 per week. Within her discretion, Weyers denied the request, however indicating that she was willing to consider reducing contact hours based upon a proposal from the team that addressed the curriculum development project needs. Fisher also informed Weyers that there was no agreement with other team members concerning the Grievant's request. Weyers then requested Fisher to reconvene the team and have them discuss the issue.

In the Spring of 2003, Weyers received a formal proposal and a meeting took place between her and the team members. Weyers testified that in her view, there was a need for the curriculum to be redone and that she was interested in their idea of putting forward a credit union proposal, and that she was very receptive to giving them a reduced workload to get their curriculum activities done, but not a long-term commitment, because those projects would end. However, this was not favorably received by the team and subsequently resulted in the Grievant's grievance.

The grievance was denied because there was no rationale for a blanket exception; Weyers seeing no compelling support for the request to go to 18 contact hours, based upon the generic statement from the Grievant contending that extra time would allow him and the team to be more efficient and productive. That statement is not adequate to reduce the Grievant's workload limit, particularly in light of the fact that he consistently works extra-contractually. Therefore, the grievance is not really about efficiency, but about compensation, as the Grievant works more than 20 contact hours anyway, and he admitted that the net result of the grievance is just more extra-contractual pay. There is nothing about the process the College followed with respect to the Grievant's request which would have violated the terms of the Agreement. While the Grievant had the right to make his request, the College had the right to deny it.

The College asserts it also was justified in reducing the student contact hours for the Communication Skills team. Mastricola has been employed as a Communication Skills instructor for 21 years and is the current Association president and on the Communication Skills team. She testified that the team was the first to petition to be reduced to 18 hours, and further stated that she provided rationale for the decrease to Weyers and may have also spoken to the College President. While there is a contractual mechanism permitting a team to petition to have hours reduced, the language does not grant an automatic reduction in hours based upon individual perception or preference, essentially what the Grievant seeks. Fisher testified that the Grievant's workload has been handled in a manner consistent with other team members

under her supervision. When assigning work, she tries to reach the maximum of 20 contact hours for all team members, as evidenced by the spreadsheet identifying each team's workload for the Fall of 2003 through the Fall of 2004. Thus, the record clearly supports a finding that the Grievant's workload was handled consistent with the terms of the parties' Agreement.

In its reply brief, the College first asserts that the entire argument of the Association, as presented in its brief, flies in the face of Article XIII of the parties' Agreement. The grievance is based on a statement alleged to be inconsistent with the Agreement. Per Article XIII, Section A, the parties have decided not to entertain such arguments for the obvious reason that it is important for the parties to rely on the written words they have negotiated. As the issue at hand does not fall into any gray area within the written words of the Agreement, the extraneous arguments of the Association should be rejected.

The College also disputes the Association's reliance on the doctrines of promissory and equitable estoppel, arguing that the doctrines do not apply under the facts of this case. The doctrines essentially require three elements of proof. First, the Association must prove that the College made a promise to the Grievant which it could reasonably expect to induce action or forbearance on the Grievant's part. The promise identified by the Association is the alleged comment by President Rafn to the effect that no one would be penalized by the move from the old workload formula to the new team concept of work allocation. He allegedly relied on the President's statement to plan his workload and estimate his compensation once he became a member of the Business Administration Credit team. While he argues that a drop from 20 to 18 student contact hours would allow him and the team to be more efficient and productive, he admits that he consistently works extra-contractual hours and the net result of the success of this grievance would be that working more than 18 student contact hours would result in additional pay for the Grievant, even though the contract for the bargaining unit allows up to 20 contact hours before additional pay. The grievance has absolutely nothing to do with the Grievant and his team being more productive, nor does it relate to the Grievant's reliance on the alleged statement to plan his workload. His workload for the year at issue was already planned before he started work, and he was undeniably aware of it. The compensation paid to the Grievant was consistent with the Agreement and the rest of the bargaining unit, just as his hours were consistent with the range allowed in the contract. Simply because the Communication Skills team followed the contractual procedures and had its hours reduced from 20 to 18, that exercise of discretion, as allowed for in the Agreement, cannot be transformed into a promise of a special limit on the Grievant's workload. Finally, in that regard, the College is prohibited from individual bargaining and the Grievant's contention that he was personally promised something other than what the rest of the unit lives under would violate that prohibition.

Secondly, the Association must prove that the Grievant, in reasonable reliance on the promise, acted or refrained from acting to his detriment. There is no evidence in the record that the Grievant relied on the alleged statement to plan his workload for the year at issue in this grievance, or to determine his compensation. He was well aware of the fact that instruction would be taught under the team concept and he did not refrain from acting or act to

his detriment in planning his workload or compensation, as that information was already known to him prior to his hire. What the Grievant should have relied on was his knowledge of the change and the contract language relating to that change that was agreed to between the College and the Association. Further, any reliance must be "reasonable". It is patently unreasonable for the Grievant to believe he can individually rely on an isolated comment of the College President in connection with the 1999-2002 Agreement, when the Grievant's wages, hours and conditions of employment are subject to negotiation each and every contract term. The alleged promise occurred during a period well before the current contract was consummated. Jennings testified that the alleged promise by the President was in connection with the 1999-2002 contract, but acknowledged this grievance arises out of the 2003 workload under the 2002-2005 Agreement. The bargaining is collective, and the only reasonable reliance the Grievant can have is on the result of the bargain, i.e., the language of the current Agreement.

Third, the Association must prove that the injustice suffered by the Grievant can be avoided only by enforcing the promise. The parties agreed to the terms of a collective bargaining agreement and part and parcel of that agreement is the College's ability and right to assign instructors a maximum of 20 student contact hours. As that is stated as a "maximum" the College can also determine workloads of less than 20 hours. The Agreement provides a mechanism permitting a team to petition to have hours reduced; however, that procedure does not guarantee a reduction in hours based upon individual preference, as the Grievant seeks here. The Grievant's workload has been handled in a manner consistent with other team members. His claimed injustice is that he has not been granted his desire to be treated the same as those instructors by similarly capping his student contact hours and increasing his prep time and compensating him at the extra-contractual rate for all contact hours over 18. However, if the Arbitrator favors the Grievant's position, the exact opposite will occur, as the Grievant will be in a special protected group of one. No one else would have that limit contractually, as those who now have a lower limit have it by way of exercise of the College's discretion. The College acted in good faith when transitioning the delivery of instruction towards a team approach, and did not treat the Grievant any differently than other instructors in similar situations.

The College finds the cases cited by the Association in support of its reliance upon the doctrine of equitable estoppel distinguishable based on the facts in this case. The Grievant was not misled by anyone, as he was well informed of the College's direction toward a team approach to teaching, and was cognizant that he would be part of the transition period to working 20 student contact hours per week. Also, arbitrators in a number of the cases cited concluded that the promises or comments involved in those cases could not overturn clear contract language. In this case, the Grievant and the Association wish to ignore the clear contract language. Nor is the College in this case changing its position to the Grievant's detriment. The College has consistently applied the contract and has not changed its position as to its interpretation of the contractual language. Further, a number of the cases require that the reliance upon the statement or promise be "reasonable" and that the individual must have used due diligence to ascertain the true facts. Here, the Grievant fails the test as to due diligence and reasonable reliance, even if one assumes, *arguendo*, that a promise was made.

The College requests that the grievance be denied in all respects.

DISCUSSION

The Association is relying upon Dr. Rafn's statement that no instructor would be penalized or harmed by going to the team approach and the parties' Agreement to support the Grievant's claim that he must be assigned a maximum of 18 hours of student contact time, with a ½ hour of prep for each contact hour, and paid at the extra-contractual rate for all contact hours over 18, retroactive to the 2001 Spring semester.

As it must, an analysis of a contract interpretation dispute begins with a review of the applicable language of the Agreement. Both parties cite the provisions of Article X under the section captioned, "College-Wide Team Guidelines". The Association also cites Article IX regarding "non-discrimination", and the College also cites Article XIII, arguing that provision precludes consideration of Dr. Rafn's statement in determining the parties' rights under their Agreement. 1/

Beginning with Article IX, that provision refers to discrimination based on protected classes, such as, sex, race, creed, etc. As there is no allegation that the Grievant was discriminated against on any of those bases, the provision has no apparent application to this dispute.

As noted, both parties rely upon Article X to support their respective positions. Both agree that under "Student Contact Hour Parameter", of Article X, the Agreement provides that an instructor may be assigned a "maximum" of 20 student contact hours and a "minimum" of ¼ hour of prep time for each contact hour and that contact hours averaging 20 hours per week in a semester will be considered "extra-contractual". On the one hand, the Association argues that Dr. Rafn's statement is not in conflict with that wording and should be considered in determining its meaning. According to the Association, since 20 contact hours is a "maximum" and ¼ hour of prep time per contact hour is a "minimum", it would not conflict with that wording for an instructor to be assigned less than 20 contact hours or more than a ¼ hour of prep time. Indeed, the College agrees this is the case, acknowledging that this has occurred where a team has petitioned the Vice-President of Learning to reduce the maximum assignable hours for the team and provided supporting rationale for its request.

The problem with the Association's position, however, is that it does not merely claim that Dr. Rafn's statement permits a maximum of less than 20 contact hours; rather, it asserts that his statement requires it. According to the Association, the statement constitutes a promise that instructors who primarily teach lecture courses, like the Grievant, will not have a maximum of more than 18 contact hours or a minimum of less than ½ hour of prep time, and will receive extra-contractual pay for any contact hours over 18, as under the old workload

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1/ As the Association has noted, the College has not disputed that the statement was made.

formula, and that it violates the parties' Agreement to assign the Grievant to 20 student contact hours and ¼ hour of prep time per contact hour and only pay the extra-contractual pay for contact hours over 20, instead of 18. While the Association acknowledges that there is a procedure in Article X for a team to petition to have its maximum assignable hours reduced, it in essence argues that Dr. Rafn's statement requires that such a petition be granted, rather than leaving the decision to the discretion of the Vice-President of Learning. The Association also essentially argues that the College is acting in bad faith, and is in violation of the Agreement, by assigning instructors at the "maximum" and "minimum". In other words, the Association argues that Dr. Rafn's statement is essentially a promise that the College will follow the old workload formula as to instructors such as the Grievant. Interpreted in that manner, the statement is indeed in conflict with the wording of Article X, and, pursuant to Article XIII, Section A, is superseded by the terms of the parties' current Agreement, which no longer contains the old workload formula. It is therefore unnecessary to address the issue of the parol evidence rule's application in this case.

The Association also asserts that the doctrine of promissory estoppel requires that the College honor Dr. Rafn's statement. Both parties cite the necessary elements that must be established for the doctrine to apply. First, it must be established that there was a promise by the College that could reasonably be expected to induce action or lack of action by the Grievant. The College President's statement that no instructor would be harmed by the change to the work allocation under the team approach could be construed as a "promise", but it is not at all clear what action or inaction by the Grievant would be induced by the promise. The second necessary element is that the Grievant must have reasonably relied on the promise and acted, or refrained from acting, to his detriment. Again, it is not clear what the Grievant did, or did not do, in reliance upon Dr. Rafn's statement. Further, as the College notes, Dr. Rafn's statement was made in 1999, just prior to the signing of the parties' 1999-2002 Agreement. At that time, the Grievant had just begun teaching at the College as a member of the bargaining unit and had no experience teaching under the old workload formula at the time the promise was made. 2/ Further, while there is some dispute as to whether Weyers had a discussion with the Grievant about going to the team approach when he was hired, it is clear from the record that he was aware of the change when he started, as he complained of it to the Association. More importantly, the parties negotiated a successor 2002-2005 Agreement that does not contain the old workload formula, and at the time it was bargained, there were instructors, including the Grievant, who taught primarily lecture courses and were assigned 20 contact hours with a ¼ hour prep time per contact hour without receiving extra-contractual pay. There could no longer be any reasonable reliance upon the statement made in 1999 at that point.

Perhaps the Association's strongest argument is its reliance upon the wording under "Guidelines for Work":

2/ Presumably, this is what Ryczkowski was referring to in paragraph 2. of her response to the grievance.

> "Given the same set of circumstances, the goal of the parties is that these guidelines are applied uniformly within a department, within a division, and across the College."

The Association was able to demonstrate that at least two teams in the General Education division, the Communication Skills team and the Social Studies team, had reduced team assignments to 18 contact hours with a ½ hour of prep time per contact hour and extra-contractual pay for contact hours over 18. However, other than involving primarily lecture courses, there was no showing of similarity of the circumstances of those teams with the circumstances of the Business Administration Credit/Financial Institutions Management team. Further, the Communication Skills team had been the first to petition Weyers to have the team's maximum workload reduce to 18 contact hours, and according to team member and Association President Rose Marie Mastricola, the team had presented supporting rationale with its request. No evidence was presented as to what the rationale was, so it cannot be compared to that provided by the Grievant's team. Also, according to Fisher, most of the other teams in the Business Information division were assigned 20 contact hours. Thus, there is a question of which teams are to be the basis of comparison. Last, there was no evidence presented as to whether other teams, out of all the other teams teaching lecture courses at the College, had their workload assigned at a maximum of 18 contact hours.

The Association also questions Weyer's good faith in denying the Grievant's petition. However, her testimony, as well as the grievance statement itself, establishes that she was willing to reduce the team's maximum to 18 contact hours based on the rationale provided to her for the reduction, i.e., curriculum work and the possible credit union proposal project, but only for the duration of those projects. The Grievant, however, wanted a permanent reduction, more or less regardless of the rationale he and Messenger offered. As noted previously, that is not what the Agreement requires, nor does it appear to be what the parties expected. Based upon these facts, Weyers' exercise of discretion in denying the petition was not unreasonable.

For the foregoing reasons, it is concluded that the College did not violate the parties' Agreement when it assigned the Grievant a workload for the 2003 Spring semester on the basis of a maximum of 20 student contact hours with a ¼ hour of prep time for each contact hour and denied his request to have his team's maximum workload reduced to 18 student contact hours with a ½ hour of prep time per contact hour and for extra-contractual pay for contact hours over 18.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 11th day of April, 2005.

David E. Shaw /s/
David E. Shaw, Arbitrator

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