

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFT-WISCONSIN, LOCAL 395, AFL-CIO**

and

**WISCONSIN INDIANHEAD TECHNICAL COLLEGE BOARD**

Case 81  
No. 64789  
MA-13016

(LaForte Grievance)

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**Appearances:**

**Mr. Timothy E. Hawks**, Attorney, Hawks Quindel Ehlke & Perry, S.C., 700 West Michigan, Suite 500, P.O. Box 442, Milwaukee, Wisconsin, appearing on behalf of Local 395.

**Ms. Victoria L. Seltun**, Attorney, Weld, Riley, Prens & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of Wisconsin Indianhead Technical College

**ARBITRATION AWARD**

AFT Wisconsin, Local 395, AFT, AFL-CIO, hereinafter "Union," and Wisconsin Indianhead Technical College, hereinafter "College," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators to the parties in order to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on September 8, 2005, in Shell Lake, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs and reply-briefs, the last of which was received on November 13, 2005, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

### ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

1. Whether or not the Higher Learning Commission (HLC) credentialing process is to be applied in the interpretation and application of paragraph 2 of Section T of Article IV of the collective bargaining agreement?
2. If not, what is the appropriate remedy?

### RELEVANT CONTRACT LANGUAGE

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#### ARTICLE II – FAIR PRACTICES

##### Section D. Teacher Qualifications

1. The minimum requirement for all teaching positions shall be no less than other minimum requirements set forth by the Wisconsin Board of Vocational, Technical and Adult Education to qualify for state and federal aids in that particular area of work. Any teacher who, by reason of an addition to these minimum requirements, becomes unqualified for the position they then hold, shall be given reasonable opportunity to re-qualify therefore; provided, however, that this clause shall not be interpreted as a guarantee of employment for said teacher.
2. It is the intent of the college to employ faculty members who meet the academic credential standards of the Higher Learning Commission.

Faculty members hired after April 9, 2002 shall obtain these academic credentials at a schedule agreed between the faculty member and immediate supervisor. These faculty members shall obtain these academic credentials on their own time and at their own expense.

Active faculty members on April 9 2002 who do not meet Higher Learning Commission academic credential standards, must pursue

these credentials consistent with an individualized learning plan agreed between the faculty member and supervisor. The college shall provide support for faculty members engage in such an individualized learning plan consisting of the following:

- a) Undergraduate or graduate tuition reimbursement for actual tuition expenses, not to exceed the average of undergraduate or graduate credit tuition costs at UW-Superior, -River Falls, -Eau Claire, and -Stout.
- b) Time in the form of non-teaching assignable workdays, not to exceed 2 workdays per graduate credit.

If an affected faculty member and supervisor cannot arrive at an appropriate credential-focused individualized learning plan, a resolution panel at each campus will be identified to resolve the dispute. The resolution panel will consist of one college-wide manager and one local faculty member selected by the union.

Individualized learning plans established under this provision may be adjusted or delayed by the college for budgetary reasons.

Active faculty members on April 9 2002 who do not meet Higher Learning Commission academic standards and are at least 50 years of age, and the sum of the faculty member's age in years and years of service to the college totals at least 60 shall either

- a) pursue these academic credentials through an individualized learning plan supported by tuition reimbursement and time in the form of non-teaching assignable work days on the same basis as other affected faculty; or
- b) provide the college with an irrevocable letter of retirement by January 15, 2006, effective no later than June 30, 2007, and receive a retirement stipend of \$6,500. A faculty member who provides a retirement letter under this provision to be effective after the expiration of this agreement shall not have the current retirement benefits or retirement subsidy reduced in subsequent bargaining; or
- c) be reassigned to another position within the bargaining unit where there is no Higher Learning Commission credentialing issue.

#### **ARTICLE IV – WORKING CONDITIONS**

Section S. Management Rights

1. Recognition of Board Rights: The Union recognizes the right of the Board and the College President to operate and manage the affairs of the Wisconsin Indianhead Technical College District, in accordance with its responsibilities under law. The Board and the College President shall have all powers, rights, authority, duties and responsibilities conferred upon them and invested in them by the laws and the Constitution of the State of Wisconsin.

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:

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a. The right to determine location of the schools and other facilities of the school system, including the right to establish new facilities and to relocate or close old facilities.

g. The direction and arrangement of all working forces in the system, including the right to hire, suspend, discharge or discipline or transfer employees.

h. The right to relieve employees from duty for lack of work.

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 employee performance.

3. Exercise of Management Rights: The exercise of the foregoing powers, rights, authority, duties and responsibilities of 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.

Section T. Staff Reductions

1. Whenever it becomes necessary to decrease the number of employed teachers who have completed a probationary period by reason of a decrease in pupil population within a specific campus, or any other reason, employees shall be laid off in the inverse order of seniority by program (i.e., machine shop, accounting, etc.), or major instructional areas, and by campus. Notice of such layoff shall be sent prior to the July 1 preceding the school year in question by registered mail, return receipt requested, to the last known address of the employee.

A teacher who has the least seniority in the program or in a major instructional area to be reduced may transfer to another program or major instructional area in which they are certified and there is a less senior employee in that program or instructional area.

Such teachers who have completed the probationary period shall be reinstated in that campus in inverse order of their being laid off, if qualified to fill the vacancies.

The seniority these teachers have accumulated shall be retained, but shall not accrue from time of lay off. Seniority for the purpose of recall from lay off shall be retained for a period not to exceed two (2) years. All laid off teachers have a period of thirty (30) days to accept or reject a recall to work and during this time no new permanent appointment may be made to fill that vacancy.

2. If a teacher who has completed a probationary period and had their individual teaching contract non-renewed because of lack of work, the said teacher may be given the opportunity to be reassigned to teach other courses in their area(s) of certification to all district facilities if such a vacancy exists. In no instance shall a senior teacher replace an existing faculty member at another district location.
3. No new staff members shall be hired part-time or full-time having the same areas of certification as said professional employee unless non-renewal professional employee has been offered part-time or full-time contract and declines to accept same.

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**BACKGROUND**

The Higher Learning Commission (HLC) is the accrediting body for the North Central Association of Colleges and Schools. Receipt of federal financial aid for students is contingent Upon HLC accreditation. The College has been evaluated by the HLC for a number of years and since 1993 the issue of faculty credentials was identified by the HLC as a concern.

During bargaining for the 2001-2004 labor agreement, the College proposed changes to Article II, Section D, Teacher Qualification and Article IV, Section T, Staff Reduction. The Federation bargaining representatives responded positively to the teacher qualifications modifications in Article II, Section D and the parties solidified language that separated the teaching staff into three groups; those that met HLC standards, full-time instructors that did not meet the HLC standards and part-time that did not meet HLC standards. Of the 145 total staff, 33 fell into the full-time instructor category that did not meet the HLC standards. The College committed to a tuition reimbursement and time off plan for the full-time staff employed on April 9, 2002 that did not meet the HLC standards.

With regard to the College's proposed changes to the Staff Reduction section, the College wished to add "credential under HLC guidelines" to paragraph two as a criteria for transfer. The Union representatives responded that the bargaining unit would never ratify language that amended the bumping provisions. The parties ratified the 2001-2004 labor agreement on April 9, 2002 with the HLC changes added to the Teacher Qualifications section, but not the Staff Reduction section.

In anticipation of an HLC on-site visit in the Fall of 2003, representatives from the College attended a convention in Chicago during the Spring of 2003. Lois Eichman, College Vice President of Instruction, returned from the convention and informed Palin that although she was not entirely sure what the HLC's focus would be, she was sure that the lack of faculty credential requirements would be an issue.

The HLC visited the College from October 13-15, 2003 and prepared a report. The Comprehensive Evaluation Visit report, in relevant part, read as follows:

3. Evidence that demonstrates the criterion requires institutional attention and Commission follow-up
  - a. WITC has developed a general plan and begun implementation of individual faculty plans for faculty to gain requisite credentials in their teaching fields. Nevertheless, an examination of these plans and personnel files indicates that significant numbers of full and part-time faculty do not possess appropriate qualifications for their assigned teaching fields. Of the 21 full-time faculty in General Education, 15 do not have adequate course work in one or more of their teaching fields. Eleven have been grandfathered, which means that they are not expected to fulfill the requirements. Although the team was told that those in this category would be retiring soon, no dates of retirement were indicated. Individual faculty plans for those not grandfathered did not consistently identify projected completion dates and

annual progress towards completion, thus making monitoring difficult and being devoid of a sense of urgency to complete requirements. Further, the long-range plans do not address the needs of current students. Finally, files relative to the qualifications of part-time faculty were incomplete.

- b. The issue of faculty credentials is exacerbated given that the concern has been substantiated in a variety of documents: the 1993 visiting team report, 2003 Self Study, BID forms in the 2003 Self Study, 2002 report commissioned by the College, report from the Human Resources Department requested by the visiting team, and the current faculty contract, which specifically exempts faculty from the HLC requirements based on age and tenure.

#### Faculty Credentials

Given the rationale and evidence presented in the Criterion Two section of this report, the team recommends that the College, by May 15, 2004, file a Progress Report with the Higher Learning Commission, which contains a plan showing how the College will resolve the issue of faculty credentials. The team further recommends that the College, by 2006-2007, resolve the issue in such a way that the majority of full-time and part-time faculty possesses credentials that are in substantial compliance with HLC standards.

Due in part to the College's lack of credentialed faculty, the HLC expected the College to submit a Progress Report by May 15, 2004 showing a plan as to how the College would resolve the faculty credential issue. The HLC also informed the College that it would conduct a Focus Visit at the College in the Fall of 2006.

#### FACTS

The Grievant, Fay LaForte, was employed by the College in the capacity of non-probationary Counselor at the New Richmond campus. On February 9, 2005 LaForte was sent written notification that she would be laid off effective the end of the 2004-2005 contract year. In her layoff letter, the Grievant was informed that she had recall rights to "full time bargaining unit positions for which you are qualified. You have these recall rights for two years after your last day of work. As provided by the collective bargaining agreement, we will forward job vacancies to the address you provide."

On April 6, 2005 the College posted a job vacancy for the position of Communications Instructor. The posting read as follows:

Wisconsin Indianhead Technical College is seeking a learning-focused, creative and dynamic individual to teach Communications courses at the WITC New Richmond campus beginning fall semester. Teaching responsibilities include written communications and technical reporting courses. The ideal candidate will demonstrate interest in and potential for excellence in facilitating student learning and development.

### **Minimum Qualifications**

#### Core Abilities

WITC seeks to employ individuals with talent, commitment, enthusiasm, strong interpersonal skills and the ability to:

- \* Assess own learning and progress toward established personal and professional goals.
- \* Demonstrate creativity, critical thinking, and problem-solving skills.
- \* Communicate effectively in personal and group settings.
- \* Contribute to a diverse, respectful, and inclusive working and learning environment.
- \* Effect change and demonstrate flexibility and positive leadership.
- \* Acquire and apply technology to working and learning.

#### Education/Training and Experience

1. Master's degree in English OR a master's degree and 18 graduate credits in English.
2. One year (2000 hours) of occupational experience outside the field of education.
3. Previous teaching experience preferred.
4. Experience teaching online, ITV, and alternative instructional modes strongly preferred.

Note: In the assessment of credentials, a higher rating may be given for education/training, skills and experience beyond the minimum qualifications.

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The Grievant sent an e-mail to Perry Palin, College Vice President Human Resources, on April 11 expressing her intent to exercise her contractual transfer rights into the



Communications position. LaForte was certified as a Counselor and Social Studies-Psychology. She was certifiable for English, English-Basic Skills and Social Studies-Psychology, Basic Skills. She additionally was credentialed for Social Studies-Psychology because she held 19 graduate credits in psychology.

On April 22 Palin denied the Grievant's transfer request to the Communications instructor position because she did "not have the qualifications and credentials necessary to move into the open Communications position."

A grievance was filed on April 28 alleging the College had violated Article IV, Section T when it denied the Grievant transfer to the Communications position. The Union also challenged the Grievant's layoff notice, but this issue is not before the Arbitrator. The grievance was processed through all steps of the grievance procedure placing it before the Arbitrator.

## **POSITIONS OF THE PARTIES**

### **The Union**

The College violated the collective bargaining agreement when it denied the Grievant transfer to the vacant Communications Instructor position.

The clear and binding contract language of Article IV, Section T provides the Grievant with transfer rights to positions for which she is certified. As the College's Human Resource Specialist testified, the Grievant was certifiable for the Communications Instructor position. The College violated the clear language of the parties' labor agreement when it did not approve the Grievant's transfer request.

The College has attempted at the bargaining table to include HLC-recommended credentials to the bumping provisions of the labor agreement. These attempts have been unsuccessful. In August 2000, the College proposed and the Union rejected tying credentialing to bumping and/or transfer. During negotiations for the 2004-2006 agreement, the College again sought to amend the bumping language in Article IV and was unsuccessful. The College inappropriately applied the HLC credentialing requirements to the Grievant and in doing so, violated the labor agreement.

### **The College**

The College reasonably determined that the Grievant was not qualified for the Communications Instructor position. The College's decision was consistent with both its inherent and reserved management rights and the second paragraph of Article IV, Section T.

The management rights clause allows the College to determine the minimum qualifications for the Communications Instructor position. Article IV, Section S provides that the College has the express right to make "...determinations of policy affecting the selection of employees, and the establishment of quality standards..." In order to retain its accreditation with the HLC, the College was obligated to comply with the HLC's direction. HLC indicated a deficiency in the qualifications of the College's faculty and the parties bargained teacher qualification language which recognized the College's intent to employ faculty members who met the HLC academic standards. It was against this backdrop that the College determined that the Grievant did not meet the minimum qualifications for the posted vacancy. Since the College's decision was guided by the HLC, it was not arbitrary, capricious or discriminatory.

This case is factually identical to NORTHEAST WISCONSIN TECHNICAL COLLEGE DISTRICT BOARD, CASE 101, NO 59696, MA 11380 (MCLAUGHLIN,1/02). In that case, a laid off employee applied for a posted position but did not meet the 18 credits of mathematics requirement. The employee had 14 credits. Arbitrator McLaughlin held that where the College had the express authority to determine qualifications for positions and there are legitimate educational reasons for establishing those qualification, then it is not the role of the arbitrator to overturn the College's decision. Similar holdings can be found in ASHLAND SCHOOL DISTRICT, CASE 62, NO. 41226, MA 5327 (BURNS, 10/89) AND OCONTO FALLS SCHOOL DISTRICT, CASE 24, NO. 62370, MA-12255 (JONES, 4/04). In all of these cases, the arbitrators have found that where there is an express management right to determine qualifications and the qualifications are reasonably related to the position's duties and responsibilities, then there is no contract violation when a bargaining unit member that does not meet the qualifications is denied a position.

As to the Union's assertion that the Grievant should be awarded tuition and time to attain a master's degree in Communications, it was not the intent of the parties to include the Grievant in the tuition and time benefits language of Article II, Section D. The College agreed to the tuition and time benefits for 33 teachers. It was never the College's understanding that that number of staff would increase and include future staff members.

### **The Union in Reply**

The College is in error when it asserts there are no contractual limitations on its ability to deny the Grievant's transfer. On the contrary, the contract authorizes the Grievant's transfer and has no provision that allows the College to impose HLC-recommended credentials. Although the College has attempted to insert HLC recommendations in transfer language, it has never achieved. There is nothing in the contract that codifies the HLC credentials for transfers.

As to the College's reliance on Mr. Palin's testimony that the College never anticipated that the number of faculty members who did not hold HLC credentials would increase, it must fail because Mr. Palin had no idea what that number was at hearing or whether that number

had increased. There is no numerical quota of employees without HLC credentials nor a list of specific employees that are entitled to the benefit in the labor agreement.

Arbitrator Richard McLaughlin's decision in NORTHEAST WIS. TECH. COLLEGE, CASE 101, NO. 59696, MA-11380 (MCLAUGHLIN, 1/02) is not relevant to the instant grievance because there are central differences between the labor agreements. The management rights clause in that case specifically reserved authority for management to determine qualifications, while there is no such authority in this labor agreement. Additionally, in that case, the parties had not bargained regarding the HLC credential recommendations, whereas in this case, the parties bargained and the College was unsuccessful in its efforts to include HLC credentials on transfers.

Similarly, the College's reliance on ASHLAND SCHOOL DISTRICT, CASE 62, NO. 41226, MA-5327 (BURNS, 10/89), OCONTO FALLS SCHOOL DISTRICT, CASE 24, NO. 62370, MA-12255 (JONES, 4/04) and MONROE COUNTY, CASE XLII (CROWLEY, 2/82) are inapplicable due to the differences in the language of those labor agreements and the labor agreement between the College and the Union.

The Union respectfully requests that the Arbitrator uphold the grievance and order the College to make the Grievant whole for all lost pay and benefits.

### **The College in Reply**

Article IV, Section T, paragraph two cannot be read in isolation. The contract is clear that certification and seniority are not the only criteria for transfer or bump. The third paragraph states that non-probationary teachers must be "qualified to fill the vacancies". Article II, Section D speaks to the issue of teacher qualifications and the parties have bargained the HLC credentialing standards. Additionally, all job descriptions and vacancy notices include the HLC requirements. The College has expressly reserved the right to determine qualifications for faculty members in Article IV, Section S. There is no express contractual term that guarantees the Grievant the Communications instructor position simply because she is certifiable in the subject area. When Article IV, Sections S and T are harmonized with Article II, Section D, it is clear the Grievant is not entitled to an automatic transfer.

The Union's assertion that the College has waived its right to determine qualifications for faculty positions because it was unsuccessful at the bargaining table to effect the change must fail. The Union's unwillingness to clarify or expand the Staff Reduction contract language does not mean that the College has lost its right to consider qualifications. As to the 2004-2006 negotiations, "bumping" was a conversation item and the College viewed it as an opportunity to improve existing contract language. The College did not have to seek language to solidify its right to determine qualifications for vacancies.

Finally, it is not the College's practice to hire non-credentialed faculty members. The College is being closely monitored by the HLC due, in part, to the lack of credentialed staff. It would be a step-backward to hire the Grievant to the Communication instructor position.

The College respectfully requests that the Arbitrator dismiss the grievance in its entirety, with prejudice.

### DISCUSSION

The issue in this case is very specific. It requires a determination as to whether the College has the contractual latitude to consider the qualifications, specifically the HLC credential requirement, when a laid off teacher has applied for a transfer. I conclude that language of Article IV, Section T, paragraph two does not afford the College this authority.

The Grievant was informed that she would be laid off at the conclusion of the 2004-2005. The parties lay off language is contained in Article IV, Section T. The first paragraph of Section T addresses the manner in which lay offs will occur and there is no challenge to the manner in which the Grievant was laid off.<sup>1</sup>

Moving to paragraph two, it reads as follows:

A teacher who has the least seniority in the program or in a major instructional area to be reduced may transfer to another program or major instructional area in which they are certified and there is a less senior employee in that program or instructional area.

This paragraph establishes the criteria which the Grievant must satisfy in order to transfer or bump to the Communications Instructor position. There are two criteria. The Grievant must be the most senior and must be certified in another program or major instructional area. As to the first, there is no evidence in the record as to whether there were any other candidates interested in the Communications position. Given that the College has not asserted a more senior candidate was available and did not deny the Grievant transfer for this reason, I conclude that the Grievant was the most senior employee seeking transfer to this position.

The second criteria that the Grievant needed to fulfill was certification. The parties have not defined certified in their agreement. Certified in the context of education relates to teacher licensing. Valerie Smith, the College's Human Resources Specialist testified that certifiable means that an individual teacher meets the minimum requirements to be certified. Certification is contingent upon the College submitting paperwork to the State Board. The

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<sup>1</sup> The Federation initially grieved the manner in which the Grievant was laid off. That portion of the Grievance was either resolved or dropped and is not a part of this case.

Grievant was certifiable in English which encompasses Communications. Smith confirmed that if the College had submitted the necessary paperwork, the Grievant would have been certified because the process is automatic.<sup>2</sup>

The evidence establishes that the parties recognize certifiability when making placement decisions for teachers identified for lay off. Smith and William Kalin, Staff Representative for AFT Wisconsin who has been assigned to this Local for 26 years, confirmed that the parties have understood certifiable and certified to be indistinguishable and further, that the parties have a history of meeting to discuss the existing certification of a teacher who is scheduled for lay off to determine whether that teacher is certifiable in another area so that the teacher may transfer or bump to a position that is vacant or held by a less senior employee. I therefore conclude that the parties have a practice of viewing certified and certifiable as one in the same. The Grievant was not certified to teach Communications, but was certifiable. The Grievant therefore met the two criteria of the paragraph two of Section T of Article IV of the labor agreement.

The College denied the Grievant's request for a transfer because she did "not have the qualifications and credentials necessary to move into the open Communications position." The College maintains that it has the right to determine qualifications and the Grievant did not meet these qualifications, thus justifying her denied transfer. The College reminds the Arbitrator that contract clauses must be harmonized with one another and relies on Article II, Section D; Article IV, Section S; and Article IV, Section T, paragraph 3.

The interpretive principle of harmonization that the College asserts provides that the "primary rule in construing a written instrument is to determine, not alone from a single work or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions." ELKOURI & ELKOURI, HOW ARBITRATION WORKS, 6<sup>TH</sup> ED. (2002) P. 463. This principle is utilized to interpret a contract clause that is susceptible to alternative interpretations. *Id.* That is not the case before me. The language of Article IV, Section T, paragraph 2 is not ambiguous and is not subject to more than meaning therefore it is unnecessary and inappropriate to look to other contract clauses.

Moving next to Article IV, Section S, this is the College's management rights clause. I concur with the College that the Article II expressly provides the College the right to "the determination of policies affecting the selection of employees", but there is no authority for the College to rely on Articles II, Section S when addressing a request from an employee to her Article IV, Section T rights.

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<sup>2</sup> Certification for the Grievant would have been limited and impacted by the length of time she was certified as a Counselor.

With regard to paragraph 3 of Section T of Article IV, this paragraph addresses the reinstatement or recall rights and process for recall rather than the transfer language of paragraph two. Reinstatement is the process by which individuals are returned to the position they held prior to layoff. The Grievant was not seeking to return to a Counselor position nor was she unemployed at the time she was seeking transfer to the Communications instructor position. Rather, she was employed as a full-time employee seeking to bump or transfer into a position held, or in this case prospectively going to be held by an instructor with less seniority than her since it would be a new hire. In lieu of hiring the individual, and then exercising her bumping rights over that new hire, she sought to transfer or bump into the vacant position.

The College cites four cases that it asserts are factually similar and support its position. All four cases are distinguishable. With regard to NORTHEAST WIS. TECH. COLLEGE, CASE 101, NO. 59696, MA-11380 (MCLAUGHLIN, 1/02) neither the language of Article IV, Section C nor the facts of the case are on point. In that case, the individual was seeking a transfer, not as a result of staff reduction, and the transfer language specifically authorized the employer to consider qualifications. In this case as previously discussed, the Grievant requested a transfer/bumping prompted by a staff reduction and qualifications is not included as a criteria for the College to consider in paragraph two.

As to ASHLAND SCHOOL DISTRICT, CASE 62, NO. 41226, MA-5327 (BURNS, 10/89), in that case, Arbitrator Burns was addressing all of these cases relate to employee requests for transfer pursuant to contractual language which expressly provided the employer the expectation and right to evaluate the employee based on a number of factors, including qualifications. Similarly, in OCONTO FALLS SCHOOL DISTRICT, CASE 24, NO. 62370, MA-12255 (JONES, 4/04) there was qualification language in the labor agreement that allowed the employer to evaluate candidates based on qualifications, although the case arose through a posting procedure rather than transfer.

As to the College's assertion that the proposal and ultimate failure by the parties to include the HLC credentialing requirements in the 2001-2004 and 2004-2006 labor agreements is not an admission that the right would not have existed without the change, I disagree. There was no evidence offered at hearing to indicate that during the bargaining for HLC inclusion in Article IV, Section T, the College indicated it was clarifying current language or a current right. Moreover, there is no question that the College ascribed an economic value to the language as contained in its 2004-2006 settlement offer since the College's most lucrative economic packages included amending the bumping language section of the agreement to "preclude bumping into a position unless the employee has the HLC credentials for the position". Ex. 10. When parties are clarifying current bargaining language, they do not generally apply an economic value as the College did in this instance. I concur with the Union that the College is attempting, in this instance, to obtain through arbitration what it could not through negotiation.

As to the remedy, although the College asserts that the time and tuition benefit for only those individuals identified as of April 9, 2002, there is no evidence to support this conclusion. The language of the Article II, Section D does not contain any restrictions other than full-time employment status as of that date which the Grievant held. Palin testified that 33 was the number of staff entitled at that time to the benefit, but Palin's failure to know, maintain a record or monitor the number of staff receiving the benefit diminish the credibility of his testimony that 33 was the maximum.<sup>3</sup> As such, I conclude that the Grievant is entitled to the time and tuition benefits contained in Article II, Section D and further, is obligated to complete the credential requirements.

In conclusion, the language of the parties' collective bargaining agreement permits transfer, also known as bumping, by more senior employees that are certified. The Grievant was certifiable and the parties have a practice of not distinguishing between certifiable or certified during staff reductions. The plain language of the parties' agreement, past practice and bargaining history supports the Union's position.

#### AWARD

1. No, the Higher Learning Commission (HLC) credentialing process is not to be applied in the interpretation and application of paragraph 2 of Section T of Article IV of the collective bargaining agreement.
2. The appropriate remedy is to immediately reinstate Fay LaForte as a full-time Communications instructor at the New Richmond campus and make LaForte whole(without interest) for losses of pay, benefits, or status that she might have suffered, if any, as a result of the College's violation as noted in 1, above.
3. The Arbitrator retains jurisdiction for a period of sixty (60) calendar days from the date of this award, to resolve, at the request of the Union or the College, any dispute as to the meaning or application of the remedy in 2, above.

Dated at Rhinelander, Wisconsin, this 10<sup>th</sup> day of February, 2006.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator

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<sup>3</sup> The record does not establish the number of faculty members that have completed the credentialing process, the number of faculty members utilizing the tuition and time benefit. The College's statements in its initial and reply briefs regarding these totals have been disregarded since they are not part of the record.