

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
NORTHEAST WISCONSIN TECHNICAL COLLEGE
and
NORTHEAST WISCONSIN TECHNICAL COLLEGE
EDUCATIONAL SUPPORT SPECIALISTS

Case 111
No. 66681
MA-13600

(Perez Grievance)

Appearances:

Robert W. Burns, Attorney, Davis & Kuelthau, S.C., 318 South Washington Street, Suite 300, Green Bay, Wisconsin 54301, on behalf of Northeast Wisconsin Technical College.

David A. Campshure, UniServ Director, Bayland Educators, 1136 N. Military Avenue, Green Bay, Wisconsin 54303, on behalf of Northeast Wisconsin Technical College Educational Support Specialists.

ARBITRATION AWARD

The Northeast Wisconsin Technical College, herein the College or Employer, and the Northeast Wisconsin Technical College Educational Support Specialists, herein the Union or ESS, are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. The Union filed a request to initiate grievance arbitration with the Wisconsin Employment Relations Commission for arbitration of a grievance filed by the Union concerning posting a position that had been held by Maribel Peres. From a panel the parties selected Paul Gordon, Commissioner, to serve as arbitrator. Hearing was held on the matter on June 5, 2007 in Green Bay, Wisconsin. A transcript was prepared. A briefing schedule was set and later extended by the parties. Briefs and reply briefs were filed and the record was closed on October 1, 2007.

ISSUES

The parties stipulated to the following statement of the issues:

Did the College violate the parties' collective bargaining agreement, Article III in particular, when it refused to post the student security officer position held by Maribel Perez to the ESS bargaining unit after exceeding 832 hours worked in the 2006 calendar year?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE I **RECOGNITION**

It is hereby certified that NWTC Educational Support Specialists, Wisconsin Education Association Council, National Education Association, has been selected by the required number of eligible employees of Northeast Wisconsin Technical College who voted at said election in the collective bargaining unit consisting of all regular full time and regular part-time operational or technical support employees working 18 $\frac{3}{4}$ hours or more per week, but excluding all confidential, supervisory and managerial personnel, as their representative; and that pursuant to the provisions of Section 111.70 of the Municipal Employment Relations Act, said labor organization is the exclusive collective bargaining representative of all such employees for the purposes of collective bargaining with the above named Municipal Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment.

Working conditions of the employer previously in effect shall not be discontinued or altered unless there is mutual agreement between both parties.

With regard to matters not covered by this Agreement, which are proper subjects for collective bargaining, negotiations may be initiated at the written request of either party. The collective bargaining representatives of the Employer and Union shall meet to resolve these situations.

The employer shall make available to the NWTC-ESS any and all information, statistics, and records which are in the public domain relative to negotiations or the processing of grievances.

ARTICLE III **DEFINITIONS**

1. The term "employer" as used herein means the NORTHEAST WISCONSIN TECHNICAL COLLEGE.

2. The term “union” as used herein means the NWTC EDUCATIONAL SUPPORT SPECIALISTS, WISCONSIN EDUCATION ASSOCIATION COUNCIL, NATIONAL EDUCATION ASSOCIATION, SUPPORT STAFF.
3. The term “employee(s)” as used herein means all regular full-time and regular part-time employees working more than 832 hours per year.
4. A regular employee is hereby defined as a person hired to fill a permanent position.
5. A temporary employee is one who is hired for a specified period of time, or to perform on a specific project and who will be separated from the payroll at the end of such period or project, subject to the following conditions:
 - a. The term of Public Service Employees or persons hired in agency training station will not exceed 365 calendar days;
 - b. Student Interns must be enrolled at least halftime;
 - c. In all other cases, the term will not exceed 90 calendar days for a given project (nor 120 work days total in a fiscal year).
 - d. In the event an individual works beyond the above excluded period, the position shall be considered as a member of the bargaining unit. The individual, however, shall have no specific rights to the position being held. The position shall be posted and filled in accordance with other provisions of the agreement. Should an existing unit employee successfully bid for the posted position, the wages and benefits of the bargaining unit employee shall be determined by the level and classification of the new position.
 - e. The Union shall be notified of all temporary employees within thirty (30) days of initial employment, and shall be provided with quarterly status updates.
 - f. Limited term shall be defined as a position lasting between 90 calendar days and 24 months. When a position is posted that is to be limited term, it will be identified as such, and an ending date will be listed on the position announcement (posting). A position announcement (posting) for a limited term employment position will also specify that the individual in such position is not eligible for dental insurance, IRS Section 125 flexible spending accounts, or tuition reimbursement.

If a limited term employment position extends longer than 24 months, it will be posted according to Article IV, Vacancies/Transfers. Article IV, Vacancies/Transfers applies to an employee in a limited term employment position, in that the incumbent has the right to bid on this and other posted positions, per contract language. However, this

incumbent does not have the right to be reassigned per Article IV, Reassignment, Layoff, Recall.

6. Casual employees are hereby defined as Work Study students and employees working 832 hours or less per year on an on-call basis. Casual employees shall continue to be excluded from this Agreement.

Positions requiring a casual employee to work on a regular basis 832 hours or less per year shall be excluded from this Agreement. The employer agrees that such casual employee positions shall not be utilized in such a manner as to displace any present bargaining unit positions. Any position doing work under the ESS recognition clause in which the College records reflect that through the normal monthly reporting procedure, that a casual employee has exceeded 832 hours paid in one calendar year, that petition will be considered a vacancy, posted with a four (4) week timeframe to the ESS bargaining unit, and filled in accordance with Article IV-Vacancies and Transfers.

7. The employer shall provide the NWTC-ESS President with a list of all unit employees and related job descriptions. When an employee terminates employment and/or when a new employee is hired, notification shall be submitted in writing to the NWTC-ESS Treasurer within five (5) days of the termination/hiring.
8. In those positions where the state has required additional industrial certification for a program or position, the employee affected will be provided with what the industry recognizes as a reasonable time period to obtain such certification.
9. A Lead Worker is defined as a bargaining unit employee who coordinates and/or facilitates work activities and who may have some limited authority to coordinate functions such as setting work schedules and/or relaying information. A leader (sic) worker shall not supervise, evaluate, or discipline other bargaining unit members.

Any information provided to the College by a Lead Worker in the performance of Lead Worker duties shall be investigated and verified independently by the supervisor.

ARTICLE XII **ARBITRATION**

When a controversy cannot be settled through the grievance procedure, the union may appeal directly to the Wisconsin Employment Relations Commission for arbitration.

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

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.

No arbitrator shall have any right to change, add to, subtract from or modify any of the terms of any written agreement existing between the parties.

BACKGROUND AND FACTS

The College has approximately ten positions known as student security officer. Students in these positions work a varying number of hours. The College has one full time Level I security officer who is not a student. The full time position is in the ESS bargaining unit. The College offers programs in Criminal Justice/Law Enforcement and in Criminal Justice/Corrections. During 2006 Maribel Perez worked as a student security officer. During that time she was enrolled full time at the College in the criminal justice program, and was not enrolled in any internship courses for credit. In 2006 she worked 908.75 hours.

Prior to 2004 the College provided security by contracting with an outside agency. In 2004 the College decided to provide its own security and developed a new position called Manager of Security and Safety. The Manager was to oversee student security officers, among other things. The College hired a Manager, Tom Hinz, who had significant executive experience in law enforcement for Brown County and the City of Green Bay. The newly hired Manager, who had also been an adjunct instructor in the criminal justice program, developed and implemented the student based security role of the security student officers. He felt that providing student security officers would both enhance security presence on campus and provide an opportunity for students to develop some job skills. He drafted the position description which states in pertinent part:

General Qualifications:

- High school graduate or equivalent
- Applicant must be currently enrolled at NWTC. Preference will be given to students in the Criminal Justice/Law Enforcement or Criminal Justice/Corrections programs
- Possess a valid Wisconsin Drivers License
- Ability to write detailed reports
- Basic computer skills
- Possess excellent people skills
- Ability to work independently
- Ability to follow directives

- Possess high ethical standards
- Bilingual in speaking Spanish, Lao, or Hmong is desired

General Duties and Responsibilities:

- The Student Security Officer will work under the direction of the Manager of Security and Safety, and take daily assignments from the full time NWTC Security Officer.
- The Student Security Officer will receive their training from the Manager of Security and Safety
- The daily job assignments will vary, but generally the officer will be required to:
 - Lock and unlock office and classroom doors as scheduled
 - Patrol the hallways and parking lots on campus on a regular schedule
 - If assigned, be part of the Bicycle Patrol Program on campus
 - Check assigned area for non-authorized individuals, i.e. Wellness Center
 - and gym
 - Assist in providing basic first aid when needed
 - Assist in providing customer service for individuals having vehicle
 - problems in the parking lots
 - Filling out Incident and Accident Reports as needed
 - Check for maintenance problems on their assigned rounds as directed
 - Immediately report any serious incident up through the chain-of-command or to the proper authority as directed
- All other duties as directed
- If employed as a Student Security Officer at the time of his/her graduation, the individual may continue to be employed as an NWTC Security Officer up to one year post graduation.

(emphasis supplied)

When the student security officer positions were being created the Manager sought funding from the Student Senate, which then provided \$30,000.00 of the \$42,000.00 cost, and the Student Senate referred to the funding in its 2005-2006 budget as “Criminal Justice Interns”, with “wages and fringes for on-campus internship security”. Some positions in the ESS unit are partially funded by the Student Senate. The Manager, in his testimony at the hearing in this case, held the opinion that the student security officer position would fit a

general definition of internship with intern meaning restricted to a student, providing practical experience which is related to their field of study. In administering the security program the Manager was not seeking academic credit for the students. Other than referral to fill the positions, the faculty within the criminal justice or law enforcement programs had no involvement with the positions. The College did not have or seek any type of written report from the Manager about any student completing any number of hours or certain types of training relative to the position, and none was provided by the Manager other than the position description and payroll information. The College did not provide the Manager with anything as far as what an internship would be required to do or criteria for an internship for these positions. The Manager was not aware of any similar requirement for internship positions the Manager was familiar with for Brown County or the City of Green Bay. The Manager was not aware of an internship course at the College. The College budget office at some point referred to the positions as security internship wages.

In August of 2005 and thereafter the College sought students to fill the positions and put up what it called a posting. The posting contained qualifications and duties very similar to those set out in the position description and contained other information. It did not mention internship. The security program then became operational in September, 2005.

The College has as electives in its criminal justice programs: Law Enforcement Internship, 10-504-175, and; Corrections Internship, 10-504-171. The President of the Union, Karen Parr-Jerabek, works in the College Career and Student Employment Center, (which has had student interns). She frequently uses the College course catalogue, which has information for the criminal justice internship and the law enforcement internship as a two credit course with an obligation of 90 hours of intern or direct contact with their experience in either corrections or criminal justice. She is also aware that internships are overseen by faculty, who receive monetary reimbursement for their contact hours with the student.

There are internships for other programs at the College, such as Business and Information Technology, which has different requirements as to the number of required hours and relevant work experience

The College Vice President for Human Resources, Sandy Ryczkowski, applies the term "student intern" to mean the individual is a student of the College who is in a field of study and working in that field of study for practical experience that would look good on a resume. According to her, there are a lot of different types of internships at the College. Some are formal and some are informal. Some are paid and some are unpaid. Some are for academic credit and some are not. For some, an individual student may talk to their instructor and work out a special arrangement because it works for the program or it makes sense in their field. Internships are not uniformly applied and the term is used quite inconsistently throughout the College. Internships change from time to time based on curriculum changes and other things.

The College also has students who are in work study, and receive their assignments through some discussion with the financial aid office, work study being coordinated through

the financial aid Director. Work study may be related or unrelated to the student field of study.

The College provides monthly status reports, called the 832 hour report, on the number of hours worked by various part time non-union employees. These included casual and temporary employees. They included the student security officer positions and work study positions. The reports are sent to supervisors, including Manager Hinz, and Union officials. The reports have contained cover memorandums which point out a need to adjust hours of work to submit plans to remain within the 832 hour limit. The November memorandum indicated that Ryczkowski was already reviewing some plans. The hours for Perez appear on the reports. By October 28th she had 801.5 hours, by November 11th she had 822.75 hours, and by the final year report on December 22nd, 908.75 hours. She was the only person listed on the report to have more than 832 hours worked in 2006.

In early November 2006 Hinz went to Parr-Jerabek to discuss the possibility of some student security officers exceeding the 832 hour limit. Hinz suggested the position should not be subject to the limit because of the uniqueness of the position, or that some hours could be carried over into the next fiscal year. He did not refer to the position as an internship. Parr-Jerabek did not agree to any changes and maintained the positions were subject to the collective bargaining agreement terms, which is the rule they follow. About a week later Hinz asked Parr-Jerabek if she had reconsidered, which she had not.

In early December, 2006 the Union requested that the position held by Perez be posted to the ESS bargaining unit because she had worked more than 832 hours. The College responded that it considered the position to be an internship because Perez was at least a half-time student. The College did not post the position. The Union filed the instant grievance on or about December 22, 2006. The College denied the grievance on the basis that the Perez position was, under Article III 5. b., a student intern and not subject to the 832 hour limitation. This arbitration followed.

Further facts appear as set out in the DISCUSSION.

POSITIONS OF THE PARTIES

Union

In summary, the Union argues that the position held by Perez was not an internship. The position was subject to the 832 hour contractual limit. Only after the Manager erroneously allowed Perez to exceed 832 hours did the College begin portraying the position as an internship to keep it out of the ESS unit. The position description and job posting do not mention intern or internship. Enrollment in either criminal justice programs was not required, but only preferred. Neither the position description nor job posting require enrollment at least half-time, as mentioned in the agreement. The position can be extended for a year after graduation. The Manager did not know whether the officers were enrolled half-time. The

College's interpretation would render meaningless the requirement of half-time enrollment for an intern position. Enrollment in a *de minimis* amount of classes eviscerates the agreement. The actual supervision of the position did not have any of the characteristics of a true intern position. Perez was not enrolled in either internship listed in the course catalogue. There was no faculty oversight of the position. The Manager did not prepare any reports on progress or training. The College can't have the position both as an internship and as a casual position, based on enrollment status on any given day. By virtue of the lesser enrollment requirements the position cannot be considered an internship.

The Union argues that the College's claim that the student security officer position was an internship was an after-the-fact cover-up. The College's tracking of hours worked undermines its position. If it were considered an internship there would be no need to track hours. An employer who engages in behavior that contradicts its position cannot ignore its prior behavior when advancing its new position, citing arbitral authority. The College's inclusion of the Perez position in the 832 hour reports is in direct opposition to the position she was a student intern and not a casual employee. Her supervisor was notified she was in danger of exceeding the 832 hour limit. Perez's name was listed and highlighted. The Manager is on the distribution list. Perez was referred to as an employee, not as an intern. The College's testimony regarding inclusion on the 832 hour report is contradictory and self serving. The College's position is further undermined by the Manager having approached the Union to possibly exceed the 832 hour limit. The College should not be allowed to gain something through arbitration that they did not get at the bargaining table. The College's deeming the position an internship was an after-the-fact creation done to circumvent the parties' agreement and avoid posting the position to the ESS unit.

The Union also argues that the requirements for the student security officer position do not prevent posting of a security officer position to the ESS unit. The College utilizes work study student positions, which are considered casual positions under the agreement and tracked on the 832 hour report. If they exceed 832 hours there is an obligation to post the position to the unit. The posting would not require enrollment as a student. Likewise, exceeding 832 hours in the student security office position does not mean the College is required to post it with the enrollment requirement. Rather, the position in the ESS unit would perform the same work performed by the student security officer. The agreement also contemplates that ESS employees may take credits through the College as it set a requirement for employees to be considered interns rather than employee. At the heart of Article III, Sections 5 and 6 is the protection of bargaining unit work and positions. These were negotiated to prohibit adding casual and temporary employees to avoid union wages and benefits by working them unlimited hours. This erodes the bargaining unit. The agreement requires creation of ESS positions where a justifiable need exists. That need was defined by 832 hours. Perez worked 908.75 hours in 2006. The position must be posted to the ESS unit.

The Union contends that Ms. Perez was not employed as an intern or temporary employee, but as a casual employee. The College argument that the position is not casual because it is restricted to students ignores that work study positions held by students are

expressly included in the definition of casual employees. The College also overlooks the fact that student security officer positions are not exclusively for students as they can continue past graduation. And the recognition clause does not exclude students from holding ESS positions. The full-time security office performs similar, if not the same, duties as student security officer. As to Ms. Holtmeier's and Mr. Hinz's opinions, the agreement is not with them, but between the Union and the College. Hinz approached Parr-Jerabek twice to talk about how to not be in violation of the agreement. The College treated the position as casual by inclusion the 832 hour reports, which is the tracking procedure for casual employees. The 832 hour report is not required under the agreement for temporary employees. The Hinz conversations with Parr-Jerabek did not take place during the position's development stage, as argued by the College. The College's after the fact claim must be dismissed.

The Union further argues that the student security officer position was not an internship. The College gave no examples of internships that were not for credit. There was no requirement of full-time status or restriction to criminal justice students. There was no specific criminal justice training, only that they show up for work. The Student Senate budget draft reference to interns was unknown to the Union and does not excuse the fact that the College treated the position as a casual employee. Other ESS positions are funded in part by the Student Senate. This position lacked any common characteristic of a student internship. Perez was not a student intern.

The Union contends the 2003 memorandum of understanding is applicable to this case as background as to the origin of the current language in the agreement.

College

In summary, the College argues that the student security officer does not fall under the casual employee definition in the contract. Article III, Section 6 defines casual employees. The College understands that section to mean it hires a number of casual employees and they do work on an as-needed basis and stay within the number of hours. There is no reference to student interns in Section 6. That reference is in a completely different Section (5), dealing with temporary employees, and that section contains no reference to 832 hours. Also, the position does not fit the definition of casual employee because it is restricted to students. The position description states "Applicants must be currently enrolled at NWTC." The position is tied to College security functions assisting with College security. That was the rationale for the pay rate. During the position's development the Manager spoke with Parr-Jarabek of the Union about the 832 hour question raised by the Union. He informed her he didn't think the 832 hour rule applied due to the uniqueness of the position. He also discussed this with the Human Resources office which opined the 832 hour rule did not apply. He never intended to replace bargaining unit positions or envision it to be held to 832 hours. The critical issue is whether the position is excepted by Section 5(b) of Article III. If so, inclusion on the 832 report is not of any significance. Simply being named on the report does not trigger posting if the position is exempt as an internship. The information is put on by a clerical staff employee who has no responsibility to distinguish categories of employees. A variety of part-time employees would

be expected on that list. The position would not fit under 5(b) as an internship and presumably fall under the casual employee definition when he/she is not longer a student or when he/she is not enrolled at least half-time. The position held by Perez does not fit the casual employee definition as argued by the Union, as it is stipulated she was a full-time student. And, there is no relationship between the Level I security office position in the ESS unit and the student security officer position. Level I is full time and there is no requirement it be held by a student.

The College argues that the student security officer position is an internship which is excluded by its own status independent of the casual category. The contract language includes a general reference to student interns within the exclusions for temporary employees in Article III. The College has a number of different internships. Contrary to the Union's arguments at hearing, the contract language contains no qualifiers which would include or exclude certain varieties of internships. Internship best fits the definition of the student security officer role. It was designed for criminal justice students to provide security, with the intention of working within a student's class schedule and affording practical experience in the field of study. Hinz discussed the position with Holtmeier while creating it, and she agreed it would be most similar to the characteristics of an internship. The Student Senate budgeted \$30,000.00 for what it identified as interns and internship security. This was contemporaneous with the development of the position and predates the grievance by over a year and a half. A bargaining position would not be funded by the students; an internship could be and was here. The College budget office also refers to the funding as security internship wages.

The College also argues that the student security officer is a temporary employee. The position is an internship and as such Article III Section 5(b) excludes it. The College defined a student intern as an individual who is a student at the College in a field of study and the internship is in that field of study for practical experience. The only additional qualifier in the agreement would be the student is enrolled at the College at least half-time. Perez was enrolled full-time. Internships are looked on as being temporary workers which is in a different Section of Article III. The student interns referenced in Section 5 would not be subject to the 832 hour limit. Other than half-time, there are no other restrictions under Section 5. There is no academic credit restriction in the contract for internships. That would need to be gained at the bargaining table. The College's application of the student intern exception is reasonable and within any commonly understood definition of the term used in the collective bargaining agreement.

The College maintains that the memorandum of understanding is not applicable to this grievance. Eventually the parties agreed to include the language in the contract. The 2002 situation dealt with casual employees under Article III Section 6. It does not apply to temporary employees. Union witness Gabryszek acknowledged that if the student security officer position was not subject to the 832 hour limit, it would not be similar to the 2002 grievance. This is the fork in the road that divides the parties. The memorandum is not relevant because the position does not fall within the casual employee definition and is expressly exempt as a student internship under Section 5(b). The memorandum applies to positions not otherwise excluded by the contract itself.

In arguing that the student security officer position is an internship, the College contends that the Union distorts the facts in its phrasing. The College is granted great latitude when making decisions so long as those decisions are not contrary to the specific terms of the agreement or are so clearly arbitrary or capricious as to reflect an intent to derogate the relationship, citing arbitral authority. The management rights clause acknowledges the College's rights. Nothing in the agreement prohibits the College from classifying the student security officer positions as an internship. The only restriction is that the student be enrolled at least half-time. The Union ignores the temporary category. However, Section 5, which references temporary employees, contains no reference to the 832 hour limit. This position is temporary and restricted to students. \$30,000.00 has been allocated by the Student Senate for this internship. A bargaining unit position would not be funded by the Student Senate. The position is temporary in nature and correctly falls into Section 5(b). Specific provisions of a contract supersede a more generally stated provision. Section 5(b) exclusively relates to internships. The position could fall under the casual employee definition only when he/she is no longer a student or not enrolled at least half time. The parties stipulated that Ms Perez was a full-time student, thus not subject to the casual employee definition as argued by the Union. Less than half-time enrollment is not before the arbitrator. The College has consistently acknowledged that half time enrollment is a qualifier for the intern category within the temporary exclusion. And there are no specific characteristics identified by the College for internships. Attaching course numbers to other internships does not mean the position is not an internship.

The College argues it did not violate the contract when defining the student security officer position as an internship. It did not portray the position as an internship only after Perez exceeded 832 hours. In March of 2005 Hinz approached the Student Senate about funding. Students were sought in August and the program started in September, 2005. A year and a half later the 832 hour report was sent out for October, 2006 hours. Hinz had discussed with Parr-Jerabek the position not being subject to the 832 hour rule in conjunction with the position's creation. During the same timeframe he discussed the issues with Holtmeier, who agreed the 832 hour rule would not apply. Hinz wanted to provide practical experience and a realistic perception of aspects of law enforcement to students, and allow them to use him as a reference. He never intended the position to be casual and he did not contradict the College position. The normal monthly reporting procedure is of no significance and triggers no obligation to post the position because it is an internship. The College consistently looked at the position as an internship.

The College further argues that the Union's argument regarding work study positions is misplaced. Student interns contractually categorized as temporary employees must be enrolled at least half-time. Work study positions held by students are covered in a more specific provision of the contract at Article III Section 6, which contains the 832 hour limit. Casual employees and work study employees are intertwined under this specific provision. That does not hold true with interns, who are not referenced in that section but, separately referenced in Section 5. Absolutely no language ties the 832 hour rule casual employee requirement with temporary employees and student interns.

DISCUSSION

Maribel Perez worked 908.75 hours in 2006 as a student security office for the College while she was a full-time student in the College's criminal justice program. She was not enrolled in any internship courses for credit. The Union contends that because she worked more than 832 hours that year her position should have been posted as required in Article III Section 6 of the collective bargaining agreement. The Union contends her position was not an internship. The College maintains that the position was an internship under Article III Section 5(b) and, thus not subject to the 832 hour limitation. The agreement does not define internship other than to state in Article III 5(b) that "Student Interns must be enrolled at least halftime". Central to the issue is whether or not the Perez position was an internship.

The College recognizes many different types of arrangements to be internships. Some are formal and for credit. Presumably these would include the student internships identified in the criminal justice portion of the course catalog as courses nos. 10-504-175, and 10-504-171. These have further descriptions that include a 90 hour obligation, have two credits, and are generally overseen in some capacity by a faculty member. Perez was not in this type of internship because as the parties have stipulated, she was not in any internship courses for credit. The College also has less formal internships, some for academic credit, some not. Some are paid and some are not. For some, a student may work out special arrangements with their instructor. The College defines a student intern as a student of the College who is in a field of study and working in that field of study for practical experience that would look good on a resume. As the College notes, the Management Rights clause in the agreement gives it wide latitude in the management and administrative control of its system and to determine the qualifications and conditions of the employees it hires. These, of course, are subject to the provisions of the agreement. Thus, it would appear that the College can define an intern and internship as it chooses. However, the College does recognize that its internships are not uniformly applied and the term is used quite inconsistently throughout the College, and that internships change from time to time based on curriculum changes and other things. This is a rather fluid definition as used by the College, leaving it a challenge to apply a contractual term to it. There must be sufficient contour to the term so that it is not applied so broadly as to become arbitrary or capricious.

There are several differences between the treatment of employees defined as temporary under Section 5 and those defined as casual under Section 6 of Article III. The 832 hour per year provision relied upon by the Union is for casual employees under Section 6, which states:

Casual employees are hereby defined as Work Study students and employees working 832 hours or less per year on an on-call basis. Casual employees shall continue to be excluded from this Agreement

Positions requiring a casual employee to work on a regular basis 832 hours or less per year shall be excluded from this Agreement. The employer agrees that such casual employee positions shall not be utilized in such a manner as to

displace any present bargaining unit positions. Any position doing work under the ESS recognition clause in which the College records reflect that through the normal monthly reporting procedure, that a casual employee has exceeded 832 hours paid in one calendar year, that petition will be considered a vacancy, posted with a four (4) week timeframe to the ESS bargaining unit, and filled in accordance with Article IV-Vacancies and Transfers

If Perez was not a casual employee, but rather a temporary employee under Section 5, then the 832 hour limit would not apply to her. If she is a casual employee then it does. Section 5 must be examined to see if she is a temporary employee in the student intern provision under Section 5(b), thus taking her out of the casual employee definition and the 832 hour limit.

There are several categories of temporary employees referenced in Section 5 which have their own time limits before becoming members of the bargaining unit or the positions are required to be posted. They include public service employees and limited term employees. The only qualifier on student interns, who must be enrolled at least part-time, are those qualifiers found for Section 5 generally:

A temporary employee is one who is hired for a specified period of time, or to perform on a specific project and who will be separated from the payroll at the end of such period or project, subject to the following conditions:

...

- b. Student Interns must be enrolled at least halftime;

A student intern enrolled “at least halftime”, regardless of the definition of intern or internship, must still meet these qualifiers.

There is no evidence in the record that Perez, or any student security office, was hired for a specified period of time. The position description and job posting do not contain any reference to specific periods of time for which they are hired.¹ This is in clear contrast to the 90 hour provision in the formal internships in the Law Enforcement programs, for example. The position description allows for employment to continue up to one year post graduation. This might indicate a specified period of time. However, the College admitted that the intern provision would not apply to a person who continued in the position beyond their being a student at the College. In such a case the person becomes a casual employee. (Tr. Pp. 95, 96). That is the result that would follow under Section 5. Loss of status as a half-time student, even if still a student, is not a period of time. Even if being a student is considered a status that is expected to end at some point, the record does not show any specified maximum period of time that a student, any student, is expected to be enrolled. That may vary widely.

¹ Aside from a pay rate increase after 6 months and shifts of approximately 16 hrs/week.

Similarly, there is no specific project for Perez, or any student security officer, to perform. They have a list of duties and responsibilities, but these are clearly in terms of ongoing activities within the Safety and Security Program and nothing indicates any specific project that would contemplate or indicate separation of employment at its completion.

The student security officer position does not fit well, if at all, within the general provisions for temporary employees. The status of an internship, though, is still relevant, student interns being specifically referenced in Section 5(b). The nature of the position in terms of a student intern must be examined.

The parties disagree as to when the College began considering the positions to be internships and on the timing of some of the conversations between Hinz and Parr-Jerabek and between Hinz and Kelly Holtmeie, Director of Human Resources, as to the 832 hour limitation and the uniqueness of the position. The Union says this happened after Perez approached and then exceeded 832 hours in 2006. The College argues in its brief that these conversations happened in conjunction with the position's creation. The positions were created in August of 2005 and recruitments were in August or September of 2005. The record demonstrates that Hinz's discussions with Parr-Jerabek and Holtmeier as to the 832 hour issue did not happen when the position was created, but only in November of 2006. Hinz testified, credibly, and consistent with Parr-Jerabek's testimony that his conversation with her was "...around the time it was first brought up about this 832 hour problem, that I met with Karen..."(Tr. P. 72). The 832 hour reports for October and November of 2006 were when Perez was shown to be approaching and later exceeding the 832 hours. The report for October included Perez in the highlighted names, and requests were made by Human Relations for plans to keep the highlighted employees within the 832 hour limit. Hinz received the report. Part of his discussion with Parr-Jerabek included the idea of carrying over some hours into the next fiscal year. This is convincing evidence that the conversations took place in November of 2006, rather than August or September of 2005. Hinz also testified that his conversation with Holtmeier on the subject took place around the same time as those with Parr-Jarabek. The College's argument that it was consistently looking at the position ultimately held by Perez as an internship, as evidenced by Holtmeier's response to Hinz, is not supported by the record.

The College points out that the Student Senate budget referred to interns and internship for funding these positions. But, as the Union notes, the collective bargaining agreement is not with the Student Senate. What the Student Senate calls a position cannot become binding on a party to the agreement when that other party, the Union, was not even previously aware of the phraseology.

The Union also points out that other ESS positions have been funded by the Student Senate. The Student Senate budget document itself refers to funding other positions that appear to be Manager, Supervisor, Student Life Aide, office staff, clerical support, and student wages. The evidence supports the conclusion that Student Senate funding has gone to other positions, some of which could be contained within the ESS unit. And, the collective bargaining agreement and the Colleges definition of intern or internship have no references to

funding sources. There is nothing to indicate that any particular funding source is in any manner dispositive of a position being an internship. Similarly, although the College budget office might have referred to the wages as intern wages, the source or reason for that designation, at what level it was made, and who actually knew it was not testified to.

There appears to be little argument that the student security officer position provides practical experience in the field of study of law enforcement. Yet, the Manager of Safety and Security was not aware there were formal internships in the law enforcement programs. Presumably those would have been available for student security officers to use as electives. There is no evidence that any student security officer used their position as an internship in the formal internships listed in the course catalogue. Other than referrals for candidates, there was no contact or communication with law enforcement program faculty concerning the student security officer positions. Hinz did not report or follow up with any faculty member or the College itself as to any individual student security officer having their work count or considered an internship. Even though the College may have informal internships without credit or pay, it is striking that there was no recognition, however informal, that any student security officer's experience or work in the positions were considered an internship by any student or potential employer. Particularly telling is the absence of any evidence from Maribel Perez herself as to what status she understood herself to be in and whether she used the position as an internship on any possible or potential resume.

There is the matter of the positions being listed in the 832 hour reports. The Union argues this shows the College understood they were casual positions and not internships. The College responds that the list is meaningless, containing lots of information and compiled by a clerical without authority to make classification decisions. Yet, the November report did have the cover memorandum that referenced adjusting hours to stay within the 832 hour limit and the plans to so. It mentioned that Sandy Ryczkowski had reviewed plans received and will be monitoring the hours closely. Ryczkowski, who is vice president of Human Resources and administers the collective bargaining agreement, testified that she did not know why Perez was listed on the report, and questioned that herself. But, she clearly was aware that Perez was on the report. She did not remove Perez from the report and did not direct the clerical person to do so. The fact that Perez remained on the 832 hour report, and that Hinz responded to the directive to plan for limiting hours during this same time, are indications that the College, in some respects, felt the 832 hour limit applied. This undercuts the arguments that the College always felt the positions were internships. It was only after the Union raised the issue that the College took the position with the Union that these were internships. The matter simply did not come up before Perez began to approach the 832 hour limit.

The Safety and Security program at the College was designed to replace the contracted service which had previously provided security for the College. The positions were then designed as part of that effort. While it appears that the student security officer position has all the possibilities of being used for an internship, however informal that may be, it appears that it never in fact was actually considered and used by the parties and importantly by the students, with the College's recognition, as actually being an internship. The College vice president for

Human Resources testified that some internships are from a special arrangement worked out by a student and an instructor. There is no evidence of such an arrangement here, only referrals to the position. The evidence is insufficient to conclude that the positions were, by their very nature alone, internships filled by student interns. Section 5(b) is a specific reference to student interns, but the students here were not shown to have been working in the capacity as interns so as to be within the provisions of that section. The evidence shows that these positions are not in the Section 5(b) category as a temporary employee.

The student security officers are College employees that fit in Section 6 as casual. They can be students, as work study students are specifically covered. As Parr-Jerabek testified, Hinz had explained to her that they had experienced more events than planned upon. This indicates that the student security officers were working as needed beyond set shifts. Perez did work more than 832 hours in 2006. Security officer work is done by at least one ESS unit member. It is security work provided to the College. This is the type of work done under the ESS recognition clause. The students get practical experience in that field. The position's hours were reported on the 832 hour reports. Section 6 requires that if the hours of a casual employee exceed 832 hours in a calendar year the position is to be posted to the ESS bargaining unit. When Perez exceeded 832 hours in 2006 the agreement requires her position be posted. It was not, despite the Union's request. This was a violation of the agreement.

Accordingly, based upon the evidence and arguments in this case, I issue the following

AWARD

The grievance is sustained. As a remedy the College shall post the position held by Perez to the ESS bargaining unit pursuant to Article III Section 6 of the collective bargaining agreement.

Dated at Madison, Wisconsin, this 18th day of February, 2008.

Paul Gordon /s/

Paul Gordon, Arbitrator

