

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
SOUTHWEST WISCONSIN TECHNICAL COLLEGE

and

**SOUTHWEST WISCONSIN TECHNICAL COLLEGE PROFESSIONAL STAFF
ASSOCIATION, LOCAL 3670, AFT, AFL-CIO**

Case 26
No. 68356
MA-14206

Appearances:

Steve Kowalsky, Representative, 6602 Normandy Lane, Madison Wisconsin, appeared on behalf of the Union.

Godfrey & Kahn, S.C., by **Jon E. Anderson**, One East Main Street, Madison, Wisconsin, appeared on behalf of the Employer.

ARBITRATION AWARD

Southwest Wisconsin Technical College Professional Staff Association, Local 3670, AFT, AFL-CIO, herein "Union" and Southwest Wisconsin Technical College, herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Fennimore, Wisconsin, on February 3, 2009. Each party filed a post-hearing brief and reply brief, the last of which was received May 13, 2009.

ISSUES

The parties stipulated to the following statement of the issues in this case:

1. Did the Employer violate the collective bargaining agreement when it reduced the full-time contract of Karen Bast to less than 95% of full-time?

2. If so, what is the appropriate remedy?¹

FACTS

The Employer is a subdivision of the State of Wisconsin providing technical and vocational education to students in southwestern Wisconsin. The Union represents its academic staff. The vast majority of the academic staff is full-time, although there are some part-time employees. Ms. Bast was a member of the bargaining unit represented by the Union at all relevant times. The Employer divides its programs by academic departments. As of the time of this dispute, Ms. Bast was primarily in the culinary Arts Department. There were two members of the academic staff in that department of which Ms. Bast was the least senior. Ms. Bast had been hired as a full-time teacher and remained a full-time teacher until the facts in dispute.

The Employer determines its complement of employees based upon the enrollment in various subjects and other considerations. On June 5, 2008, the Dean's Council, a management team, met and recommended to the Employer's School Board that the Culinary Arts program be reduced from 2.0 full-time equivalent (herein "FTE") staff to 1.5 FTE. The School Board meets approximately once per month. It met prior to July 27, 2008, and approved the recommendation. Thereafter, it would not have been available to make a change in that determination until at least September, 2008.

On July 27, 2008, the Employer notified Ms. Bast that it was reducing her workload from 100% to 50% FTE exercising what the Employer believed its rights were under Sec. 5.04(c)(2)(bb) of the Agreement.² The Employer never considered making a special assignment to Ms. Bast under Sec. 5.01(i) of the Agreement. Work would have been available had the Employer considered it. Sometime after the decision was made, enrollment in the program reached the point that would have justified retaining Ms. Bast full-time.

The Union filed a grievance protesting the failure to provide her with a special assignment. The same was properly processed to arbitration in this proceeding.

RELEVANT AGREEMENT PROVISIONS

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¹ The parties stipulated that I might reserve jurisdiction over the specification of remedy, including, but not limited to the calculation of back pay if either party requests that I do so in writing, copy to opposing party, within sixty (60) days of the date of the award.

² It was later increased to slightly more than 50% FTE.

- (n) Farm Business and Production Management Faculty Load
 - (1) A one hundred (100) percent teaching load will be calculated based on a minimum of 180 credits for the school year. Credits cannot be taken from an instructor with less seniority to fill an under load of a more senior instructor. These credits may be generated in two ways:
 - (i) Initial credits are calculated based on the number of Farm Business and Production Management students who have enrolled by October 1st of each year. Education is flexible over 52 weeks, but October 1 is the initial date for instructor load calculation. Credits for additional load shall be determined based on students enrolled after October 1 and February 1. Final loads (which will include new students enrolled subsequent to February 1 shall be determined on June 1 and pay adjusted accordingly.
 - (ii) Other credit workshops, courses or seminars that are taught prior to June 30 of the fiscal year.

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ARTICLE V WORKING CONDITIONS

Section 5.00. Calendar

- (c) The Memorial Day (effective 05-06) and Independence Day (July 4) holidays will be granted to employees who would normally be scheduled to work that day.

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Section 5.01. Work Load and Schedule

- (i) If a computed load is below ninety-five (95) percent, a special assignment shall be given to bring the load up to one hundred (100) percent. Any underload assignments (below the computed ninety-five (95) percent) shall be by mutual agreement. In the event that an instructor refuses to accept an assignment to bring the workload up to at least ninety-five (95) percent, the instructor's pay shall be prorated accordingly. No reduction in

pay shall result for a ninety-five (95) to ninety-nine (99) percent load. This does not apply to instructors whose workload is set at less than ninety-five (95) percent.

...

- (n) **Farm Business and Production Management Faculty Load****
- (1) A one hundred (100) percent teaching load will be calculated based on a minimum of 180 credits for the school year. Credits cannot be taken from an instructor with less seniority to fill an under load of a more senior instructor. These credits may be generated in two ways:
- (i) Initial credits are calculated based on the number of Farm Business and Production Management students who have enrolled by October 1st of each year. Education is flexible over 52 weeks, but October 1 is the initial date for instructor load calculation. Credits for additional load shall be determined based on students enrolled after October 1 and February 1. Final loads (which will include new students enrolled subsequent to February 1 shall be determined on June 1 and pay adjusted accordingly.
- (ii) Other credit workshops, courses or seminars that are taught prior to June 30 of the fiscal year.

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Section 5.04. Fair Dismissal, Discipline, Layoff, and Recall Policy

...

(c) **Layoff**

(1) **Employee reduction:**

In the event the Board determines to reduce the number of positions (layoff) for the forthcoming academic year, the provisions set forth in this article shall apply.

(2) Notice:

- (aa) Prior to any load reduction for those hired at less than 95% or termination for the forthcoming year, the Board shall notify the PSA and the affected employee(s) with a letter of intent to reduce load or terminate no later than March 1 with final notification no later than March 15.
- (bb) For programs with low enrollment for the ensuing school year, the Board shall by July 1 simultaneously notify the PSA and the affected employee(s) in writing of the position(s), which it intends to reduce.

(3) Selection:

The implementation of employee layoff shall be accomplished in accordance with the following steps:

- (aa) **Attrition:**
Normal attrition resulting from retirement or resigning will be relied upon to the extent it is administratively feasible in implementing employee reductions.
- (bb) **Least Senior Employee:**
Whenever two or more employees in the affected program or subject area are certified, the employee(s) having the most seniority will be selected for retention and the least senior employee for layoff.

(d) Seniority:

Seniority as described herein applies only to Section 5.04, Fair Dismissal, Discipline, Layoff, and Recall.

- (1) Employee seniority begins with the first day of initial employment. Employees hired to begin employment on the exact same date will be granted seniority via:
 - A. If any employee has previously taught for Southwest Tech, they will receive the most senior ranking. If two or more have previously taught for Southwest Tech, the individual with the most previous teaching/work hours will receive the senior ranking. Previous teaching/work

hours are for the purpose of tie-breaking only and will not be counted in accumulated seniority.

- B. If no employee has previously taught for Southwest Tech, seniority shall be determined by lot in the presence of those employees, HR, and the Union President. The ranking will be noted on the Seniority Report.
- (2) The College shall provide PSA with a seniority list by September 30th of each year.
 - (3) The list shall show by rank order, each employee's seniority and certification area(s) and include the previous year workload assignments and status of all employees on layoff or load reduction. The PSA President shall be notified in writing of any additions to or deletions from the list during the year.
 - (4) An employee who is laid off shall retain his/her seniority during the recall period. However, the employee shall not accrue seniority during the recall period.
 - (5) Seniority does not accrue for non-bargaining unit work.
 - (6) Seniority shall cease and be lost for:
 - (aa) Voluntary resignation
 - (bb) Layoff greater than recall period
 - (cc) Discharge (for cause)
 - (dd) Leaving the bargaining unit [Note: Employees who leave the bargaining unit and return within a twelve (12) month period shall retain all accrued seniority attained prior to leaving.]
 7. Employees may accumulate one seniority year per year. [A seniority year equals a full-time (95% or more) contract.]
 8. Employees with assigned workload between 50% and 95% shall accrue seniority on a pro rata basis. Summer sessions taught will be included in an individual's contract year load. Summer session will start a contract year load followed by the first and second semester.
 9. Any support staff employee who is contracted to teach a class or classes for which they are certified or certifiable, shall accrue

seniority within the provisions of the academic staff unit. This provision applies to long term [50% or more of an individual course(s)] substitute teaching. Certifiable is defined as possessing the credentials to be come certified.

10. All employees on approved leave shall retain seniority rights.

(e) Bumping:

The objective of bumping is to allow the more senior employee the right to retain a position substantially equivalent in hours and compensation to the position the employee held prior to the notice of layoff.

- (1) The employee must be fully certified or certifiable for the position that the employee intends to bump.
 - (aa) An employee shall have the right to bump back to any program or subject area from which the employee previously transferred, provided there is a vacancy or an employee with less seniority in such program or subject area.
 - (bb) An employee shall have the right to bump into any program or subject area, provided there is a vacancy or an employee with less seniority in such program or subject area. The employee (even if currently certified in such program or subject area) must possess the credentials that the WTCS would require for a newly hired employee to become certified in the affected area or the credentials, which would allow the employee to become, certified under the “closely related occupation” criteria of the certification code.
- (2) Any employee who is selected for layoff shall elect in writing, within ten (10) days of receipt of notice of layoff, if he/she desires to assume the workload assignment of a less senior employee pursuant to paragraph (1) above.
- (3) Any employee who receives a layoff through bumping may similarly elect to assume the workload of a still less senior employee.
- (4) Employees shall have the right to the workload of any part-time employee (less than 50% load) or overload of any full-time

employee as long as the employee is certified or certifiable to assume such workload.

- (5) The Board shall notify employees in writing of their selection for layoff through bumping, within five (5) school days after it has occurred. The Board shall simultaneously provide the PSA with copies of any notice, which it is required to provide employees under this step.

(f) Benefits/Rights During Layoff:

- (1) Employees on layoff shall remain eligible for inclusion in the district's group health and dental insurance programs as outlined in Section 6.10.
- (2) An employee on layoff who is subsequently recalled to work for the College shall be credited with sick leave equal to the amount of accumulated sick leave that the employee had at the time of layoff MINUS any sick leave days that were converted to the payment of health insurance premiums.

(g) Recall:

Employees shall be recalled for reemployment in the reverse order that they lost employment. Recall shall occur as positions become available for which the employee is certified or certifiable. Recall rights shall be maintained for a period of three (3) years.

(h) Recall Notice:

The Board shall send the recall notice by certified mail to the employee's last known address. The notice of recall shall advise the employee of the time and place that the employee is to report to duty. Copies of any recall notices, which are sent to employees on layoff status, shall be simultaneously forwarded to the PSA.

- (1) It shall be the employee's responsibility to keep the Board informed as to the employee's current address.
- (2) If the Board does not receive written confirmation of the employee's acceptance of the recall within twenty (20) calendar days from the mailing, the employee will lose all rights to be recalled. Failing to report at the requested time and place will void the recall and all reemployment rights of the employee.

9. An employee on layoff status may refuse recall offers of reduced load, part-time, substitute, or other temporary employment without loss of rights to the next available position for which the employee is certified or certifiable. An employee on layoff status shall not lose rights to a full-time position by virtue of accepting reduced load, part-time or substitute appointments with the College.
10. No new regular or substitute appointments may be made by the College while there are employees who have been laid off who are available, certified or certifiable to fill the vacancies unless such employees have refused the offer of full or reduced load recall.

(i) **Informed consent:**

The College shall inform employees of the rights and benefits available to them upon layoff. The choices reached shall be reduced to writing and signed by the employee and college president or designee.

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POSITIONS OF THE PARTIES

Union:

The Employer did not offer proof that there was, in fact, low enrollment in the program. Union exhibit 1 establishes that there was, in fact, adequate enrollment to continue her position. This is supported by Ms. Bast’s testimony that the enrollment number in this program in June has usually been low, but picks up in later. The enrollment numbers upon which the decision was based were about the same as in previous years. The evidence bears this out because as of early September in 2008-09, the enrollment figures turned out to be the highest that had ever been in the program. Alternatively, the Employer may not reduce a full-time (greater than 95% teacher to a lesser workload. The Employer incorrectly construes the word “reduce” to mean that it can reduce the workload of an individual teacher rather than lay them off. All of Section 5.04, and specifically 5.04(c) need to be read in its entirety. This shows that “reduce” means the eliminating of her position resulting in a layoff. Any other interpretation is a harsh and absurd result. Section 5.04(c) is labeled layoff and applies to any action layoff or reduction in hours from full-time to part-time. The Union’s position is also buttressed by the terms of Sec. 5.01(i) which requires that the load of full-time teachers be supplemented at full-time. Under that provision, the only way for a full-time teacher to have an under-load is by mutual agreement. The Employer’s construction also leads to a harsh result because by its construction, the teacher who has his or her work load reduced is not entitled to bump under Sec. 5.04. This construction is inconsistent with Sec. 5.04. The Employer should

have done what it does in other situations, given her a layoff notice and offered her the choice to bump or accept the reduction. The Union argues that since the Employer failed to lay off Ms. Bast in accordance with the agreement, she remains a full-time teacher. It requests that the grievance be sustained and that Ms. Bast be awarded a full-time contract for the ensuing school year.

In reply, the Union notes that by raising the specter of partial layoff, the Employer is attempting to give the word “reduce” in Section 5.04(c)(2)(bb), two entirely different meanings. The first is that “reduce” means the decrease of an employee’s hours (load) as it did in Ms. Bast’s case. The second is that “reduce” means eliminate a position and layoff the employee involved. By contrast, Sec. 5.04(c)(1), the definition of layoff means to “reduce the number of positions.” It does not say that the word “layoff” also means to reduce the work load of a position to less than full-time. When Sec. 5.04 is read as a whole, the only choice the Employer had was to layoff and let the bumping and/or recall process unfold. The Union argues that only the second interpretation is correct. The Union notes that the Employer’s attempt to hold the examples of the situation of Mr. McCauley and Dr. Senn as contrary examples is incorrect. In the case of Mr. McCauley the Union was aware of the situation, but Mr. McCauley was offered full-time employment both rendering a potential grievance moot and also making it an example supporting the Union’s position herein. The case of Dr. Senn is also inconsistent with the Employer’s position. In that case, Dr. Senn was laid off entirely and was only then given the option to come back at a reduced work load.

Employer:

Although the parties stipulated that Sec. 118.22, Stats, applies to teachers employed by the Employer, that statute has no relevance to this dispute. The statute applies to non-renewal of teachers. The Employer reduced Ms. Bast’s schedule, but it did not non-renew her within the meaning of the statute. Her contract status continued with the Employer. Sec. 118.22(4), Stats, allows the parties to negotiate language that fits their unique circumstances which the parties have done in this circumstance.

Section 2.01 – Management Rights, reserves to the Employer rights not granted otherwise restricted by the Agreement. There is nothing in the Agreement which restricts the right of the Employer to determine the appropriate level of staffing. The Employer’s decision that it needed to reduce the level of staffing in the Culinary Management Area was reasonable. Section 5.04 requires that the decision be made in March and again by July 1. The Employer relied upon data which was current at the time it made its decision and exercised its right by the July 1 deadline. Ms. Bast was the least senior instructor in Culinary Management and, therefore, was properly selected for reduction. Section 5.04(2)(bb) applies to the procedure to be followed. Section (2)(aa) does not apply because Ms. Bast was not hired at less than 95% and also because she was selected for reduction not layoff. The Agreement does not require a layoff as alleged by the Union, but, instead, clearly allows for a load reduction for purposes of low enrollment by using the July 1 time frame. Note that the term “termination” appears in Section (2)(aa), but “reduction” appears in Section 2(bb).

The Union's claim that Ms. Bast should have been completely laid off and then recalled is not supported by the Agreement. First, the Union's position completely reads Section (2)(bb) out of the Agreement. Second, it is highly impractical because the Employer would not have reliable enrollment data during March. The Agreement also does not require a full layoff and then a recall. Ms. Martin testified about Mr. McCauley and Dr. Senn who were both given notices of reduction.

The Union's attempt to apply the language of Section 5.01 should also be rejected. Section 5.01 is part of a workload formula and mandates supplementation of a load computed at less than 95% to bring the load level up to 100%. The language does not preclude reductions, but rather details the responsibility of the Employer in making assignments to employees who are on staff. This language did not preclude the reduction of Mr. McCauley or Dr. Senn. The Employer asks that the grievance be denied in its entirety.

The Employer replied to the Union's argument. The Employer established that it met the low enrollment threshold. The Dean's Council looked not only at the enrollment for not only the first year, but also the second year of the program. They looked at these figures shortly after students financially committed to the program. Dr. Senn's testimony on the decision process is both credible and logical.

The Union's argument that the Employer may not reduce a full-time teacher at any time is without merit. The use of the term "reduce" is intended to avoid this absurd result. The Union's view is inconsistent with the other provisions of that section. Section 5.01(i) does not apply to situations when a person's work load is either set at hire below 95% or who is "reduced" under the provision in dispute. The Union's argument effectively reads Sec. 5.04(c)(2)(bb) out of the agreement. Union witness Kreul is not credible about bargaining history because she was not involved in bargaining when the language was adopted. The Union's reliance on the documented layoff of Ms. Senn in 1988 is misplaced and ignores changes to the Agreement since that time. Ms. Bast was treated in the same manner as Mr. McCauley was treated when he was reduced.

DISCUSSION

The role of the arbitrator is to apply the parties' agreement as it is expressed. When language is clear and unambiguous, the arbitrator applies it as it is written. When language is reasonably susceptible to alternative meanings, it is said to be "ambiguous." When language is ambiguous arbitrators determine the parties' intent by looking at the past practices, if any, of the parties, the purposes of the provisions, the context of the language, the rules of construction applied by courts and arbitrators and the purposes of the provision.

The Employer has established that there was "low enrollment" within the meaning of Section 5.04(c)(2)(bb) in the program in dispute and properly exercised its right to invoke the procedures of Sect. 5.04. This provision provides two reduction (layoff) determination dates. The first, Sec. 5.04(c)(2)(aa) is the general layoff provision requiring notice by March 15.

This provision applies to any legitimate reason the Employer determines to reduce the number of provisions. By contrast Sec. 5.04(c)(2)(bb) give the Employer a second chance to reduce staffing for low enrollment reasons. Contrary to the position of the Union, the specific decision made by the Dean's Council was authorized by (bb). It did so based upon the best data available to it at the time. The evidence establishes that the enrollment on an objective basis was numerically low. The decision was rationally based upon the projected enrollment for the program as a whole including enrollments in the second year of the two-year program. Even though historically the enrollment in this program tended to rise at the last moment, it still remained a program of generally low enrollment. Under the circumstances, the Employer's decision must necessarily be broader than that contemplated by the Union. It did make a judgment about its budget, academic goals and its view that there was a decline in interest in the program area over all. The decision was consistent with a reasonable judgment made to further legitimate management objectives. I note that the decision to reduce the position occupied by Ms. Bast at the time from full-time to part-time was, therefore a legitimate exercise of the Employer's rights under the agreement. The sole issue in this case is whether Ms. Bast's total work load could be reduced from full-time.

The next issue raised by the Association is whether the Employer violated Sections 5.01(i) and/or 5.04(c) by "reducing" Ms. Bast to part-time rather than laying her off entirely and then, if the Employer so chose, offered her the available part-time position. In turn, this requires a determination as to whether the phrase: ". . . notify . . . the affected employee(s) in writing of the position(s), which it intends to reduce"³ implies that the Employer has the right to reduce the workload of a full-time teacher to part-time when it determines that the position he or she occupies should be reduced to part-time.⁴ In analyzing this provision, it is important to note that it is undisputed that there is a significant distinction at this institution between employees who are hired as full-time and employees who are hired as part-time employees. The history of changes from full-time to part-time indicates that other than in specific programs otherwise covered in the agreement it occurs rarely. The Employer historically has employed few part-time instructors. The Agreement has some rather unique provisions which reflect the policy of a major distinction between full-time and part-time Sec. 5.01(i) provides that at least under certain circumstances that if the work load of full-time teacher will not be assigned a work load of less than 95% except by mutual agreement. Section 5.04(c) provides for bumping in layoff situations and provides that the purpose of the concept of "bumping is the most senior employees the right to retain a position substantially equivalent in hours and compensation to the position the employee held prior to the notice of layoff." [Emphasis supplied.]

The Employer's position assumes two things. First, it assumes that the word "reduce" in Sec. 5.04(c)(bb) refers to the reduction of a teacher's work load rather than the reduction in

³ Emphasis supplied.

⁴ The analysis in this decision is limited to employees who were hired at, and remained full-time employees at the time the Employer exercised its rights under this provision. No decision is expressed or implied as to part-time employees.

the number of teaching positions.⁵ Second, it reads this provision as an authorization or, at least, confirmation of an Employer management right to involuntarily reduce a full-time teacher's load to less than 95% irrespective of the limits on its rights to do so at other times. The term "reduce" in subsection (bb) is not defined. The term could refer to a "reduction" in the number of positions as used in (c)(1) and/or a "reduction" in work load for a specific teacher as used in Section 5.04(c)(2)(aa). The term is also ambiguous in another way as noted. There is a question as to whether this provision is a grant of authority superseding other provisions of the agreement restricting the Employer's right to involuntarily reduce a full-time teacher's work load to less than 95%.

Addressing the first issue, arbitrators construe ambiguous provisions in their context. (bb) has the wording: ". . . position(s), which it intends to reduce." [Emphasis supplied.] This reflects the same phrasing in (1): ". . . reduce the number of positions (layoff) for the forthcoming academic year" [Emphasis supplied.] By contrast there is nothing in the provision which reflects the concept of load reduction in (aa). Arbitrators also look at the entire scheme of regulation preferring constructions consistent with the entire scheme of regulation over those constructions which do not. Section (aa) also includes circumstances similar to those in (bb). The Employer can reduce the number of positions at that time for any legitimate purpose which may include, but is not limited to, circumstances of expected low enrollment then. This provision must be read with Sec. 5.01(i) which prohibits the Employer from involuntarily reducing the work load of full-time teachers. This provision continues the prohibition of involuntarily reducing the work load of full-time teachers in layoff situations occurring for the March 15 deadline. It makes no sense and, indeed, is somewhat contradictory that the parties would have intended to expand the power of the Employer to reduce full-time employees to part-time, if it did not so intend under (aa). It is far more likely that the parties intended to reflect the concepts of (aa) in (bb) without lengthy repetition.

Arbitrators also look for guidance to the bargaining history of the parties and their past practices under disputed language. The language of 5.01(i) appeared in similar form in a 1981-83 agreement between The Professional Staff Association and the Employer. The exception appeared in that agreement as well: "This does not apply to instructors whose work load is set at less than 95%. Although other related provisions of that agreement were not in evidence, the provisions of a later agreement (1987-89) show that the current bb did not exist at the time of those two prior agreements. A review of 5.01(h) of the 1981 agreement specifies that "Any under-load assignments (below the computed 95%) shall be by mutual agreement. The evidence available in this case indicates that as of 1981 the sole ways to become part-time were: 1. to be originally hired (set) at less than 95%; or 2. to agree to be reduced to less than 95% (and thereby set at less than 95%). A review of the similar provisions of the 1987-89 agreement's 5.01(i) shows a similar structure and Section 5.04 provides a layoff procedure which on its face only provides for layoff by

⁵ And, possibly, the reduction in the number of hours of a specific teaching position.

dismissal from work: no reduction in hours is mentioned. It is not uncommon for agreements to fail to reflect the practical ways reductions from full-time to part-time occur. There is little evidence about the Employer's practice. However, there is evidence that in 1988, the Employer notified one employee that she was laid off for the ensuing year, but stated:

Due to the present anticipated teaching load in some programs, we are now in a position to offer you a 68%-100% (100% first semester; 68% second semester) teaching load for the 1988-89 school year. [Directions to sign for acceptance omitted.]

The better view of this evidence under the terms of the 1987-89 agreement was that the Employer exercised its right to layoff and the employee was then offered the choice to exercise bumping rights or accept any pro-offered part-time position. This is inconsistent with the procedure used in this matter. This appears to be the practice in effect until the current bb was adopted. Based on this evidence, I conclude that it is unlikely bb was intended to modify this practice. I conclude that the Employer did violate Sections 5.01(i) and 5.04 when it involuntarily reduced Ms. Bast's work load to less than 95%.

REMEDY

The purpose of a remedy for a contract violation is to put the parties in a position as they would have been had there not been a violation. The Union seeks a remedy forcing the Employer to grant Ms. Bast a full-time assignment. I do not agree. The appropriate remedy is to order that the Employer cease and desist from violating either Section 5.01(i) or Sect. 5.04(c)(2)(bb). The Employer did exercise its right under Sec 5.04(c)(2)(bb) and Ms. Bast had notice that the Employer did so. The only issue is whether the Employer had the right to involuntarily reduce her work load or was required to lay her off. Under the circumstances the remedy that puts the parties in the position closest to that which would have occurred is for the Ms. Bast to be afforded the right to accept the part-time position or be laid off with all other attendant rights. The parties have also agreed that I retain jurisdiction over any issues arising from the specification of remedy. I have done so.

AWARD

The grievance is hereby sustained. The Employer was not authorized under Sec. 5.04(c)(2)(bb) to involuntarily reduce Ms. Bast to less than 95% time and was prohibited from doing so by Sec. 5.01(i). Ms. Bast's status hereby converted to a layoff status with the

right to voluntarily accept the disputed part-time position. I reserve jurisdiction over issues arising from or relating to the specification of remedy if either party requests that I do so in writing with a copy to opposing party within sixty (60) days of the date of this award.

Dated at Madison, Wisconsin, this 14th day of August, 2009.

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Arbitrator

SHM/gjc
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