In the Matter of the Arbitration Between
The Board of Regents for
Higher Education

-AND-

The Federation of Technical College
Teachers, Local 1942, AFT ,AFL-CIO

Arbitrator Michael R. Ricci
Decision & Award

Re: Winterbottom Grievance **August 23, 2023**

APPEARANCES

For the Federation:
Eric W. Chester, Esq.
Ferguson, Doyle & Chester, P.C.

For the Board of Regents:
John P. Shea, Esq.
Jackson, Lewis, P.C.

Procedural History

Pursuant to the Collective Bargaining Agreement (CBA) between the AFT (Federation) and the Board of Regents (BOR, Board, College, GCC), the parties have designated Arbitrator Michael R. Ricci to determine certain issues arising from the CBA. The parties presented evidence and arguments on May 23, 2023. The Federation was represented by Eric W. Chester, Esq, and the BOR was represented by John P. Shea, Esq. The Hearing was held electronically as per the agreement of the parties. There was no stenographic record of the proceedings. The record was closed July 28, 2023, after the parties electronically filed written Briefs with the Arbitrator.

Issue

1. Did the Board of Regents for Higher Education violate its collective bargaining agreement with the Federation of Technical College Teachers, Local 1942, AFT when it removed EVS 100 from Professor Winterbottom's summer 2021 teaching assignment?

2. If so, what shall the remedy, consistent with the collective bargaining agreement, be?

Applicable Language

ARTICLE III. NON-DISCRIMINATION

3.1. The Board and the Federation recognize the right of any member of the bargaining unit to become or refrain from becoming and/or remaining a member of the Federation and will not discriminate or in any way interfere with such rights or the exercise of such rights.

3.2 The Board and the Federation shall continue their policy of not discriminating against any member of the bargaining unit on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, marital status, political affiliation, or present or past history of mental disorder, mental retardation, learning disability or physical disability as provided by Connecticut and federal law. Further, the Board and the Federation shall continue their policy of complying with Connecticut law regarding the employment of job applicants who have criminal conviction records. Finally, the Board and Federation agree not to discriminate against bargaining unit members based upon membership or fee paying status in any Union representing employees of the Board of Regents for Higher Education.

3.3 All references to bargaining unit members in the Agreement designate both sexes, and whenever gender is specified it shall be construed to include male and female employees.

ARTICLE VII. RIGHTS OF THE BOARD OF REGENTS FOR HIGHER EDUCATION

Except to the extent that there is contained in this Agreement an express and specific provision to the contrary, all the authority, power, rights, jurisdiction, and responsibility of the Board are retained by and reserved exclusively to the Board, including, but not limited to, the right: to determine the mission of the System and the methods and means necessary to fulfill that mission, including the discontinuation of service, positions or programs in whole or in part; to determine the content of job classifications; to establish and enforce standards of efficient performance; to maintain discipline, order and efficiency; to determine educational policy, programs, and courses; to direct employees and to determine their duties and professional assignments; to determine the days and hours of the operation of the colleges; to determine the academic calendar and to schedule work; to determine the quality, quantity, and types of equipment to be used; to determine the composition of committees; to introduce new methods and procedures and facilities; to determine staffing requirements; to determine expansion or reduction of operations; to select and hire employees; to determine qualifications; to reward and to promote unit members; to suspend, discipline, or discharge a unit member for just cause; to transfer and assign unit members; to lay-off unit members for lack of work or other legitimate reasons; to recall unit members; to determine that unit members shall or shall not perform certain functions; to take all necessary actions to carry out its mission in emergencies; to promulgate rules and regulations, provided that such rules and regulations shall not be exercised so as to violate any of the specific provisions of this Agreement.

ARTICLE VIII PROFESSIONAL WORKING CONDITIONS

8.3.1.4. Laboratory hours in the sciences (including computer courses) and technologies, clinical hours in allied health, art studio hours, hospitality and food service laboratory hours, and all other courses having a laboratory, studio, or clinical component shall be treated the same as lecture hours for teaching credit purposes – that is they shall not have a lab/lecture ratio. The present ratio for lecture hours to practice hours shall continue in effect. Effective July 1, 2017 Nursing and Allied Health Clinical Faculty shall have their compensation adjusted to reflect a sixty (60) minute contact/credit hour.

8.3.9. Pay for Additional Teaching

> Whenever a teaching Faculty Member voluntarily bids on and is selected to teach a course or courses above the workload he/she is obligated to teach by the terms of his/her appointment, he/she shall be paid in accordance with the part-time lecturer rate. See Schedule D.

ARTICLE XXIV. ADDITIONAL TEACHING

Unit employees shall be notified of, and, should they apply, shall be considered for teaching opportunities beyond the amount they are obligated to teach by the terms of their appointments. As soon as practicable unit employees who have so applied shall be notified whether they have been selected. It is understood that no employment or pay obligation will arise if, after such selection, the class does not form.

14.7. THE GRIEVANCE PROCEDURE

14.7.6.5. Authority of Arbitrator

The arbitrator's decision, subject to Section 52-418 of the Connecticut General Statutes, shall be final and binding provided that said Arbitrator shall be without power to add to, subtract from, alter, amend, or modify any provision of this Agreement.

September 30, 2020 Memorandum of Agreement

1. Priority for consideration for summer assignments and intersession assignment for additional pay shall be given to full-time bargaining members within each college for employment in their primary areas of competence up to a maximum of 80% of the anticipated course offerings.

2 The offer of employment is made only by written contract executed by the campus President or CEO. 1. Program Coordinators, Department Heads, and Division Directors shall recommend any instructor hiring for the summer and intersession terms to the Campus President/CEO or their designee.

3. In selecting full-time bargaining members for the summer session and intersession, the President may consider but is not limited to consideration of the requirements of the assignment and any special skills or experience of potential assignees.

4. In the event, the College wishes to assign a course to an adjunct faculty member for a course that a full-time bargaining member has expressed desire to teach, the College must demonstrate for cause, the reasons why the adjunct should be given the course over that of the full-time bargaining members. The decision to give an adjunct a course over a full-time bargaining member shall not be arbitrary or capricious.

Background

1. The Board of Regents for Higher Education (BOR) is an employer consistent with the provisions of the State Employees Relations Act (SERA) CGS 5-270.

2. The Federation of Technical Teachers, American Federation of Teachers, Local 1942 AFL-CIO (Federation) is an "employee organization" consistent with SERA.

3. At all relevant times during the period giving rise to the instant grievance the parties were signatory to as Collective Bargaining Agreement or CBA (Un1) in effect from 2016 until 2021.

4. The parties agreed to and signed a Memorandum of Agreement (Un8) dated September 30, 2020. The MOA articulates the preferential consideration granted to full-time bargaining unit members for summer and intersession assignments

5. The Grievant is a full-time tenured professor at Gateway Community College (GCC) with 29 years teaching experience. He has taught courses in the summer sessions for ten years.

6. The Grievant was assigned to teach the Concepts of Chemistry (CHE111) and Introduction to Environmental Science (EVS100) for the summer of 2021. Shortly before the start of the session he was notified that he would not be teaching EVS100. The course was assigned to an adjunct professor.

7. The Grievant has taught CHE111 over ten times in summer terms and over 40 times during fall and spring semesters. He had developed EVS100 and he has taught the course 40-50 times in his tenure. In the summer term of 2020, he taught both courses. On May 21, 2021, the Grievant sent an email to Dean Kosinski regarding being reassigned from EVS100. The inquiry constitutes a Step I Grievance. (Un2)

8. On May 21, 2021, there was Step II response from Dean Kosinski denying the Grievance. (Un3)

9. August 31, 2021, there was a Step III response from Dr. Brown, CEO of GCC denying the Grievance. (Un6)

10. June 7, 2022, there was a Step IV response from Hearing Officer Albrecht denying the Grievance. (Un7)

(Please note: since the Federation is the moving party, the Award will start with their argument first. Also the use of MOA in the Award is designate the Memorandum of Agreement, Union Exhibit 8, while the use of *moa* is to designate memorandums of agreement in general)

The Federation's Position

The Federation argues that the parties bargained for the full-time faculty to have preference for assignment of summer and intersession courses. The MOA, the agreed upon language from the negotiations, clearly states that the employer must demonstrate *cause* to assign a summer or intersession course to a part-time faculty member before it is assigned to a full-time professor; moreover, the Board's decision cannot be *arbitrary or capricious*. The GCC violated the MOA when they assigned EVS100 to an adjunct professor in the summer term of 2021 over the qualified full-time Grievant who sought to teach the course. Specifically, the Board did not have cause to reassign the class and the decision was arbitrary or capricious.

The Federation notes that the Grievant was well qualified to teach the course and there is no evidence to support reassigning the EVS100 to an adjunct professor. The fact that the College initially assigned the course to the Grievant proves he is qualified. Moreover, there is nothing in the record that supports the BOR's decision to reassign EVS100 per the MOA.

The clear intent of the MOA is to provide preference to full-time faculty members for teaching summer and intersession courses. The language was negotiated to achieve the intent by placing the burden on the employer to show *cause* why a full-time faculty member who desires to teach a course would be passed over for an adjunct professor. The language also defines that the decision cannot be arbitrary or capricious. Specifically, the language states: "the college must demonstrate for cause, the reasons why the adjunct should be given the course

over that of the full time bargaining member." The decision to assign an adjunct a course over a full-time bargaining member shall not be arbitrary or capricious. (Un8). The Federation further notes that the MOA does afford the Board discretion in assigning a full-time faculty by allowing the President to consider assignment requirements and the potential assignees special skills and/or experience. They state that if EVS100 was assigned to another full-time faculty then the bar on assignment would be much lower; however, when they reassigned the course to an adjunct faculty member then the burden shifts to the Board to show *cause* per the MOA.

The Federation further argues that the Grievant is being treated differently than his colleagues. The Board asserts that teaching more than six contact hours during a summer session cannot be done effectively. However, the record shows that their assertion is inaccurate. In fact, the Grievant successfully taught both classes in the summer session of 2020 and the record is devoid of any performance issues, which is a testament to the Grievant's high skills and qualifications. The Federation reasons that "[w]hile the Board did proffer some evidence advancing its assertion that there is a six (6) hour cap placed on faculty who teach over the summer session, it provided no evidence in support of its position to reassign the course to an adjunct faculty member." (Brief pg10)

Next, the Federation documents that the Board has not followed their own six contact hour rule. Union Exhibits 9 and 10 prove that close to 50 faculty members have taught more than six contact hours in the 2021 summer session. Some have far exceeded the six contact hour rule. For example:

- Prof. Rajczewski taught four different math courses totaling 13 contact hours at Asnuntuck CC
- Professors Perugini and Shen each taught two calculus courses equating to 8 contact hours at Gateway CC
- Professor Duffy taught 6 courses equating to 23 contact hours at Norwalk CC.
- Professor Tinone taught three Chemistry courses equating to 18 contact hours.

Therefore, the above shows that the six contact hour rule has not been uniformly enforced. Moreover, there is no evidence that any of the courses cited in the exhibits suffered in the quality of education delivered; put differently, the large sampling of courses in the summer term of 2021 show that the six contact cap is a subjective number without a correlation to the quality of teaching.

Lastly, the Federation reasons that the CBA is devoid of a six contact hour cap for

summer sessions or intersessions. They note that the contract language speaks to assignment and compensation only (with the MOA speaking to full-time preference of assignments), thus if the parties intended on negotiating a cap they would have done so. Therefore, the BOR has no contractual basis to reassign EVS100 from the Grievant to a part-time faculty member.

Board of Regents' Position

The BOR argues that the Federation has not met their burden to prove that they violated the CBA. Their substantive arguments are: 1. The MOA is not part of the CBA and the CBA does not speak to summer term assignments, therefore it is outside the authority of the Arbitrator to rule on. 2. Arguendo that the MOA is the controlling language, then the Board has not violated the language and the Federation has not proven otherwise.

The first argument is an effect an arbitrability claim.

The BOR argues that there "is no contractual provision mandating that a professor be entitled to any particular course during a summer session." (Brief pg20). The only language that addresses the assigning of summer session courses is in the MOA. However, the MOA is not incorporated in the CBA and therefore, the Grievance is "not substantively arbitrable" (pg23).

They support their argument on questioning arbitrability by citing Barentine v. Arkansas-Best Freight Sys., 450 U.S. 728, 744 (1981). Specifically, the quote that "[a]n arbitrator's power is derived from, and limited by, the collective bargaining agreement." And they further quote: [h]is task is limited to construing the meaning of the collective bargaining agreement so as to effectuate the collective intent of the parties." Thus, as expressly stated in the Barentine ruling, an arbitrator has no authority to go beyond the "collective bargaining agreement".

Moreover, the CBA language precludes an arbitrator from considering any *memorandum of agreement/understanding* that is not incorporated into the CBA, because the arbitrator would then be *adding/modifying* to the contractual language. They point to Article XIV, Section 14.7.6.5, THE GRIEVANCE PROCEDURE (CBA) that states: "The arbitrator's decision, subject to Section 52-418 of the Connecticut General Statutes, shall be final and binding provided that the said Arbitrator shall be without power to add, subtract from, alter, amend, or modify

any provision of this Agreement". Thus, the Arbitrator would violate the contractual prohibition of *adding/modifying* to the CBA if for the MOA is considered for this Award.

In sum, the BOR's argument is that the MOA is not incorporated into the CBA, and the Arbitrator has no authority considering language outside the CBA (per case law and the CBA language), therefore the Arbitrator has no authority to rule on the instant Grievance.

The second argument made by the Board is, that even if the MOA were arbitrable, the BOR has not violated the CBA or the MOA language.

First, they cite the *management rights* language in the CBA:

ARTICLE VII. RIGHTS OF THE BOARD OF REGENTS FOR HIGHER EDUCATION

Except to the extent that there is contained in this Agreement an express and specific provision to the contrary, all the authority, power, rights, jurisdiction, and responsibility of the Board are retained by and reserved exclusively to the Board, including, but not limited to, the right: to determine the mission of the System and the methods and means necessary to fulfill that mission, including the discontinuation of service, positions or programs in whole or in part; to determine the content of job classifications; to establish and enforce standards of efficient performance; to maintain discipline, order and efficiency; to determine educational policy, programs, and courses; to direct employees and to determine their duties and professional assignments; to determine the days and hours of the operation of the colleges; to determine the academic calendar and to schedule work; to determine the quality, quantity, and types of equipment to be used; to determine the composition of committees; to introduce new methods and procedures and facilities; to determine staffing requirements; to determine expansion or reduction of operations; to select and hire employees; to determine qualifications; to reward and to promote unit members; to suspend, discipline, or discharge a unit member for just cause; to transfer and assign unit members; to lay-off unit members for lack of work or other legitimate reasons; to recall unit members; to determine that unit members shall or shall not perform certain functions; to take all necessary actions to carry out its mission in emergencies; to promulgate rules and regulations, provided that such rules and regulations shall not be exercised so as to violate any of the specific provisions of this Agreement.

The contractual language is unambiguous that, subject to any contrary language, the BOR has the right to assign courses. Furthermore, there is no applicable language in the CBA that abridges this managerial right. Therefore, GCC's assigning the EVS100 to an adjunct faculty is within their contractual rights and not a violation of the CBA.

Next, they point to the language in the MOA: specifically, paragraph #4:

In the event, the College wishes to assign a course to an adjunct faculty member for a course that a full-time bargaining member has expressed desire to teach, the College must demonstrate for cause, the reasons why the adjunct should be given the course over that of the full-time bargaining members. The decision to give an adjunct a course over a full-time bargaining member shall not be arbitrary or capricious.

The BOR reasons that the language gives management the ability to assign summer and intersession courses to a part-time faculty member for *cause* and that their decision "shall not be arbitrary or capricious." The decision to reassign the course from the Grievant is based on the needs of the students, the College and the Professor and therefore their action was based on *cause*. When considering that the Grievant would be teaching CHE111 and EVS100 in a shortened term (four weeks and one day) it was determined that is in the best interest of all the stakeholders that the EVS100 be reassigned. They note that the Grievant would be working "11.25 hours a day 7 days a week" (Brief pg24) during that term; a schedule that is adverse to providing quality education.

They further argue that their decision was based on cause and also, it is not *arbitrary or capricious*. The Board notes that the term is defined in numerous arbitration awards. They utilize a citation from Arbitrator Klein to illuminate the meaning of the term:

> However, the arbitrator finds the phrase to mean a decision without a basis in reason or fact. An "arbitrary and capricious" decision is one based on whim, personal preference, prejudice, irrationality, or pure impulse. For the Association to prove its charge that the Board acted in an arbitrary and capricious manner in formulating the grievant's teaching schedule for the 2004-2005 school year requires clear proof by either direct evidence or strong inferences rationally drawn from the evidence.

American Arbitration Ass'n, 2005 AAA LEXIS 769, *17-18

As defined above, the term would be an action based on a *whim* or on *irrationality,* but the Board's refusal to allow the Grievant to carry nine contact hours in a shortened term is based on reason and rationality. Their reassignment of EVS100 is not *arbitrary or capricious* according to the widely adopted definition of the terms.

Finally, the BOR argues that the practices at some of the other colleges does not render GCC reassignment as arbitrary or capricious. The underlying fact is that GCC action is based on the reasonable concern that such an onerous work load will have a detrimental effect on the education process. The examples provided by the Federation of other faculty teaching six or more contact hours consisted of longer summer terms, double lectures with independent labs and the faculty were

teaching the same course in various sections; in short, the cited examples are not accurate comparisons to the Grievant's reassignment.

Since the Federation has not proven that GCC's reassignment of the Grievant was not based on cause, nor was the Board's decision made in an arbitrary or capricious manner, then the Grievance should be denied. Moreover, the Grievance is outside the Arbitrator's authority and therefore, it is not arbitrable.

Discussion

It is well established that the moving party has the burden of proof. The Federation is the moving party and therefore they must reasonably prove that the BOR has violated the agreed upon language by reassigning the EVS100 from the Grievant to a part-time faculty member.

Before we assess the merits of the case, we must decide the threshold issue of the MOA. Specifically, is the MOA language arbitrable? The BOR contends that the MOA is outside the contract and therefore, the arbitrator has no authority to rule on the issue per the MOA. Since there is no language in the CBA concerning summer session assignments and if the MOA language cannot be considered, the Grievance fails on its face value. The BOR, in effect is making an *arbitrability claim* which shifts the burden to the party making the claim. They base this claim on the cited Barentine case and the CBA language (14.7.6.5) that limits the arbitrator's authority to add or modify the CBA.

The Board's argument is rejected for the following reasons.

First , the cited case is distinguishable from the instant case. Barentine concerns an arbitrator's ability to rule on a federal statute (FLSA) and not on the arbitrator's authority to rule on bargained language. The context of the quoted citations will illuminate this point:

Moreover, even though a particular arbitrator may be competent to interpret and apply statutory law, he may not have the contractual authority to do so. An arbitrator's power is both derived from, and limited by, the collective bargaining agreement. *Gardner-Denver,* 415 U.S. at 415 U. S. 53. He "has no general authority to invoke public laws that conflict with the bargain between the parties." *Ibid.* His task is limited to construing the meaning of the collective bargaining agreement so as to effectuate the collective intent of the parties. Accordingly,

"[i]f an arbitral decision is based 'solely upon the arbitrator's view of the requirements of enacted legislation,' rather than on an interpretation of the collective bargaining agreement, the arbitrator

has 'exceeded the scope of the submission,' and the award will not be enforced." *Ibid.,* quoting *Steelworkers v. Enterprise Wheel Car Corp.,* 363 U.S. at 363 U. S. 597. Because the arbitrator is required to effectuate the intent of the parties, rather than to enforce the statute, he may issue a ruling that is inimical to the public policies underlying the FLSA, thus depriving an employee of protected statutory rights.

The ruling clearly discusses the arbitrator's authority within the bargained language and their lack of authority outside that realm. Furthermore, the ruling defines the arbitrator's role: "the arbitrator is required to effectuate the intent of the parties, rather than to enforce the statute." The ruling language does not limit the arbitrator's authority within the realm of the collective bargaining relationship and in fact, it directly speaks to the requirement of the arbitrators "to effectuate the intent of the parties."

Next, the ruling states: "[the arbitrator's] task is limited to construing the meaning of the collective bargaining agreement so as to effectuate the collective intent of the parties." A *memorandum of agreement (moa)* is "the collective intent of the parties." It is bargained language that represents a mutually beneficially agreement that addresses an issue; it is codified into the written word so the parties can follow the agreement and police the agreement (such as through the grievance procedure). These devices are used in lieu of the cumbersome midterm bargaining for issues that inevitably arise during the term of a contract. The fact that the MOA was signed in the middle of the contact term appears to corroborate that the parties used this device in lieu of midterm bargaining. Furthermore, as intimated above, the cited ruling does not differentiate between contract language and *moa*-s. In other words, there is no language in Barentine that expressly prohibits *moa*-s from an arbitrator's authority, however to the contrary, the ruling suggests an arbitrator's broad authority concerning the parties' collective intent. If the Board's argument is correct, then a *moa* would be an exercise in futility since either party could just disregard the agreed upon language and there is no mechanism to enforce the agreement.

Therefore, *moa*-s are universally accepted by arbitrators as what they are: bargained mutually beneficial agreements that define and codify the collective bargaining relationship. They are in essence collective bargaining language that for efficiency that are bargained outside the negotiating of the contract. As shown in the Barentine ruling, the arbitrator is required to effectuate the collective

intent of the parties; in the instant case that would be considering the MOA when adjudicating the grievance. Therefore, there would be no violation of Section 14.7.6.5 to consider the MOA language.

Now onto the merits of the case

The Federation argues that the MOA language is clear that there has to be *cause* and the decision cannot *arbitrary or capricious*; however, the Board's reassignment was without cause and the decision was arbitrary. Since the Grievant was highly qualified to teach EVS100 (he actually developed the course, plus, he taught it 40-50 times) then the BOR reassigning the course to a less qualified part-time faculty proves their decision is without cause. Furthermore, the decision was *arbitrary* since this circumstance was the only cited time that the cap was imposed. The Federation notes that the six contact hour cap (that is not codified in any negotiated and agreed upon language) was not followed in close to 50 examples that they cited. (Un10) The fact that the Grievant successfully taught the two courses in the year prior summer term further shows the decision was arbitrary and without cause.

The Board counter argues that their decision is for *cause:* the six contact hour cap is reasonable because it is based on the needs of the educational system. They point to the fact that Grievant's original assignment of teaching both classes in the abbreviated summer term (four weeks and one day) would put his workload at 11.25 hours per day, seven days per week; a work load that is not sustainable and thus, detrimental to all the stakeholders. Furthermore, they argue that the cap has been applied evenly in the system. In their Brief, they show that the examples (six contact hours or greater) cited by the Federation Union Exhibit 10 are distinguishable because either: "(1) [the course is] taught over a longer session; (2) consisted of professors teaching the same course (less prep and less work); (3) consisted of double lecture courses with independent lab; or (4) consisted of a combination of these factors." (Brief pg15). Finally, the Board argues that reassignment was made on a *rational basis* and therefore, it is not an arbitrary or capricious decision.

The Arbitrator agrees with the Federation for the following reasons.

The MOA language which the parties negotiated and agreed upon to codify the process for summer term assignments grants the full-time faculty preferential rights to assignments, but it also allows some managerial discretion with caveats; the managerial decision must be for *cause* and it cannot be *arbitrary or capricious*. In the instant case, when looking just at the work hours per day (11.25) that teaching the two classes would entail, the decision is for cause; however, when taking into account the entirety of the circumstances the decision is arbitrary.

It is arbitrary because the cap has not been uniformly administered. Union Exhibit 10 and the corresponding statistics in Union Exhibit 9, strikingly show that there are 46 instances when faculty in the system have been assigned to nine or more contact hours in the summer terms of 2021. The Board counter argues that these examples are not similar to the Grievant's case and thus not applicable. The Arbitrator respectfully disagrees with the BOR-at least in part- as explained below.

There are some examples that are dissimilar and not appropriate comparisons (the BOR admits there is one similar), but a vast majority are rejected by the Board because the cited faculty are teaching two sections of the same course in one term, the logic being that the load is lessened because the prep time is not doubled by the need to prep for two different courses. There are two issues with this reasoning: 1. The same logic also applies to the Grievant. Since, he has developed the course and has taught it 40-50 times there has to be a lessened need to prep. The fact that he successfully taught both courses just the year prior, corroborates this point; 2. In the Step 2 response (Un3) the Board makes the cogent argument that "each class presents its own dynamics, its own chemistry and mix of student learning styles and requires faculty to often recalibrate the course syllabus and activities to best meet student needs". (pg 1) Put differently, the challenges of each individual class mitigate the efficiencies gained by the Grievant's vast experience with EVS100. So, this logic, which makes perfect sense, was applied to the Grievant, but it is seemingly non-applicable to faculty assigned to two sections of the same course in one summer term. Finally, the cap appears to be randomly or *arbitrarily* administered in the instant case.

The Arbitrator finds that the Board violated the MOA on the narrow grounds that the decision to reassign the EVS100 from the Grievant was an *arbitrary* decision.

Concerning the remedy, the Federation is seeking that the Grievant be compensated for the class. While the BOR argues that if the Grievance is sustained, then at the most the Grievant lost an opportunity to teach a class in the summer term; therefore, the remedy should be limited to an opportunity in the future. The Arbitrator agrees that the Grievant was deprived of the opportunity and thus, he should be provided another opportunity by September 1, 2024.

Conclusion

The Arbitrator has considered all the evidence and arguments made by the parties. The Arbitrator, however, may not have repeated every item of documentary evidence or testimony: nor re-stated each argument of the parties.

Award

Having heard the evidence and the arguments of the parties, the Arbitrator awards as follows:

The Grievance is sustained

Remedy: The Board shall provide the Grievant with the opportunity to be assigned to more than six contact credit hours in a summer or intersession term. The course(s) offered should be appropriate in that they are related to the Grievant's expertise such as EVS100. If, by the end of the 2024 summer session, an appropriate opportunity is not offered then the Grievant should be compensated for the value of the course that was reassigned in the 2021 summer term.

Michael Ricci

August 23, 2023 Arbitrator Michael

I, Michael R. Ricci, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is my Award.

Michael Ricci

August 23, 2023 Arbitrator Michael Ricci

Certification

This is to certify that August 23, 2023 a copy of the above Award was sent electronically:

For the Federation:
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For the Board of Regents:
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