

## Arbitration

Federation of Technical College Teachers  
Local 1942

Gr: Distance Learning - Summer

and

Board of Trustees of  
Community-Technical Colleges

Award: August 14, 2009

Arbitrator: Roberta Golick, Esq.

Hearing: March 16, 2009

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

For the Employer  
Richard Voigt, Esq.  
McCarter & English, LLP

### The Issue

The parties presented the following issue:

Did the Board violate the contract when it did not apply the Distance Learning premium to principal bargaining unit members teaching Distance Learning courses in the summer of 2008?

If so, what shall be the remedy?

### The Agreement

The 2007 – 2010 collective bargaining agreement between the parties provides, in relevant part:

## Article VIII Professional Working Conditions

### 8.1 Work Year

#### 8.1.1. Teaching Faculty Work Year

The work year for teaching faculty members shall consist of up to 160 days of instruction and exams. In addition, faculty members may be scheduled for up to eight (8) "College days" plus commencement for a total of 169 days.

The work year shall consist of two semesters (Fall and Spring), each having up to eighty (80) instructional/exam days. College days may be scheduled within the work year set forth in Section 8.1.1.1 below.

Faculty who volunteer and work on registration days scheduled outside of the work year referred to in 8.1.1.1 of this Agreement may have the time credited to their additional responsibilities.

8.1.1.1. Teaching faculty shall be scheduled consistent with the following:

- a) Fall Semester: Teaching faculty may be scheduled to work beginning on or after August 25 through December 23<sup>rd</sup>...
- b) Spring Semester: Teaching faculty may be scheduled to work beginning no earlier than the day following the Martin Luther King holiday through June 1, exclusive of commencement. Commencement shall not be scheduled later than June 5. Attendance at commencement scheduled after June 1<sup>st</sup> shall not be mandatory for Federation bargaining unit members.

#### 8.1.2. Class Schedules

The class schedule for teaching Faculty Members shall be published by May 15 for the succeeding Fall semester and by November 15 for the succeeding Spring semester...

...

### 8.3 Annual Workload

#### 8.3.1. Teaching Faculty

During each academic year, full-time teaching faculty shall:

- 8.3.1.1. Teach twenty-four contact/credit hours and perform related duties as provided in Section 8.3.5. below.
- 8.3.1.2. Perform additional responsibilities equivalent to the preparation and teaching of an additional three contact/credit course or an average of nine hours per week for each semester within the appointment year or teach an additional three contact/credit hours each semester or combine additional responsibilities with additional contact/credit hours as provided in Section 8.3.6. below...

#### 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...

...

#### Appendix II **Side Letter Re: Protocols for Distance Learning**

...

Workload Credit (from arbitrator's award)

For purposes of computing faculty workload, subsequent offerings of distance learning courses shall be weighted at 133%.

#### Background

In the summer of 2007, I served as "interest" arbitrator in the parties' "Distance Learning Reopener" dispute. The reopener was to deal with "the delivery of credit courses via fully online instruction." Among the issues to be decided in the interest arbitration were a) whether a teaching faculty member should be given additional workload credit for *developing* a distance learning course; b) whether a teaching faculty member should be given additional workload credit for *teaching* a distance learning course the *first time*

he/she teaches the course; and c) whether a teaching faculty member should be given additional workload credit *each time* he/she teaches a particular distance learning course after the first time teaching that course.

In February 2008, I issued my final rulings in the so-called Distance Learning case. I selected the Board's LBO's in connection with the development and first time teaching of a distance learning course. Those LBO's, in effect, entrusted to the discretion of Academic Deans the granting of credit towards additional responsibilities of up to nine hours per week for the development and/or first time teaching of a distance learning course. I selected the Federation's LBO in connection with the subsequent teaching of online courses. That LBO provided that "for the purpose of computing faculty workload, subsequent offerings of Distance Learning courses shall be weighted at 133%." The language of that "subsequent offerings" LBO is now incorporated into the parties' collective bargaining agreement.

It is this third component of online teaching – the "subsequent" delivery of an online course – that is the subject of this grievance arbitration. In early summer 2008, the Federation grieved that the Board was not providing the contractual "distance learning teaching premium" to bargaining unit members who were teaching distance learning courses in the Colleges' summer session. The Board denied the Federation's grievance, and asserted that full-time teaching faculty members are ten-month employees who are "off contract" during the summer months. The Board stated that the aggrieved bargaining unit members were the equivalent of adjunct faculty and that their summer

employment was entirely separate from and not covered by the terms of the collective bargaining agreement.

The matter proceeded, unresolved, to arbitration, and the parties turned to me for an interpretation of the contract.

### Positions of the Parties

The Federation contends that the contractual 133% workload credit applies to summer teaching just as it applies to fall and spring teaching of distance learning courses. At no time during the negotiation or interest arbitration of the distance learning reopener did the Board or the Federation confine their offers to the fall/spring academic semesters.

Federation unit members are covered by their contract for the full term of the agreement, which includes the summer months; the terms of the contract do not lapse during the summer. Furthermore, the Federation argues, its interpretation of the contract makes more sense than the Board's: Teaching distance learning courses requires a greater amount of time and effort than does teaching the same course on ground. Accordingly, there is no basis upon which to deny the contractual premium to faculty teaching in the summer session.

The Board maintains that the grievance is without merit. There is nothing in the collective bargaining agreement that would extend the workload credit to unit members teaching at times other than the contractual work year, defined as "ten months." Summer instruction, the Board argues, is not part of the work year covered by the contract; that is



the genesis of the Board's "off contract" reference. The workload credit formula plainly applies to the teaching of distance learning courses during the academic work year, not in summer programs that are governed by a separate contract of employment. The question of additional compensation for faculty teaching distance learning courses in the summer was never part of the negotiations that led to the current contract provision. Accordingly, the Board asks that the Federation's grievance be denied.

### Discussion

The Federation takes issue with the Board's "off contract" rationale for denying this grievance. The Federation points out that the phrase "off contract" does not exist in the parties' collective bargaining agreement. It argues, moreover, that it is a "mistruth" to suggest that bargaining unit members are "off contract" during the summer months, since the term of the collective bargaining agreement is continuous for three years and benefits such as health insurance do not lapse in the summer.

The premise of the Board's response to the Federation, however, is not that the unit member him or herself is "off contract"; rather, it is the activity that the unit member is engaged in that is "off contract." The Board's position is that summer session instruction is not governed by the collective bargaining agreement; it is, in the Board's view, an independent summer pursuit not unlike any other summer pursuit that a faculty member may choose to do outside of the work year.

The contractual question, then, is whether the summer session teaching of distance learning courses by unit members is entitled to a 33% premium by virtue of Appendix II of the collective bargaining agreement. It is understandable that bargaining unit members who are rewarded with extra workload credit during the academic year for teaching online courses would feel deserving of a premium for teaching “subsequent” online courses during the summer. The burden that justifies the workload credit during the academic year is theoretically no different in the summer than it is in the winter. The teaching methodology is apparently analogous and the students are probably comparable. The distinction that must be made here, though, is between “deserving” and “entitled.” It is that distinction that prompts the Board to caution against converting this case, which is a grievance, into an interest arbitration. In an interest case, the concept of “deservedness” carries weight. A grievance is solely a matter of previously established “rights.”

On the question of entitlement, I agree with the Board that unit members are not entitled to a premium for their summer teaching of online courses. It is not that the contract is silent on the question; what the contract does say makes it clear that the so-called premium for teaching distance learning courses attaches to fall and spring semester teaching only.

First, as the Appendix II provision itself states, the added “weight” given to distance learning courses is a component of “workload credit.” “For purposes of computing faculty workload,” the contract says, “subsequent offerings of distance learning courses shall be weighted at 133%.” One may refer casually to this added weight as a

“premium,” but it is not a premium in the economic sense. It is, rather, extra “credit” towards “workload,” which is entirely a creature of fall/spring semester teaching.

Article 8.3 of the contract defines “annual workload.” “During each academic year,” the provision begins, full-time teaching faculty shall “teach twenty-four contact/credit hours...” and shall “perform additional responsibilities equivalent to the preparation and teaching of an additional three contact/credit course...” That, in perfectly plain language, is a bargaining unit member’s workload. And lest the phrases “annual workload” or “academic year” be misconstrued to include teaching in a summer program, Article 8.1 defines the teaching faculty “work year” as “two semesters” – “Fall Semester” and “Spring Semester” – and Schedule B of the contract confirms that “full-time faculty” work pursuant to a 10-month contract. Thus, in computing faculty workload, which is the express *raison d’être* of the benefit, distance learning courses are weighed more heavily than on-ground courses. Summer teaching, whether online or on-ground, does not factor into faculty workload, and thus has no connection to the Appendix II provision at issue.<sup>1</sup>

Article 8.3.9 does not change the outcome. That section states that when a faculty member is selected to teach a course or courses above the obligatory workload, the member will be paid in accordance with the part-time lecturer rate set forth in Schedule D of the contract. As the parties agree, Article 8.3.9 addresses the rate of compensation in

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<sup>1</sup> Interestingly, Article 8.1.1 provides that faculty who volunteer and work on registration days scheduled “outside of the work year...may have the time credited to their additional responsibilities.” This provision demonstrates that when the parties wished to link outside-of-work-year activities to workload, they did so explicitly.



an “overload” situation, which occurs during the academic year, that is, when a faculty member carries a course load over and above what is required in Article 8.3.1. Though the Federation argues that there is no reasonable distinction between the principal bargaining unit member who teaches an online course as an overload during the fall or spring and the bargaining unit member who teaches the same online course during the summer, there is a contractual distinction, whether or not reasonable. Online courses taught in the fall and spring semesters are entitled to the additional weight set forth in Appendix II; online courses taught as part of a summer session are neither workload nor overload and are not contractually entitled to additional compensation.

The Board presented further support for its position by pointing, for instance, to the separate contract of employment given to faculty who teach during the summer, to the tolling during the summer of contractual time limits that would otherwise apply to grievance filings, and to the cost estimates of the Federation’s LBO that the Board openly relied on at the distance learning arbitration. It is not necessary to probe these additional points, however, because the language of Appendix II, read in conjunction with Article 8, leaves no doubt that the extra credit for teaching distance learning courses attaches to courses taught as part of the defined work year. Online courses taught outside the work year are not included, even if they pose the same challenges to faculty members.

Award

The Board did not violate the contract when it did not apply the Distance Learning Premium to principal bargaining unit members teaching Distance Learning courses in the summer of 2008.

The grievance must, therefore, be denied.

A handwritten signature in cursive script that reads "Roberta Golick". The signature is written in dark ink and is positioned above a horizontal line.

Roberta Golick, Esq.  
Arbitrator

Date: August 14, 2009