

ARBITRATION DECISION AND AWARD

**FEDERATION OF TECHNICAL COLLEGE
CONNECTICUT, AFL-CIO**

and

**CONGRESS OF COMMUNITY COLLEGES,
SEIU, LOCAL 1973**

and

**BOARD OF TRUSTEES OF THE
CONNECTICUT STATE COMMUNITY
COLLEGES**

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ARBITRATOR: Joan G. Dolan

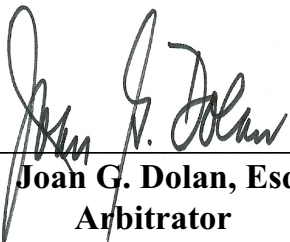
**GRIEVANCE: Three Rivers Independent
Study Grievance**

AWARD DATE: June 24, 2012

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and having duly considered the proofs and allegations of the Parties, awards as follows:

1.) The Board of Trustees for the Community-Technical Colleges did not violate its Collective Bargaining Agreements with the Federation of Technical College Teachers, Local 1942, AFT, and the Congress of Connecticut Community Colleges, Local 1973, SEIU by the manner in which it awarded Additional Responsibilities credit for independent study supervision.

2.) The grievance must be, and hereby is, denied.


Joan G. Dolan, Esq.
Arbitrator

**FEDERATION OF TECHNICAL COLLEGE
CONNECTICUT, AFL-CIO**

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ARBITRATOR: Joan G. Dolan

**GRIEVANCE: Three Rivers Independent
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AWARD DATE: June 24, 2012

This matter was presented to the undersigned arbitrator at a hearing held in Rocky Hill, Connecticut on January 9, 2012. Eric Chester, Esq. represented the Union. With him were Congress of Connecticut Community Colleges (4C's) President Steve Cohen, Federation of Technical College Teachers (FTCT) President Dennis Bogusky and Treasurer/Steward G. Kent Harding, and AFT Staffer Bob Reutenaner. Richard Voigt, Esq. appeared for the Board of Trustees (Board). Also present for the Employer were Director of Labor Relations Marjorie London, Director of Human Resources Louise Summa, and Three Rivers Community College Academic Dean Ann Branchini.

All witnesses were sworn. Both counsel had full opportunity to call the witnesses they chose to present and to cross-examine those who testified. The filing of post-hearing briefs and reply briefs was completed on May 14, 2012.

ISSUES TO BE DECIDED

Despite efforts to do so, the parties were unable to agree on how the issues in this case should be framed. They agreed to leave this task the arbitrator. The following is an amalgam of the two issues they suggested:

- 1.) Did the Board of Trustees for the Community-Technical Colleges violate its Collective Bargaining Agreements with the Federation of Technical College Teachers, Local 1942, AFT, and the Congress of Connecticut Community Colleges, Local 1973, SEIU by the manner in which it awarded Additional Responsibilities credit for independent study supervision?
- 2.) If so, what shall be the remedy?

THE BARGAINING UNITS AND THE GRIEVANCES

This dispute involves Three Rivers Community College (College), one of the 12 campuses of the Connecticut Community college system. Five of the colleges, including Three Rivers, are the result of mergers of facilities with different faculty Union representation. At the merged colleges, two unions represent employees.

At Three Rivers, the Federation of Technical College Teachers, Local 1942, AFT, AFT Connecticut (FTCT) represents a unit of faculty, counselors, and librarians. The Congress of Community Colleges (4C's) represents a separate and distinct bargaining unit of faculty, administrators, counselors, and librarians. Thus, there are Three Rivers faculty included in both bargaining units. The two unions have negotiated separate collective

bargaining agreements covering their respective bargaining units (the contracts), but have formed a Coalition for certain purposes.

At the beginning of the 2009-2010 academic year, the Coalition became aware that faculty members were being assigned courses as independent study that the Coalition believes are under-enrolled regular courses that have been improperly re-cast as independent study without the contractually-required faculty compensation or Additional Responsibility (AR) workload credit.

Both Unions seek the same remedy for the contract violations alleged. On the grievance forms, that remedy reads:

REMEDY: TO BE MADE WHOLE –

1. Recognize that each individual assigned to a faculty member for independent study represents nine hours of effort per week for each credit he granted;
2. Increase compensation to that equivalent to the contracted rate of pay for each three credits.¹

What this remedy request means is that, if the Union prevails, each affected faculty member who has taught an independent study course of the same title as a regular college course would receive either 1.) 135 hours of AR credit for a one-semester independent study course or 270 hours for a two-semester independent study course, or 2.) If the faculty member had otherwise fulfilled his/her AR requirements, compensation for teaching a 5th course at the contractual part-time lecturer (PTL) rate.

¹ This portion of the remedy was amended at hearing to read as written here.

RELEVANT 2007-2010 CONTRACT PROVISIONS

FEDERATION OF TECHNICAL COLLEGE TEACHERS

ARTICLE II.
DEFINITIONS

CONTACT/CREDIT HOURS

A contact/credit hour shall equal a 50-minute lecture hour meeting for each week of the semester.

ARTICLE VIII.
PROFESSIONAL WORKING CONDITIONS

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. While the final decision of whether an individual faculty member shall teach an additional three (s) contact/credit hours course or perform additional responsibilities rests with management, the managerial decision shall be based on the merits of each individual faculty member's application for additional responsibilities in accordance with the procedures in Appendix E.

8.3.5 **Teaching Duties**

8.3.5.1 All Teaching Faculty members shall:

(e) prepare and teach college-approved courses in accordance with approved course descriptions and class schedules, including developing syllabi and reading lists and keeping each course taught complete and up to date;

8.3.6. Additional Responsibilities Teaching

8.3.6.1 The additional responsibilities as specified in Section 8.3.1. may include, but shall not be limited to the following, and shall be for the purpose of fulfilling the mission, goals, and priorities of the college and the System as determined by the employer:

(n) (2) supervising adjunct or independent study, provided it is not asserted that such supervision is part of the teaching obligation of 24 credit hours;

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 should be paid in accordance with the part-time lecturer rate. See Schedule D.

SCHEDULE D MISCELLANEOUS RATES OF PAY

	Rate Per:	2009-2010 ²
Part-Time Lecturer		
Level I <18 credit hours	workload credit	\$1,336
Level II >18 credit hours	workload credit	\$1,437

² This is the latest year for which there is a salary figure in the contract in evidence. Parties have extended this contract to cover years subsequent to 2009-2010.

ARTICLE XIV
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.

CONNECTICUT CONGRESS OF COMMUNITY COLLEGES

ARTICLE VII
GRIEVANCES

Section 4. Arbitration

C. Arbitrator's Authority

(1) The arbitrator shall not have any power, right or authority to add to, subtract from, modify, change, or alter any of the terms or provisions or the express intent of this Agreement.

ARTICLE X
WORKING CONDITIONS AND WORKLOAD

Section 1. Teaching and Related Duties of Teaching Faculty

All Teaching Faculty members shall:

(e) prepare and teach college-approved courses in accordance with approved course descriptions and class schedules, including developing syllabi and reading lists and keeping each course taught complete and up to date;

Section 2. Additional Responsibilities/Teaching

The Additional Responsibilities as specified in Section 3A may include, but shall not be limited to the following, and shall be for the purposes of fulfilling the mission, goals, and priorities of the college and the System as determined by the employer:

(n) within the limitation of the Article, such other administrative or supervisory or teaching-related assignments as are consistent with the mission and goals of the college, including but not limited to:

2. supervising adjunct or independent study, provided it is not asserted that such supervision is part of the teaching obligation of 24 contact/credit hours.

Section 3. Work Load, Hours of Work, and Work Year of Teaching Faculty

A. Work Load

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

(1) teach twenty-four contact/credit hours and perform related duties as provided in Section 1 above (one 50 minute lecture hour shall equal one contact/credit hour for purposes of this provision);

(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 2 above.

FACTUAL BACKGROUND

CONTRACTUAL WORKLOAD AND RATES OF PAY³

The contracts establish the following:

- 1.) The faculty unit measure of workload is the contact/credit hour defined as “a 50-minute lecture hour meeting for each week of the semester”;
- 2.) Nothing in the contractual language ties workload or compensation to any factor relating to student learning time as opposed to actual faculty time spent on classroom teaching-related or AR activities;
- 3.) 80% of faculty workload is composed of 12 contact/credit hours teaching four three-credit courses /semester, with a total of 24 contact/credit hours for eight three-credit courses per year. It is undisputed that the assumption underlying the contract provisions is that a three-credit course involves nine hours of work per week: three hours for three 50-minute lectures three times a week + six hours (two per lecture hour) of preparation and related activities;
- 4.) Semesters are 15 weeks long. At nine hours per week for a three-credit course, faculty will spend 135 hours of work per semester on classroom teaching and related functions, and 270 hours over the course of an academic year;

³ The contracts contain several variations on workload, duties, and pay. The picture given in this section is the one pertinent to this case.

5.) In addition to the 80% time classroom teaching function, 20% of faculty workload is composed of additional responsibilities (referred to as AR or ARs). The contracts say that these ARs are “equivalent to the preparation and teaching of an additional three contact/credit hour course or an average of nine hours per week for each semester within the appointed year.”⁴ One way of fulfilling this requirement is by teaching an additional three contact/credit hour course;

6.) Both contracts include in their sections entitled “Additional Responsibilities/Teaching” a list of 15 activities of the type that may be included in AR “for the purposes of fulfilling the mission, goals, and priorities of the college and the System as determined by the employer.” Among the listed activities is administrative or supervisory or teaching-related assignments which may include “supervising adjunct or independent study, provided it is not asserted that such supervision is part of the teaching obligation of 24 contact/credit hours.”⁵

7.) The AR obligation amounts to 135 hours per semester (15 weeks x 9 hours/week) and 270 hours per year.

8.) The parties have never bargained over the question of whether independent study courses that are listed in the course catalog should be paid at the same or a different rate than

⁴ FTCT Section 8.3.1.2.; 4C’s Article X, Section 3(a)(2).

⁵ FTCT Section 8.3.6.1(n)(2); 4C’s Article X, Section 2(n)(2).

when they are when taught in the classroom. They have negotiated and agreed to different rates of pay for things such as distance learning, nursing, and allied health courses.

UNION EVIDENCE

Much of what FTCT President Dennis Bogusky testified to has been set out in the section above. He also stated that what the Union was complaining about is existing college courses taught by bargaining unit members as independent study. Mr. Bogusky stated that the problem is that students are getting three credits but faculty are not getting corresponding AR credits or being paid at the contractual part-time lecturer rate if they have fulfilled their AR requirements and the independent study course is a course beyond their workload obligations.

Mr. Bogusky said that he had spoken with some Three Rivers faculty and their Union representatives and learned that a series of courses taught by faculty member Jeffrey Crouch as independent study courses were all three-credit catalog courses canceled because of low enrollment. The Union introduced the "Summary Faculty List" forms for each of these courses for the year 2010 and the Fall semester of 2011. The courses were Community-Based Corrections, Introduction to Security, and Security Management. Two of these courses had one student; one had two; and one had three. All of the students listed received three credits.

Prof. Crouch did not testify so there is no evidence in the record on what was involved in these courses when they were sufficiently enrolled to be taught as regular classroom

courses. As will be seen below, the Employer introduced evidence going to the point of what was involved when they were held as independent study courses.

FTCT Three Rivers Chapter President Kent Harding testified that in the Fall of 2011 the Operations Management course was under-enrolled and canceled. He was asked to teach the course as an independent study but refused because he was not going to be paid at the three-credit rate for teaching a regular classroom course.

These grievances were filed in the name of faculty members Betty Gladue and William Hare. Neither Ms. Gladue nor Mr. Hare testified at the hearing, and there is no evidence relating to their claims. The record is similarly silent as to any Union evidence comparing the specifics of teaching a regular classroom three-credit course with an independent study course of the same name.

COLLEGE EVIDENCE

The Employer presented its case through the testimony of Three Rivers Academic Dean Ann Branchini and also through documents.

Dean Branchini

The Dean stated that there are many types of learning available through the College, one of which is independent study. She said that this is a broad category because students have different needs and initiate different independent study project to meet them. Their

purpose is to obtain credit for students for conducting a largely independent body of work. What usually happens is that students approach faculty members with independent study courses or projects they wish to undertake. If faculty members agree to oversee the students' activities, Independent Study Contracts are drawn up and sent to the Division Chair and Academic Dean for their approval.

Dean Branchini gave several examples of types of situations where students do independent study in a subject rather than attend the traditional catalog classroom course. Not all courses run every semester. If students are not going to be available when a course runs and they need it to graduate, they may undertake an independent study in the subject. Sometimes students will want a course that the College is either not running when they need it or does not offer. Another situation is where students sign up for regular classroom courses but not enough people sign up so the courses are canceled for low enrollment and a faculty member takes on the course as an independent study.

The independent study courses or projects faculty propose to oversee in the next academic year fall into the contractual Additional Responsibilities area. Faculty must submit by June 1 of each academic year their proposal or report for their AR work in the next academic year. The proposals list an estimate of the time each activity will take the faculty member, as well as the total number of AR hours for the upcoming year. Dean Branchini said that she looks at the proposals over the summer, and typically there is some back-and-forth with faculty on them. The proposals may be modified during the year they are being

carried out after discussions with the Dean. She made plain that the focus of these independent study proposals and reports is on the amount of time the faculty member puts in, not the greater amount of time the student doing the learning puts in.

Dean Branchini also spoke to the point of whether or not taking on independent study courses was compulsory. She said that she considered the work voluntary, a position confirmed by Prof. Harding's testimony that he was not disciplined for refusing to accept an independent study assignment.

Finally, the Dean stated during her cross-examination that she was fully confident of three things Union counsel inquired into. They were: the integrity of the Three Rivers academic program; that students with three credits for a course on their transcript had done the work required to earn those credits; and that a faculty member who has awarded three credits to a student has done the requisite work to do so.

Documents

The documents the College introduced consist of Independent Study Contracts and faculty AR proposals. Only those related to independent study courses with the same titles and credit hours as regular classroom courses will be set out here since these are what this case is about. Courses involving internships, practica, or teaching assistantships are not included.

Before turning to the specifics, there are two facts that run through all of the independent study contracts. One is that the students received three credits for the work they

did. The second is that there are no 50-minute lectures, or lectures of any length, mentioned in any of the contracts. The forms contain a category to be filled out which reads “Meeting dates and places.” All of them list either “To be determined,” “To be determined by mutual agreement of the instructor and the student,” or “To be determined by needs of student and upon mutual agreement between faculty and student during the course of the semester.”

1.) Criminal Justice Independent Study Courses: Prof. Jeffrey Crouch’s 2009-2010 and 2010-2011 AR proposals show that he estimated 40 hours to conduct two to four independent study courses in one year and 60 hours to handle four to eight in another. The Independent Study Contracts are for the following courses listed in the catalog: CJS 244 Community-Based Corrections; CJS 220 Criminal Investigations; and CJS 102 Introduction to Corrections.

Dr. Crouch prepared syllabi for the Criminal Investigations and Community-Based Corrections courses. Both documents are headed by the course name followed by “Independent Study.” They appear to be a classroom course syllabus modified for an independent study context. The place in the document for course location and day/time are filled out “N/A.” The “Instruction Methods” for both courses list under “Independent Study” “read text & prepared chapter summaries, written exams, and research papers.” Prof. Crouch specified in the independent study contract or the syllabus how each of these activities was to be graded.

The CJS 102 independent study course “Introduction to Corrections” syllabus lists assignments as 17 weekly chapter summaries, mid-term and final exams, and an 8-10 page research paper.

Economics Courses: Prof. Philip Mayer’s 2009-2010 AR Proposal listed three independent studies courses which he estimated would require 60 hours of his working time. On the form, he wrote in the “Expected Outcomes by End of Academic Year” column: “At the end of the semester, students will have mastered their respective subjects.”

The College introduced three independent study contracts in economics. ECN K102, Principal [sic] of Microeconomics: Honors” independent study required that the student complete a take-home final, a newspaper article project, and write a 5-7 page research paper on a topic relating to economics. There were no required readings.

Two students did an independent study that was a modification of course ECN K 250 “Money and Banking.” Students had to read approximately 20 chapters in a textbook, do article summaries, a book review, a project, and an all-essay take-home final.

UNION POSITION

For the reasons to be stated, it should be found that the Board has violated the contracts. The arbitrator should issue an order that the Board and Three Rivers cease and desist from the contract violations, make whole all faculty members who taught courses as “Independent Study” from the day the grievance was filed; and compensate faculty members at the bargained-for rate of pay for teaching additional courses by either applying the PTL rate or crediting the A/R requirement commensurate with the credits being taught.

1.) Failure to Pay Faculty at the Contractual Rate for Teaching Additional Courses

In the collective bargaining agreement, the parties agreed to a rate of pay for teaching additional courses. Three Rivers faculty members who do so are not being compensated at the negotiated rate. The bargained rate for teaching an additional three credit course is compensation at either the PTL rate or credit against the faculty member's A/R requirement. There is no contractual justification for compensation at any other rate than that which has been bargained for.

This case is not an interest arbitration concerning the question of what the rate of pay should be for the courses faculty are teaching. Instead, the issue is whether or not the negotiated rate of pay is being applied, which it is not. The Employer urges that "common sense" should trump the contract because there is less labor in teaching these under-enrolled courses than there is in teaching courses in the traditional classroom setting. There has been no request for interim bargaining over this issue. Had such a request been made and the Coalition agreed to open its contracts, the Board could have taken such a bargaining position. Instead, it is asking the arbitrator to undo the salary rate it bargained in the name of common sense. All the Coalition is asking is that the arbitrator interpret and enforce the terms of the contracts as they were agreed to.

2.) Individual Bargaining Impermissible and Illegal

There is no mechanism that permits individual bargaining with faculty members over rates of pay that are not those contained in the contract. The Employer cannot negotiate with individual employees over salary, but must comply with the salary agreement it made with the Union. In addition to violating the contract, the collective bargaining law prohibits such individual bargaining. The individual independent study contracts that were introduced into the record do not have the ability to circumvent the recognition clause found in both contracts.

3.) Faculty Teaching Courses, Not Supervising Independent Study

Independent study takes place when a student is working independently on a special project, and faculty may supervise such activities. As the Board says in its brief, this type of study occurs when students undertake to learn a body of material on their own initiative. Independent study involves a wide variety of subject matters, including subjects that would be covered in traditional classrooms, as well as special courses tailored to the specific interests of an individual student.

However, this is not what has been happening at Three Rivers. As the testimony of several witnesses established, what is happening is that some courses students need are under-enrolled. Faculty are being asked to teach these courses and perform all the work that accompanies teaching, such as syllabi, grading, administering exams, and awarding college credits.

What is the issue here is not an internship or practicum either. These types of learning are covered in the contract, as are true Independent Study projects. Supervising a student or two who are working independently on a special project in the manner one might also supervise adjunct faculty is not at all similar to what is happening at Three Rivers, which is under-enrolled courses being recycled as “Independent Study.” In reality, courses are being offered, as exhibits in the case established. They are taught, graded, and credits awarded. The Employer produced no evidence of any students taking on a special project in some area of study not traditionally offered in the classroom. These courses must be compensated at the bargained-for rate of pay.

It should also be noted that there are multiple ways in which courses may be presented. The contracts have a single rate of pay, with a few exceptions that are clearly set out in the contracts. For instance, the parties negotiated a 33% premium for distance learning courses, and increased compensation for certain nursing courses. Aside from these and the language dealing with practicums and internships, the single rate of compensation that appears in the agreements applies whether courses meet once, twice, or three times a week, are hybrids of online and campus meetings, or the course is just two students in an arrangement the College calls “Independent Study” that involves meeting with a professor at various times during the semester while completing assignments.

4.) Board Acknowledges the Courses but Not the Proper Rate of Pay

Three Rivers Academic Dean Branchini did not present a single example of an Independent Study that was not an actual course offered by the college. She provided no examples of special projects that would commonly be associated with the concept of an Independent Study. Instead, her testimony supported the Coalition position that the College is using Independent Study in a manner that is totally divorced from how it is customarily known and contemplated by the contracts.

Dean Branchini testified that she had confidence: 1.) In the integrity of the Three Rivers academic program; 2.) That students have done the work to earn three credits when there are three credits for course on their transcripts; and that 3.) A faculty member who has awarded three credits has done the requisite work to do so. These answers make plain that

a faculty member who has taught a three-credit course is entitled to the contractual rate of pay, not to some lesser level of compensation that does not exist in the collective bargaining agreement.

Finally, although, on one hand, Dean Branchini testified to her belief in the integrity of the Three Rivers program, courses, and faculty, on the other hand the Employer is trying to justify a lower rate of pay for these courses because the work is not being done. Such a position casts a dark shadow over the integrity of the College's academic program. It also raises troubling concerns about audits by accrediting agencies.

EMPLOYER POSITION

This grievance should be denied for the following reasons:

1.) Insufficient Evidence and Insufficient Basis for Claim

It is undisputed that AR credit is routinely given to faculty members who supervise independent study. This dispute is about how much AR workload credit should be given for such supervision. The Unions' position that all nine hours per week of AR time should be awarded for the supervision of an independent study course is unsupported by the evidence or common sense.

This grievance was filed by Betty Gladue and William Hare. No evidence was presented as to whether either of these faculty members actually supervised independent study courses or, if they did, the nature of these courses and the time commitment involved. There is also no evidence on how much AR credit they received if they did supervise independent study courses. There is simply no basis in the record for an arbitrator to conclude that the contracts have been violated as to Professor Gladue and Hare.

Instead of presenting specific evidence relating to the Grievants, the Unions take the position that the College violated the contract because it did not routinely determine that faculty members could satisfy their entire A/R obligation of 135 hours per semester or 270 hours per year by supervising one, three-credit independent study course. The premise underlying this argument is that an independent study course or project is basically the same activity as teaching a regular classroom course + if students get three credits for a regular classroom course, the faculty member who taught the course receives three workload contact/credit hours of 135 hours/semester or 270 hours/year of actual work time → if a

student doing independent study gets three credits, faculty members supervising that work receive the same A/R workload credit they would get for teaching a full-time course. Further, if they have engaged in other activities which have already satisfied their A/R obligation, they are entitled to be paid on a per-credit-basis of \$1,437 for the independent study supervision.

The Unions' position lacks a basis in both the contracts and basic principles of common sense. The College's approach of providing some AR credit for supervising independent study reflects both the contractual language and the practical realities of how much time is typically involved in supervising independent study. An arbitrator ruling that the contracts have been violated would significantly distort the compensation arrangements envisioned by the contracts and significantly undermine the College's ability to afford independent study by students. These concerns exist on top of the fact that there is simply insufficient evidence to support the finding of a contract violation here.

The Contracts

The Unions cannot point to any specific contract language which has been violated. Nothing in the contracts requires that faculty members who supervise (or teach, as the Unions prefer) an independent study course are entitled to a workload credit of three contact/credit hours or its AR equivalent simply because a student, or a few students, get three academic credits for completing the independent study.

In fact, awarding the unions what they seek would go against the contracts. Article II of the AFT agreement, and comparable language in the 4C's contract, defines a "contact/credit hour" as equaling a 50-minute lecture or meeting for each week of the course. This definition means that faculty members would have to engage in a lecture activity or something akin to it for a minimum of 50 minutes three times per week over the course of a 15-week semester in order to receive three contact/credit hours. There is no evidence whatsoever in this case that faculty members supervising independent study courses meet this standard. The Unions simply cannot reasonably contend that, for workload purposes, supervising independent study is contractually identical to teaching a regular classroom course.

Additionally, the contracts contain language that specifically distinguishes between supervising independent study and teaching a regular classroom course. Section 8.3.5, "Teaching Related Duties" in the AFT Contract and Article X, Section 1 in the 4C's contract specify the basic duties of teaching faculty. There is no mention in either of the sections of supervising or teaching independent study.

The contracts do, however, specifically deal with independent study in their AR provisions. Both contracts say that AR can include “supervising... independent study, provided it is not asserted that such supervision is part of the teaching obligation of 24 contact/credit hours.” The absence of independent study provisions in the teaching section and their presence in the AR section reflect the contractual recognition that involvement with independent study cannot and should not be equated with regular classroom teaching. Also, faculty involvement with independent study is described as “supervising,” not “teaching.” The contracts make plain that supervision of independent study is not part of the teaching obligation of 24 contact/credit hours.

If faculty involvement with independent study were the workload equivalent of regular classroom teaching, there would have been no need to have specific, separate language in the AR independent study provision since this subject would have already been covered in the section dealing with teaching and related duties. The separate mention of independent study in the AR section indicates that the faculty role in this area is something different from teaching a regular classroom course.

Also noteworthy about the contracts is that they make no distinction between various types of independent study. The Union is arguing that different types of independent study must be treated differently for purposes of assigning workload credit. This would have it that a faculty member supervising one or two students in a course which might otherwise be taught in a regular classroom format cannot be treated the same as a faculty member supervising one or two students in an internship or practicum, even though both situations are commonly spoken of as involving independent study. However, the Unions cannot point to any such distinction in the contracts. The term “independent study” has been applied to independent work by students that relates to academic courses, internships, practica, and special projects. Simply because a student gets three academic credits for an independent study of a subject that might also be taught in a classroom course does not support the conclusion that the faculty supervisor has performed the work load equivalent of teaching a regular classroom course. Regardless of whether an independent study course is listed in the College catalog or not, the limited nature of the faculty member’s effort is unchanged.

2.) The Practical Realities

Ignoring the practical realities would lead to absurd results in three respects:

a.) The Unions presented no evidence from any faculty member establishing that he or she had spent nine hours per week in every week over the course of a 15-week semester supervising independent study or had met with independent study students three times per

week for at least 50 minutes each session. It is also significant that a faculty member supervising independent study is typically dealing with only one or two students, as opposed to the 15-20 students or perhaps more who may be in a regular classroom course. It is unreasonable to contend that independent study supervision is entitled to equal workload credit with teaching a regular three contact/credit hour classroom course.

b.) Independent study involves a wide variety of activities and a corresponding wide variety of faculty supervisory activities. However, none of this activity is comparable to the investment of faculty effort involved in teaching a regular classroom course because, as the term “independent study” suggests, the work is done primarily by the students on their own.

As the evidence indicates, any number of the courses involved only one student, minimal or lesser academic work than in a regular classroom course, and the bulk of the work done by the student independently rather than in a regular classroom setting. Meeting times were by mutual agreement of the students and supervising faculty member. This was true of courses such as Community-Based Corrections, Criminal Justice Practicum, Independent Study Criminal Justice/Introduction to Corrections, Independent Study “Principal (sic) of Micro-Economics,” Independent Study Money and Banking, Independent Study Teaching Assistantship in Economics, Independent Study Political Science/Congressional Internship, and Independent Study Political Science/Legislative Internship.

c.) The evidence shows that the amount of time faculty spent supervising independent study was far less than the 135 hours per semester or 270 hours per year AR requirement. Phil Maher indicated that supervising three students would require 60 hours over a full year. Jeff Crouch indicated in his 2009-2010 AR proposal that it would require 40 hours of his time over the full year to conduct 2-4 independent study courses. His 2010-2011 AR proposal indicated 40 hours over a year to conduct 4-8 independent study courses. It cannot reasonably be contended that there was a contractual violation when the College did not automatically assign faculty a full 135 hours/semester or 270 hours/year of AR workload credit in these circumstances.

In order for the arbitrator to sustain the grievances in this case, the contractual distinctions and practical realities they reflect would have to be ignored, as would the fact that doing so would create a burdensome and unreasonable contractual requirement where none now exists. Such an outcome would be inconsistent with the contractual limitation on arbitral authority that appears in both contracts. It is that an arbitrator lacks the power to add to, subtract from, alter, amend, or modify any provision of the contracts. (Section 14.7.6.5. of the AFT contract). The 4C’s contract puts this limitation a little differently in Article VII, Section 4.(C.). It says that “The Arbitrator shall not have any power, right or authority to add

to, subtract from, modify, change, or alter any of the terms or provisions or the express intent of this Agreement.

3.) Interest vs. Grievance Arbitration

The Board is not trying to convert this case into an interest arbitration. All of its arguments are rooted in the contract, which it is not seeking to change in any way. In fact, it is the Unions who seem to be engaged in an interest arbitration proceeding by seeking to create a specific, special compensation scheme for independent study which does not appear in the contracts. If the Unions prevail here, there will be a substantial new financial burden relating to independent study on the College, a type of outcome usually obtainable only through interest arbitration.

The Board's references to the practical realities associated with independent study serve only to support its interpretation of the contracts. For the arbitrator to interpret the contract in a way which is not consistent with these practical realities risks an absurd outcome such as giving a faculty member 135 hours of workload credit for supervising independent study for one semester when that faculty member spent only 20 hours on this process.

4.) No Individual Bargaining

There was no individual bargaining here. The contracts set out very specifically how the AR workload credit is to be assigned. It is through submission of a faculty proposal that the Academic Dean reviews for purposes of accepting it or modifying it through discussions with the faculty member. Carrying out such duly negotiated contract language cannot constitute illegal conduct.

OPINION

For all of the reasons to be stated below, the evidence and the arguments compel the

conclusion that this grievance must be denied.

WHAT IS NOT INVOLVED IN THIS CASE

Individual Bargaining

Both contracts contain provisions entitled “Additional Responsibilities/ Teaching.”⁶ Academic Dean Branchini’s undisputed testimony established the procedure the parties have followed with faculty proposals. They are submitted to the Dean, who has the responsibility for approving or disallowing them. Part of the process is usually Dean-faculty member discussions of the proposals, including modifications during the academic year.

It is true that the public sector collective-bargaining law prohibits individual bargaining, something that is also prohibited by the recognition clauses of the contracts. The Union argues that both of these are violated by the Dean-faculty AR proposal discussions. This contention cannot be sustained because these discussions are the fruit of the contract language⁷ and the method the parties use to carry out that language.

Interest Arbitration

The parties both contend that the other is trying to engage in an interest arbitration. This is a form of future-oriented arbitration used when parties have been unsuccessful in agreeing to terms that will be included in the contract they are trying to finish negotiating.

⁶ FTCT Article 8.3.6; 4C’s Article X, Section 2.

⁷ FTCT Article 8.3.1.2. and Appendix D; 4C’s Article X, Section 2 and “Additional Responsibilities of Teaching Faculty” Side Letter Addendum.

They ask an interest arbitrator to consider the language each side wants and evidence related to those suggestions. After doing that, the arbitrator writes a decision and language award which can accept the proposed language one side wants, write some different but related language, or omit such language from the award entirely.

Grievance arbitration, what we are doing in this case, is different. It involves an existing contract, not a future one. A grievance arbitration is about the interpretation of language the parties have already agreed to put in their contract and are living by.

This case does not involve interest arbitration because the question here is whether the Employer has violated certain terms of the existing collective bargaining agreements. It is unnecessary to create any new contract term in order to resolve this dispute.

Limitations on an Arbitrator's Authority

The FTCT contract states that an arbitrator has no authority to add to, subtract from, modify, change, or alter any of the provisions of the contract.⁸ The 4C's contract contains that same basic language and also a prohibition against adding to, subtracting from, modifying, changing, or altering "the express intent of this Agreement."⁹

Both sides argue that I could run afoul of these provisions by taking certain actions in this case that would be additions to, subtractions from, modifications, changes, or alterations to the existing contracts. As will be seen below, the resolution of this matter is

⁸ Article 14.7.6.5.

⁹ Article VII(4)(C)(1.)

based exclusively on current contract language, so the prohibitions of the types set out in the two clauses are not violated in this decision.

Accreditation Issues

The Unions argue that the College's accreditation standards require that students receive 15 hours of instruction for each academic credit the college offers and thus faculty must receive equivalent credit when they oversee an independent study course. Under this theory, if a student receives three credits for an independent study course, a faculty member overseeing that course should get the nine hours a week of contact/credit hours workload credit time that goes with teaching a regular three-credit classroom teaching course.

If this approach is not followed, the Unions contend, giving students three credits for regular courses as independent study with less work raises accreditation issues. In its responses to the grievance, the College set out information which it believes rebuts this argument. Aside from the merits of the accreditation point, nothing in the parties' two contracts ties compensation or AR time to student learning time, or anything at all relating to students' side of the educational equation. The contracts are concerned only with what might be called faculty instructional clock time. Because this is the contractual issue, the extra-contractual accreditation issue will not be discussed further.

MERITS OF THE CASE

The Unions had the burden of proving that supervising/teaching independent study

courses is the contractual workload equivalent of classroom teaching. With this contract language and the other evidence presented, it cannot be concluded that they met that burden for several reasons.

What the Unions proved was that students got three credits for these independent study courses with the same names and numbers as regular classroom courses, and that one professor was involved with such independent study courses. That was not enough. What was not proved was the contractual equivalency to classroom courses factor, or any contractual or real time connection between independent study student credit hours for learning time and faculty time worked.

As the contracts specify, a contact/credit hour for purposes of faculty workload requirements equals a 50-minute lecture or meeting for each week of the course. It is undisputed that the assumption underlying the contract provisions is that a three-credit classroom course involves nine hours of work each week, for a total of 135 hours per semester and 270 hours for an academic year. The AR obligation that is 20% of a faculty member's workload must, according to the contracts, be equivalent to preparing and teaching an additional three contact/credit hour course or an average of nine hours per week per semester. The AR obligation is 135 hours per semester, and 270 hours per year.

The evidence the College presented was fatal to the Unions' classroom teaching or AR hours equivalency argument. Its documents relating to the independent study courses Professors Crouch and Maher taught were not contradicted by any evidence from the Unions.

Prof. Maher stated in his AR proposal that supervising three independent study students would take him 60 hours over a full year. Prof. Crouch said in his two AR proposals that it would take him 40 hours to oversee two-four independent study courses one year and 60 hours to do four-eight such courses the other year. These figures fall strikingly short of the proof required to justify faculty AR workload credit of 135 hours a semester or 270 hours a year for a single independent study course.

Additionally, the Independent Study Contracts that the College introduced into the record showed no thrice weekly 50-minute lectures or meetings. All of them referred only to meetings to be determined or to be determined by mutual agreement between the faculty member and the student. It is also noteworthy that none of these independent study contracts involved the faculty member having responsibility for all the duties that go with a full class of students. The record does not contain evidence on the typical size of a class at the College. The Employer's brief refers several times to a class size of 15-20. If that is the number, it means that the faculty member teaching a typical classroom course has a great deal more work to do than he or she has when dealing with a single independent study student working on the same course, or even several students.

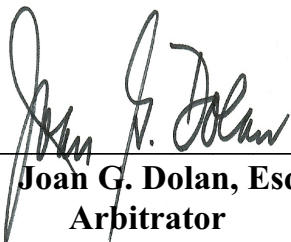
Given all of these factors, it cannot be found that supervising/teaching an independent study course is the workload equivalent of teaching a regular classroom course of the same name and number of student credit hours. The College was not contractually obligated to

give faculty members nine hours a week of AR workload credit for independent study courses or to deem teaching one of them equivalent to teaching an extra classroom course.

AWARD

1.) The Board of Trustees for the Community-Technical Colleges did not violate its Collective Bargaining Agreements with the Federation of Technical College Teachers, Local 1942, AFT, and the Congress of Connecticut Community Colleges, Local 1973, SEIU by the manner in which it awarded Additional Responsibilities credit for independent study supervision.

2.) The grievance must be, and hereby is, denied.



Joan G. Dolan, Esq.
Arbitrator