AMERICAN ARBITRATION ASSOCIATION

In The Matter of Arbitration Between	)	Case No: 01-23-0002-9211
The Federation of Technical College Teachers, Local 1942, AFT, AFL-CIO	)	OPINION AND AWARD
and	)	Joseph M. Celentano Arbitrator
Connecticut Board of Regents for Higher Education	)	Date: June 20, 2024

Grievant: Kmiecik

APPEARANCES:

For the Employer: John P. Shea, Esq., Hugh Sokolski, Esq.
For the Union: Eric Chester, Esq.

Background of Proceedings

This dispute between the Federation of Technical College Teachers Local 1942 (Union) and The Connecticut Board of Regents (Employer or Board) arose out of a grievance *(J. Exh. 12)* filed on December 9, 2022 by the Union on behalf of Professor Chris Kmiecik (Grievant) alleging that the administration at Three Rivers Community College inaccurately calculated the Grievant's rate of pay for the Fall 2020, Spring 2021, Fall 2021 and Spring 2022 semesters. This grievance was processed in accordance with the contractual grievance procedure and on January 24, 2024 a virtual arbitration hearing was held before Arbitrator Joseph M. Celentano. Both parties appeared, were represented, and provided full opportunity to adduce evidence, examine and cross-examine witnesses and make argument. Briefs were filed by the parties and forwarded to the American Arbitration Association on May 3, 2024.

The Issue

Is the matter arbitrable?

If so, did the Board of Regents for Higher Education fail to pay Professor Chris Kmiecik in accordance with Article 23.2 of the collective bargaining agreement between the Board of Regents of Higher Education and the Federation of Technical College Teachers, Local 1942, AFT for the following semesters: fall 2020, spring 2021, fall 2021, spring 2022?

If so, what shall be the remedy in accordance with the collective bargaining agreement?

Exhibits

J. Exh. 1.-Collective Bargaining Agreement Between Board of Trustees for Community - Technical Colleges and The Federation of Technical College Teachers, Local 1942, AFL-CIO, For the Period of 2007-2010

J. Exh. 2.-Collective Bargaining Agreement Between Board of Trustees for Community-Technical Colleges and The Federation of Technical College Teachers, Local 1942, AFL-CIO, Level 1 Part-Time Employees, For the Period of 2007-2010

J. Exh. 3.-Collective Bargaining Agreement Between The Board of Regents for Higher Education and The Federation of Technical College Teachers, Local 1942, AFL-CIO, For the Period of 2016-2021

J. Exh. 4.-Collective Bargaining Agreement Between The Board of Regents for Higher Education and The Federation of Technical College Teachers, Local 1942, AFL-CIO, Level 1 Part -Time Employees, For the Period of 2016-2021

J. Exh. 5.-Collective Bargaining Agreement Between The Board of Regents for Higher Education and The Federation of Technical College Teachers, Local 1942, AFL-CIO, For the Period of 2021-2025

J. Exh. 6.-Collective Bargaining Agreement Between The Board of Regents for Higher Education and The Federation of Technical College Teachers, Local 1942, AFL-CIO, Part-Time Employees, For the Period of 2021-2025

J. Exh. 7.-Stipulated Agreement Between The Board of Regents for Higher Education and The Federation of Technical College Teachers, Local 1942, AFL-CIO, Dated August 26, 2013

J. Exh. 8.-Memorandum of Agreement Regarding Non-Credit Lecturers Dated February 19, 2016, Attached to Proposed Contract Language

J. Exh. 9.-Notice of Appointment For Adjunct Faculty For Chris Kmiecik dated January 4, 2022

J. Exh. 10.-Memorandum of Agreement Regarding Non-Credit Lecturers Dated February 19, 2016, With notations

J. Exh. 11.-Tentative Agreements As of June 7, 2017

J. Exh. 12.-Grievance Trail

J. Exh. 13.-Chris Kmiecik's Payment Schedule From The Fall of 2020 Through Fall 2023

E. Exh. 1.-A Selected List of Full -Time Faculty Members who taught non-credit hours

U. Exh. 1.-Email Chain Between the Grievant and Various Administrative Officials From September 26 through October 21, 2022

Attendees and Witnesses

Union

Eric Chester
Philip Mayer
Chris Kmiecik
Dennis Bogusky

Board
John Shea
Hugh Sokolski
Erin Sullivan
Mike Lopez

Relevant Contract Language And Supplemental Agreements

1. **Relevant Language from the principle collective bargaining agreement dated 2021-2025 J. Exh 5.**

Article II. Definitions

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Full Time Teaching Faculty Member

A. For a teaching Faculty Member on a regular appointment: an individual who is obligated by the terms of his /her appointment to teach 24 contact/credit hours and perform teaching-related and additional responsibilities each academic year.

B. For a teaching Faculty Member on special appointment: an individual who is hired to teach 12 contact/credit hours and perform teaching-related and additional responsibilities in one semester.

Part-Time Faculty

The term "Part -Time Faculty" is defined in Article 23.1.

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.

Article XIV. Grievance Procedure

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14.3 Time Limits

14.3.1 All grievance shall be processed in accordance with the time limits specified in each grievance step herein, and the number of days indicated as such step shall be considered the maximum.

14.3.2. Except for the initial filing of the grievance, such time limits may be extended by written agreement between the grievant and the Employer provided that no such agreement or extension shall be made after the expiration of such time limits.

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14.7. The Grievance Procedure

14.7.1 Step 1. Informal Procedure

a. Any grievant who feels that there is a grievance shall first discuss the problem with his/her supervising Dean or whomever the Employer as[sic] designated.

b. Said grievant shall request such discussion with said supervising Dean, or Designee, not later than twenty-one (21) work days after such grievant or Faculty

Member knew, or should have known, or should reasonably have been expected to have learned of the act or condition on which the grievance is based.

Article XXIII. Pay, Benefits, Responsibilities, and Utilization of Part-Time Faculty

23.1 Definition

A part-time teaching Faculty Member on special appointment is defined as an employee who is hired to teach at least 8 contact/credit hours but less than 12 contact/credit hours in any one semester. A part-time teaching Faculty Member on a regular appointment is defined as an employee obligated by the terms of his/her appointment to teach more than 16 but less than 24 contact/credit hours per academic year.

23.2. Rates of Pay

Part time unit members who teach 8 contact/credit hours or more but less than 12 contact/credit hours in a semester shall be paid on a prorated basis at the full-time rate of pay.

2. Relevant Language for the Level 1 Part-Time Employees Collective Bargaining Agreement. *J. Exh. 6.*

Article II. Definitions

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2.5 Level 1 Part-Time Faculty

A "Level 1 Part-time Faculty Member" or an "Employee" is a teaching employee hired to teach 8 contact/credit hours or less or a non-teaching employee hired for less than 20 hours per week.

2.6 Contact/Credit Hours

A "contact/credit hour shall equal a 50-minute lab or lecture hour meeting for each week of the semester. *Joint Exh. 6, p. 2.*

Memorandum of Agreement Dated February 19, 2016 Regarding Non-Credit Lecturers. *J. Exhs. 8 and 10.*

1. A Non-Credit-Lecturer (NCL) is a teaching employee hired to teach fewer than 7.5 contact/non-credit hours. NCLs are added to and remain in the bargaining unit and governed by the entire current Level 1 Part-Time Agreement between the FTCT and the BOR. The following provisions of the Collective Bargaining

Agreement (CBA) shall not apply to Non-Credit Lecturers: Article 13.3 (longevity).

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Tentative Agreements As of June 7, 2017

The Board of Regents (BOR) and the Congress of Connecticut Community Colleges, Federation of Technical College Teachers and AFSCME, Council, 4 Local 2480 (Coalition) hereby agree to this Tentative Agreement in settlement of a number of outstanding issues toward reaching a successor collective bargaining agreement. This Tentative Agreement is in addition to the Tentative Agreement dated May 4th, 2016 and December 6, 2016. Taken together, these three documents constitute the parties' Tentative Agreement for a successor agreement subject to ratification and the drafting of mutually acceptable contract language.

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5. Part-time unit members who teach ~~7.5~~ 8 contact/credit hours but less than 12 contact/credit hours in a semester shall be paid on a pro-rated basis at the full-time rate of pay. (AFT only*). J. Exh. 11.*

Facts

Chris Kmiecik, the grievant, began his employment at Three Rivers Community College (TRCC) in 2016 and since 2018 has been employed as an adjunct professor. During his tenure he has taught engineering and mathematics courses. Some of these courses are offered to employees at Electric Boat in their apprentice program. *Testimony, Kmiecik*. In the fall of 2020, he taught four non-credit courses and one credit course. For the spring of 2021, he taught two credit courses and one non-credit course. For the fall 2021 semester, the grievant taught six courses, two of these for credit and the remaining four for non-credit. In the spring of 2022, the grievant taught two credit courses and one non credit course. *J. Exh. 13, Testimony, Kmiecik*

On September 26, 2022, the grievant was presented a new contract for the fall semester 2022. *J. Exh. 9.* This contract reflected the Board's position that the grievant's status had changed from a Part Time Lecturer to Interim Full Time Lecturer since he was

assigned to teach more that than eight credit hours. His actual assignment was to teach ten hours of mathematics for credit. *J. Exh. 13.*

In response to the Board's proposed new contract, the grievant requested additional background information. On September 27, Jasmine Rosada, a representative of the college responded as follows:

> Part time lecturers are allowed to teach a maximum of 8 credits per semester. As you are teaching 10 credits, your classification has changed from adjunct to interim Full Time Lecturer and requires a different contract to be signed.... *U. Exh. 1.*

This response triggered a series of email communications initiated by the grievant seeking further clarification regarding the contract, his pay rate, board polices supporting the pay rate, and related questions. On October 8, and again on October 17, the grievant notified the administration that he believed he was entitled to retroactive full time prorated pay as an Interim Full Time Lecturer for the following semesters: Fall 2020, Spring 2021, Fall 2021, and Spring 2022. *U. Exh.1.* On October 21, 2022, the Board responded that "[c]redits and non-credit workloads are not combined so those payments appear correct based on the PTL and NCL rates at that time. The Full-Time Lecturer Job Code applies only to total semester credit loads at 9 or more credits/contact hrs." *U. Exh. 1.*

On December 9, 2022, Philip Mayer, Vice President of AFT Local 1942, filed a grievance on behalf of Mr. Kmiecik alleging that Kmiecik's compensation for four previous semesters was improperly calculated. The grievance claimed that the grievant should have been paid as the full-time lecturer rate and as a result he was owed back compensation calculated at between the difference between the full-time lecturer rate and the actual compensation received.

On February 13, 2023, Kem Barfield, Interim Dean of Academic and Student Affairs, responded denying the grievance. This response stated that the academic workload for the current spring 2023 and last semester, the fall of 2022, "appear correct." As for the years beyond the fall of 2022, the response referred the Union to Article 14.7 of the existing collective bargaining agreement which requires a step 1 grievance to be filed "not later than twenty-one (21 work days after said grievant or Faculty member knew, or should have known or should have reasonably have been expected to have learned of the act or condition on which the grievance is based. All the semesters referenced in the grievance are well outside the 21-work day limit. The grievance is therefore denied at step 1." *J. Exh 12.*

On March 1. 2023, the step 1 denial was appealed to step 3.[1] In this filing, Mr. Mayer stated that the grievant had not been properly compensated specifically referring to Article 23.2 of the collective bargaining agreement which states: "part time members who teach more than 8 contact/credit hours but less than 12 contact/credit hours shall be paid on a prorated basis at the full rate of pay." The Board's step 3 denial stated:

> However, Article 23.2 references the prorated calculation for PTL [part time lecturers] hours (credit only). Non-credit hours are not included in the 8-credit calculation. It was also confirmed by the Union that historically non-credit hours have not been included. As demonstrated in Mr. Kmiecik's pay for the Fall 2022 semester, when an employee has a PTL (credit) workload that exceeds 8 credits they are paid on the prorated full-time salary grid pursuant to Article 23.2. *J. Exh. 12.*

The Union appealed the grievance to step 4. On May 5, 2023, the Board denied the grievance. The Board's response at step 4 closely tracks its response at step 3 stating as follows:

> However, Article 23.2 references the prorated calculation for PTL hours (credit only). Non-credit hours are not included in the 8-credit calculation (which the Union

[1] There was no evidence presented as to why this grievance bypassed step 2.

agreed to during the Step 3 and provided no additional evidence to support a change in practice during this Step 4).

Position of the Parties

Arbitrability

Union

The Union makes the following arguments in support of its claim that the grievance is arbitrable.

- There is a presumption of arbitrability and all doubts regarding ambiguous language regarding the grievance time limits should be resolved in favor of the grievant and against forfeiture.

- The grievant's unrebutted testimony was that he realized for the first time in October 2022 that he was paid incorrectly during previous semesters.

- When contractual time limits are not strictly enforced or where the date of the discovery of the day giving rise to the grievance is debatable, arbitrators generally uphold arbitrability.

- The grievant submitted his grievance well within the twenty-one (21) work days from the date he became aware of the contract violation.

- Under the theory of continuing violation, the Board's payment to the grievant is inconsistent with the collective bargaining agreement

- and gives rise to a new claim or grievance for each pay period which allows a grievance to be timely filed.

- The employer cannot enforce an overly burdensome interpretation of strict timelines when the Board itself has failed to observe them. The unrebutted testimony and documented evidence show that there was no Step 2.

Board

The Board makes the following arguments in support of its claim that the grievance is not arbitrable.

- The grievant's prior knowledge of the alleged failure to pay for the Semesters from Fall 2020 until the Spring of 2022 renders the grievant untimely and non-arbitrable.

- Here the grievant and the Union should have known that the Board did not consider hours spent teaching non-credit courses as contact/credit hours under Article 23.2

- Employees governed by a collective bargaining agreement must assume responsibility for becoming knowledgeable of their rights and benefits and must take the necessary steps to enforce those rights in a timely manner.

- The grievance is not a continuing violation because the Union assented to the time limits imposed in the collective bargaining agreement. Contractual time limits

must be adhered to. Arbitrators are aware of the importance of negotiated and self-imposed time limitation for processing grievance to give predictability to the grievance machinery. These limitations are not mere formalities.

- Even if the arbitrator finds the grievance timely, the remedy must be limited. Any potential monetary remedy would only start to accumulated twenty-one work days preceding December 9, 2022, when the grievance was actually filed.

Merits

Union

- The definition of contact/credit hours is inclusive of credit and non-credit hours. The use of "/"is intended to be a conjunction of the two words. According to the Merriam-Webster Dictionary defines and/or as a function word to indicate that two words or expressions are to be taken together or individually.

- The collective bargaining agreement defines contract/credit hours. "It shall equal a fifty (50) minute lecture hour meeting for each week of the semester." Had the parties sought to limit the definition solely to lecture hours that are for credit, they would have done so.

- The employer inserts "credit only" in support of its step 3 and 4 denials. It is not bargained for language.

- The phrase "contract/credit hour" is used in the MOA that caused the Federation to represent NCL'S. The same phrase is used in the level 1 Part-Time collective bargaining agreement as well as the principal collective bargaining agreement. There is only one definition.

Board

- The Union must prove that the grievant is entitled to prorated full-time pay in accordance with Article 23.2 of the collective bargaining agreement for hours spent teaching non-credit courses. It has the burden of proof. In this case, it has patently failed to present sufficient evidence that the Board has violated any provision of the collective bargaining agreement.

- The tenets of contract construction confirm that the grievant was paid appropriately. The plain meaning of contract/credit hour confirms that the grievant is not entitled to prorated, full time pay. There is no reference to non-credit or even simple contact hours let alone an agreement that such can be considered or combined with contact/credit hours to become eligible for prorated pay. If contract/credit hours included hours spent teaching non-credit courses, or so-called contact/non-credit hours, the parties would have specified such (as they did in the 2016 Memorandum of Understanding).

- Even if the term "contact/credit hours" is determined to be ambiguous, other aides of contract interpretation confirm the fact that the term does not encompass non-credit lecturer hours. One such aide is the past practice of the parties. Here, the

Union has failed to introduce a single instance where hours spent teaching non-credit hours were used in calculating prorated pay under Article 23.3

- The parties have never considered hours spent teaching non-credit courses for purposes of calculating teacher workload, which is also based on contact/credit hours. Article 23.3.1.1 mandates that full-time faculty teach twenty-four contact/credit hours. It is undisputed that hours spent teaching non-credit courses by full-time faculty members are not considered contact/credit hours for purposes of satisfying the contractual workload requirement.

- If the term contract/credit hours truly encompassed both credit and non-credit course instruction, a separate stipulated agreement:1 specifically including non-credit lecturers who work a certain amount in the Union; and 2 utilizing "hours" (and not contact/credit hours) as the threshold for inclusion in the Union, would have been unnecessary.

- If the Union's interpretation that time spent teaching non-credit courses constitute contact/credit hours, the term non-credit lecturer would not exist, faculty would either be classified as "full-time faculty" or "part-time faculty" based on their contact hour load. Furthermore, there would be no need to differentiate different compensation levels for credit and non-credit courses.

- A finding in favor of the Union's interpretation of contact/credit hours would lead to a number of absurd results. One such result would be that part-time lecturers would be paid more than full-time faculty for identical work.

Discussion

Arbitrability

The Board has challenged this grievance as not arbitrable and as such has the burden of proof to establish its claim by a preponderance of the evidence. *Miami Industries, 50 LA 978, (Howlett, 1968); Rodeway Inn, 102 LA 1003 (Goldberg, 1994); Phillips 66 Co., 92 LA 1037 (Neas, 1989).* Based on the evidentiary record, I conclude that the Board has met its burden and find the grievance not arbitrable.

The Union first contends that this grievance is arbitrable arguing that every presumption should be made in favor of arbitrability. "Where there are ambiguities in the wording of contractual time limits, or uncertainty as to whether time limits have been met, all doubts shall be resolved against forfeiture of the right to process the grievance." *Citing Elkouri, and Elkouri, How Arbitration Works, 8th Ed. p. 5.33.* I disagree. The language the Union references is not relevant to the present case.

First, the language of presumptive arbitrability cited by the Union is based on a series of United State Supreme Court Cases known as the Steelworkers Trilogy in which the court discusses the role and power of the arbitrator vis a vis the courts in deciding questions of arbitrability. *In Steelworkers v. Enterprise Wheel, 363 U.S. 564*, the court stated that questions of contract interpretation are for the arbitrator, and the courts "have no business overruling him because their interpretation of the contract is different from his." *Id. at 599.* Furthermore, in *Steelworkers v. American Manufacturing Co., 363 US 564, 568, 1343, 34 LA 559, 46 LRRM 2414 (1960)* the court stated that "...whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances, the moving party should not be deprived of the arbitrator's

judgment, when it was his judgment and all that it connotes that was bargained for." And in *Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 46 LRRM 2416 (1960)* the court stated that a party should not be denied the ability to arbitrate a grievance "...unless it may say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." From these cases, it is clear that there is a general presumption of arbitrability and any doubts should be resolved in favor of hearing the merits of a grievance. *Id. at 583-584.* However, these above referenced cases are concerned with whether the subject matter of the dispute, i.e. wages, hours and working conditions, are appropriate subjects for an arbitrator to decide, which is not initial question before me.

The question here is whether the grievance filed on behalf of the grievant was filed in accordance with the timelines provided in the collective bargaining agreement. Put another way, this case is one of procedural arbitrability and not substantive arbitrability. It is well understood that a party's failure to adhere to the contractual time limits of collective bargaining agreement's grievance procedure will render the grievance untimely and thus not arbitrable unless the parties agree to extend the time for filing or in the alternative the opposing party agrees to waive the timeliness requirements of the contract. *Elkouri and Elkouri, How Arbitration Works, 6th Ed. BNA, 2003, p. 217.*

Second, I do not find the language of the grievance procedure to be ambiguous. Article 14.7, 1 Step 1. Informal Procedure(b) states that "[s]aid grievant shall request such discussion with said supervisor Dean, or Designee, not later than twenty-one (21) work days after said grievant or Faculty Member knew, or should have known, or reasonably expected to have learned of the act or condition on which the grievant is

based. Moreover, the Section 14.3.3 makes clear the parties' agreement that the [f]ailure to file or appeal within the specified time limits at any step of this grievance procedure shall result in a waiver of such grievance. *J. Exh. 5.*

In this case, the grievant is seeking back pay as far back as the fall of 2020. At that time, the grievant did not receive prorated pay for non-credit courses that he taught. Nor was he paid on a prorated basis for those courses he taught for non-credit in the Spring and Fall of 2021 or the Spring of 2022. If the grievant had reviewed his payroll information and made a comparison to the pay provisions in the collective bargaining agreement, he would have realized that the Board was not including the hours he spent teaching non-credit course as contact/credit hours for purposes of prorated pay under Article 23.2. Thus, it is reasonable to believe that the grievant should have known of his pay discrepancy in the Fall of 2020 or in the alternative "should reasonably have been expected to have learned of the condition" giving rise to the grievance at that time. Yet at no time during any of these semesters did he or the Union file a grievance. On these facts, the grievance is not timely and thus not arbitrable.

But assuming for the sake of argument that the grievant should not have reasonably known that his pay rate allegedly was in violation of the collective bargaining agreement until sometime in October of 2022, the grievance is still untimely. After several weeks of back-and-forth communications between the grievant and the administration, the grievant, on October 8, 2022, notified the administration that he believed that he was entitled to retroactive pay for those prior semesters. At that time, the grievant "knew" that he was not being paid in accordance with what he thought was his proper pay rate. On that date, the time began to run on his grievance. Yet, the Union did

not file a grievance at step 1 until December 9, 2022, or some 41 work days from the October 8, 2022 date. [2]

The Union also argues that arbitrators recognize a presumption of arbitrability, when the contractual time limits are not strictly enforced or where the date of discovery of the event that gave rise to the grievance is debatable. citing *Elkouri, supra at 5-27.* Neither of the above cited situations are present here.

There was no evidence introduced by the Union that the parties routinely failed to adhere to the time limits of the contract. As to the claim that the event that gave rise to grievance is debatable, the language of the grievance procedure requires some due diligence on the part of the grievant. The grievance procedure requires a filing of the grievance within twenty-one days after the grievant knew or should have known, or reasonably have expected to know of the incident giving rise to the grievance. Clearly, the grievant should have been reasonably expected to know of the facts underling the grievance in the fall of 2020 and clearly knew in October of 2022 of those facts. Thus, there is no debate as to when the timelines began to run to file this grievance.

The Union also argues that the grievance was timely filed under the theory of a continuing violation. This theory holds that continuing violations of the agreement will give rise to a repetition of an injury allowing a party to challenge that continuing violation by filing a grievance each time a violation arises regardless of when the initial violation occurred. Thus, a grieving party is not penalized for not filing a grievance

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[2] Neither party presented the school calendar to provide guidance to support their positions on timeliness. Therefore, in making this calculation, I assumed Monday thru Friday as days of work and I excluded the Holidays of Columbus Day, Veterans Day, Thanksgiving, and the Day after Thanksgiving from the work day calculation. Even if this calculation is off by a few days, the grievance is still untimely by some twenty days. It would also be untimely, if the I was to consider the October 21st date as the date the grievant first became aware of his pay discrepancy which of course is not the case.

within the time limits of the initial occurrence so long as the violation in question reoccurs. *Elkouri and Elkouri, How Arbitration Works, p. 217, 6th Ed. 2003.*

As I understand the theory as it would apply to this case, the Employer's continued alleged failure to pay the grievant a prorated sum for each week that he taught a combination of credit and non-credit courses would trigger a continuing violation during the Fall of 2020, and each of the following three semesters.[3]

There are several problems with the application of this theory here. First, as the evidence has established, the grievant at the time of the grievance filing, was no longer working the same course load of credit and non-credit courses. Rather, in the fall of 2022, when he filed this grievance, the grievant was teaching a courseload of 10 credit courses and his status went from part time adjunct to a Full Time Lecturer. *U. Exh.1.* Thus, he was no longer being paid at the rate that he claimed was in violation of the collective bargaining agreement during prior semesters. Given this fact pattern, there could not be a continuing violation.

Second, in the vast majority of cases, arbitrators strictly enforce contractual time limitations on the time periods within which grievances must be filed, responded to, and processed where the parties have consistently enforced such requirements. *Elkouri and Elkouri, How Arbitration Works, pp. 217-218*, 6th Ed. 2003. *See United Parcel Service, 121 LA 1042, 1048* (2005) where the arbitrator held the grievance untimely because "[t]he collective bargaining agreement places great emphasis on the timely filing and processing of grievance and specifies that a grievance is waived if the contractual time

[3] According to this theory, a violation would occur every time the grievant received a paycheck.

limits are not met." [4] There was no evidence presented in this case that the parties have been lax in enforcing those requirements. Perhaps in those situations where the parties have failed to adhere to the strict time lines of the collective bargaining agreement, an arbitrator may be persuaded to find a continuing violation. This is not such a case. Here, the Union has filed an untimely grievance and as a result of that failure the grievance is not arbitrable.

In conclusion, I find that the grievance was not timely filed and as such this matter is not arbitrable. Therefore, I have no authority to determine the merits of this case.

Award

The Matter is Not Arbitrable

Attorney Joseph M. Celentano, Arbitrator

June 20, 2024

[4] The Union argued that the Employer should not be allowed to enforce the overly burdensome interpretation of strict timelines when they have failed themselves to observe them. In this regard it points to the fact that there was no Step 2. However, there was no evidence presented as to why the grievance was processed to Step 3. The Union is the moving party and the fact that the Employer allowed the Union to bypass Step 2 in no way can be considered a basis to claim that the Board has failed to observe the contractual time limits of the grievance procedure.