

AMERICAN ARBITRATION ASSOCIATION AWARD

*****	CASE NO.: 01 23 0001 5922
In the Matter of	*
	*
Federation of Technical College Teachers	*
Local 19	*
	*
and	*
	*
Board of Regents of Higher Education	*
	*

OPINION AND AWARD

REPRESENTATIVES OF THE PARTIES

For the Federation: Eric W. Chester, Esq.
 For the Board: John P. Shea, Jr., Esq.

THE ISSUES

Did the Board of Regents violate Article 8.3.1.6 of the of the Collective Bargaining Agreement with the Federation of Technical College Teachers, Local 1942 AFT in the manner in which it calculated and paid the nursing faculty at Capital Community College for proctoring exams for the courses NUR 125 and NUR 225 in the Spring 2022 semester?

If so, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

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 (3) 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 D.

8.3.1.3. The parties agree to the following changes regarding workload for teaching faculty:

a. Full time faculty hired on or after July 1, 2017 shall be required to teach a course in lieu of Additional Responsibilities (AR);

b. Teaching faculty hired on or after July 1, 2017 shall be hired at step 3 of their respective rank on the salary schedule. Step movement shall mirror the 2017 SEBAC Agreement; Faculty hired on or after July 1, 2017 shall be released as appropriate with approval from the college so that they may work on professional obligations toward the goals of attaining tenure and/or promotion;

c. All faculty employed on or before June 30, 2017 shall elect to either complete AR or teach a 3-credit course for \$2,500 compensation. The parties understand that compensation shall be pro-rated based on the number of credits taught, not necessarily the number of courses. Said election shall be made by the faculty member no later than May 15th of the preceding academic year. AR approval decisions shall be made no later than June 1st of the preceding academic year. The existing practices and rules regarding AR proposals/approvals shall remain in place;

d. If a faculty member elects to perform AR and such election and proposal is approved, any additional course(s) taught by such faculty member shall be paid at the prevailing PTL rate;

e. The parties agree to continue discussions regarding limitations (policy and/or contractual) on teaching assignments.

8.3.1.6. The parties recognize that in some cases, in order to accommodate the needs of the college, the teaching load of a teaching faculty member may have to be unequally divided between the semesters of an academic year. Whenever possible, such an arrangement shall be on the basis of mutual agreement between the faculty member and the President or his/her designee. No teaching faculty member shall be assigned more than 16 contact/credit hours – including the time spent on additional responsibilities pursuant to this agreement – during any one semester.

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

ARTICLE XIV. GRIEVANCE PROCEDURE

14.7. THE GRIEVANCE PROCEDURE

14.7.6.3. Submission to Arbitration

a. Such submission to arbitration shall be by letter addressed to the American Arbitration Association and postmarked within the time limit provided in Section 14.7.6.1 of this Article. A copy of such letter shall be mailed concurrently to the President of the Connecticut State Colleges and Universities.

b. Such submission to arbitration shall specify the alleged violation of the Agreement and shall specify the remedy or relief sought.

14.7.6.4. Expenses

a. The expenses for the Arbitrator's services and for the hearing shall be shared equally by the Board and the Federation except for those costs accruing to either party who at its respective option elects to purchase its own transcript or to retain its own counsel.

b. Each party shall bear the cost of preparing its own witnesses, except that any employee whose participation at an arbitration hearing as a witness is deemed necessary by the Employer, the Federation, or the arbitrator, or who will serve as the spokesperson for the Federation shall receive no loss of pay thereby, or charge to any other leave. The parties shall provide 48 hours' notice to the college Administration for such release time. Unless otherwise agreed, arbitration hearings shall be conducted at the System Office.

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.

FACTS

The Board of Regents for Higher Education oversees and governs Connecticut's twelve (12) Community Colleges of which Capital Community College (CCC) is one.

The Nursing Program offered at CCC consists of three major components: clinical, lectures and proctoring exams. The grievant, Professor Tara Ferrauolo, who is also Union Steward of the Local Union has been a full time professor of Nursing at CCC since 2017.

There are a faculty of eight (8) assigned to the freshman level and a faculty of eight (8) assigned to the senior level. Faculty spends 225 hours a semester delivering instruction in a clinical setting. Also, faculty are paid for each hour spent lecturing in a classroom setting.

Proctoring of each exam throughout the semester is performed by 4 to 5 faculty members. Ms. Ferrauolo and others were paid for every hour spent proctoring exams the same way they were paid for both clinical and lecture with the exception being the spring of 2022 semester. Ms. Ferrauolo testified that she was paid for every hour she spent proctoring exams for every semester since she began teaching in 2017 with the exception of the Spring 2021 and fall of 2021 because of Covid-19 when students took exams online.

However, Ms. Ferrauolo and others were paid one-half (.5) of an hour for Spring of 2022, regardless of the number of hours spent proctoring. Thereafter, in the Spring of 2023 Ms. Ferrauolo and her colleagues were paid the full hour for each hour they proctored. The Spring 2022 proctoring is the only issue here.

Another professor, Lori Cerone, who worked at CCC for 32 years and participated in all of the teaching components testified that she was consistently paid for every hour she spent proctoring.

Dean Jason Scappaticci, was interim Dean in August 2022 at the time of the payment to the employees. He testified that salary is based on workload. When faculty work in excess of their workload, they are paid as on overload. For the nursing facility, they are paid proportionate to their salary. So, if a nursing faculty teaches one (1) credit in the overload, they would receive 1/30th of their salary. He confirmed that nursing faculty spend 225 hours teaching in the clinical setting. Also, he did not dispute that faculty members spend four (4) or more hours proctoring exams.

He further stated that one (1) credit is equal to three (3) hours, thus, one-half (.5) credit equals one and one-half (1 ½) hours, and that faculty should be paid for each hour they work.

Dr. Cathy Leary, Nursing Director at CCC from July 1, 2022, testified that she was informed in August 2022 as to how to calculate each hour spent proctoring toward the respective faculty member's workload. She further stated that she was advised at a later date that the workload should be calculated differently as it related to proctoring.

THE POSITIONS OF THE PARTIES

The Board of Regents' position is that the Union alleges the Board's method of calculating workload violates Section 8.3.1.6, but Section 8.3.1.6 does not reference the method of calculating workload or the definition of a contact credit hour, rather, it only generally prohibits the assignment of more than sixteen (16) contact hours, and, as the calculation of exam proctoring hours did not cause them to either exceed 16 contact hours or fall below such, the Union has failed to establish a violation of the Agreement.

Further, the Collective Bargaining Agreement (CBA) contains a provision governing the calculation of workload. Article VIII, Section 8.3.1.1 provides that when calculating workload, hour for hour credit is only required for time spent teaching, namely, time spent in lecture or clinical. Also, the history of payments is irrelevant, since (1) this issue was not submitted to the Arbitrator or otherwise within the Arbitrator's jurisdiction; (2) any such history is insufficient to

establish a practice contrary to the clear and unambiguous contract language permitting the previous partial credit in the same manner, such as provided here.

The Union's position is that when nursing faculty work on overload, they must be paid the overload rate. When faculty is nursing work overload, they are paid at their normal rate. Specifically, "employees base salary divided by 30 equals per credit compensation for required overload." Every witness corroborated that nursing faculty are and always have been paid at the overload rate when working beyond their required workload of 225 hours a semester.

The record is equally clear that nursing faculty meet their workload requirement as a result of working in the clinical setting alone. That is, nursing faculty will have worked 225 hours in the clinical setting throughout any given semester. The result is that the hours they spend teaching in the classroom is overload as well as time spent proctoring exams. Faculty are paid for each hour they spend lecturing in the classroom. Even though faculty team teach their courses, they are credited with appropriate workload based on the amount of hours each faculty member actually spends delivering instruction in the classroom. Nevertheless, they receive workload credit "hour for hour" for the hours spent teaching in the classroom. Up until the Spring of 2022, with one exception, faculty were also paid similarly for each hour spent proctoring exams. The exception being during Covid-19 when nursing students took their exams online.

Faculty were paid their corresponding overload rate subsequent to the Spring 2022 semester. There is no basis for the college's failure to pay the contracted for overload rate for the Spring 2022 semester.

OPINION

Due to the nature of nursing courses, it is not unusual for nursing faculty to be assigned more than 16 contact credits for each semester. As a result, nursing faculty are paid an overload premium that is more than paid to other non-nursing faculty; and, the workload exceeds 16 contact credit hours without considering the time spent proctoring exams.

After a thorough review of the language in the CBA, there is no reference to how time spent proctoring exams should be paid. It is clear from the testimony of witnesses that there is no teaching involved, although there may be questions asked by students during exams, none of the questions relate to teaching.

Section 8.3.1.6 speaks of the teaching load and although there is reference to additional responsibilities, it does not reference time spent.

Although the Union's arguments were strong for its positions on the issue, they were not sufficient to overcome the lack of language in the CBA as to how and for what compensation was to be paid. The fact that nursing faculty were paid hour per hour for proctoring in the past did not rise to the level of past practice.

AWARD

The Board of Regents did not violate Article 8.3.1.6 of the Collective Bargaining Agreement in the manner it calculated and paid nursing faculty at Capital Community College for proctoring exams for the courses NUR 125 and NUR 225 in the Spring 2022 Semester.



LOUIS P. PITTOCCO
Arbitrator