

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between

AAA Case No: 01-23-0002-9214

Federation of Technical College Teachers

Peter Adomeit, Arbitrator

-and-

OPINON AND AWARD

Connecticut Board of Regents of Higher Education

September 2, 2025

Appearances

For the Employer

Hugh T. Sokolski, Esq.

For the Union

Eric W. Chester, Esq.

The Issues:

1. Did the Union file the Grievance at Step 1 within twenty-one (21) calendar days of the date Grievant knew or should have known, or should reasonably have been expected to have learned, that he was not assigned a non-credit course in violation of the Collective Bargaining Agreement between the parties?
2. Did the Board of Regents for Higher Education violate its collective bargaining agreement or the Level I Part-Time collective bargaining agreement-Appendix G with the Federation of Technical College Teachers, AFT when it did not offer a non-credit course to be taught by the grievant, Douglas Tufaro for the fall 2022 or spring 2023 semesters?

If so, what shall the remedy, consistent with the express terms of the Collective Bargaining Agreement between the parties, be?

Michael Lopez, Human Resource Director, testified that he parties have two agreements.

The Principal CBA applies to full-time members of the bargaining unit; the Part-time CBA applies to part time lecturers.

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.

APPENDIX N

JOB SECURITY FOR PART-TIME LECTURERS

When a part-time lecturer in the system has taught 18 credits and has received a satisfactory evaluation, the part-time lecturer will be placed in the part-time lecturer pool at the college(s) where the part-timer has accumulated a minimum of 18 credits. All courses taught by part-time faculty shall count toward meeting the requirements for entry into the part-time seniority pool. The offering of course to part-time faculty who are in the seniority pool shall apply to every term (fall, spring, summer and intersessions.)

1. Once a part-time lecturer is placed in the pool, she/he shall remain in the pool unless and until he/she has received an unsatisfactory evaluation. Receipt of an unsatisfactory evaluation shall result in immediate removal from the pool. All members who are in the pool prior to the execution of this CBA shall remain in the pool.
2. Among the members of the pool, employees will be assigned on a seniority basis to at least one course per semester, subject to course availability. Seniority will be calculated by determining when the 18-credit threshold was met. This provision does not require that any specific course be assigned on a seniority basis, only that if the number of pool members exceeds the number of available courses, senior pool members will be assigned at least one course.
3. Continuous service in the pool for seniority purposes will be considered broken for a break in service resulting from the employee refusing, declining or otherwise not

responding to course assignments for three (3) consecutive semesters. Seniority in the pool will restart effective the date the employee returns to teaching. The aforementioned break in service will not apply to the following:

- a. pursuing an advanced degree related to the field in which the employee teaches
 - b. for medical reasons relating to themselves or immediate family members.
4. This agreement applies only to initial course assignments and does not apply to:
 - Changes in course assignments necessitated by enrollment or by other unanticipated circumstances which occur within 14 days of the start of classes;
 - Courses offered under grants or contracts;
 - The assignment of courses to full-time employees, including but not limited to the assignment of “overload” courses to full-time employees, and the assignment of courses to former full-time employees who have retired;
 - A decision to broaden the hiring pool to enhance the skill base or to enhance affirmative action or diversity in the selection of part-time members.
5. The college where the part-time lecturer has taught eighteen (18) credits, shall maintain the person in the pool. Records of pool membership shall be shared with the bargaining units each semester.
6. Once courses are assigned, a senior member of the pool may not “bump” a junior member of the pool if the senior member’s assigned course is cancelled.
7. Repeated attempts to contact a part-timer by telephone, e-mail and certified mail as a method to satisfy notification requirement, shall constitute compliance with the requirement to offer such part-timer a course under this agreement.

APPENDIX N

ARTICLE I. RECOGNITION

The Board of Regents of Higher Education (hereinafter referred to as the Board) hereby recognizes the Federation of Technical College Teachers, Local #1942, American Federation of Teachers, AFL-CIO (hereinafter referred to as the Federation) as the sole and exclusive bargaining agent for the purposes of collective bargaining with respect to wages, hours, and other conditions of employment, pursuant to Connecticut General Statutes Sections 5-270 et seq., (as certified by the Connecticut State Board of Labor Relations in Case No. SE-12,880, Decision No. 3067, dated January 7, 1993) for all teaching faculty members, counselors and librarians employed for 8 or fewer contact/ credit hours per semester or 20 hours per week in non-teaching positions, provided that casual employees shall be excluded from the bargaining unit.

The parties hereby agree that all unit parameter issues will be decided through the petition procedures of the State Labor Board or by mutual agreement.

ARTICLE II. DEFINITIONS

2.5 LEVEL I PART-TIME FACULTY

“Level I 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.

ARTICLE VI. RIGHTS OF THE BOARD OF REGENTS

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

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

ARTICLE VIII. PROFESSIONAL WORKING CONDITIONS

7.1 TEACHING AND RELATED DUTIES

The teaching and related duties of Level I Part-time Teaching Faculty Members shall consist of the following:

7.1.1. teaching and related preparation of college-approved courses in accordance with approved course descriptions and class schedules;

7.1.2. developing course compendia and reading lists, and participating in departmental responsibilities in the selection of textbooks and related teaching resources;

7.1.3. maintaining at least one (1) regularly scheduled office hour per week per three (3) contact/credit hours or any part thereof for the purpose of student-faculty contact as it relates to classroom/laboratory instruction; meeting with students for the purpose of academic advisement;

7.1.4. maintaining accurate student records;

7.1.5. respecting student rights in accordance with the Board’s Policy on Student Rights and Discipline;

7.1.6. distributing to students during the first week of classes, subject to subsequent modification, with copies to the appropriate Dean, a course compendium that includes information about course objectives, topics with time-frames, reading and attendance requirements, and an indication of evaluative and grading mechanisms to be utilized;

7.1.7. within the scope of the Work Year, attending college convocations and college or system conferences, commencement, meetings and department meetings to the extent reasonable;

7.1.8. preparing routine reports such as academic deficiency reports or

attendance verification reports for veterans' benefits.

APPENDIX N

Article VII – Job Security for Part-Time Lecturers

When a part-time lecturer in the system has taught 18 credits and has received a satisfactory evaluation, the part-time lecturer will be placed in the part-time lecturer pool at the college(s) where the part-timer has accumulated a minimum of 18 credits. All courses taught by part-time faculty shall count toward meeting the requirements for entry into the part-time seniority pool. The offering of course to part-time faculty who are in the seniority pool shall apply to every term (fall, spring, summer and intersessions.)

1. Once a part-time lecturer is placed in the pool, she/he shall remain in the pool unless and until he/she has received an unsatisfactory evaluation. Receipt of an unsatisfactory evaluation shall result in immediate removal from the pool. All members who are in the pool prior to the execution of this CBA shall remain in the pool.
2. Among the members of the pool, employees will be assigned on a seniority basis to at least one course per semester, subject to course availability. Seniority will be calculated by determining when the 18-credit threshold was met. This provision does not require that any specific course be assigned on a seniority basis, only that if the number of pool members exceeds the number of available courses, senior pool members will be assigned at least one course.
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 - A decision to broaden the hiring pool to enhance the skill base or to enhance affirmative action or diversity in the selection of part-time members.
- c. The college where the part-time lecturer has taught eighteen (18) credits, shall maintain the person in the pool. Records of pool membership shall be shared with

the bargaining units each semester.

- d. Once courses are assigned, a senior member of the pool may not “bump” a junior member of the pool if the senior member’s assigned course is cancelled.
- e. Repeated attempts to contact a part-timer by telephone, e-mail and certified mail as a method to satisfy notification requirement, shall constitute compliance with the requirement to offer such part-timer a course under this agreement.

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off unit members for lack of work or other legitimate reasons; to recall unit members; to determine that unit members shall or shall not perform certain functions; to take all necessary actions to carry out its mission in emergencies; to promulgate rules and regulations, provided that such rules and regulations shall not be exercised so as to violate any of the specific provisions of this Agreement.

ARTICLE VII

PROFESSIONAL WORKING CONDITIONS

7.1 TEACHING AND RELATED DUTIES

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7.1.2. developing course compendia and reading lists, and participating in departmental responsibilities in the selection of textbooks and related teaching resources;

7.1.3 maintaining at least one (1) regularly scheduled office hour per week per three (3) contact/credit hours or any part thereof for the purpose of student-faculty contact as it relates to classroom/laboratory instruction;

7.1.4. maintaining accurate student records;

7.1.5. respecting student rights in accordance with the Board's Policy on Student Rights and Discipline;

7.1.6. distributing to students during the first week of classes, subject to subsequent modification, with copies to the appropriate Dean, a course compendium that includes information about course objectives, topics with time-frames, reading and attendance requirements, and an indication of evaluative and grading mechanisms to be utilized;

7.1.7. within the scope of the Work Year, attending college convocations and college or system conferences, commencement, meetings and department meetings to the extent reasonable;

7.1.8. preparing routine reports such as academic deficiency reports or attendance verification reports for veterans' benefits.

ARTICLE XXIII.

PAY, BENEFITS, RESPONSIBILITIES, AND UTILIZATION OF PART TIME FACULTY

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Relevant Language from Level I Part-Time Collective Bargaining Agreement:

2.5 LEVEL I PART-TIME FACULTY

A **“Level I Part-time Faculty Member”** or an **“Employee”** is a teaching employee hired to teach eight (8) contact/credit hours or less or a non-teaching employee hired for less than twenty (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. (**emphasis in original**)

APPENDIX G

Article VII — Job Security for Part-time Lecturers

1. Once a part-time lecturer is placed in the pool, she/he shall remain in the pool unless and until he/she has received an unsatisfactory evaluation. All members who are in the pool prior to the execution of this CBA shall remain in the pool.
2. Among the members of the pool, employees will be assigned on a seniority basis to at least one course per semester, subject to course availability. Seniority will be calculated by determining when the eighteen (18) credit threshold was met. This provision does not require that any specific course be assigned on a seniority basis, only that if the number of pool members exceeds the number of available courses, senior pool members will be assigned at least one course.
3. Continuous service in the pool for seniority purposes will be considered broken for a break in service resulting from the employee declining course assignments for five (5) consecutive semesters. Seniority in the pool will restart effective the date the employee returns to teaching. The aforementioned break in service will not apply to the following:
 - a. pursuing an advanced degree related to the field in which the employee teaches
 - b. for medical reasons relating to themselves or immediate family members.
4. This agreement applies only to initial course assignments and does not apply to:
 - Changes in course assignments necessitated by enrollment or by other unanticipated

- circumstances which occur within 14 days of the start of classes;
- Courses offered under grants or contracts;
- The assignment of courses to full-time employees, including but not limited to the assignment of “overload” courses to full-time employees, and the assignment of courses to former full-time employees who have retired;
- A decision to broaden the hiring pool to enhance the skill base or to enhance affirmative action or diversity in the selection of part-time members.

C. 2/19/2016 MEMORANDUM OF AGREEMENT REGARDING NON-CREDIT LECTURERS

1. A Non-Credit-Lecturer (NCL) is a teaching employee hired to teach fewer than 7.5 contact/credit hours. NCLs are added to and remain in the bargaining unit and governed by the entire Level I Part Time Agreement between the FTCT and the BOR. The following provisions of this Collective Bargaining Agreement (CBA) shall not apply to Non-Credit Lecturers: Article 13.3 (longevity).

POSITION OF THE UNION

Dennis Bogusky has been the President of the Union for forty (40) years. He has bargained an estimated fourteen (14) to fifteen (15) collective bargaining agreements.

Bogusky testified that Non-Credit Lecturers (NCLs) are Part-Time faculty governed by the Level I CBA. He further testified that though bargaining, NCLs were brought into the Union and represented by the Federation.

Specifically, the 2016 MOA brought NCLs into the bargaining unit. The MOA states, “*NCLs are added to and remain in the bargaining unit and **governed by the entire current Level I Part Time Agreement** between the FTCT and BOR.*” (Joint 8, **emphasis added**) The parties bargained for one, and only one, carve out. NCLs would not be eligible for longevity. “*The following provisions of this Collective Bargaining Agreement (CBA) shall not apply to Non- Credit Lecturers. Article 13.3 (Longevity)* ” The remainder of the **entire** CBA applies to NCLs. No other carve outs apply. (Union Ex. 3, Testimony of Bogusky)

An NCL is someone who teaches a non-credit course. Their workload is measured by contact/credit hour. As stated above, the CBA clearly defines “contact/credit hour.” A

“contact/credit hour” shall equal a fifty (50) minute lab or lecture hour meeting for each week of the semester. It must only be a fifty (50) minute lab or lecture hour meeting each week of the semester. The parties did not agree that the lab or lecture be *“for credit.”*

A. Tufaro’s teaching experience

Tufaro has been teaching reading and writing courses within the English as a Second Language (ESL) Department at Norwalk Community College since the fall of 2010. He typically taught two to three courses each semester. The courses did not award college credit. He continued teaching these courses until his last assigned courses in the spring 2022 semester. He was not offered a course to teach in fall 2022 or spring 2023 semesters, resulting in the Union's grievance and the instant proceeding.

Tufaro said he never received an unsatisfactory evaluation. The record is void of any formal evaluations of Tufaro's teaching. Nevertheless, his ongoing teaching assignments presume a satisfactory tenure.

B. Tufaro's progression to the 18 contact/credit threshold

Peter Daupern testified that he has been a math professor at NCC for twenty-four years and the Federation's Chapter Chairperson/ Union Representative at NCC for eleven. Daupern filed the grievance on Tufaro's behalf upon learning he was not assigned a course for the fall 2022 or spring 2023 semesters. Daupern testified that Tufaro had attained and was earning “Level 2” pay. An adjunct faculty attains Level 2 status and associated pay upon completion of teaching 18 contact hours. Daupern and Tufaro testified that Tufaro was receiving the Level 2 pay rate and there was no evidence to the contrary.

Union Exhibit 5 lists adjunct faculty teaching ESL courses, both Level 1 and Level 2 at NCC. It further shows the corresponding rates of pay. Tufaro is absent from Union 5, as he was not assigned a course to teach. Present on Union 5 are eight (8) adjunct faculty at Level 1 who

were assigned a course. An adjunct can only be in the part-time seniority pool upon successful completion of teaching eighteen (18) contact hours. Tufaro was. Level 1 adjuncts were not. The parties bargained for a seniority pool to provide a level of job security for their part time faculty. It assures that those who meet the eighteen (18) contact hour threshold will be offered a course to teach over those who are not in the seniority pool. There is no dispute that Tufaro met the eighteen (18) contact hour threshold. He should have been in the seniority pool and offered a course prior to any part time faculty not in the pool. The employer takes the position that because the courses taught by Tufaro were not credit bearing, he and other NCLs are disqualified from being in the pool. That assertion contrasts with the clear and unambiguous language bargained for by the parties.

The matter *is* arbitrable

The Board raised, for the first time, the issue of arbitrability at the outset of the arbitration hearing. It did so based on the time requirements for submitting a grievance.

It is widely known and accepted 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 should be resolved against forfeiture of the right to process the grievance.”* (Elkouri & Elkouri, How Arbitration Works, 8th Edition, P. 5-33) The Union asserts that it has met the contractual time limits, however, to the extent that there is any ambiguity, any doubt should be resolved against forfeiture.

“Arbitrators have held that the time for filing a grievance does not begin to run until the affected employee was aware, or should have been aware, of the alleged violation giving rise to the grievance.” (d P. 5-35) The unrebutted testimony was that the Grievant realized, for the first time, in December of 2023 that he was not offered a course to teach

in the fall 2022 semester. Union representative and College Chapter President Peter Daupern testified that he initiated the grievance process asserting that Tufaro should have been offered a course in the fall 2022 semester. He raised this during the fall 2022 semester. He also correctly asserted that he was not being offered a course for the coming spring 2023 semester.

Arbitrators recognize a presumption of arbitrability. *Accordingly, when contractual time limits are not strictly enforced or unusual circumstances occur, arbitrators tend to allow the grievance to go to arbitration... So too, where the date of the discovery of the event giving rise to the grievance is debatable, arbitrators generally favor upholding arbitrability.* Elkori & Elkori. How Arbitration Works (P. 5-27)

The grievant submitted his grievance well within the twenty-one (21) work days from the date he became aware of the contract violation. Tufaro testified that his assigned classes for fall 2022 were “canceled,” although he did not know why. Tufaro testified that he expected to be assigned classes for spring 2023. When no classes were assigned, he enlisted the assistance of his Union representative who filed the grievance on January 31 2023. Finally, the employer cannot enforce an overly burdensome interpretation of strict timelines when they have failed to observe them. The un rebutted testimony and documented evidence show that there was no Step 3 response to the grievance. This step requires submission to and response from the college CEO/President. Union Exhibit 4 includes a Step 3 submission to CEO DeVonish, however, the record is void of any response. The employer willingly participated in the processing of this grievance up to arbitration. The employer cannot look the other way on a procedural requirement (Step 3) and then seek to have the grievance ruled in-arbitrable due to another procedural requirement. *“If both parties have been lax as to observing time limits in the past, an arbitrator will hesitate to enforce them strictly until prior notice has been given by a party*

of intent to demand strict adherence to the contractual requirement.” (Elkori & Elkori, P. 5-33)

Moreover, when an employer contests arbitrability, it carries the burden of proof to show it is not. There was no testimony proffered by the Board in this regard. Neither its step 2 nor step 4 response mentioned anything about the grievance being in-arbitrable due to timeliness. Instead, it makes this last minute assertion without any corroborating evidence. The employer's claim should fail in this regard.

The grievance was submitted within the time constraints of the CBA and it is therefore arbitrable. Moreover, when contesting arbitrability, it is the employer's burden to prove the matter not arbitrable. It failed in that regard. Professor Tufaro's unrebutted testimony was that his fall 2022 courses were canceled, without any communication to him explaining why. He was not assigned courses for the following spring 2023 semester and the grievance was filed. The matter is clearly arbitrable

B, The definition of ‘contract/credit hour’ is inclusive of credit and non-credit courses.

The use of “/” between *contact* and *credit* is inclusive of contact *and* credit hour. Had the parties used “*contact-credit*,” both would need to apply. But that is not the case. “*And/or*” might be the most common use of a function word. The use of “/” is intended to be a conjunction of the two words. That is, Merriam-Webster’s Dictionary defines “*and/or*” as a function word to indicate that two words or expressions are to be taken together or individually. The same is true for *contact/credit* hour. It is both contact hour and credit hour.

Moreover, the CBA defines “contact/credit hour.” *It shall equal a fifty (50) minute lecture hour meeting for each week of the semester.* (Joint 5, P.9 Joint 6, P. 6) A lecture hour meeting does not distinguish between those that are for credit and those that are not. Had the parties sought

to limit the definition solely to lecture hours that are for credit, they would have done so. Instead, the parties bargained for the definition they have and it does not exclude lecture hour meetings that occur as part of non-credit courses. As discussed below, Professor Tufaro spent lecture hours teaching students in non-credit courses. Those are contact/credit hours.

The employer inserts “credit only” in support of its Step 2 and Step 4 denials of the grievance. (U “*(Credit only)*” is not the bargained for language. The employer maintained that position through the arbitration. That position is unsupported and in contradiction with the clear and unambiguous language bargained for by the parties.

The phrase “contact/credit hour” is used in the MOA that resulted in the Federation's representation NCLs. The same phrase is used in the Level I Part-Time CBA as well as the principal CBA. The parties never bargained for a different definition applicable to NCLs. There is only one definition. It is universal and clear. Contact/credit hours are fifty (50) minute lecture hours meeting each week of the semester. “*(Credit only)*” is the employer's recent invention, and not what it bargained for.

Lastly, the employer identifies Tufaro's hourly rate of pay as “per contact/credit hour” on each and every individual employment contract. (Union Exhibit 7) The record could not be clearer.

Again, there is no distinction between credit and non-credit. “*(Credit only)*” is invented. An adoption of this un-bargained for language would be a modification of the parties’ collective bargaining agreement. The Board seeks to add terms that do not exist. The Federation seeks enforcement of the bargained for terms.

C. The 2016 MOA incorporates NCLs into the Level I Part Time Agreement.

As stated above, Union Exhibit 3 is the Agreement among the parties that recognized

NCLs as represented by the Federation. The parties did not bargain a separate CBA for NCLs. Instead, they agreed that “A Non-Credit-Lecturer (NCL) is a teaching employee hired to teach fewer than seven and one half (7.5) contact/non-credit hours. NCLs are added to and remain in the bargaining unit and governed by the entire Level I Part Time Agreement between the FTCT and the BOR. The following provisions of this Collective Bargaining Agreement (CBA) shall not apply to Non-Credit Lecturers: Article 13.3 (longevity).”

That includes Appendix G

The parties were clear to list one exclusion: longevity. Had the parties intended to exclude NCLs from Appendix G, they would have listed it along with longevity. Of course, they didn't. NCLs are governed by the entire Level I Part Time Agreement. That includes Appendix G.

Tufaro met the 18 contact/credit hour threshold.

Professor Tufaro has been teaching courses at NCC since 2010 and did so uninterrupted until he was not offered any courses to teach during the fall 2022 and spring 2023 semesters. He taught reading and writing within NCC's ESL Department. The record is void of any negative evaluations. Tufaro testified that he never received any unsatisfactory evaluations. Rather, NCC continued to assign him courses for over ten (10) years.

Peter Daupern testified that NCC uses two pay rates for NCL compensation, at least within its ESL Department. One for Level 1 and the other for Level 2. In order to achieve the higher Level 2 rate of pay, an NCL must meet the eighteen (18) contact/credit hour threshold. Tufaro did that and was earning the Level 2 rate pay. As an NCL who reached this milestone, he must be in the Appendix G seniority pool. The bargained for language requires that he be offered a course, subject to availability, prior to an NCL who is not in the pool. He wasn't. The Board violated its contracted for language with the Union.

Mike Lopez, Director of Compensation for the system office, testified that rates of pay can vary among NCLs based on the particular campus or the industry in which they teach. We know from the un rebutted testimony of Daupern as well as Tufaro that the eighteen (18) contact/credit hour threshold was met. We know Tufaro was paid a higher rate based on achieving that threshold. We know he should have been in the seniority pool pursuant to the entire Level I Part Time Agreement. We know that those in the pool must be offered a course to teach over those not in the pool. We know that did not happen and the Union has grieved the matter.

CONCLUSION:

The grievance is sustained. Professor Trufaro should have been offered a course to teach in both the fall 2022 and spring 2023 semesters. The employer's failure to adhere to the language it bargained for resulted in a loss of opportunity and pay for the Grievant. Tufaro should be compensated at the contracted for rate of pay for the two courses he was prevented from teaching. Moreover, he should be assigned courses consistent with Appendix G from the date of the grievance, prospectively.

The Remedy:

1. Professor Tufaro should be compensated for each semester from fall 2022, spring 2023 where he was not offered a course to teach.
2. The Board should cease and desist from violating the CBA with the Federation and apply the language of Appendix A going forward, included but limited to semesters where he was not offered a course to teach but limited to semesters subsequent to spring 2023.
3. The Arbitrator retains jurisdiction for purposes of enforcement of the resulting Award.

Discussion and Analysis

The 2016 MOA incorporates NCLs into the Level I Part Time Agreement.

2/19/2016 MEMORANDUM OF AGREEMENT REGARDING NON-CREDIT LECTURERS

Union Exhibit 3 is the Agreement among the parties that recognized NCLs as represented by the Union. They did not bargain a separate CBA for NCLs. Instead, they agreed that “A Non-Credit-Lecturer (NCL) is a teaching employee hired to teach fewer than seven and one half (7.5) contact/non-credit hours. NCLs are added to and remain in the bargaining unit and governed by the entire Level I Part Time Agreement between the FTCT and the BOR. The following provisions of this Collective Bargaining Agreement (CBA) shall not apply to Non-Credit Lecturers: Article 13.3 (longevity).”

The parties were clear to list one exclusion: longevity. Had the parties intended to exclude NCLs from Appendix G, they would have listed it along with longevity. They did not. NCLs are governed by the entire Level I Part Time Agreement. That includes Appendix G.

The use of “/” between *contact* and *credit* is inclusive of contact *and* credit hour. Had the parties used “*contact-credit*,” both would need to apply. But that is not the case. “*And/or*” might be the most common use of a function word. The use of “/” is intended to be a conjunction of the two words. That is, Merriam-Webster’s Dictionary defines “*and/or*” as a function word to indicate that two words or expressions are to be taken together or individually. The same is true for *contact/credit* hour. It is both contact hour and credit hour.

Moreover, the CBA defines “contact/credit hour.” *It shall equal a fifty (50) minute lecture hour meeting for each week of the semester.* (Joint 5, P.9 Joint 6, P. 6) A lecture hour meeting does not distinguish between those that are for credit and those that are not. Had the parties sought to limit the definition solely to lecture hours that are for credit, they would have done so. Instead, the parties bargained for the definition they have and it does not exclude lecture hour meetings that occur as part of non-credit courses. As discussed below, Professor Tufaro spent lecture hours teaching students in non-credit courses. Those are contact/credit hours.

The Union argues that the employer inserts “credit only” in support of its Step 2 and Step 4 denials of the grievance. “*(Credit only)*” is not the bargained for language. The employer maintained that position through the arbitration. That position is unsupported and in

contradiction with the clear language bargained for by the parties. I agree.

The Union argues that the phrase “contact/credit hour” is used in the MOA that resulted in the Federation's representation NCLs. The same phrase is used in the Level I Part-Time CBA as well as the principal CBA. The parties never bargained for a different definition applicable to NCLs. There is only one definition. It is universal and clear.

Contact/credit hours are fifty (50) minute lecture hours meeting each week of the semester.

“(Credit only)” is the employer's recent invention, and not what it bargained for. I agree.

The employer identifies Tufaro's hourly rate of pay as “per contact/credit hour” on every individual employment contract.

The Union argues that there is no distinction between credit and non-credit. “(Credit only)” is invented. An adoption of this un-bargained for language would be a modification of the parties’ collective bargaining agreement. The Board seeks to add terms that do not exist. The Federation seeks enforcement of the bargained for terms. I agree.

The matter is arbitrable. The failure to properly pay the Grievant is a recurring event. When an employer contests arbitrability, it carries the burden of proof to show it is not. There was no testimony proffered by the Board in this regard. Neither its step 2 nor step 4 response mentioned anything about the grievance being in-arbitrable due to timeliness.

The grievance was submitted within the time constraints of the CBA and it is therefore arbitrable. Moreover, when contesting arbitrability, it is the employer's burden to prove the matter not arbitrable. It failed in that regard. Professor Tufaro's un rebutted testimony was that his fall 2022 courses were canceled, without any communication to him explaining why. He was not assigned courses for the following spring 2023 semester and the grievance was filed.

The employer presented evidence if one lays the facts of Mr. Tufaro next to other

teachers, who were teaching complex courses, the rules governing those other facts would nullify Mr. Tafaro's case if applied to him. I found it unpersuasive. Those were not his facts.

The Union filed the Grievance at Step 1 within twenty-one (21) calendar days of the date Grievant knew or should have known, or should reasonably have been expected to have learned, that he was not assigned a non-credit course in violation of the Collective Bargaining Agreement between the parties.

The Board of Regents for Higher Education violated its collective bargaining agreement or the Level I Part-Time collective bargaining agreement-Appendix G with the Federation of Technical College Teachers, AFT when it did not offer a non-credit course to be taught by the grievant, Douglas Tufaro for the fall 2022 or spring 2023 semesters

AWARD

1. Douglas Tufaro should be compensated for each semester from fall 2022, spring 2023 where he was not offered a course to teach.
2. The Board should cease and desist from violating the CBA with the Federation and apply the language of Appendix A going forward, included but limited to semesters where he was not offered a course to teach but limited to semesters subsequent to spring 2023.
3. The Arbitrator retains jurisdiction for purposes of enforcement of the resulting Award.



Dated: September 2, 2025 _____

Peter Adomeit, Arbitrator