

AMERICAN ARBITRATION ASSOCIATION

VOLUNTARY LABOR ARBITRATION

In the matter of the arbitration between:

**WAYNE COUNTY COMMUNITY
COLLEGE FEDERATION OF
TEACHERS, AFT LOCAL 2000,**

Union,

-and-

**WAYNE COUNTY COMMUNITY
COLLEGE DISTRICT,**

Employer.

AAA Case No. 54 390 01200 11

Grievance no. 012-11

Issue: Added 2011 summer classes

Contract: Article XV, Section I

Arbitrator: Kathleen R. Opperwall

ARBITRATION OPINION AND AWARD

Two days of arbitration hearing were held on September 5 and 21, 2012, in Detroit,

Michigan, with the following individuals attending:

On behalf of the Union:

Gillian H. Talwar, Attorney for Union

Beatrice Talpos, Grievance Chair

Wallace Peace, Local 2000 President

Liz Duhn, AFT Michigan Staff Representative

On behalf of the Employer:

James C. Zeman, Attorney for Employer

Derek Johnson, College Counsel

Karen Jackson, (retired) Associate Vice Chancellor

The record was closed on February 20, 2013, after receipt of the parties' briefs.

ISSUE

Did the Employer violate Article XV, Section I, by not honoring the seniority rights of full-time and over 100-hour part-time faculty when a large number of additional classes were added to the 2011 summer class schedule? If so, what should the remedy be?

HEARING RECORD

Wayne County Community College Federation of Teachers, AFT Local 2000 (hereafter the Union or AFT) represents the full-time and regular part-time faculty members who teach at Wayne County Community College (hereafter the Employer or the College). There are approximately 70 full time faculty members and over 700 part-time faculty members. The College is a two year multi-campus institution, with five campuses located in Wayne County, Michigan. The Downtown campus is in downtown Detroit, the Downriver campus is in Taylor, the Eastern campus is on the east side of Detroit, the Northwest campus is on the northwest side of Detroit, and the Western campus is in Belleville. The full-time faculty members are each assigned to one of the campuses as a “home base campus.” Some of the campuses specialize in certain subject areas.

The College operates with three semesters: a 15 week Fall semester, from early September to mid-December; a 15 week Spring semester, from mid-January to early May; and a 12 week Summer semester, from mid-May to early August. The selection of classes by the faculty normally occurs three or four months before the beginning of the semester. There are usually fewer classes offered in the summer semester than in the fall and spring semesters. Full time faculty members are not required to teach during the summer semester, but can receive “overload” pay for teaching in the summer.

This grievance involves the selection and assignment of classes for the 2011 summer semester. Article XV of the parties’ contract sets out a detailed procedure for the selection and assignment of classes, basically on a seniority basis, starting with the full time faculty. The initial selection of classes for the 2011 summer semester took place on February 10, 11 and 14, 2011. The number of classes which were available for selection

by the faculty was significantly less than in previous summers. It was undisputed that the College was facing financial difficulties due to the recession and falling tax revenues. The Union acknowledged that the College had the right to decide how many classes to offer.

In some subject areas, such as physics, there were no classes offered; in other subject areas, such as history and economics, the only classes which were offered were online classes, which not all faculty members are certified to teach. As a result, some full-time faculty members and many part-time faculty members were not able to select as many classes as they normally did. The Union and individual faculty members complained to the administration about the situation, and asked that more classes be added to the schedule.

As students began to register for classes, they also complained about the lower than normal number of classes. A group of students expressed their concerns at a meeting of the College's Board of Trustees. On March 4, 2013, the Chancellor of the College advised the President of the Union that the College would be able to add some additional classes, based on student demand and an updated budget report. The College began adding classes in mid-March, and continued adding classes through late May. The summer semester started on Monday, May 16, 2011.

A net total of 103 classes were added to the schedule, which was a 23 percent increase over what had initially been offered. It was normal to add and drop some classes, but this was far more than normal.

Grievance

The grievance was filed on May 4, 2011. It asserted that Article XV, Section I, had been violated, and gave the following statement of facts:

After the scheduled class selection for summer 2011 the college continued to add additional classes. Additional classes were not offered to full time faculty and/or over 100-hour part-time faculty.

The grievance requested the following relief:

College follows the contract. Summer 2011 class selection redone to follow the contract or college will pay faculty for all classes denied for F.T. and P.T. faculty over 100 hrs.

1. The federation is immediately supplied electronic copy of the work assignment (class assignments etc) of federation members.
2. Updated seniority lists.

Grievance Response

The College denied the grievance, in a written response dated July 8, 2011, as follows:

Grievance denied. The Federation has identified none of its members purportedly aggrieved. The College takes all appropriate action and exercises reasonable diligence to ensure that the Contract is followed whenever classes are added to the schedule. The adding of grievants would be untimely. The District reserves the right to supplement this response during the course of the grievance process.

Contract Provision

Article XV, Section I, the contract provision cited in the grievance, reads as follows:

Full-time or part-time Faculty members with more than one hundred (100) hours shall be entitled on a seniority basis to select any classes which do not appear on the schedule at the time of selection and may bump from such courses any part-time Faculty members with fewer than one hundred (100) hours who have selected such classes.

The arbitration hearing was held on September 5 and 21, 2012. Nine witnesses testified on behalf of the Union: Wallace Peace, Antonina Brem, Bruce Ewen, Eileen Martin, Mary Haynes, Mary Perlman, Lillian Craig, Mary Christine Ellis, and Beatrice

Talpos. Two witnesses testified on behalf of the College: Karen Jackson and Ronald Harkness. The parties submitted 28 exhibits, which included seniority lists, lists of the added classes, printouts of the original class schedule and the final class schedule, and other documents. The Union presented claims for twelve faculty members.

Exhibit 11 shows when the classes were added. An especially large number of classes were added on March 28th (20 classes), April 8th (40 classes), and May 13th (39 classes). On other days, a handful of classes might be added. Classes for particular subject areas were added over a period of weeks, not all at once. For example, English classes were added on March 24, March 28, April 6, April 8, May 13, May 16, May 19, and May 24. The original schedule had only offered 32 English classes; 29 more were added after the initial selection.

The College did make an effort to honor seniority. On April 6, 2011, Dr. Bulger, the Vice Chancellor of Educational Affairs, sent an email to all faculty which included the following: “There are classes that need faculty. If you know persons who may be interested, ask them to leave their contact information at edaffairs@wcccd.edu.” The Union President responded to Dr. Bulger with an email which included the following: “It is assumed you will follow Article 15, Section I, of the Master Agreement in the assignment of any new classes. I feel confident the Discipline Chairs can help with this.” After receiving that email, Dr. Bulger sent another email to the faculty which included the following: “Please be advised that full time or part time faculty members with more than one hundred (100) hours shall be entitled to the unassigned Summer 2011 classes on a seniority basis.” (Exhibits 15 and 10)

Karen Jackson was the Associate Vice Chancellor of Transfer Programs at that time. She testified concerning her efforts to find faculty to teach the added classes and to apply seniority while doing so. She was responsible for the general education courses which are taken by students who plan to transfer later to four year colleges. This includes subject areas such as English, biology, humanities, sociology, and sciences. She testified that she spoke on a daily basis with the discipline facilitators in the various discipline areas. She organized lists which ranked the faculty by seniority. She also testified that there came a point, as classes continued to be added, when it became impossible for her to keep up with it (TR day 2, p. 140). Also, as the start of classes approached, it became a higher priority to simply find faculty members who could teach the classes.

One of the points of greatest contention between the parties was the “no drop” rule which was applied by Dr. Bulger. The rule was that a faculty member who dropped a class would not be allowed to add a different class. The rule had been applied in several previous semesters. Beatrice Talpos, the Union grievance chair for the past few years, testified that the Union had “grouched” about the rule in meetings with the administration, but had not filed a grievance over it (TR day 2, p.56). She testified that it became a big issue for this summer semester because full time faculty and high seniority part time faculty were affected by it. In the past it had had only affected a few people, and the parties had been able to work something out (TR day 2, p. 59).

Karen Jackson testified that she believed the purpose of the rule was to prevent a chain reaction of faculty dropping and adding classes (TR day 2, p. 150). She testified that many of the part time faculty members also taught at other schools or had full time jobs

elsewhere, and this made it difficult to find a replacement if a faculty member dropped a class. (TR day 2, p. 150-151)

Six of the affected faculty members testified about their individual circumstances. Those specifics will be addressed in the remedy portion of this decision.

SUMMARY OF THE PARTIES' POSITIONS

It was the Union's position that the College had acknowledged its responsibility to honor seniority rights, but had failed to do so. It was also the Union's position that Article XV, Section I, did apply to the facts of this case. The Union argued in particular that the College's insistence on applying its "no drop" rule was inconsistent with Article XV seniority rights, and violated the contract. It was the Union's position that the grievance and the individual claims were timely. It was also the Union's position that the appropriate remedy would be to compensate the individuals for the classes they should have been able to select.

It was the College's position that it had made every reasonable effort to fill the additional classes on a seniority basis. The College argued that Article XV, Section I was never intended to address this type of situation, but had been designed to remedy a different problem, the intentional holding back of classes. The College also argued that the grievance was untimely, and the claims of some of the individuals were untimely. The College also argued that several of the individual claims did not fall under Article XV, Section I. In addition, the College argued that any remedy should be limited to giving the affected faculty member an opportunity to teach an additional class in a future semester.

DISCUSSION AND DECISION

Timeliness

This decision will address the timeliness issue first. The Grievance Procedure, in Article XI, includes several provisions which are pertinent to this issue. Section B includes the following:

A “grievance” shall mean an allegation by an employee in the Bargaining Unit, by a Group of Employees, or by the Federation on its own behalf that there has been an alleged violation, misapplication or non-application of any provision of this Agreement or any disciplinary action.

Paragraph C (1) gives the following time deadline:

If the grievance remains unresolved after informal discussion, the Federation may submit a written grievance no later than twenty (20) working days after the Grievant’s knowledge that a grievance exists.

Paragraph G (4) includes the following definition:

For purposes of this Agreement, a “working day” shall be defined as any weekday, Monday through Friday, excluding holidays and any other days on which the College is closed officially.

The grievance in this case was filed on May 4, 2011. That was a week and a half before classes started for the summer semester. It was also the week after the College’s Spring Break, which included the days from April 22 through 28 (Appendix A). Excluding these Spring Break days, and counting back 20 working days, means that the grievance would be timely for events which became known to the Grievant on or after March 30, 2011.

Most of the classes which were added to the schedule were added after March 30. Dr. Bulger’s emails to the faculty were sent the week after that, on April 4. Those emails asked faculty members to respond by April 8, and indicated that the full-time faculty members and over 100 hours part-time faculty members were entitled to the classes “on a

seniority basis.” Karen Jackson’s records show that she collected and organized information from the responses through about April 20 (Ex. 28).

Based on this time record, it is my conclusion that the grievance was timely in connection with the classes which were added to the schedule after the original selection. The grievance procedure allows grievances to be filed on behalf of a group of employees. It does not require that all the individuals be specifically identified at the time a group grievance is filed. This grievance was filed on behalf of “all full time faculty and all faculty over 100 hours of seniority.” (Ex. 2) The Union witnesses described the process the Union used to solicit information from its members and filter the responses in order to determine from among competing responses who had the highest seniority (TR day 2, p. 53). With over 100 classes being added and over 700 faculty members this was not a simple task. It is my conclusion that the grievance was timely as a group grievance.

Contract Interpretation

The main issue in this case is the interpretation and application of Article XV, Section I. This section reads as follows:

Full-time or part-time Faculty members with more than one hundred (100) hours shall be entitled on a seniority basis to select any classes which do not appear on the schedule at the time of selection and may bump from such courses any part-time Faculty members with fewer than one hundred (100) hours who have selected such classes.

This provision is found within Article XV, which is entitled Assignments. Article XV takes up 11 pages of the parties’ contract, and is the longest article in the contract. This is an indication of how complex the assignment process is, and an indication of how important it is to the parties. It is not necessary to quote all of Article XV in this decision. Article XV sets forth a detailed procedure for the faculty to select class assignments, in

round robin fashion, based on seniority. Basically, the full time faculty select first, followed by the part time faculty who have accumulated over 100 contact hours of seniority, followed by the part time faculty with less than 100 contact hours of seniority.

The College argued that the provision cited in the grievance, Article XV (I), had nothing to do with adding classes as occurred in this case, and that the grievance should be denied on that basis. The Union acknowledged that this provision had been added to the contract in order to curtail a practice known as “hiding classes” (TR 2, p. 63). It is my conclusion that the language in Article XV (I) is broad enough to cover classes which are added to the schedule after the initial time of selection. Its main purpose may have been to curtail the intentional “hiding” of classes. However, the contract language is not written that narrowly. It applies to “classes which do not appear on the schedule at the time of selection.” The plain meaning of this language is broad enough to cover classes which are added at a later date as well as classes which may have been intentionally hidden or otherwise left off the schedule.

The College argued that it did everything that could reasonably be done under the circumstances to honor and apply seniority. The parties agreed that the 2011 summer semester was highly unusual. There was no system in place for handling this type of situation, with over 100 classes being added to the schedule after the initial selection. Karen Jackson made a valiant effort. However, as classes continued to be added on an almost daily basis, and as faculty members continued to respond, it became impossible to keep up.

The fact that the College made a real effort to apply seniority does not, however, completely satisfy its contractual obligation. I agree with the College that re-doing the

whole selection process was not a viable option, at least as of May 4, 2011, when the grievance was filed. I do think, however, that the College could have involved the Union more in the process. This was uncharted territory, an unusual and difficult situation which directly involved a key provision of the contract, namely, seniority. The parties might have been able to resolve most or all of the issues if they had worked more closely together.

The basic issue is how to interpret and apply Article XV(I) under the facts of this case. First, it is significant that XV(I) does not set out any specific procedure or mechanism. It does not require the College to follow the full complex procedure which is required for the initial selection of classes. Nor does it require the College to contact each faculty member in strict seniority order. Instead, it states that full time faculty members and part time faculty members with more than 100 hours “shall be entitled on a seniority basis to select” any such classes, and it states that they “may bump” any part time faculty members with fewer than 100 hours who have selected such classes. This at least implies some action on the part of the faculty members to select and bump when they have the right to do so.

Article XV makes distinctions between full time faculty members, who are covered in Section A, and part time faculty members, who are covered in Section B. Specifically, Section A(2)(b), which applies to full time faculty, includes the following sentence:

All classes canceled and subsequently re-added or all new classes added shall be offered to Faculty for selection.

In contrast, Section B(1)(b)(3) has a somewhat different provision for part time faculty:

The appropriate Academic Administrator shall make reasonable attempts to offer remaining or subsequently available class assignments to qualified part-time

Faculty members, on a seniority basis, who did not acquire a teaching assignment before making an assignment to other qualified persons.

It is my conclusion that the difference between these provisions means that the standard for part time faculty members is somewhat lower than that for full time faculty members, in requiring only that “reasonable attempts” be made to offer classes to them on a seniority basis.

One of the basic principles for interpreting contracts, including collective bargaining agreements, is sometimes called the “Rule of Reasonableness.” This is summarized as follows in *The Common Law of the Workplace: the Views of Arbitrators* (2nd ed., BNA, 2005), at §2.13:

An interpretation giving a reasonable meaning to contractual terms is preferred to an interpretation that produces an unreasonable, harsh, absurd, or nonsensical result. Good faith is an element of reasonableness.

As applied to this case, it is my conclusion that it was reasonable and acceptable under Article XV(I) for the College to notify the faculty by email that additional classes would be available, and to expect interested faculty members to at least respond if they wanted to be considered. The evidence showed that there were problems with the email system from time to time, and it was not guaranteed that every faculty member would be reached. Nonetheless, under the circumstances, it was a reasonable way to proceed under XV(I). As mentioned above, Article XV(I) does not require that every member of the faculty be individually contacted in seniority order. The Spring semester was still in session during most of the time that classes were being added. I think it is fair to assume that most of the faculty members were aware of the situation, due to the emails and the controversy over the reduced number of classes.

No Drop Rule

Several of the individual claimants were not allowed to select one or more of the added classes, because to do so they would have needed to drop a class they had previously selected during the original selection process.

The testimony indicated that this “no drop” rule had been applied in several previous semesters, but it had not affected many people. The Union had protested the rule, but had not filed a grievance over it. The testimony also indicated that the “no drop” rule was discussed by the parties during the processing of this grievance (TR 2, p 82-83).

First, it is my conclusion that the Union did not acquiesce in the “no drop” rule, or waive its right to grieve concerning the rule. The Union did put the College on notice that it objected. It is not necessary to file a grievance every time there is a disagreement, in order to avoid a waiver. In the past, the parties have applied their own “rule of reasonableness” when just a few classes have been added and the impact on seniority has been minimal. In this case, with many more classes being added, the rule did have a significant impact.

I can understand the practical reasons for applying the rule, at least in the last few weeks before classes begin. Nonetheless, in this case, applying the rule conflicted with Article XV(I). Article XV (I) states that the full time faculty and over 100 hours part time faculty “shall be entitled on a seniority basis to select any classes which do not appear on the schedule at the time of selection...” The no drop rule should have yielded to this contract requirement, particularly in light of the unusually large number of added classes. Seniority rights were significantly impacted when such a large number of classes were not included on the original schedule.

Remedy

In its post hearing brief, the Union presented information concerning twelve faculty members, some of whom were full time and some of whom were part time. The contract does make distinctions between full time and part time faculty members. Article XV, Section A(4) provides as follows for full time faculty who have a grievance concerning the assignment process:

Formal Grievances arising from this provision shall be initiated as soon as possible, but no later than ten (10) working days after the first day of regularly scheduled assignments.

In contrast, Section B(1)(e) for part time faculty reads as follows:

Formal grievances arising from the above provisions in this section shall be initiated as soon as possible but no later than ten (10) working days after the first day of regularly scheduled classes. The only relief that shall be required of the Employer in any resolution of these grievances shall be the placement of the Faculty member in an assignment for the next regular semester.

It is my conclusion that it is appropriate to consider and apply this distinction in fashioning the remedy in this case.

My determinations concerning the remedy are based on the evidence which was presented, and are based on the preponderance of the evidence. It may be that there is information which was not presented at the hearing which might have been pertinent. Nonetheless, it is my conclusion that sufficient information was presented to make these remedy determinations.

Full Time Faculty

Antonina Brem is a full time biology instructor who teaches BIO 155 (Intro Biology) and Bio 295 (Microbiology). She testified at the arbitration hearing that she usually taught two overload classes in the summer. Her home base is the Northwest

Campus. The original selection schedule had very few science classes offered at the Northwest campus, even though Northwest is known as the science campus. Ms. Brem selected a Microbiology class at the Western campus because it was all that was available. She decided after discussing it with her department chairperson to drop the class, and did so early on so that the chairperson would have time to find a replacement. On March 28 and April 8 a large number of Biology classes were added at the Northwest campus. Ms. Brem told the chairperson she would like to add some of them, but he told her she could not because of the “no drop” rule. She had not previously heard of that rule. She pursued her request with Karen Jackson, who also told her she would not be allowed to add any classes due to the “no drop” rule. (TR day 1, pages 59-72) It is my conclusion that the no drop rule should not have been applied in this circumstance, and that Ms. Brem should have been allowed to teach the following classes which were added to the schedule on March 28, 2011:

56300 BIO 295 Microbiology Lecture at NW
56301 BIO 295 Microbiology Lab at NW

She had higher seniority than the faculty member who was assigned these classes. It is my conclusion that the appropriate remedy for her is for the College to compensate her for these classes at the contractual rate, which would be as summer overload classes.

Mary Perlman is a full time faculty member in English. Her home campus is the Northwest Campus. She testified that she normally teaches five classes in the summer. The initial selection only included 32 English classes, none of which were at the Northwest campus. She therefore selected (through a proxy) five classes at other campuses. She learned in early April that English classes had been added at the Northwest Campus, and requested to switch to those classes. Her request was forwarded to Karen Jackson, who

denied the request due to the “no drop” rule. Those classes were subsequently assigned to part time faculty members who had less seniority than she did. She submitted documentation at the arbitration hearing showing \$1,029.92 in damages do to time and expense of driving to the other campuses (TR day 1, pages 160-167; Exhibit 23). It is my conclusion that the College should compensate Mary Perlman for this \$1,029.92.

Mary Haynes is the senior of two full time faculty member in the Business Information Technology (BIT) discipline (per Exhibit 5), which is sometimes referred to as Business Information Systems (BIS). She testified that she was certified to teach all the OIS (Office Information Systems) classes, as well as the following Business classes: BUS 150, BUS 225, and BUS 240. At the time of her initial selection, she did not see any classes on the schedule for her. She did not pursue that with anyone. Exhibit 8 shows that there were in fact two BUS 225 classes and one BUS 240 class on the original schedule. It is my conclusion that this grievance specifically cited and asserted a violation of XV(I) concerning classes which were added after the initial selection. Therefore, I am not addressing whether there was a different problem with the BIT related classes at the initial selection. That would be a different grievance. Mary Haynes was later offered and accepted one of the added classes, an OIS 251 class, which she taught Monday and Wednesday, from 1:00 to 4:00 pm at the Downtown campus. The business related classes were not part of Karen Jackson’s responsibility. The record showed that there was considerable confusion in assigning some of the additional classes (Exhibits 18 – 21). It is my conclusion that as a full time faculty member Mary Haynes should have been offered and could have taught the following classes which were added to the schedule:

56288 BUS 225 Thursdays at the Western campus, 12:00 noon to 2:40 pm
56463 BUS 150 Fridays at Northwestern campus, 8:00 – 11:45 am

The College should compensate Mary Haynes for these two classes at the contractual rate.

Bhawatosh Bagchi is the only full time Physics faculty member. The initial schedule did not have any Physics classes, so he selected four math classes. He did not testify at the arbitration hearing. There was somewhat conflicting testimony at the hearing concerning his circumstances. Wallace Peace testified that some physics classes were added, but because of the “no drop” rule, Mr. Bagchi had not been allowed to select them (TR day 1, page 46). Karen Jackson testified that an exception had been made for him, but he had decided to keep the math classes instead (TR day 2, page 129). It is at least believable that an exception to the “no drop” rule was made for him, because the testimony did show that an exception was made for Wallace Peace. It is my conclusion that the preponderance of the evidence concerning him did not establish a violation or damages.

Part Time Faculty

Lillian Craig is a part time faculty member who teaches in the Business Information Technology (BIT) and Computer information Systems (CIS) discipline areas. She testified that she has taught all the OIS classes, plus BUS 225 and CIS 110. At the time for her initial selection, she was told that there were no classes available. As was the case with Mary Haynes, above, it is my conclusion that this grievance does not cover classes which were in fact on the initial schedule but were assigned to lower seniority faculty members. On May 16 at 2:55 pm Lillian Craig was sent an email advising her of three added BUS 225 classes. The email included the following; “Deadline to respond is immediate.” She saw the email and responded at 6:55 the next morning, selecting the following class: 56464 BUS 225 at Northwest campus, Fridays from 8:00 to 11:45 am

(Exhibit 25). However, she was told that the class had been assigned to someone else (TR day 2, p. 10). It is my conclusion that this was an unreasonably short time for response, which effectively undercut her right to select by seniority. Because Lillian Craig was a part time faculty member, her remedy pursuant to Article XV, B.1.e is limited to being given an assignment in a subsequent semester. To make this remedy effective, it is my conclusion that she should be given priority of selection of one class at the next time of class selection. This is similar to the priority given under Article XV, Section F.6.

Mary Christine Ellis is a part time faculty member, also in the Business discipline area. She normally teaches four classes in the summer. She testified that she tried to select the BUS 240 class which was on the original schedule (Downtown campus, 53284) but was told it was no longer available. She then selected and taught two other classes, Management 205 and Marketing 200 (TR 2, p 35). She later learned that the BUS 240 class was in fact assigned to a faculty member who had far less seniority than she did. When Mary Ellis had inquired during the initial selection as to who had been assigned that class, she was advised by Karen Jackson that there was no way to tell (TR day 2, p. 35). I can appreciate that it is important that this type of information be available during the selection process so that the parties can implement Article XV in an orderly and timely manner. Nonetheless, as discussed above, it is my conclusion that this assignment which was made at the time of the initial selections is not covered by this grievance, because it does not involve classes which were added later.

Eileen Martin is a part time faculty member in Law Enforcement (LEA), Corrections (COR), and Criminal Justice (CJS). She has taught at the College for thirty seven years. She testified that she usually teaches two or three classes in the summer. At

the initial selection time, there were no classes available for her. She testified that she was not offered any of the added classes. (TR day 1, pages 128-137) The Union asked that she be compensated for a Corrections 100 class that was added at the Downtown campus (#56445). That class was assigned to a part time faculty member with less seniority than her. The College did not present evidence that “reasonable attempts” had been made to offer her this class (per XV.B.1.b.3). It is my conclusion, consistent with the discussion above for part time faculty, that she should be given priority for selecting a class at the time of the next class selection.

John Kazanjian is a Math faculty member with high seniority as a part time retiree. He did not testify at the arbitration hearing. Bruce Ewen testified on the first day of the hearing that John Kazanjian had complained to the Union that he felt he had been passed over (TR day 1, page 122). Exhibit 28 shows that he responded on April 7 and expressed an interest in teaching any Math courses. Karen Jackson put him on the list, and showed his seniority as 746 hours. The College did not give any explanation for why a part time faculty member with less than 100 hours was assigned a Math 100 course instead of him (#56475). Based on the preponderance of the evidence, it is my conclusion that he should have been offered this class. He should be given priority to select a class during the next selection. It is also my conclusion that the argument made in the Union’s brief concerning two Math 105 classes was too speculative.

Paul Manning has the highest part time seniority in economics. He did not testify at the arbitration hearing. Bruce Ewen, who is the only full time economics faculty member, testified concerning his circumstances (TR day 1, pages 120 – 123). There were no economics classes at the initial selection. Later, on April 8, an ECO 101 class was

added at the Downriver Campus (Ex. 11). That course was assigned to a part time faculty member who had far less seniority than Paul Manning (Ex. 12 and 6). The College did not provide any explanation for why this would have occurred. It is my conclusion, based on the preponderance of the evidence, that Paul Manning should have been offered this course. He should be given priority to select a class during the next selection.

Ida Short is a part time English faculty member. She did not testify at the arbitration hearing. The Union argued that she should have been offered four of the English 119 or 120 classes which were added to the schedule, since nine of those classes were assigned to faculty members with less seniority. Exhibit 28 includes the information which Karen Jackson compiled for the added English classes. This exhibit shows that classes were assigned to the higher seniority English teachers who had responded. Of the nine classes identified by the Union, eight were assigned to faculty members who had responded and were being tracked by Karen Jackson. Ida Short's name was not on Karen Jackson's list. It is my conclusion, based on the preponderance of the evidence, that the College did meet its burden of showing "reasonable attempts" in connection with these English classes. Therefore no remedy is awarded.

The Union argued in its brief that Marie Lumpkin and Jennifer Shelton, who are retirees with over 100 hours in Open Studies English (OSE), should have been assigned classes ahead of part time faculty members with less than 100 hours of seniority. This is similar to the issue presented in the previous paragraph. Neither individual testified at the arbitration hearing. The College did present evidence by way of Karen Jackson's testimony and exhibit 28 that seniority was used in assigning the OSE classes. Their names are not on the list, and no evidence was presented that they had responded. Based

on the preponderance of the evidence, it is my conclusion that the College did meet its burden of showing that “reasonable attempts” had been made, in relation to these part time faculty members. No remedy is awarded for them.

In summary, as discussed above, it is my conclusion that the grievance was filed on a timely basis; that Article XV, Section I, does apply for the classes which were added; that the “no drop” rule should not have been applied for the added classes; and that based on the evidence presented some of the individual faculty members are entitled to a remedy.

The grievance is granted in part.

A handwritten signature in black ink, appearing to read "Kathleen R. Opperwall". The signature is written in a cursive, flowing style.

Dated: March 27, 2013

Kathleen R. Opperwall, Arbitrator