

reported off well past the start of the September 10, 1993, first shift, that the receptionist had to ask the Grievant if he was sick (there being no firm basis in the record for not accepting the truth of her account), and his then not indicating if he had a doctor's appointment are seen as inconclusive regarding the validity of the Dr. Saltz slip; this, nevertheless, is strongly suggestive of a nonchalant attitude toward his fundamental employee obligation to regularly appear for work on time—especially against the backdrop of the Grievant twice being late for work that same week after having just returned from a five day disciplinary suspension for excessive absenteeism where he was given a discharge ultimatum. Accordingly, it is strongly felt that the Grievant still hasn't gotten the message that he is on the thinnest of thin ice in this regard. Therefore, while reinstatement is required in this matter under the just cause standard, an award of back pay and lost benefits would be inappropriate.

Based upon all of the foregoing, it is held that the instant grievance is one which is meritorious and, therefore, is sustained. Accordingly, the Company is directed to immediately reinstate the Grievant to his former position. Back pay and lost benefits are denied.

AWARD

The grievance is sustained as herein provided.

SOUTH SUBURBAN COMMUNITY COLLEGE

Decision of Arbitrator

In re SOUTH SUBURBAN COMMUNITY COLLEGE (South Holland, Ill.) and COOK COUNTY COLLEGE TEACHERS UNION, July 25, 1994
Arbitrator: Lamont E. Stallworth

WAGES

— Adjunct faculty — Employee status — Course load >100.45 >100.01 >100.0783

College that assigned classes of suddenly ill colleague to two adjunct faculty members, who previously taught about nine credit hour equivalents (CHEs) violated collective-bargaining contract when it assigned one of colleague's laboratory periods to third faculty member rather than to

grievants, and paid grievants for their 14.93 CHEs on "additional services" salary schedule, where college did not deny that purpose was to avoid assigning them "normal course load" of 15 CHEs, which would entitle them to compensation and all other rights and benefits of full-time faculty member, it could have hired them with formal understanding that fulltime status would be limited to semester in question, it was responsible for not requiring them to hold office hours, as required of fulltime staff, and ruling comports with prior award concerning temporary fulltime position.

Appearances: For the employer — Barbara Goodman and Daniel Cannon, attorneys. For the union — Gilbert Feldman, attorney.

ADJUNCT FACULTY

Issue

STALLWORTH, Arbitrator: — The Parties submitted the following issue(s) to the Arbitrator:

1. Whether the College violated the Collective Bargaining Agreement in Spring 1993 Semester by paying Tammi Huggins and Sandra Bushor-Gardner under the Additional Service Salary Schedule rather than under the Full Time Salary Schedule?
2. If so, what is the appropriate remedy?

Relevant Contract Language

ARTICLE I RECOGNITION

Section 1.1

The Board recognizes the Association as the sole and exclusive bargaining agent for all faculty members as defined herein, specifically excluding the following:

All Part-Time Employees.

The term "faculty member" shall mean College faculty members with a normal load as set forth in this Agreement and paid in accordance with the salary schedule set forth in this Agreement, as well as Coordinators, Counselors, Librarians, the Director of Placement and the Audio Visual Director, who are employed on a full-time basis and who are paid in accordance with the salary schedule set forth in this Agreement.

Faculty members shall, in accordance with applicable College policy, schedule a minimum of five (5) hours per week as and for-office hours. At least one (1) office hour will be scheduled each day a faculty member has classes. The last day of scheduled appointments for counselors and librarians, except for evening counseling, shall be the last day of examinations each semester. Similarly, the last day for office hours for counselors and librarians shall be the last day of examinations for each semester.

The normal load, as defined herein, shall be fifteen (15) credit hour equivalents (che's), except as hereinafter provided:

EMPLOYMENT AND TENURE

Section 9.1

Before a full-time bargaining unit position covered by this Agreement is filled, it shall be advertised to faculty members before it is advertised to persons not covered by this Agreement. If a full-time administrative position is advertised, it shall be advertised to faculty members at the same time that it is advertised generally. Notices for full-time positions covered by this Agreement shall include the necessary qualifications, duties, and salary schedule for the position. Nothing herein shall be construed to (1) require the Board to fill any such positions, or (2) require an individual who applies for a position to accept such position if it is proffered.

Section 9.2

Each department shall form a committee of faculty members to assist in the interviewing of applicants for positions covered by this Agreement. Additionally, each department shall adopt a written rotation plan used to involve no more than three (3) faculty members to serve on the committee for interviewing applicants for any one position. In the event faculty members determine they cannot serve on a committee, faculty members shall be re-positioned on the rotation plan just as if faculty members had served on the committee.

Background

The facts in this matter are undisputed. Tammi Huggins has been employed as an adjunct faculty member in the Biology Department since 1988. Prior to the Spring 1993 Semester, Ms. Huggins was responsible for teaching credit hour equivalents ("CHE's") which varied from four and one-half to ten (10) CHE's per semester. Sandra Bushor-Gardner was employed as an adjunct faculty member in the Biology Department from 1990 until the Fall 1993 Semester, when she became a full-time faculty member. Prior to the Spring 1993 Semester at issue in this case, Ms. Bushor-Gardner taught approximately nine (9) or ten (10) CHE's per semester. As adjunct faculty, neither Ms. Huggins or Ms. Bushor-Gardner were members of the bargaining unit prior to the Spring 1993 Semester.

The pay of faculty adjuncts and their other working conditions are governed by college or administration rules. Adjunct faculty pay is based on a pay schedule applied to those who work less than 10.5 CHE's in a semester. An adjunct faculty member working 10.5 to less than 15 or more CHE's in a semester is paid based on the faculty members' additional services salary schedule, pursuant to administrative policy. Full time faculty members must teach at least fifteen (15) CHE's per semester, referred to as a "normal course load." This is set forth and defined under Article I, Section 1.1. It is

the College's practice to calculate the exact number of CHE's taught by the faculty. It is not the College's practice to round up or round down the CHE's taught by any faculty member.

Approximately one week prior to the beginning of the Spring 1993 Semester, the College was notified that Les Freeman, a Biology Department faculty member notified the College that he would be unable to teach any courses that semester as a result of medical problems. There were no full time faculty members available to teach Mr. Freeman's courses. The College asked Ms. Huggins and Ms. Bushor-Gardner to split Mr. Freeman's CHE's for that semester, thus requesting each to teach 14.93 CHE's. In order to prevent the Grievants from teaching a normal load, i.e. 15 CHE's, another faculty member taught one fifty (50) minute lab during the semester instead of each Grievant. Ms. Huggins and Ms. Bushor-Gardner did not exceed the maximum number CHE's of adjunct faculty member's teaching hours. An adjunct would be considered a full time teacher under the Agreement if he or she taught fifteen or more CHE's in a semester and would have to be compensated as a full time faculty member.

The Grievants agreed to and did teach 14.93 CHE's in the Spring 1993 Semester. They were not required to hold office hours, which faculty members are required to do, in accordance with the Collective Bargaining Agreement ("Agreement"). However, Ms. Bushor-Gardner did hold office hours. Both adjuncts were compensated on the faculty overload schedule, a higher wage scale paid for the teaching of additional courses.

The Union filed the instant grievance on May 13, 1993, alleging that the College violated Article 1, Section 1.1 of the Agreement by engaging two adjunct faculty members to teach the equivalent of fifteen (15) CHE's without giving them faculty member status, thus preventing them from receiving all of the rights and benefits of faculty members.

The instant grievance included reference to a previous grievance filed by Roseanne Michaels in 1987, involving an alleged violation of a Section 1.1. This matter was ultimately arbitrated. In that arbitration, *Thornton Community College v. Thornton Community College Faculty Association, et al.* (Berma decision, January 5, 1987), Arbitrator Herbert M. Berman held that a person hired by the College as a full time counselor for a six-week period, was a faculty member during that time period, pursuant to Section 1.1 of

the Agreement, and entitled to receive the salary paid to other full time employees. The relevance of the *Berman* award will be discussed in the Opinion section of this award.

The College filed a Step 1 Answer to the instant grievance on June 1, 1993, denying the grievance based on the assertion that Ms. Huggins and Ms. Bushor-Gardner had not been assigned a normal load (i.e. 15 CHE's) and therefore should not be considered as full time faculty members.

The Union appealed to Step 2 on June 14, 1993, and appealed to Step 3 on July 20, 1993. The College denied the instant grievance on July 26, 1993. The Parties could not resolve the instant dispute and the matter proceeded to arbitration. It is within this factual context that the instant dispute arises.

The Union's Position

The Union contends that the instant grievance should be sustained for several reasons. First, the Union asserts that the *Berman* award governs the instant dispute under the doctrine of *stare decisis*. The Union argues that Arbitrator Berman's award issued on January 5, 1987 is controlling on this issue. The Union points out that the College made no subsequent attempt to negotiate a change in the relevant contract language following the *Berman* award. Therefore, the Union concludes that the *Berman* award is part of the current Agreement.

The Union refutes any meaningful distinction between the *Berman* award and the present matter. The Union argues that the two cases cannot be distinguished simply because the grievant in the *Berman* award (Roseanne Michaels) was a counselor rather than a teacher, and that the normal loads of a teacher and counselor differed. The Union's position is that, just as Roseanne Michaels was considered by the College to work as a temporary replacement, even though she worked a "normal load" as a counselor, so too did the Grievants. Arbitrator Berman interpreted, applied and defined the term "normal load" as used in Section 1.1 of the Agreement. The Union argues that it is immaterial to the issue at hand that different bench marks are used for teaching and non-teaching faculty in determining their "normal load".

The Union further argues that it is not suggesting that the College round up the CHE's the Grievants taught from 14.93 to 15. The Union does not contest the College's practice of refusing to round off CHE's. Rather, the Union protests the College's use of

course splitting," another College practice, as a means of keeping adjunct faculty off of the full time salary schedule. The Union argues that the College used "course splitting" in order to schedule the Grievants for teaching 14.93 CHE's in one semester, rather than allowing them to teach a full 15 CHE's. The Union asserts it is the College's practice to allow "course splitting" among faculty members to prevent any faculty member from teaching more than twenty (20) CHE's in one semester, which would violate the contract. The Union notes that "course splitting" is a voluntary means of preventing full time faculty members from exceeding the maximum of twenty (20) CHE's per semester. The Union argues that course splitting should not be used by the College as a means of denying faculty their rights to be on a full-time salary schedule.

Finally, the Union rejects the College's argument that it would have violated Sections 9.1 and 9.2 of the Agreement if it had allowed the Grievants to teach a "normal load" without first advertising the vacant positions and interviewing faculty members.

The Union further notes that Section 9.9 of the Agreement provides that the College may grant a non-tenured faculty member a contract for an academic term, which may be non-renewed with notice 75 days prior to the conclusion of the contract term. The Union cites two examples of the College appointing an adjunct counselor to a full-time position in an emergency situation. Both Karen Simac and Roseanne Michaels were reduced to their adjunct positions at the end of the semester.

The College's Position

The College contends that the instant grievance should be denied for the following reasons. First, the College argues that the *Berman* award is not applicable to the instant case because that case involved a non-faculty member, whose sole responsibility was to work thirty-five (35) hours per week. The instant case, however, involves the question of whether the Grievants should have been considered faculty members, who have responsibilities in addition to teaching, namely to hold office hours. The College argues that the Grievants did not perform all of the duties of full time faculty member, because they were not required to hold office hours. The College also argues that the *Berman* award is distinguished from the instant matter because the grievant in that matter, Ro-

seanne Michaels, did perform all functions required of a counselor.

The College further argues that a past practice has developed since the *Berman* award, wherein adjunct faculty members who work more than ten (10) CHE's but do not exceed a "normal load" are compensated on the overload schedule. "Past Practice" is defined in the Agreement under Article XVII:

The parties agree that the following four (4) requirements must exist for an alleged past practice to qualify as a bona fide, binding practice, whether under the provisions of this Agreement or at any time prior thereto.

A. The asserted practice must be reasonably consistent;

B. The asserted past practice must be clearly stated in writing or clearly articulated in an ascertainable manner;

C. The asserted past practice shall be acted upon; and

D. The asserted past practice must be readily ascertainable over a reasonable period of time as a reasonable fixed and established practice accepted by both parties to this Agreement.

The College cites several examples of its practice of compensating adjunct faculty on the overload schedule since the *Berman* award, and asserts that this practice is binding upon the Parties pursuant to Article XVII of the Agreement.

The College further attempts to distinguish the instant case by noting that the Arbitrator *Berman* did not consider or address the Sections 9.1 and 9.2 arguments raised by the College in the instant matter.

The College argues that Sections 9.1 and 9.2 of the Agreement do not allow for the hiring of full time faculty members without first advertising the position, forming a Selection Committee and interviewing applicants. The College had only one week to fill Les Freeman's position, and that was insufficient time for the College to hire a new faculty member to replace Les Freeman for the Spring 1993 Semester. The College argues that if it had hired the Grievants to teach fifteen (15) CHE's and paid the Grievants as full time faculty members for the Spring 1993 Semester, it would have violated the hiring procedures set out in Sections 9.1 and 9.2 of the Agreement.

The College contests the Union's position that the Grievants should have been considered full time faculty members in this emergency situation. The College argues that the Union's position would allow emergencies to dictate who becomes a member of the faculty's collective bargaining unit. Furthermore, if the College had employed the Grievants as full time faculty members for that semester, this

would have been a unilateral hiring decision; while Sections 9.1 and 9.2 allow for faculty participation in the hiring process.

The College asserts that it may not hire adjunct faculty members merely for one semester or for a temporary period because it is under no contractual obligation to provide notice of nonrenewal to faculty members. Furthermore, the College asserts that it is under a statutory obligation to reasonably renew or refuse to renew a faculty member's contract. The College implied in its post-hearing brief that, if it had contracted with the Grievants and then refused to renew their contracts, that particular decision may not have been construed as reasonable.

The College further argues that adjusting CHE's to conform to the requirements of the contract is a common past practice among the faculty members as well as the administration. The College asserts that the faculty routinely divide the amount of teaching they perform in order to comply with the requirements of the contract that limit the amount of CHE's any one person may teach per semester, i.e. 20 CHE's.

The College's final argument is that the Grievants were compensated for the precise number of CHE's that they taught consistent with College practice, and that the composition of the collective bargaining unit was not disturbed, because Ms. Bushor-Gardner was indeed hired as a full-time faculty member to replace Les Freeman after he gave notice of early retirement.

Opinion

In the instant case the Grievants were scheduled to teach a normal load, but were not treated as full time faculty members for salary purposes because the College shortened each Grievant's teaching schedules by one class period of 50 minutes. The Parties submitted the following issue(s) to the Arbitrator:

1. Whether the College violated the Collective Bargaining Agreement in the Spring 1993 Semester by paying the Grievants under the Additional Service Salary Schedule rather than under the Full Time Salary Schedule?

2. If so, what is the appropriate remedy?

The Arbitrator has considered the testimony, evidence and arguments presented by the Parties and concludes that the College violated the Contract by paying the Grievants under the Additional Service Salary Schedule rather than under the Full Time Salary Schedule. The Grievants shall be made whole and be paid for the Spring 1993 Semester pursuant to the full time salary schedule.

The College learned one week prior to the Spring 1993 Semester that faculty member Les Freeman would be unable to teach his normal course load (15 CHE's) that semester. The College did not have time to hire a replacement pursuant to Article IX, Employment, and Tenure. The College asked the Grievants, adjunct faculty members, to split Mr. Freeman's course load plus teach their own courses. The Grievants should have taught fifteen (15) CHE's each, but the College reduced each of their CHE's by not allowing them to each teach one fifty (50) minute lab during the semester. The College failed to provide evidence of a legitimate business reason for reducing the Grievants' respective course loads by one 50 minute lab period. The College did not present evidence during the hearing to dispute or deny that the Grievants were intentionally scheduled to teach 14.93 CHE's rather than fifteen (15) CHE's in order to avoid paying them under the Full Time Salary Schedule.

The Union argues that the *Berman* award is controlling in this matter and this Arbitrator agrees. In that case, Arbitrator Berman determined that the College violated the Contract by classifying Roseanne Michaels, the grievant in that case, as a part time employee when she was required by the College to work the same number of hours as a full time employee. The Contract language defining part time and full time employment, Article I, Section 1.1, remains unchanged since the *Berman* award issued in 1987. In the instant case, the College required the Grievants to carry a normal load while not providing the benefits that full time faculty members receive. The College elected not to require the Grievant to hold regular office hours as other full time faculty are required to hold.

The College argues that the *Berman* award should be distinguished from the instant dispute because the Grievant in the *Berman* award did work full time as a counselor without being compensated as a full time employee. The College argues that the Grievants in the instant case, however, were not employed in a full time capacity. The Grievants each taught 14.93 CHE's. Furthermore, the Grievants were not required to maintain office hours like full time faculty members. The College's assertions are accurate. However, the College intentionally limited or restricted the Grievants to teaching 14.93 CHE's rather than fifteen (15) CHE's in order to prevent them from receiving full time salaries. The Arbitrator notes that the College is respon-

sible for not requiring the Grievants to hold office hours. Accordingly, the Grievants should not suffer the loss of salary that they otherwise would have earned during the Spring Semester but for the College's decision not to require them to hold office hours.

The College argues that the *Berman* award can be distinguished from the facts of the instant case because the *Berman* award did not address Sections 9.1 and 9.2 of the Contract. The College asserts that it would have violated those Sections if it had hired the Grievants as full time faculty members for the Spring Semester. The Undersigned Arbitrator does not find this argument to be persuasive. The College asserts that pursuant to Section 9.1 of the Contract, it would have had to advertise the two positions to all bargaining unit members before offering full time positions to the Grievants, who were not members of the bargaining unit. The College also argues that it did not have time to form a committee to assist in a formal interview process, pursuant to Section 9.2.

The College has properly construed the plain meaning of the Contract language. However, the College did not have a full time bargaining unit position open at the time it assigned full course loads to the Grievants. Mr. Freeman did not timely relinquish his position prior to the Spring semester. At the time the College offered the Grievants the opportunity to split Mr. Freeman's courses, the College was not in a position to replace Mr. Freeman. As discussed in the *Berman* award, this situation effectively created a temporary full time faculty position. Therefore, Sections 9.1 and 9.2 are not relevant to the issue of whether the College was obligated to pay teachers who were responsible for normal teaching loads.

The College also asserts that a past practice has developed since the *Berman* award wherein adjunct faculty members who work more than ten (10) CHE's but do not exceed a "normal load" are compensated on the overload schedule. In the Arbitrator's opinion, this past practice does not excuse the College from its obligation to compensate employees for their full time work performed by "full time temporary faculty members." The Arbitrator also reasons that the College benefited by the full time services of the Grievant; therefore the College should compensate the Grievants on a full time basis according to the Contract.

The College further asserts that it could not have simply hired the Grievants for one semester and paid them as full time faculty members for one se-

mester for several reasons. First, it is under no obligation to provide notices of non-renewal once the Grievants were considered full time faculty members. The concern the College expressed during the hearing is that the Grievants could have continued to work as full time faculty members after the Spring Semester without any input from the faculty regarding their qualifications for the positions. In the Arbitrator's opinion, this argument is merely speculative. The College could have hired the Grievants with the express intention and understanding of hiring them as "temporary full time faculty members" for that one semester only.

The College similarly asserts that it must have a reasonable basis for the non-renewal of a faculty member. The College asserts that if it had hired the Grievants as full time faculty members, it may not have been able to terminate them at the conclusion of the Semester. This argument is also speculative. The College could have hired the Grievants and formally expressed to them at the time of hire that their full time status would be limited to the Spring Semester only. This would have also been in harmony with the *Berman* award wherein that arbitrator effectively recognized the propriety of hiring "temporary full time faculty" in emergency situations.

AWARD and REMEDY

For all of the above reasons, the Arbitrator concludes that the College violated the Collective Bargaining Agreement in Spring 1993 Semester by paying the Grievants under the Additional Service Salary Schedule rather than the Full Time Salary Schedule.

Grievance sustained.

The Grievants shall be compensated as full time faculty members for the Spring 1993 under the Full Time Salary Schedule. This monetary remedy should be the difference between what the Grievants were paid under the Additional Services Salary Schedule and what they should have been paid under the Full Time Salary Schedule. This shall be made in a lump sum payment.

The terms of this award shall be fulfilled within thirty (30) days of the date of this award. The Arbitrator shall retain jurisdiction over the remedy for a period of forty-five (45) days.

CBS INC. —

Decision of Arbitrator

In re CBS INC. and DIRECTORS GUILD OF AMERICA INC., Case No. 3198, October 10, 1994
Arbitrator: Thomas Christopher

WORK ASSIGNMENTS

— Bargaining-unit work — Parol evidence rule — Letter agreement
▶117.340 ▶24.108 ▶24.111

Employer did not violate letter agreement or collective-bargaining contract when it assigned stage manager duties to non-bargaining-unit employees, despite union's claim parol evidence rule precludes use of oral agreements to alter plain meaning of letter agreement that expressly requires that only directors be permitted to do work of stage managers, where evidence shows that intent behind letter agreement was to prohibit assigning stage manager work only to other unions.

Appearances: For the employer — David M. Pill, general attorney. For the union — Beverly S. Ware, associate general counsel.

BARGAINING-UNIT WORK

Issue

CHRISTOPHER, Arbitrator: — At the hearing the parties could not agree on a statement of the Issue, and the parties empowered the Arbitrator to frame the Issue upon the close of the record. Each party presented its version of the Issue as follows:

GUILD: Whether the performance of Stage Manager duties on "Rescue 911" segments by persons other than Guild represented Directors and Stage Managers constituted a breach of the Rescue 911 Agreement. If so, what is the appropriate remedy?

COMPANY: Whether CBS violated the Rescue 911 Agreement and the applicable CBS-DGA Collective Bargaining Agreements by not assigning a Stage Manager on certain location segments of "Rescue 911". If so, what is the appropriate remedy?

After considering the entire record the Arbitrator concludes that the Issue is:

Did the Company violate the Rescue 911 Agreement or the DGA-CBS Network Stage Managers Agreement when the Company assigned Stage Manager duties on "Rescue 911" segments to employees other than Stage Managers or Associate Directors? If so, what is the appropriate remedy?

Relevant Sections of the Contract

1990-1993 DGA-CBS AGREEMENT