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| <p>IN THE MATTER OF ARBITRATION BETWEEN</p> <p>MINNESOTA STATE COLLEGE FACULTY</p> <p style="padding-left: 40px;">(UNION)</p> <p>and</p> <p>MINNESOTA STATE COLLEGES AND UNIVERSITIES</p> <p style="padding-left: 40px;">(EMPLOYER)</p> | <p>}</p> | <p>DECISION AND AWARD</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">ARBITRATOR</p> <p style="text-align: center;">BMS CASE: IT-11-02</p> |
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| ARBITRATOR: | Eugene C. Jensen |
| DATE AND LOCATION OF HEARING: | June 18, 2013 MNSCU Offices 350 Wells Fargo Place – Rm. 3310 30 East Seventh Street Saint Paul, Minnesota 55101 |
| DATE OF FINAL SUBMISSIONS: | August 30, 2013 |
| DATE OF AWARD: | September 30, 2013 |
| ADVOCATES: | <u>For the Union</u> Jess Anna Glover Attorney at Law Education Minnesota <u>For the Employer</u> Betsy Thompson Senior Labor Relations Representative |
| GRIEVANT: | Cheryl Bocnuk |
| WITNESSES: | |
| <u>For the Union:</u> | Gregory Mulcahy President of the Minnesota State College Faculty Union David Bouchard Full Professor, Metropolitan State University |

Cheryl Bocnuk
Grievant

For the Employer:

Chris McCoy
Interim Vice Chancellor for Information Technology
Minnesota State Colleges and Universities - Systems Office

Ron Dreyer
System Director for Academic Programs
Minnesota State Colleges and Universities – Systems Office

Jeffrey Wade
Systems Director for Labor Relations
Minnesota State Colleges and Universities – Systems Office

Toni T. Munos
Systems Director for Human Resources Division
Minnesota State Colleges and Universities – Systems Office

ISSUE

Did the Employer exceed its authority or violate the collective bargaining agreement when it eliminated the credential field of computer technology and determined that the Grievant did not meet the minimum qualifications to claim work, following layoff, in the credential field of computer science? And, if so, what shall the remedy be?

JURISDICTION

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), the Minnesota Bureau of Mediation Services (BMS), and the 2009 through 2011 Master Agreement between the parties, this matter is properly before the Arbitrator.

PERTINENT CONTRACT LANGUAGE

ARTICLE 6 – MANAGEMENT RIGHTS

Section 1. Inherent Managerial Rights. The MNSCF recognizes that the Employer is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policies as the functions and programs of the Employer; its overall budget; utilization of technology; the organizational structure; and selection, direction and number of personnel. . . .

ARTICLE 11 – WORK ASSIGNMENTS

It is recognized that full-time faculty members normally average forty (40) or more hours per week in carrying out their professional responsibilities. The reference to forty (40) hours is a generalization intended for recognition of the many non-assignable duties that faculty members perform. . . .

Section 2. Teaching Faculty in the Former MCCFA Bargaining Unit. A faculty member in the former MCCFA bargaining unit may be assigned either the thirty

(30) credits per academic year limit or the forty (40) contact hours per academic year limit. . . .

Section 3. Teaching Faculty in the former UTCE Bargaining Unit.

Subd. 1. Credits and Contact Hours. Faculty in the former UTCE bargaining unit may be assigned an annual maximum of up to thirty-two (32) credits or up to twenty-seven (27) contact hours per week.

ARTICLE 20 – APPOINTMENTS AND CREDENTIAL FIELDS

Section 1. Appointments. All appointments shall be made by the college via a letter of appointment which includes the type of appointment, the length of appointment (if not an unlimited position), the faculty member's address, State of Minnesota employee identification number, and the wages. . . .

Section 2. Unlimited Full-time. An unlimited full-time faculty member is defined as a faculty member with a full-time assignment for an academic year that carries the assumption that such employment will continue on a full-time basis in subsequent years. To qualify for unlimited full-time status, the faculty member must meet minimum qualifications for the credential field and successfully

complete probationary status. All unlimited full-time positions must be posted with an approved credential field. When a credential field does not exist, the Co-chairs of the Joint Committee on Credential Fields shall be notified prior to the creation of the temporary minimum qualifications.

Section 8. Faculty Credential Fields (Assigned Fields, License Fields and new and/or modified Credential Fields, See MnSCU website, <http://www.mnscu.edu/index.html>).

Subd. 1. Establishing A Credential Field. The credential field of instructors, counselors, or librarians shall be the field for which the faculty member was hired as approved by the college president. This credential field must correspond to the majority of the assignments held. Upon initial hiring a written notice of the credential field shall be sent to the faculty member and MSCF and a written notice of any change in credential field shall be sent to the faculty member and MSCF. . . .

Subd. 2. Joint Committee on Credential Fields. A joint committee composed equally of faculty members appointed by the MSCF and administrators appointed by the Chancellor shall continue to make recommendations on credential fields and minimum hiring

qualifications to the Chancellor. When the joint committee and the Office of the Chancellor have reached agreement on a credential field and the minimum qualifications, the Employer will maintain the current qualifications and provide a copy to the MSCF. The Employer will also maintain a current listing of faculty who hold each credential field and will provide a copy to the MSCF. The current listing of credential fields and the minimum qualifications are available on the Employer's website and at the college's human resources office.

Section 9. Changes in Credential Field(s). If the Office of the Chancellor modifies the faculty member's credential field(s) in such a way that the faculty member must retrain, the employer will bear all costs including release time for the retraining.

ARTICLE 21 – SENIORITY

Section 1. Seniority Defined. Seniority of a faculty member shall be determined by figuring the total FTE length of continuous probationary and unlimited full-time or unlimited part-time service in the faculty member's credential field(s) since the faculty member's starting date in the credential field. The starting date of a faculty member's seniority shall be the beginning of the term when a faculty

member started probationary/unlimited full-time or probationary/unlimited part-time service. Seniority shall accrue in each credential field held by the faculty member. . . .

Section 8. Seniority in New Credential Fields. If subsequent to a faculty member's start of unlimited service in the faculty member's initial credential field, another credential field is/was approved for such faculty member, the seniority in this credential field shall start at the beginning of the semester when such credential field was approved.

Once a credential field is approved and established for a faculty member, the faculty member continues to accumulate seniority in that credential field for as long as the faculty member remains as an unlimited faculty member in the system.

If a faculty member has more than one (1) credential field, and the original credential field is deleted from the MnSCU Board Policy or MnSCU procedures, then the faculty member will be granted seniority in the second credential retroactive to the original seniority date.

ARTICLE 22 – LAYOFF AND FACULTY TRANSFERS

Section 1. Layoffs. Layoffs of unlimited faculty members may occur only when necessary for bona fide, good, and sufficient reasons.

Subd. 1. Reasons. The administration shall provide both the MSCF and the faculty member affected a written summary of the circumstances giving cause to the layoff and of the alternatives to layoff which have been considered. If layoffs are to occur, the administration shall meet with the MSCF to discuss the layoffs at a Shared Governance Council meeting. Such meeting shall be scheduled prior to November 15.

Subd. 2. Layoff Notice Timelines. If a layoff is contemplated by the administration, the faculty member on the unlimited full-time seniority roster who is to be laid off shall be notified of the impending layoff no later than November 1 to be effective on the last day of the next spring semester. . . .

Subd. 3. Order. Layoffs shall be based on inverse seniority within the credential field. A faculty member shall not be laid off if a less

senior faculty member in the college holds a position for which the first faculty member is qualified and has greater seniority at the college. . . .

Section 8. Layoff Benefits for Faculty with Assigned Field Credentials.

Subd. 1. Eligibility. Eligibility for benefits provided by this section requires the faculty member to be employed at the time of notice at a stand-alone community college

Subd. 2. Reassignment for Retraining. Any unlimited full-time faculty member who receives a notice of layoff by the Employer shall be granted the equivalent of twenty-one (21) semester credits for full paid reassignment time for the purpose of retraining to be completed during spring semester, the summer following notice of layoff, or any combination thereof as scheduled by the faculty member and approved by the Employer. The faculty member shall submit a training plan to the administration no later than December 1. The initial retraining plan will need to identify only the area of retraining, the number of reassigned credits needed, the timing of the reassigned time, and the number of graduate credits that will be taken. Prior to

scheduling retraining activities, the faculty member shall consult with the administration to resolve any scheduling conflicts. If the plan includes credit course work the faculty member shall provide the administration with a copy of the fee statement. During the semesters of reassignment for retraining the faculty member is subject to assignment at the college to the percentage that the enrolled credits are fewer than nine (9) credits.

ARTICLE 27 – GRIEVANCE PROCEDURE

Section 4. Grievances. A grievance is defined as a dispute or disagreement raised in writing by a faculty member, a group of faculty members, or the MSCF against the Employer involving the interpretation or application of the specific provisions of the MSCF/MnSCU contract or application of a rule or regulation affecting terms and conditions of employment in other than a uniform manner or other than in accordance with the provisions of the rule or regulation. . . .

Section 6. Grievance Steps.

Step 3. If the grievance is not settled in accordance with the forgoing procedure, the MSCF may appeal the grievance to

arbitration within ten (10) working days after the answer of the chancellor's designee in Step 2 is received or is due by serving written notice of the appeal to the chancellor's designee. The parties may convene a joint labor management committee to discuss any grievance that has been appealed to arbitration. The committee shall consist of six (6) persons appointed by the MSCF and six (6) persons appointed by the Chancellor. Meetings shall be scheduled as needed at the request of the MSCF, but no more than one (1) each month. Additional persons may be invited as needed. The MSCF representative and/or chancellor's designee may also request grievance mediation prior to arbitration. . . .

Section 8. Arbitration Panel. The arbitration proceeding shall be conducted by an arbitrator, to be selected by lot, from a permanent panel of ten (10) arbitrators. The members of the permanent panel shall be selected by the following method: the MSCF and the chancellor's designee shall submit a list of ten (10) arbitrators until agreement is reached on a permanent panel. Vacancies on the panel that arise during the terms of this agreement shall be filled by mutual agreement or by each party submitting [a] list of three (3) arbitrators, until a replacement is agreed upon.

Section 9. Arbitrator's Authority. The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the provisions of this contract. The arbitrator shall consider and decide only the specific issue submitted in writing by the Employer and the MSCF, and shall have no authority to make a decision on any other issue not so submitted. The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, and rules and regulations having the force and effect of laws. The arbitrator shall submit in writing the decision within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon the interpretation or application of the express terms of this contract and to the facts of the grievance presented. The decision of the arbitrator shall be final and binding on the Employer, the MSCF, and the faculty member(s).

Section 10. Fees and Expenses. The fees and expenses of the arbitrator shall be divided equally between the Employer and the MSCF provided, however, that each party shall be responsible for compensation [of] its own representatives and witnesses.

UNION'S ARGUMENT

The Union makes several arguments in support of its position in this matter:

- Toni Munos acted in an arbitrary and capricious manner when she denied the Grievant's request that she be given the additional credential field of Computer Science. Although she did not have a master's degree in computer science, she did have the necessary graduate level credits to qualify for the credential. "The decision to deny Ms. Bocnuk the credential field of Computer science was not a Board decision or an ICC [Itasca Community College] decision; it was a discretionary decision by Munos."¹
- As a result of the denial, the Grievant was unable to claim coursework at Itasca Community College. This was despite the fact that the Grievant had taught all but one of the Computer Science courses at the institution. In addition, the Grievant was switched from the "green side" of the collective bargaining agreement to the "blue side", which changed "her terms and conditions of employment for layoff, retirement and workload. Ms. Bocnuk was not held harmless when MnSCU eliminated her credential field."²
- The Union compared the expertise of Ms. Munos to that of Dr. Bouchard in determining the qualifications of the Grievant for the Computer Science credential field:

¹ Union's Post Hearing Brief (UPHB), 11

² UPHB, 10

Munos certainly has many years of experience, but longevity does not, in [and] of itself, mean that she has the ability to correctly determine what course[s] are “in field” and therefore eligible for granting a credential field, especially in a complicated field like computer science. . . . Contrary to anyone who has seen how computers have changed or how we use them has changed over the years, Munos stated that computer science has not changed over the many years. The experience Munos relied on provided a very narrow view of computer science – one that is heavy into programming and mathematical computation. That view of computer science is dated and does not seem supported by individuals working in the field. It was not supported by Dr. Bouchard’s analysis His analysis was supported by 27 years of academic experience *in the computer field*, as opposed to Munos’ years as an “*HR practitioner*.” . . .³

- The Union, through Dr. Bouchard’s testimony, alleges that the Grievant’s educational background more than qualifies her under the sixteen graduate credits requirement of the Computer Science credential field:

³ *Ibid.*, 12

Dr. Bouchard . . . testified that much of Ms. Bocnuk's graduate level work, whether from the early 90s or more recently in 2011, should be considered "in field" for computer science. As an expert in his field and a long-time professor in the MnSCU system, his assessment of these credits cannot be dismissed. They provide the grounds to identify Munos' determination as arbitrary. . . (15).

Dr. Bouchard identified the following courses on Ms. Bocnuk's Metro State transcript as "in field" for computer science: the 600 level Management Information Systems; Systems Design and Decision Support; Telecommunications Management; Strategic Management of Technological; the seminar in Management Information Systems; Project Management; Risk Analysis and IT; Cyber Ethics; Problem Formulation and Data; Process Analysis and Design; and Strategic Management of Technology (17).

- The Union also cited the Grievant as an expert in the field who agreed with Dr. Bouchard's opinion. The Grievant has thirty years of experience in teaching computer-related courses and she was able to identify the same coursework that Dr. Bouchard cited as being within the field of computer science (p. 106, Testimony).

- The Union argues that the Employer's expert witness "had no experience evaluating credits for determining credential fields, had little academic experience, and could really only rely on his own degree work to provide his testimony" (UPHB, 19).
- It is also the Union's position that the Grievant suffered several negative consequences when she was not appropriately informed of her new credential fields:

Ms. Bocnuk did not receive timely notice of the change to her credential field, she did not receive the guaranteed retraining benefit because of MnSCU's change to her credential field, and she was moved to the "other side" of the contract, which changed her workload and other contractual benefits (19).

Ms. Bocnuk did not receive written notice of what her credential field of Computer Technology would be changed to. In fact, months after she received notice of her layoff, during the middle of her retraining program under the layoff benefit, she finally received notice through an email with Munos. That information was not timely and it did not allow Ms. Bocnuk to get the retraining that may have made it possible for her to claim work at ICC. She did not receive timely notice regarding the effects of the credential change to address any potential issues with getting a Computer Science credential field (20).

The Master Agreement guarantees an employer-paid benefit of retraining if MnSCU changes a faculty member's credential field in a way that requires retraining. Here, Ms. Bocnuk's credential field was changed by MnSCU in a way that eliminated her ability to claim work at ICC, the institution that she had been employed at for over a decade. That is a circumstance where a change to the credential field requires retraining.

Article 20, Section 9 states: "Changes in Credential Field(s). If the Office of the Chancellor modifies the faculty member's credential field(s) in such a way that the faculty member must retrain, the Employer will bear all the costs including release time for the retraining."

Ms. Bocnuk was never offered the benefit. Ms. Bocnuk retrained in the spring of 2011 under the layoff benefit. . . . [She] had no way of knowing that she would not be given a new credential field that would allow her to claim at ICC (21-22).

- The Union argues that the language of the Article 20, Section 9 is clear and therefore unambiguous. They challenged Jeff Wade's narrow interpretation of the language as producing "an absurd result" (22).
- Finally, the Union argues that the Grievant was not held harmless when the Employer eliminated her Computer Technology credential field.

Ms. Bocnuk's original credential field was Computer Technology, which was on the "green side" of the Master Agreement. When MnSCU eliminated her Computer Technology credential field and assigned her Web Development/Web Programming, she was moved to the "blue side" of the Master Agreement. That change was a unilateral decision by Munos. That change affected Ms. Bocnuk's workload, from a yearly maximum of 30 credits to 32 credits. That change also affects her layoff rights if she is ever laid off again. And it also affects her retirement opportunities. These are all significant changes that happened only because of Munos' decision to deny the Computer Science credential field and not hold Ms. Bocnuk harmless from the system decision to eliminate her credential field of Computer Technology. Munos believed that she was providing an equivalent field for claiming. That was simply not the case (22-23).

EMPLOYER'S ARGUMENT

The Employer makes several arguments in support of its position in this matter:

- The Employer argues that they not only have the ultimate authority and responsibility for making determinations regarding credentialing requirements, but that they also have the authority and responsibility for determining whether staff meet those requirements.

In fact, MnSCU has clear unilateral authority to make credentialing determinations and to delegate this authority to a designee such as Ms. Munos. Not only was Munos' determination that the grievant did not meet the minimum qualifications for the credential field of computer science made thoughtfully and after careful consideration of the system-established criteria, her assessment was shown to be sound and reasonable by expert testimony at hearing. . . .⁴

In order to be granted the credential field of computer science, a faculty member must have either: (1) a master's degree with a

⁴ Employer's Post-Hearing Brief (EPHB), 8

major in computer science, or (2) a master's degree in any discipline/field with a minimum of 16 graduate semester credits (24 graduate quarter credits) in computer science. Ms. Bocnuk does not meet the first criterion . . . nor does she meet the second.⁵

- The Employer asserts that the decision by Toni Munos denying the Grievant credentials in computer science was neither arbitrary nor capricious.

Toni Munos testified that her assessment of whether the grievant's graduate coursework could be counted as in-field for computer science went well beyond simply looking at the course designators and titles on the grievant's transcripts. She also reviewed detailed descriptions of the grievant's master's degree coursework from the 1990s and researched online Metropolitan State University's course descriptions for the grievant's 2011 management information systems classes. Munos carefully considered the information provided in the course descriptions, measuring it against her 29 years of experience reviewing and evaluating computer science courses for credentialing purposes. . . .

⁵ EPHB, 8-9

Muno's conclusion was in accord with a previous review of Ms. Bocnuk's qualifications for the credential field of computer science that had been done by one of Munos' colleagues, Brian Ecker, in 2009.⁶

- The Employer argues that the expert testimony of Chris McCoy validated Munos' decision as being the correct decision.

McCoy is highly knowledgeable about and skilled in the field of computer science. . . .

On top of his educational credentials, he has considerable work experience in the field. . . .

[H]e is well acquainted with Metropolitan State University, the institution where Ms. Bocnuk took all of her graduate-level coursework. . . .

He [McCoy] explained that computer science deals with computational theory and the design of computational systems,

⁶ Ibid., 11

whereas management information systems deals with how computing devices can be used to support overall management decision-making. In other words, computer scientists make the tools that management information systems practitioners use to make decisions. The two fields have different foundations: computer science is based in mathematics, whereas management information systems is based in the management sciences (13-14).

- In addition, the Employer argues that Metro State's Management Information System's (MIS) graduate program requires a lower level of expertise in computer science than the credentialing requirement for computer science. "[S]tudents in Metro State's graduate MIS courses are expected to have gotten their foundational "how" knowledge of computer science at the undergraduate level . . ." (15).
- The Employer contends that the U.S. Department of Education's Classification of Instructional Programs (CIP) is consistent with Munos' decision in this matter.

Metro State's graduate program in computer science is assigned the CIP-code for computer science. None of Ms. Bocnuk's graduate coursework was taken under the computer science program, however. Instead, Ms. Bocnuk's graduate coursework

was taken under Metro State's management and administration program in the early 1990's and subsequently, in 2011, under the program's successor, the management information systems program (17).

- The Employer argues that none of its actions violated Sections 8 and 9 of Article 20 - "Appointments and Credential Fields." Specifically regarding timely notice, the Employer argues that it is part of a separate grievance that is not at bar in this matter. And, that the Grievant was eligible for retraining under the layoff provisions of the Agreement, not the "Changes in Credential Field(s)" language. The Employer's witness (Wade) emphatically testified that the language of Section 9 was meant to address instances where the requirements for a credential field had changed, not instances where the credential field was eliminated. The Employer contends that the Grievant opted for and received her proper retraining opportunity under the layoff language, and that giving her any more would exceed the clear language of the Agreement.
- The Employer suggests that the Union was complicit in the decision to eliminate the Computer Technology credential field. The joint labor/management committee (JCCF) made the recommendation as a whole, prior to the time that the Union pulled out of the meetings.
- And finally, the Employer argues that the Grievant is not eligible for equitable relief.

If a faculty member's credential field is eliminated and she meets the minimum qualifications for another credential field, she may hold the new field. But she is not entitled under the CBA or MnSCU Board policy to be granted another credential field, equivalent or otherwise, for which she does not meet the minimum qualifications. Nor does a laid off faculty member have the right to claim work at the same college from which she was laid off, unless a vacancy exists for which she meets the minimum qualifications (26).

Although the Union claims that the grievant should have been held harmless or grand parented into the different field of computer science when her credential field of computer technology was eliminated, the evidence it offered in support of these arguments is not persuasive. . . .

The Arbitrator should not disregard the Employer's right to operate within its governing policies or the bargained-for terms and conditions of employment in the contract and grant the grievant extra-contractual rights or equitable remedies simply because the Union feels that the existing rules, which MnSCU

followed, resulted in an undesirable outcome for one of its members (27-28).

DISCUSSION

The matter before the Arbitrator in this case appears, at first blush, to be illogical. A highly regarded professional educator worked for a community college for over ten years, primarily teaching computer-related coursework. She received a layoff notice, and during the layoff period she claimed work at the same community college to teach the same coursework she had taught before. The Employer refused her claim and told her she was not qualified. She then successfully claimed work at other colleges in the system. And later, just to confuse the matter more, the original college hired her back on a part-time basis to teach some of the same courses that she was previously denied.

Although the above scenario might cause one to believe that the educator was somehow contractually wronged in this process, it is not so apparent after examining the Employer's actions in the light of the Agreement between the parties. The Agreement allows the Employer to make campus by campus local hiring decisions into a myriad of employment conditions, and yet provides for system-wide layoff procedures with very specific and restrictive claiming rights.

The Union is the moving party in this matter, and its grievance on behalf of the Grievant contains the following statements as to background and the following requests for relief:

[The Grievant] is an instructor at Itasca Community College with a credential field of computer technology. On October 29, 2010, [she] received a layoff notification for reasons given of insufficient workload in her field. The layoff effective date is May 12, 2011.

In accordance with Article 22, Section 8, Subd. 4D2, [the Grievant] submitted a request for approval to claim courses in the credential field of computer science. On April 14, 2011, [she] received an email from [Toni Munos] denying her request. In the same email, Ms. Munos stated that she had approved claiming rights for [the Grievant] in a new credential field: web development/web programming. [underlined for emphasis]

Contract provision(s) claimed to be violated: Include but are not limited to, Article22 [Layoff and Faculty Transfers], Article20 [Appointments and Credential Fields]

Remedy sought: To make the grievant(s) whole, [the Grievant] shall be grandfathered in the credential field of computer science and her claiming rights shall be honored.⁷

⁷ Taken from Joint Exhibit 2 (Step 1 grievance filed on May 6, 2011).

The Union is asking the Employer to assign the Grievant the credential field of computer science, and to honor the Grievant's claim for coursework at ICC in the credential field of computer science.

It was clearly established through testimony and exhibits that the Employer has the right to determine the qualifications necessary for its various credential fields. And, it is also clear that the Employer has the authority to assess a faculty member's qualifications to determine if he/she meets the minimum requirements for any particular credential field (see Joint Exhibit 13). The Union, by Agreement (Article 20, Section 8, Subd. 2) and policy (3.32.1), is limited to only an advisory role. The Union in this case, however, alleges that the Employer abused its authority and argues that the Employer was arbitrary and/or capricious when it denied the Grievant's request to claim computer science coursework. Such a claim is not without precedent in arbitration:

[M]any arbitrators are reluctant to uphold arbitrary, capricious, or bad faith managerial actions which adversely affect bargaining unit employees. Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the "sole judge" of a matter, management's action must not be arbitrary, capricious, or taken in bad faith.⁸

⁸ Edna Asper Elkouri and Frank Elkouri, *How Arbitration Works – Third Edition* (The Bureau of National Affairs, Inc., 1973, p. 417.

The seventh edition of Black's Law Dictionary defines arbitrary and capricious as follows:

Arbitrary - 1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact.

Capricious – 1. (Of a person) characterized by or guided by unpredictable or impulsive behavior. 2. (Of a decree) contrary to the evidence or established rules of law.⁹

The Union was unable to offer credible evidence that the Employer behaved in a prejudicial, unpredictable or impulsive manner when it denied the Grievant her request to be credentialed in computer science. Specifically, the evidence did not support any real or hypothetical notion that Ms. Munos was prejudiced, nor that she held some ill feelings or a personal vendetta toward the Grievant. In addition, there was no evidence offered that Munos was inconsistent or impulsive in applying the standards she used to determine qualifications. The Union failed to offer evidence that other faculty members with similar educational backgrounds to that of the Grievant had been credentialed in computer science.

The Union mounted a case to suggest that the Employer used poor judgment when it denied the Grievant the computer science credentials, and it is that judgment they want the Arbitrator

⁹ Black's Law Dictionary, 2000. pp. 79 & 167

to overturn. The Union's expert witness was obviously quite knowledgeable and his testimony suggested that the various computer related fields have a significant amount of overlap. He was able to go through the Grievant's graduate level coursework and make the case that most of what she had done was related to computer science. The Employer's expert witness looked at the same information and came to the opposite conclusion: little or no relationship between the Grievant's coursework and computer science. And, both parties argued that their expert was in a better position to make an accurate assessment than their counterpart's.

After listening to the testimony and carefully reading the offered documents and arguments of each party, the Arbitrator concludes that there is an honest difference of opinion regarding the Grievant's educational background and its relationship to the field of computer science. The specifics of this matter make it easy to understand the Grievant's frustrations and the Union's quest for relief. After all, the Grievant taught the very courses that she was being denied in claiming. And yet, in spite of that apparent incongruity, it would be inappropriate for the Arbitrator to substitute his judgment for that of the Employer's. Management, absent specific contractual restrictions or credible proof of ill will, is allowed to rely on its own judgment in making decisions, even if those decisions are arguably questionable. In addition, the Arbitrator found no contractual provision, as the Union asserts, to hold the Grievant "harmless" nor to somehow "grandparent" her rights that are not spelled out in that same Agreement.

The Union brought forth two additional related issues during the hearing and in its post-hearing brief that, in fairness, need to be addressed by the Arbitrator. One of these issues the

Employer disagreed with and the other the Employer objected to, both in the hearing and in its post-hearing brief. Despite the objection, the Employer offered evidence and argument to protect its interests in case the Arbitrator agreed with the Union's right to have it considered. This Arbitrator believes that the arbitration process is meant to resolve issues in a conclusive manner. To leave ancillary issues unresolved is not in keeping with that belief. Both parties have clearly stated their positions on this matter and it is included in Article 22 of the Agreement which was cited in the Union's grievance that is at bar in this award.

The first issue, which was not objected to, relates to Article 20, Appointments and Credential Fields:

Section 9, Changes in Credential Field(s). If the office of Chancellor modifies the faculty member's credential field(s) in such a way that the faculty member must retrain, the Employer will bear all costs including release time for the retraining.¹⁰

The Union argued that by eliminating the computer technology credential field, the Employer had "changed" and/or "modified" that field, and that Jeff Wade's testimony to the contrary gave the language a "narrow" and even "absurd" meaning. The Arbitrator disagrees with the Union's assertion. If the parties intended to include elimination, they surely would have included it in the language. The modification of a credential field is plainly different than its

¹⁰ Joint Exhibit 1, p. 112

elimination. Black's law dictionary defines modification as, "a change to something; an alteration . . . or limitation of something" (p. 816). Elimination means just that: it's gone; it exists no more. The Grievant's computer technology field was not modified; it was eliminated, and she is not eligible for training under the provisions of Article 20, Section 9.

The second issue, which was objected to by the Employer, relates to the Grievant's usage of Article 22, Layoff and Faculty Transfers, Section 8, Layoff Benefits for Faculty with Assigned Field Credentials:

Subd. 2. Reassignment for Retraining. Any unlimited full-time faculty member who receives a notice of layoff by the Employer shall be granted the equivalent of twenty-one (21) semester credits for full paid reassignment time for the purpose of retraining to be completed during spring semester, the summer following notice of layoff, or any combination thereof as scheduled by the faculty member and approved by the Employer.¹¹

The Union argued that had the Grievant known that her credential field of computer technology was being eliminated at the time of her layoff, she would have been able to take graduate credits in computer science in an attempt to qualify for credentialing in that field.

¹¹ Ibid., p. 120

It is true that the Grievant was well into her layoff retraining before she was notified about the elimination of her credential field. It is also true that the Grievant took courses during her eligibility for layoff-related retraining that were not in the Department of Computer Science.

If the Grievant had been broad-sided with the news that her new credential field would make her ineligible for claiming work in computer science at ICC, one could make an effective argument that the late notification prevented her from making prudent choices when it came to retraining. If an arbitration case came forward with that set of facts, it would likely find the sympathetic ears of many arbitrators. Additional facts, however, came out at the hearing which cause this Arbitrator to rule against the Union on this matter. The Grievant was notified in 2009 that she did not meet the qualifications for computer science. Brian Ecker, who worked for Toni Munos in credentialing, made that determination after reviewing the Grievant's request to gain the credential for computer science. With that knowledge, and knowing that she was being laid off, she chose to enroll in coursework that was outside of computer science. Whether she continued to hold the computer technology credential field, or the new credential fields she was assigned, it would have made no difference when it came to layoff. She would still have been unable to claim work in the field of computer science.

The Arbitrator is not suggesting that the Grievant was aware of all the nuances of the vacancy filling and/or the layoff language in the Agreement. After all, she had been working for over ten years teaching courses in the computer science field despite language in the Agreement

mandating that she primarily teach courses in her own credential field (computer technology).¹² Maybe she felt things would just work out, as they had in the past. Although confusing, the Grievant did receive adequate notice from the Employer that she was being laid off and that she had limited opportunities for continued employment at Itasca Community College. And, although her intent was good in trying to prepare herself through retraining to do a better job where she had been employed, it turned out to be a decision that put at risk that same employment.

AWARD

Following a careful and thorough review of the exhibits,¹³ the witnesses' testimony and the parties' arguments, the Arbitrator finds that the facts do not adequately support the Union's claim for its proposed relief. The Grievance is denied.

¹² Article 20, Section 8, Subd. 1. "The credential field of instructors, counselors, or librarians shall be the field for which the faculty member was hired as approved by the college president. This credential field must correspond to the majority of the assignments held."

¹³ Union Exhibit 1 was not considered by the Arbitrator in arriving at his decision in this matter.

Respectfully submitted this _____ day of September, 2013.

Eugene C. Jensen
Neutral Arbitrator