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An Analysis of the Decisions by the American Arbitration Association of Grievances between Community College District No. 508, State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO

Paul E. Rupprecht

Loyola University Chicago

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An Analysis of the Decisions by the American Arbitration Association of Grievances between Community College District No. 508, State of Illinois and The Cook County College Teachers Union, Local 1600, AFT, AFL-CIO

by

Paul E. Rupprecht

A Dissertation Submitted to the Faculty of the Graduate School of Loyola University of Chicago in Partial Fulfillment of the Requirements for the Degree of Doctor of Education

January, 1983
An Analysis of the Decisions by the American Arbitration Association of Grievance between Community College District No. 508, State of Illinois and The Cook County College Teachers Union, Local 1600, AFT, AFL-CIO

This study was designed to investigate, describe, and analyze the nature of the arbitration process between the central administration of a metropolitan multi-campus post-secondary education system and its unionized faculty. Unbiased written records exist in the form of arbitration awards by the American Arbitration Association.

Since the majority of the institutions that have chapters affiliated with the Cook County College Teachers Union are campuses in the City Colleges of Chicago system, the documentary analysis method of research was focused on these two entities. The following objectives were sought:

1. To determine the kind of issues (grievances) that progressed to the arbitration level.
   a. To identify and classify arbitration cases which dealt with contract language according to the problematic elements of contract language.
   b. To identify the most common issues submitted to arbitration.
2. To identify the initiating party(ies) of the grievance(s) and the grounds.

3. To review the arbitrator's decisions:
   a. To determine if the awards enhanced or delimited the autonomy of the administration, and in what areas.
   b. To determine whether the arbitrators' decisions had an impact on the contract language in successive Board-Union agreements, Board rules, Academic Manual, and/or Personnel Manual.
   c. To determine the significant outcomes yielded as result of the awards.
   d. To identify grievances advanced beyond the arbitration level for judicial decisions, and ascertain the results.

4. To summarize the rationales for the decisions.

5. To construct a statistical analysis of the outcomes of arbitration cases.

6. To construct a statistical analysis of the court cases resulting from grievances and or/arbitration cases.

7. To create an equation based on the sum of the variables identified as the components incorporated in the arbitration awards.
8. To establish a reference document that summarizes each arbitration case studied based upon the variables of the equation.

The sources of data for the study were comprised of the original arbitration awards. The study includes the total population of arbitration awards during the period 1967 through 1976, and therefore sampling techniques were not used nor were tests of hypothesis required. The research technique utilized in this study was one of content analysis. The content analysis employed for this study was referred to as a form of "documentary-frequency study" which is used to determine the frequency of occurrence of the studied phenomenon. The information sought was taken from the contents of the original school arbitration awards, examined, classified, and tallied.

A total of one hundred fifty-four grievances were assigned American Association of Arbitration case numbers during the time period 1967 through 1976. This time span represents the first ten year period that the grievance procedure existed between the Board of Trustees, District #508 and the Cook County College Teachers Union, Local 1600, A.F.T. The Union initiated demands for arbitration in all but three of the cases. Both the Board and Union were recipients of thirty-four awards. Twelve of the arbitration cases were settled between the Union, in favor of the
Union's position. Forty-five arbitration cases were closed by the Union's action of withdrawal.

The summary of arbitration awards was reflected by the equation: \( \sum A = f(C\!\!+D\!\!+M\!\!+R\!\!+A/A+I) \). "A." represents the award; "C." is the problematic elements of the contract language; "D." is the defense argument; "M." is the major authorities relied upon by the arbitrator; "R." is the remedies; and "A/A." is the effect upon autonomy of the administration; and "I." equals the subsequent impact. These six variables represented thirty-six sub-variables.

Thirty-six cases filed were categorized as "Work Loads, Work Assignments, Class Size", disputes. The second largest body of grievances (thirty-four) were classified as "Discharge, Tenure Problems, Reduction-In-Force and Discipline." "Seniority and Rotation Points" accounted for twenty-one cases. The other twenty-one categories (containing sixty-three cases had less than ten grievances each.

The outcomes of thirty-seven arbitration cases resulted in enforcement of the autonomy of the administration. The Union achieved results that delimited the autonomous of the Board in forty-three awards. (These figures do not include the outcomes of succeeding court cases that overruled the arbitration.) Nine of the cases filed, and subsequently withdrawn by the Union strengthened the position of management.
The Illinois Supreme Court agreed with the Board of Trustees in three of four cases to reach its docket. The Board won the only U.S. Court of Appeals case resulting from an arbitrator's award. Five arbitration awards were contested in the Cook County Circuit Court. Each party received one award a piece.

The arbitration process contractually agreed upon by the Board and Union receives significant attention from both parties measured in terms of monetary expenditures, time invested, concern expressed, and efforts exerted to achieve success. In terms of the Boards freedom to make unfettered decisions without repercussions, the agreement (contract) imposed inhibiting factors. Compared to the years prior to 1967, and the institution of the arbitration procedure, the Union has been successful in achieving results previously unattainable.
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VITA

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CHAPTER I
INTRODUCTION

Statement of Purpose

This study is designed to investigate, describe, and analyze the nature of the arbitration process between the central administration of a metropolitan multi-campus post-secondary education system and its unionized faculty. One goal is to identify the problematic areas between the Board of Trustees (the employer) and the professional teaching staff (the employee) based upon the written contract between the parties, which resulted in grievances reaching the final level (arbitration) for determination.

Unbiased written records exist in the form of arbitration awards by the American Arbitration Association. The adjudication process is stipulated in the board-union contract. Sufficient evidence exists to establish a longitudinal study for the years 1967 through 1976 of the City Colleges of Chicago. (The initial contract provided for the multilayer grievance process to begin in
1967.¹ For school years 1977 and 1978, a significant number of the grievances are in the arbitration-hearing process. This dissertation will provide insights into the experiences of administrators who are faced with the daily management of an urban community college district.

The City Colleges of Chicago have a full-time faculty staff in excess of 1,200 people, nine campuses (not including the overseas program) and a student body of over 100,000. The Chicago community college system is the second largest community college system in the nation.² In its first ten years of bargaining, the Chicago City College Teachers Union succeeded in doubling faculty salary, in obtaining separation of rank and salary, in reducing teaching load from fifteen to twelve hours, as well the acquisition of many fringe benefits. (The City Colleges of Chicago faculty are the only community college teachers in the nation teaching twelve contact hours per week.) Like many community colleges, District 508 sprang from the K-14 system. Many faculty were members of a powerful lower

¹Two Year Agreement between the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois and the Cook County College Teachers Union. Local 1000, AFT, AFL-CIO Chicago, Illinois (Chicago: n.p., 1967).

school teachers' union (AFT, Local 1) when it was divided from the elementary-secondary school system in 1966.

The Union, as a separate local entity, was established in 1966 concurrent with the establishment of a separate Board for the administration of the junior college system in Chicago. After extensive bargaining and two work stoppages, the new Board and union consummated a bargaining agreement. This contract was the first of its kind between a college administration and faculty union in the country.3

In its first ten years of existence, the Cook County College Teachers Union struck the District 508 Community College Board six times. Three injunctions were defied, and the union president was incarcerated twice. Five contracts were negotiated. The management-union conflict has resulted in negotiations being conducted in court periodically since 1971. It is indeed "one of the successful, if not the most successful, community college union in the United States."4

The growth of unionism in higher education in Illinois is of particular interest because of the absence of a state collective bargaining statute. This is important since, as of January, 1975, more than half of the public community

3American Arbitration Association Case No. 51-30-0044-68 Award, p.1. Pearce Davis, Arbitrator.

colleges in the twenty-one states with enabling legislation were unionized. These twenty-one states contained 70% of the nation's public community colleges. Only the community colleges in Illinois and Maine were able to unionize to any extent under voluntary agreements. (A 1966 Illinois Appellate Court ruling permits teachers to bargain collectively at all levels.) Garbarino called state public employee bargaining laws the "most important single factor that explains unionization in higher education." To further emphasize the importance of collective bargaining legislation, Garbarino pointed out that at the end of 1974, 90% of all organized public institutions and faculty were in states with strong bargaining laws. Among the State of Illinois' 136 institutions of higher education in 1976, (49 public, 87 private, including 39 public and 10 private junior colleges) 14 had bargaining on 20 campuses. Eleven of these institutions belong to the Cook County College Teachers Union, Local 1600.

Since the majority of the institutions that have chapters affiliated with the Cook County County College


7Ibid.
Teachers Union are campuses of the City Colleges of Chicago system, the documentary analysis method of research will be focused on these two entities. The following objectives have been sought:

1. To determine the kind of issues (grievances) that progressed to the arbitration level.
   a. To identify and classify arbitration cases which dealt with contract language according to the problematic elements of contract language.
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4. To summarize the rationales for the decisions.

5. To construct a statistical analysis of the outcomes of arbitration cases.

6. To construct a statistical analysis of the court cases resulting from grievances and/or arbitration cases.

7. To create an equation based on the sum of the variables identified as the components incorporated in the arbitration awards.

8. To establish a reference document that summarizes each arbitration case studied based upon the variables of the equation.

The results of this research are intended to be of value to students of administration, union leaders, arbitrators, college board members, and university class students.

The design parameters are:

1. To investigate on a micro level, as opposed to the previous macro level, one district. (Previous research design had been state wide.)

2. To investigate the strategy and tactics utilized between one school board and one union.
3. To prepare a longitudinal study covering a ten year span. (All other research had been based on a time period of less than five years.)

4. To investigate repercussions of arbitration cases at the post-secondary level. (Edmondson determined that the majority of arbitrations in higher education occur in the community colleges.)

5. To investigate repercussions of arbitration cases situation in one Illinois community college district. (no previous study had been focused locally.)

6. To investigate in a controlled situation. Previous studies were not confined to awards determined by arbitrators representing the American Arbitration Association solely.

7. To investigate where the environment is not influenced by a Public Employee Act and/or a Collective Bargaining Law.

8. To investigate and update a topic in which the latest dissertation was completed in 1976, based on data that are at least five years old.

The expansion of the arbitration process in public education

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systems is greatest at the community college level. The analysis of the data resulting from this dissertation will be germane to administrations of post-secondary education institutions.

**Historical Background of the City Colleges of Chicago**

The College was founded in September, 1911, when 28 students attended the first class in the Crane Technical High School building on the West side. By 1916, 50 students were enrolled in post-high school courses at Senn, 128 at Lane, and 211 at Crane. In 1917, only Crane offered college courses. From its beginning in 1911 through 1932, Crane gave college credit opportunities to more than 28,000 students. Crane was fully accredited by the North Central Association of Colleges and Secondary Schools in 1917, as are all colleges today. The curriculum was designed primarily for the student who planned to continue his higher education after junior college.9

In 1931, the junior college system in Chicago was reorganized. Its administration was made separate from that of the high school. In 1933, a major crisis in the struggle for the existence and progression of the college developed when it was deemed necessary to abolish the institution during the Depression as an economy measure. Attorney

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9City Colleges of Chicago 1972 Catalog, p.6.
Clarence Darrow led the Community in protesting the abolition of "The College of the People" as he put it.\textsuperscript{10} The board heeded the protest and reversed its decision, with one major change. Not one, but three junior college branches were planned.

In September, 1935, the College reopened at the following sites: a North side branch in the Wright building; a South side branch, Wilson, in the Normal College building and a West side branch in the Medill building. This branch was moved in 1936 to better facilities in the Herzl building where, except during World War II, it remained until 1954 when it was moved back to the Crane Technical High School building. Enrollments were: Wright, 1,602; Wilson, 1,476; and Medill (Herzl), 679.\textsuperscript{11}

In 1954, Crane was reopened. Other branches followed quickly in succession: Amundsen, in September, 1956, (which became Amundsen-Mayfair in February, 1962); Southeast in February, 1957; Fenger in February, 1958; Bogan in September, 1960; and Loop in February, 1962. In 1969 Crane as renamed Malcom X College and Wilson, Kennedy-King College. In 1970, Fenger and Southeast merged at a new site to become the Olive-Harvey College. At the same time, the

\textsuperscript{10}Ibid.

\textsuperscript{11}Ibid.
Board changed the public name of the institution from Chicago City College to the City Colleges of Chicago.\textsuperscript{12}

The junior college system was a part of the Chicago Board of Education until July 1, 1966. On that date the Board of Trustees of Junior College District 508, County of Cook and State of Illinois, became operative under the 1965 Illinois Public Junior College Act. This law transferred control from the common school to the state system of junior college districts.\textsuperscript{13}

Oscar E. Shabat, who was Executive Director of the junior college system under the common school board, was appointed the first Chancellor of the College in December, 1966, and installed in June, 1967. He said:

In our fight for survival and for a progressive and qualitative educational program the date of July 1, 1966, ranks in significance with September, 1911 and with September, 1934. There is this exception: With this new beginning the prospects for the achievement of a highly professional public community college are even greater than before.\textsuperscript{14}

The Board of Trustees of Junior College District No. 508, which operates the City Colleges of Chicago, stated in a Resolution adopted November 29, 1967, that it is dedicated and committed to the concept and philosophy of the public

\begin{itemize}
\item \textsuperscript{12}Ibid.
\item \textsuperscript{13}Ibid.
\item \textsuperscript{14}Ibid.
\end{itemize}

The philosophy of the public junior college is that the opportunity to study in institutions of higher education should be available to all young people who may reasonably be expected to benefit from such study\(^{15}\); and that Class I junior college districts, such as the Board of Trustees of Junior College District No. 508, shall admit all students qualified to complete any one of their programs including general education, transfer, and occupational programs, as long as space for effective instruction is available; and that the City Colleges of Chicago, shall provide community services, including assistance for under-educated youths and adults.\(^{16}\)

The Board also said that the need is rapidly expanding for persons with many different kinds of educational preparation—professional and occupational and for more general education for all citizens.

It is the special obligation of the public junior college, the Board said, to identify the educational needs of the community which it serves and to recruit students and

\(^{15}\)Ibid.

\(^{16}\)Ibid.
to counsel and distribute them among its programs according to their interests and abilities.

It is also the special obligation of the public junior college to promote a student body in each college campus which will be broadly representative of the general population of the city, the Board said. The Resolution said that realistic planning for the future of the City Colleges of Chicago requires awareness and study of the following:

- The need for occupationally trained manpower as well as for the university educated professional;
- The number of young people and adults who will seek to enter educational and training programs designed to meet manpower needs;
- The capital and operation costs necessary to meet goals based on enrollment and program requirements;
- The availability of needed funds from state and local taxes and from federal aid to education; and
- The organizational structure that will best provide an outstanding comprehensive educational program in a multi-college system for the City Colleges of Chicago.\(^\text{17}\)

Accordingly, the Board authorized and directed the Chancellor, together with the College staff and faculty, to begin a continuing study for the City Colleges of Chicago and to develop a Master Plan for the College which will address itself to the questions of number of students to be educated, in what kinds of programs, in what kinds of facilities, and administered under what kind of organizational structure.

\(^{17}\)Ibid.
The Board also said in its November 29, 1967 Resolution that planning groups appointed to such a study be informed that the Board is committed to the philosophy of "open door" admissions and a policy of providing a broad range of programs to match the varying interests and abilities of young people and other adults; and that no eligible person should be denied an educational experience in the City Colleges of Chicago because of financial inability.  

History of the American Federation of Teachers, AFL-CIO

While collective bargaining for public employees is relatively new, union membership affiliation for teachers dates back to 1916 when the American Federation of Teachers was organized and became affiliated with the American Federation of Labor.

During the early years of World War I, an increasing number of public school teachers began to note the progress of industrial unions in the United States, and when they looked at their own status, began to conclude that it might be wrong for administrators, principals, department heads and instructional supervisors to be in the same organization with classroom teachers. In 1916, therefore, teacher representatives from New York City, Chicago, Gary, Scranton,  

\[18\] Ibid.
Oklahoma City and Washington D.C. sat down, reviewed the situation and concluded that they should form the American Federation of Teachers (AFT). In the early days of the AFT's existence, the National Education Association (NEA) was not unfriendly. Members in both groups thought that the role of the NEA should be concerned with the professional side of teachers' activities, namely, how to improve teaching, while the AFT should concern itself primarily with improving the economic status of teachers.¹⁹

During World War I, teachers flocked to join the new union and by 1919 the membership increased to 10,000. NEA leaders saw this gain in AFT membership as a threat to their organization. School superintendents put on a drive to augment NEA membership. Beginning in 1920, many districts insisted that job applicants join the NEA as a condition of employment. As a result of this pressure, AFT membership declined from 10,000 to 3,500 in 1927. During the Depression years, membership rose as teachers worried about insecurity and arbitrary discharge.²⁰

During World War II, the American Federation of Teachers took resolute action to drive Communists out of their membership. After World War II, teachers continued to


²⁰Ibid.
join the AFT in greater numbers and by 1958 membership increased to 55,000. Since 1958, victories in several major U.S. cities have swelled the rank of AFT to about 140,000 members. 21

The founders of the American Federation of Teachers originally believed that public school teachers should not be permitted to strike. They offered their members the support of organized labor and assured them that powerful allies among labor unions would offset the loss of bargaining power because of the denial of the right to strike. 22

Despite the close relationships with organized labor, AFT, in its early history, did not employ the usual techniques of the labor movement. For example, it did not try to control the level of entry into teaching. Even now it makes no real effort to win a closed shop or union shop agreement where union membership is a condition of employment. More recently, AFT has changed its attitude about strikes and militancy, and in 1960 electrified the nation with its major strike in New York City. This was a prelude to the 1961 contract breakthrough, and the AFT local in New York began to receive organizing assistance from the Industrial Union Department (IUD) of the AFL-CIO and also

21 Ibid.
22 Ibid.
considerable financial help from other unions and particularly from Walter Reuther's UAW.23

Until then, teachers were reluctant to join the AFT because they feared being labeled as "nonprofessional unionists." They believed that by belonging to the National Education Association they could impress the city school systems and state governments with their concern for appropriate licensing of teachers and insistence upon standards. AFT, it seemed to them, was more greatly concerned with wages and working conditions.24

Whereas, numerous boards of education have refused to grant the right to a representative election in accordance with established policy, procedure and practice in other areas of employment, and whereas, even after the establishment of collective bargaining certain school boards often fail to bargain in good faith, therefore, be it resolved: that the AFT recognize the right of locals to strike under certain circumstances, and be it further Resolved: that AFT urge the AFL-CIO and affiliated international unions to support such strikes when they occur.25

Background of the Cook County College Teachers Union

In September 1965, the Chicago Teachers Union (CTU), Local 1 of the AFT, with a 12,000 union membership, threatened to strike all Chicago public schools unless the board would commit itself to a new salary schedule, plus set an election date to determine the exclusive bargaining

23 Ibid.
24 Ibid
25 Forty-Seventh Annual Convention of the American Federation of Teachers.
representative for Chicago's classroom teachers. Last-minute discussions with the AFT, aided by a receptive attitude by Board Vice-President Thomas J. Murray, resulted in calling off the strike. Murray, who was also the president of Local 134 of the Brotherhood of Electrical Workers, convinced the rest of the board members that "if teachers want collective bargaining, why shouldn't they have it?" 26

The Chicago Teachers Association, an NEA affiliate, indicated that they would test in the courts the matter of the board's legal right to agree to a vote for a bargaining representative. The NEA represented only 3,500 of the city's 22,000 teachers. Both the board and the AFT agreed to encourage such a test case. The conditions the board set in authorizing an election included recognition of the right of teachers to join any organization they wanted, thus precluding a union shop; recognition of the right of non-union teachers to present matters to the Board of Education as individuals; an agreement to hold further elections if it appeared that the bargaining agent did not represent a majority of teachers; and a ban on discrimination because of race, creed color, national origin, or sex. 27

It was agreed that the Illinois Mediation Service

26 Shils, p.64.

27 Ibid. p.65.
would conduct the election.28

On May 27, 1966 teachers in the nation's second largest city chose AFT Local 1 as their collective bargaining agent. The victory was lopsided: 10,936 votes were cast for the Chicago Teachers Union, AFT; with only 364 ballots cast for the NEA affiliate. The mail ballot conclusively designated AFT. Union President John M. Fewkes planned to start negotiations in November 1966 with a view to doing better than AFT's victories in N.Y. and Philadelphia. The Chicago board's memoranda of understanding expired with all teacher groups in November 1966, one year after union pressure began.29

Meanwhile, rulings by Cook County Court and the State Department of Public Instruction assured that the election procedures would be legal.

On January 7, 1967, both the Chicago Teachers Union and the Cook County College Teachers Union (CCCTU) announced strikes. The weekend threat by the public school teachers resulted in the intervention of Mayor Richard Daley and the granting of a $500 annual raise to Chicago's 23,000 public school teachers, plus medical leave, and other benefits amounting to $20 million a year.30

28Ibid.


30Ibid.
While the settlement was made with the public school teachers, averting Chicago's first strike in the elementary and secondary schools, the college teachers under the leadership of the AFT local staged their second strike in 40 days. The first, from November 30 to December 2, 1966, had been conducted to gain recognition for the AFT as the bargaining agent for the college teachers. The college teachers in Chicago's junior college system won a salary increase of $20 to $30 per month, insurance and leave improvements, plus a reduction in the teaching schedule from 15 to 12 hours weekly.31

Collective Negotiations between the Board and the Union

The Board of Trustees is a body politic and corporate created by the State of Illinois, pursuant to the Public Junior College Act, approved July 15, 1965, Ill. Rev. Stat. 1965, Ch. 122 §§101-1-106-12. The Union is a labor organization, duly chartered by the American Federation of teachers, AFL-CIO, which admits to membership college teachers and represents such teachers in matters concerning salaries, fringe benefits and working conditions.32 The Public Junior College Act specified, inter alia, that the

_____

31Ibid.

32Two Year Agreement between the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO Chicago, Ill. (Chicago: n.p. 1967). p.72
Board has the duties to adopt and enforce all necessary rules for the management and government of the colleges of its district ... To appoint all teachers and fix the amount of their salaries ... to establish tenure policies for the employment of teachers and the cause for removal.33 No provision of the Public Junior College Act allows the Board to delegate or relinquish in whole or in part, its statutory duties and responsibilities.34

Pursuant to the opinion of its counsel dated August 22, 1966, the Board exercised its lawful discretion and consented to negotiate with an organizational representative of its faculty members as exclusive collective representative of such employees, regarding salaries, fringe benefits and working conditions if such representative were so designated by a majority thereof.35

By appropriate proceedings and within the area of Board discretion described in the opinion of Board counsel, authorization was given by the Board on September 26, 1966, to the conduct of a representative election by the American Arbitration Association certified that 592 secret ballots were cast in said election and that 535 votes therein were cast for the Union. Pursuant to the foregoing, on October

33 Ibid. p.73.
34 Ibid.
35 Ibid.
11, 1966, the Board recognized the Union as the exclusive Collective Representative regarding salaries, fringe benefits and employment conditions for all faculty members in the bargaining unit.

A Negotiating Committee was thereafter appointed by the Board to conduct negotiations with a similar Committee of the Union. As a result of such negotiations, the Board Negotiating Committee achieved consensus with the Union representatives regarding salaries, fringe benefits, and employment conditions for all faculty members in the bargaining unit, for the period of January 1, 1967, through December 31, 1968. The Board Negotiating Committee recommended to the Board that such consensus be recorded in a written agreement. Having previously voluntarily endorsed the practices and procedures of collective bargaining as a peaceful, fair and orderly method of employment relations insofar as such practices and procedures are appropriate to the special functions of the Board, are permitted by law, and are consonant with the paramount interests of the students of the College, the College system and the public, the Board approved and accepted the recommendations of its Negotiating Committee by formal action at its meeting of May 9, 1967, and authorized its President on behalf of the Board, to sign the Agreement so recommended. By appropriate procedures the Union authorized its President similarly to sign said agreement.
In accordance with the terms and procedures of their agreement which was to terminate on December 31, 1968, the parties entered into negotiations on September 1, 1968, for the purpose of reaching a new agreement with regard to salaries, fringe benefits and working conditions for the period commencing January 1, 1969. Such an agreement was adopted by the Board and signed by its Chairman and Secretary and the President of the Union. 36 The agreement so adopted is determinative of salaries, fringe benefits and working conditions of all faculty members in the bargaining unit for the period of January 1, 1969 to December 31, 1970. Subsequent contracts were approved for the periods:

- January 1, 1971 through June 30, 1973
- July 1, 1973 through June 30, 1975
- July 1, 1975 through August 21, 1977
- August 21, 1978 through July 15, 1980 37

The Procedure

A study of arbitration cases involving Community College District No. 508, State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO during the period 1967 through 1976 were made. During this time space 154 grievances were submitted to the arbitration process stipulated in the agreement between the Board of

36 Ibid., p. 74.
37 Ibid., pp. 74-75.
Trustees of Community College District No. 508, County of Cook and State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO Chicago, Illinois. As of January 12, 1981, 137 of these grievances have been arbitrated, resolved, or withdrawn. As provided for in the board-union contract, the administration initiated five grievances, of which two were assigned American Arbitration Association case numbers.

Article X of the board-union contract states:

B.3.I. The decision of the arbitrator will be accepted in good faith as final by both parties to the grievances and both will abide by it.

B.3.K. The Board and the Union agree that neither party will appeal an arbitration award to the courts unless the arbitrator is believed by either party to have acted illegally.

Twenty-two of the arbitrated grievances were referred to the Illinois State courts (four were decided in the Supreme Court) for adjudication. The data base for this study was drawn from these cases (1967-1976).

The research technique to be utilized in this study is one of content analysis. The content analysis to be employed for this study is referred to as a form of "documentary-frequency study" which is used to determine the

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38 Ibid.
frequency of occurrence of the studied phenomenon.\textsuperscript{39} That is, the sought for information will be taken from the contents of the original school arbitration awards, examined, classified, and tallied.

As pointed out by Borg, "the major purpose of descriptive research in education is to tell "what is."\textsuperscript{40} Descriptive studies serve several functions: in the face of conflicting claims regarding a new subject, it is often of great value to know the current state of the subject. Secondly, it is often a preliminary step to be followed by more rigorous control and methods of study. Third, descriptive studies are widely used as the basis for internal evaluation and educational planning by alert school systems."\textsuperscript{41}

A widely accepted definition of content analysis defines it as "a research technique for the objective, systematic, and quantitative description of the manifest content of communication."\textsuperscript{42} Content analysis is distinguished from more subjective forms of analysis in that it requires the careful formulation of classification

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\textsuperscript{41}Ibid., pp. 202-203.

\end{flushleft}
categories which are vigorously and systematically applied to all data in the sample. The results of this analysis are quantified to emphasize the importance of various aspects of the analysis.\textsuperscript{43}

Holsti asserted that content analysis is a multi-purpose research method developed specifically for investigating a broad spectrum of problems in which the content of communication serves as the basis of inference.\textsuperscript{44} Any study using the content analysis research technique stands or falls depending upon the extent that categories for analysis of written material are clearly formulated and adapted to the problem and content.\textsuperscript{45} The definition of categories requires that they be exhaustive to ensure that every item relevant to the study can be classified and that they be mutually exclusive, so that no item can be scored more than once within a category set.\textsuperscript{46}

Once the cases are analyzed to determine categories they are briefed. The case briefing technique is similar to the method used by lawyers in the preparation of cases. It


\textsuperscript{45}Berelson, p. 147.

\textsuperscript{46}Holsti, p. 646.
is also similar to the technique used by law students studying cases while at law school. The case system has been defined as "a method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method." Each grievance is recorded in a standardized format as follows:

- Case number
- Brief description
- Contract provision
- Opinion of arbitrator
- Award

Each grievance is classified in one of the twenty-three (23) possible categories (See Chapter Three and the legend for Appendix 1.). The outcomes of the disputes submitted to arbitration are also classified according to subject area. The number and percentage of disputes sustained and denied in each subject area are reported. The nature of the remedies ordered in the cases where grievances were sustained is reported in number and by percentage. The remedies are classified in the following categories:

1. Additional pay
2. Back pay
3. Cease and Desist
4. Reappointment
5. Take affirmative action
6. Return situation to a condition that existed before the grievance was filed.
7. Other

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A further examination of the cases which dealt with contract language was conducted. The problematic elements in each case are identified and placed in one of the following categories:

1. Construction
2. Interpretation
3. Absent Specific Language
4. Direct Violation of Language
5. Other

The following classifications were used to categories defense arguments.

1. Past Practice
2. Intent of the parties
3. Contract Language
4. Emergency conditions
5. Non-arbitrable
6. Other

A search of the literature has been incorporated so as to create an inventory of published information available; and, in addition, unpublished research that has been performed in this subject area.

The indepth study concentrates upon the influence (or absence thereof) of the awards on:

1. subsequent board policy
2. contract negotiations
3. with resulting changes in contract language and provisions

The initial and succeeding contracts for 1966 through 1976 were compared section and paragraph to section and paragraph to identify subsequent changes negotiated. A correlation between the changes and prior arbitration awards
was accomplished so as to identify the impact of the grievance procedure upon contract language.

A comparable review of the Board rules was accomplished to reveal alterations and/or additions in them. A similar correlation is made so as to determine the impact the arbitration awards have had on the Personnel Handbook and Academic Policy Handbook under the aegis that the central and campus administrators function under. Ensuing changes that have occurred are denoted by the dates in the handbooks. A search was made of the revisions so as to ascertain what modifications resulted from arbitration decisions.

The analysis incorporated the success ratio for each party of the arbitrable issues, with an accompanying profile of the validity of each adversary's position. It was desired to ascertain the existence of a pattern of grievable issues. This issue included repetition of identical issues, contract clauses violated, lack of provisions in contract language, etc.

Limitations of the Study

The data collection task was the prime priority. The time required was the greatest obstacle to the completion of the thesis. Time was devoted to reading each of the awards, extracting the information, and converting it to a statistical form.
Frequency tables were constructed so as to illustrate the number of arbitration cases in each stage, the outcomes of the disputes according to subject matter and the nature of the remedies ordered when the cases were sustained. Arbitration cases, which dealt with contract language, were identified and classified according to the problematic elements of the contract language.

It was indeterminable if there were arbitration cases missing. Some files of cases did not contain all the original material. In several cases, the original files were inaccessible because they are still held by the Union's lawyer's office. In a few cases, the outcome was available, but the opinion of the arbitrator was not accessible.

In AAA Case No. 51-39-0215-73, the outcome of a mandamus suit entered in the Cook County Circuit Court was not learned.

If an impact was identifiable from the processing of the grievance, it was incorporated in the case analysis. It is not presumed that the impact identified was a direct result of a specific cause (the grievance). It is felt that the grievance and resulting arbitration cases identified areas of problems. Other external events are likely to have brought considerations into the decision making processes so as to shape the outcomes. For example, alternatives, revisions, additions to subsequent Board-Union contracts may have been due to unattributable causes, in addition to the
awards of arbitrators. (The award date was employed to determine if a subsequent contract was affected). It has been assumed that the grievances were symptomatic of problem areas; and were indicative of the reaction to management trends.

The Manual of Personnel Policies and Procedures was published on March 30, 1970. No attempt was made to demonstrate the impact of arbitration awards during the years 1967, 1968, 1969 on the institution of new policies.

It should be appreciated that revisions of the Personnel Policies Manual occur indirectly. Arbitration awards that created an impact on the application of the Board Rules and/or Agreements are reflected by alterations in the Personnel Policies Manual. This Manual, per se, was not the precipitating factor in the grievances (except in AAA Case No. 51-39-0481-72).

Articles that have been revised or added have the change date at the bottom of the page. The practice was to destroy the original policies and replace them with the updated copy. It was difficult to demonstrate by comparison what the actual changes were since only the revised copy existed in the manual.

The following chapters constitute a review of the related literature, the repercussions of arbitration cases and analysis of the data, the documentation of arbitration cases, followed by the summary, and conclusions.
CHAPTER II
REVIEW OF RELATED LITERATURE

Introduction

Chapter II of this study presents an overview of arbitration as it has developed in both the private and public sectors. An extensive search of the literature was conducted in an effort to locate information of professional interest of the characteristics of the grievance process and the often resulting arbitration. The literature revealed significant factors relating to public employees in general, and public school instructors in particular with regard to their rights to collective bargaining and utilization of the grievance and arbitration process in the same manner as the private employee sector. The dynamics of grievance arbitration are noted, and the impact on management where grievance arbitration exists is reported.

A search of the literature reveals the subject of grievance arbitration is one which has received considerable comment and has been written about widely. Much of the literature on the subject has, understandably, been found in references to the private and industrial setting, and only more recently in the field of public employment or more
specifically in the educational setting. The involved nature of grievance arbitration and its impact upon school authorities and faculty organization is investigated. The search of the literature included an examination of the areas of grievances, arbitration and collective negotiation. Sources come from different texts related to legal, labor, and educational publications. The review of the literature, while by no means exhaustive, is representative of the general nature of the grievance arbitration process. The literature does not conclusively establish that public employees are significantly different from those in the private sector, nor does it offer alternative suggestions for collective bargaining.

Impasse Resolution

Impasse resolution in the United States began in the 1800's as collective bargaining in private industry appeared, even though it had been well established in Europe prior to that time. This type of resolution was not utilized to a large degree until collective bargaining expanded in the 1900's, and then impasse resolution methods also expanded.¹

The origin of organized written grievance procedure is found in the beginnings of collective bargaining in the

private sector. Prior to World War II, the general terms of collective bargaining agreements were so vague as to be almost unenforceable. As a result, grievance procedures and the power of arbitrations were loose and poorly defined. The tremendous growth in the 1930's and 1940's of a labor movement oriented to the improvement of conditions on the job was a key factor in changing the collective bargaining agreement from a brief general statement of terms to the more detailed legally enforceable document of today.²

During World War II, many unions negotiated contracts which contained no-strike, no-lockout provisions and provided for binding arbitration as the means for settling disputes arising from the interpretation of the contract.³ The War Labor Board (1942-1945) functioned as a tripartite arbitration board of disputes over unresolved contract terms. By the end of 1945 when the War Labor Board went out of existence, arbitration, as a means for settling disputes over the interpretation and application of existing collective bargaining agreements, had been accepted as a

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³Ibid., p.7.
viable, practical, peaceful alternative to industrial warfare. ⁴

In the twelve years following World War II, the criteria and procedures for solving disputes by arbitration continued to grow and develop. During this period, the federal courts played a minimal role in shaping the arbitration process. Arbitration awards were enforced largely by State courts applying common law to State statutes. ⁵

Impasse resolutions preceded grievance procedures in the history of collective bargaining. Impasse occurs at the point when it is determined by either or both parties that the negotiators are unable to resolve their differences and assistance is needed. Impasse resolution procedures were key issues in most collective bargaining agreements and were frequently legislated when public sector bargaining issues were passed into state law by state legislative bodies. ⁶

Perry and Wildman indicated that there were three broad alternatives for the resolution of impasse in any bargaining dispute:

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⁴Ibid., p. 243.

⁵Ibid., pp. 244-245.

(1) Economic approaches based on withholding of resources -- strikes or lockouts. These were most effective in the short run and tended to foster crisis bargaining in the long run. These approaches often resulted in decisions based on short run desires.

(2) Political approaches based on appeal to public opinion. These approaches had limited effectiveness, especially at the outset of collective bargaining experiences, but were more effective for long term results.

(3) Rational approaches based on factual determination by an important third party. These approaches worked best where economic approaches had been used in past experiences.

Approaches to impasse resolution that were rational were based on factual, not emotional, determination of the balance of equity in a bargaining dispute. To insure to as much as a degree possible a rational solution, a third party opinion or third party assistance was generally necessary. Also essential was the concept that the third party be impartial. 8

Grievance Arbitration

Grievance procedures developed out of impasse resolution techniques. Pigors and Meyers identified the most desirable characteristics of a grievance procedure:

(1) it should be demonstrably fair; (2) provisions should be clearcut; (3) it should be simple; and (4) it should


8 Ibid., pp. 90-91.
function properly. 9

The criteria for the workability of a grievance procedure was provided by Ashby:

(1) The word grievance should be carefully defined so as to distinguish it from the day-to-day 'gripe.'

(2) The purpose of the grievance procedure should be stated, for example, to 'encourage a spirit of cooperation, trust, mutual responsibility between the board and their entire staff.'

(3) The document should make it crystal clear that any person invoking the provisions written therein will be free from any prejudicial or punitive measures because of such action.

(4) The procedure should outline in clear language the order of the steps which should be taken in seeking redress for a grievance.

(5) The time allotment between each succeeding step should be precisely defined.

(6) The procedure should indicate that the aggrieved employee shall have the right to present witnesses and to be represented by counsel.

(7) There should be a definition of what constitutes an arbitrable grievance. In the cases of arbitration, the document should spell out who bears the cost and the qualifications for an arbiter. 10


The resolution of disputes under the grievance machinery contains the following possibilities: (a) forfeiture of grievance processing due to noncompliance with stipulated time limits and thereby, under the agreement demonstrating an acceptance of the disciplinary action, (b) negotiating a mutually acceptable settlement, and (c) finally, complying with a decision rendered by either a bipartite or neutral umpire.  

Anderson noted one aspect which continued to play a role in the arbitration of grievances in both the private and public sectors. This aspect had to do with disputes and politics. Several points were presented which may affect why grievances progress to an arbitration settlement: (1) the principal reason is political; (2) management backs its own group and the union backs labor even in grievances with little merit; and (3) for political reasons the grievance is arbitrated not by either logic or rational thought.  

A good grievance procedure should contain the following:

(1) Definition of a grievance.

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(2) Methodology to be used by the parties.

(3) Formal procedures to be followed:
   a) Maximum time for each step.
   b) What happens if the time passes.
   c) When a grievance must be in writing.

(4) Authority of arbitration
   a) Advisory
   b) Binding

(5) Procedure for appointment of the arbitrator.

(6) How costs of arbitration are to be met. 13

Advantages and Disadvantages of Arbitration

Some arguments for and against the use of the concept of binding arbitration in collective bargaining disputes have been identified by Howlett. He listed the following reasons against the procedure:

1. unconstitutionally delegated legislated power
2. parties didn't bargain as effectively
3. wages could be awarded by administrative action
4. weak unions had an advantage
5. outside parties made contract decisions
6. negotiating parties were pushed apart.

Some of the advantages to the process identified by Howlett were:

1. good alternative to strike
2. work stoppages were not in the public welfare

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(3) it was a civilized way to resolve differences. 14

Apparently the mere existence of arbitration in a grievance procedure has an effect on administrative treatment of employees. Taylor observed that most managements are, by and large, doing everything in their power to avoid arbitration and prefer to keep disputes "within the family." 15 Another writer in noting this effect comments that "the parties cannot help but be aware of the available legal sanctions and while legal sanctions are rarely used, they significantly effect the relationship in many instances." 16

The avoidance of strikes was frequently used as a reason for the adoption of compulsory arbitration laws. In most instances when arbitration laws were enacted, they included non-strike clauses. Those that did not allow


limited use of the strike usually required exhaustion of other impasse resolution methods first.\textsuperscript{17}

Neil Chamberlain conducted a survey of the impact of unions upon management control which led him to conclude that erosion of traditional managerial authority had occurred. He further observed that management tends to attempt to preserve holding the line against union intrusion based on the following fears: "The safeguarding of unified final authority, the discharge of imposed responsibility, protection of efficiency, lack of union responsibility, inadequacy of union leadership, suspicion of union motives, and the fear of a changing economic system."\textsuperscript{18}

William J. Usery, Jr., writing in the \textit{Monthly labor Review}, while he was Assistant Secretary of Labor for Labor Management Relations of the United States Department of Labor, stated: "Because private arbitration of labor-management disputes has been an effective substitute for

\textsuperscript{17}Hugh D. Jascourt, "Fact Finding in Public Education Negotiations Disputes: An Overview," \textit{Journal of Law and Education} \textbf{3} (April 1974) 263.

strikes and lockouts, it is in the public interest to encourage its growth and health.\textsuperscript{19}

The impact of grievance arbitration upon management personnel is believed to be another significant implication of grievance arbitration. One author comments:

Middle management and first line supervisors are no longer free to issue orders as they please; today they must do so with the contract or agreement constantly in mind. The unilateral perogatives of management to discipline or process grievances gives way when these functions come under the contract agreement.\textsuperscript{20}

Management had tended to view arbitration of grievances with contempt and fear. Baer noted managements' position when stating that: "Arbitration is a means by which the union is enabled to further erode managements' few remaining prerogatives by obtaining things through a third party which were not given nor intended to be given during collective bargaining."\textsuperscript{21}

Contrasting managements' views are those of the employees' organizations as regards arbitration.

...the process which allows an outsider, who was not present when the parties argued, compromised and finally agreed, to come in and look over the shoulders of the


company and union, to read their arguments, hear their respective arguments, then tell them what they really meant and intended when they drafted their document and thus provide justice and equity to all.\textsuperscript{22}

A major premise underlying arbitration of contract grievance as a stabilizing factor in employee relations is that the employer may wreak a wrong on the employee and this prerogative is upheld. He may be found guilty of a contract violation and required to make restitution. However, his original right to wreak the wrong is retained. To wit,

An employee must attempt to comply with the rules and performance standards in good faith. He must obey orders, even those he believes are incorrect unless compliance with an order will endanger his health, or safety. If he believes he is being treated unjustly, he must use the grievance procedures and must not attempt to take matters into his own hands; i.e. he must perform and then grieve.\textsuperscript{23}

It has been reported that grievances are sometimes processed by employee organizations for political purposes. "Union officers, if they are responsive to membership pressures, as they must be in a democratic organization are forced to represent an individual even at times to the extent of taking his case to arbitration when they actually believe that such actions are not

\textsuperscript{22}\textit{Ibid.}

\textsuperscript{23}\textit{Dallas L. Jones, Arbitration and Industrial Discipline, Report 14, Bureau of Industrial Relations, (Ann Arbor: The University of Michigan, 1961), p. 21.}
Two reasons are advanced for this: 1) The fact that an individual pays his dues and is entitled to help from the union and the union is obligated to provide it -- it is a major function of a union, and 2) the fear and known hardship of unemployment prompts members to feelings of sympathy and belief that an individual should be given another chance.

Despite the recognition of the political context in which some grievances are pursued to arbitration, Jones concluded "... although political consideration plays an important part in the decision to arbitrate some cases, the desire to correct believed injustices is also an important reason for arbitration. In fact, it would appear to be the basic reason in most cases."

The Law As It Relates To Arbitration

The United States Supreme Court's description of the grievance process culminating in arbitration was cited by Duryea, Fisk, et al., as follows: "... the United States Supreme Court has described the grievance process, culminating in the arbitration of a disputed issue by a neutral third party, as "the very heart of the system of industrial self government." "It is," the Court said, "a

24 Ibid, pp. 141-165.
25 Ibid. p. 141.
26 Ibid. p. 131.
vehicle by which meaning and content is given to the collective agreement.*

Since arbitration may be considered as a form of self government under which both parties resolve their differences, questions arise concerning under what circumstances an arbitrator's authority might be overruled. What is the practice when one of the parties, upon receipt of an adverse ruling, refuses to comply with the award or even to participate in arbitration, where that party believes arbitrator authority is unwarranted? This and other questions have arisen through the history of labor arbitration and the courts have been called upon to clarify the legal status of labor arbitration.

It should be noted that: ... the law does not enter the picture unless it is summoned by one of the parties. The law is available for the purpose of forcing a party to arbitration when he is unwilling to do so, and of forcing the party to obey an arbitration which he is refusing to oblige. The law is called to the scene when only one of the parties is dissatisfied with the working of the arbitration process. As long as arbitration and its results are voluntarily accepted by the parties and as long as neither party resorts to the courts, the law leaves them strictly alone.

The United States Supreme Court in a series of landmark decisions, beginning in 1957 with the Lincoln Mills

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Case,\textsuperscript{29} provided the foundation for developing an elaborate system of federal substantive law on arbitration and the labor contract. An interpretation of that decision was that the court affirmed four basic principles:

1. That either party could sue in the federal courts for enforcement of a collective agreement.

2. That federal rather than state law should be controlling in such suits.

3. That an agreement to arbitrate disputes is enforceable in federal courts under federal law rather than in state courts under various state laws.

4. That the Norris-LaGuardia Act, which limits the issuance of injunctions by federal courts in labor disputes, does not apply to a union's suit seeking enforcement of an employer's promise to arbitrate.\textsuperscript{30}

It should be noted that while this case and others considered by the U.S. Supreme Court dealt with issues arising under collective bargaining contracts subject to the Federal Taft-Hartley Act, the controlling view of that court would be followed by the state court system where a public bargaining law is basically similar to the federal law.

A series of three concurrent decisions by the U.S. Supreme Court in 1960, generally referred to as the \textit{Triology}

\textsuperscript{29}Textile Workers Unions v. Lincoln Mills, 353 U.S. 448 (1957).

or Steelworkers Trilogy\textsuperscript{31} are commonly viewed as the most significant for determining the general attitude of that court toward the arbitration process. The following extracts from those decisions appear to place that body squarely in favor of encouraging and supporting labor arbitration.

The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware.

The union claimed in this case that the company had violated a specific provision of the contract. The company took the position that it had not violated that clause. There was therefore, a dispute between the parties as to the 'meaning, interpretation and application' of the collective bargaining agreement. Arbitration should have been ordered. When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of

collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal. 32

The above case was brought by the union to compel arbitration as was the following:

Courts and arbitration in the context of most commercial contracts are resorted to because there has been a breakdown in the working relationship of the parties; such resort is the unwanted exception. But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is usually a vehicle by which meaning and content are given to the collective bargaining agreement.

Apart from matters that the parties specifically exclude, all the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement. 33

Finally, the third of the series dealt with a union, which after winning a favorable arbitration award, was compelled to seek court assistance to gain compliance with the award:

The refusal of courts to review the merits of an


arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. The arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level—disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Thus it would appear that the highest court shows great reluctance to intervene into what is considered a private contractual agreement between the parties to settle their disputes by arbitration.

The United States Supreme Court also recognized the necessity of requiring the parties to exhaust arbitration before seeking court relief by stating in a later opinion that the individual must attempt the use of the grievance

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procedure,\textsuperscript{35} and in that same opinion also recognized the problem of parallel jurisdiction which creates opportunities for employers to delay the implementation of an award.

**Arbitration and the Public Sector**

Labor disputes were natural characteristics of the free enterprise system, especially when related to worker organization and collective bargaining. Such disputes reflected the determination of employers and employees to receive what each considered its fair share of the fruits of labor. Generally speaking, the development of methods of impasse resolution has followed closely the development of collective bargaining in the public sector.\textsuperscript{36}

Arbitration in the public sector has been gaining popularity and legal authority continually for the past two decades. President Nixon issued Executive Order 11941 on January 1, 1970. This executive order provided for binding arbitration in impasse situations for federal employees who were involved in collective negotiations. Even though interest arbitration was not precisely the same as grievance arbitration, the flow of public sector acceptance of this arbitration was increasing. The distinction is described in


the subsection "Terminology and Contract Language."

The question of binding arbitration while dealing with public employees was largely dependent upon the governing statutes and regulations and on the individual facts and circumstances of the cases. The key issue was whether government management which receives its authority and responsibility from the people may redelegate all or some of this authority and responsibility to an outside arbitrator for a binding decision.37

Garber discussed the question of the delegation of authority because of the compulsory arbitration usage in the public sector.

Opponents of compulsory arbitration argue that third-party determination of contract issues would constitute an unlawful delegation of the government's legislative powers. It is contended that the government, as the sovereign, is not only the employer, but the representative of all the constituencies. The legislature could not be assured that the arbitration panel would issue awards in conformity with the public interest.

The components of this argument must be reviewed in considering both the propriety and legality of compulsory arbitration. While certain aspects of this contention have unquestionable merit, the sovereignty issue should not be permitted to rule out the implementation of compulsory arbitration.38


Private sector arbitration appears to include emphasis on maintaining industrial discipline and control of the workers, while this issue does not appear to be a major issue in the public sector. The American Arbitration Association reports: "The most significant difference between grievance arbitration in the public and private sector is that discharge and discipline cases are extremely infrequent in the former." This conclusion is felt to be due to the traditional forms of civil service and tenure protections given public employees against arbitrary discharge. The single most frequent issue in arbitration in the public section appears to be disciplinary actions.

Loewenberg established several basic conditions regarding the development of arbitration in the public sector.

1. Arbitration is a voluntary process.

2. Arbitration deals with differences in the administration of the agreement which the parties have negotiated.

3. Arbitration involves settlement of a dispute by a person chosen by the parties who hears the evidence and makes a decision.

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4. The arbitration decision is based on the facts in the particular case at hand and is not bound by prior decisions and not influenced by pending cases.41

The argument against arbitration by public officials was basically the same as was advanced against the recognition of employee unions. If employee organizations gain power, it is at the expense of management's power and sovereignty.

When the arbitrator's decision is substituted for the former right of management to accept or reject an employee's grievance unilaterally, the locus of power in that instance has shifted from management to arbitrator.42

Arbitration and the Public Schools

The argument against grievances in public education has been expressed by Prasow and Peters. The theoretical basis for objection to this concept dealt with the "theory of management reserved rights." The authors felt that this was the heart of the conflict between employee and employer regarding arbitration. The "reserved rights theory" held that management's authority was supreme in all matters except those it has expressly conceded in the collective agreement and in all areas except those where the authority


was restricted by law. 43

An important corollary that dealt with the reserved rights of management dealt with the "doctrine of implied obligations." Prasow and Peters described it as the acknowledged right of employers to alter and abolish employee benefits when the contract was open for negotiations, but once a new contract had been signed, the employer was no longer free to withdraw existing benefits. 44

This corollary applies to arbitration on two counts: (1) Nothing within the document may be withdrawn while it was in force when and if differences occurred which refer to the intentions, text or other contractual concerns when the arbitration process, if available, allows a viable solution resource. (2) If the collective negotiations contract includes arbitration of grievance provisions, management must by reason of the "doctrine of implied obligations" follow through on the grievance settlement.

Some school boards' resistance to arbitration appears to be based on several factors, including the concept of a higher authority than a locally elected board, the unprecedented scope of issues subject to arbitration, and the potential loss of control over employees. Attorney


44 Ibid., p. 4.
Keller, writing in the Michigan School Boards Journal states:

Compulsory arbitration means a transfer of government authority from the legislative body elected by the people to a panel of so-called experts operating on a case-by-case basis. This alone is enough to condemn compulsory arbitration in public employment. . . . Turning to another important problem we should recognize that in public education there is a pronounced trend to control administrative decisions at the collective bargaining table. Included in this area are such vital matters as the selection of administrators, instructional requirements, curriculum development and change, and teaching methods.45

Another writer sees a less effective control by lay boards, a whittling away of discretionary authority of school boards and a pronounced trend to control administrative decisions.46

Bailey and Halter jointly reported on a study conducted as part of a doctoral dissertation by Halter of seven Illinois districts where strikes occurred in 1972. Three of the several hypotheses are pertinent. Those hypotheses, along with the results, were as follows:

1. Teacher negotiation representatives and school management representatives would both agree that the arbitration strategy would not be an appropriate dispute settlement mechanism in public education bargaining impasses. This hypothesis was


neither accepted nor rejected due to conflicting data.

2. Teacher negotiation representatives would agree that the strike strategy should be available as a means to resolve collective bargaining disputes. This hypothesis was accepted.

3. School management negotiation representatives would agree that the strike strategy should not be available as a means to resolve collective bargaining disputes. Contradictory data prevented acceptance or rejection of this hypothesis. 47

Erickson studied the first five years of grievance arbitration awards in Michigan after the implementation of the Michigan Public Employment Relations Act of 1965. Sixty-five grievance awards were located and investigated. A classification and frequency analysis was developed to investigate the awards. A series of questions were developed to accomplish the objectives of the study.

The conclusions by Erickson were:

1. Without a question new authority is present in the school setting. The new authority of arbitration is institutional in nature and represents doctrines established over long years of practice in the non-public sector.

2. Experienced arbitrators bring with them to the school setting many established principles of common law existing in the private sector.

3. Several factors will determine the rate of growth of a new common law in schools from the arbitration process. These involve commonality of contract language, the extend to which school arbitration is

published and also definition of the teachers role divorced from his role as a citizen.

4. The impact of grievance arbitration upon school management is profound. The possibility of arbitrator's reviewing management decisions not only is new to authorities in the schools but also requires different patterns of administration.

5. Arbitration impact upon teachers is equally profound. Teachers over the years have been relatively unsuccessful in obtaining control over conditions of their employment. Arbitration decisions may be the cutting edge for determination of important changes in the profession.

6. Arbitration is formal and complex, expensive and lengthy. Teachers have been quite successful in appealing grievances leading to the conclusion that grievance arbitration is an extension of fundamental rights of appeal when conflict occurs between school authorities and teachers short of recourse to time-consuming process in Michigan courts.48

Masters suggested that:

School administrators who until recently were primarily concerned with educational issues and program administration, must now, under collective bargaining, also concern themselves to a much greater degree with employee relations. In fact many (administrators) continued to find philosophical or 'professional' reasons for objecting to collective bargaining, even when it is established public policy, as it is in Michigan. Boards of education, on the other hand, exhibit a fear of loss of sovereign power resulting form collective bargaining contracts enforceable by third party arbitration.49


These concerns recognize the feasibility that arbitrators will be ruling in areas where they have had little technical experience but in which they will have broad contractual authority to render significant decisions in the field of education. One writer believes arbitration means that the ultimate power of government will rest with the arbitrator and that "arbitration will begin to introduce a new common law shaping the manner of controlling management-employee relations."

Educators did not agree with any consistency on the usage of binding arbitration. A study conducted by Gandreau in the State of Connecticut indicated that board members wanted some issues to always remain advisory - salary, fringe benefits, and educational policy, while teachers in the same state felt that advisory arbitration should only encompass working conditions, policy matters, salary and fringe benefits.

Another writer commented:

Professional employees, such as teachers, social workers, and nurses have become more militant than ever before. No group of organized employees seems to have learned the...
art of negotiation faster than the professionals, nor has any group been more inventive in tactics or in expanding demands. Their organizations have introduced a significantly new principle in collective bargaining in the public service: to have a substantial voice in policy making. In the area of government in which these professionals are employed -- especially in social services and education. . . the government mission, the manner of performance of the mission, and the technical devices used in the mission may be decided by the organized employees and the public administrator. 52

Professor Wolfbein of Temple University's School of Business has seen the relationship of the public educator and his employer as being significantly different from that of the employer-employee relationship in the private sector of our economy. He noted that in private industry a bilateral relationship existed and the interest was usually divergent; whereas in the public sector a multilateral relationship with convergent interest was common. 53

The final step of appeal to an outside arbitrator is stated to have advantages for both teachers and supervisors. Its primary value to the organization (teacher's) is that the organization can go beyond the board of education for an application and interpretation of a collective agreement without recourse to strikes, sanctions, or other extreme actions. By the same token, the administration is usually guaranteed uninterrupted service the duration of the agreement. Furthermore, the superintendent and his staff may get a much better view of staff relations at the school level through this


process. Without grievance arbitration, the teachers may be reluctant to voice their dissatisfactions, especially since the administrators who are the cause of the grievance may also be the last court of appeal for correcting it. 54

The arguments for and against arbitration in public education have been summed up by Howlett. Arguments in favor of arbitration are: 1) when strikes are prohibited the state must provide a substitute for resolving an impasse; 2) it is essential that there be no work stoppages in services which endanger the health and safety of citizens; and 3) it is a civilized method of dispute resolution. Howlett also comments upon the arguments which have been noted against legislated arbitration in the public schools: 1) it is an unconstitutional delegation of legislated power; 2) it damages collective bargaining because parties fail to bargain; 3) it is not effective because there is no practical way to enforce compliance; 4) it may result in administrative awards of wages; 5) it works to the advantage of weak unions; 6) outside third parties, who are unfamiliar with the practicalities of the

enterprise, write the contract; and 7) it does not encourage cooperation. 55

The National Education Association recognized the need for a grievance procedure as evidenced in a statement by their commission on Professional Rights and Responsibilities. "The negotiated contract means little unless the meaning of administrative compliance can be secured through effective grievance administration." 56

The governance of public higher education institutions, where professional negotiation activities have been instituted, is in a state of revolution and democratization. Bargaining activities will no doubt continue to increase. 57 Angell cited a specific problem when he stated the following:

The use of grievance procedures has pointed up clearly the possible conflicts between education law, civil service law, and public employment law. Which law takes precedence in determining management and employee perogatives can only be determined over a long period of time during which contracts will be written more precisely, arbitration decisions multiplied, and the

55 Howlett, "Where We've Been and Where We Are," pp. 33-34.


additional knowledge provided by court review of contracts and arbitration decisions.  

**Terminology and Contract Language**

In a judicial or quasi-judicial context a term's definition is devoid of any abstract quality. Its meaning is contingent upon circumstances which in turn are associated with a delivered "lead" decision. A dictionary definition which explains a given term in a concise but abstract form would be held by a court of law or governmental agency as an inadequate basis upon which to render a decision. In a definition the myriad of possible situations which give particularity to a case are not afforded any consideration nor lent significance. Black's Law Dictionary defines arbitration as: "The submission for determination of disputed matter to a private unofficial person selected in a manner provided by law or agreement."\(^{59}\)

Grievance arbitration was resolution of disagreements between two parties regarding interpretations of already accepted contract terms.\(^{60}\) Interest arbitration was distinguished from grievance arbitration in that it was a process used to settle impasses during collective bargaining.

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\(^{58}\)Ibid.


\(^{60}\)A Negotiations Glossary, "Ohio Schools, 53 (February 14, 1975) 23.
procedures. It was used when the parties could not agree on the terms of a future contract, often after both mediation and fact-finding had been unsuccessful.61

Fact-finding is the step between mediation and arbitration in settlements of impasse. In this instance, an impartial "fact-finder" studies the facts and makes a recommendation to the parties regarding the facts as he sees them. Normally the fact-finder's findings are made public.

Mediation is the first step in resolving an impasse. An outside, neutral mediator will attempt to get both sides to resume negotiating and move toward agreement.

Arbitration is classified as advisory, compulsory or voluntary. Advisory arbitration is defined as: "A system under which an arbitrator is selected to render an award which recommends a solution to the dispute." Compulsory arbitration is defined as "A system under which parties are compelled by law to arbitrate their dispute, sometimes found in statutes relating to bargaining impasses in the public sector."62


The New Jersey Fire and Police Arbitration Act took effect in November 1977, adding New Jersey's name to the growing list of states that currently utilized final-offer arbitration in the resolution of labor disputes in the public sector. Under the New Jersey law, the rules for implementing compulsory interest arbitration in labor disputes involving public safety employees are established by the Public Employment Relations Commission. According to those rules, covered employees and employers must negotiate their contracts according to a set procedure, whose progress is measured on a time schedule. If negotiations are still at an impasse after the use of mediation or fact-finding, the parties must inform the Commission if they have agreed upon a terminal procedure for settling the issues in dispute. In the event that the parties fail to agree on a terminal procedure within fifty days of the deadline, they must notify the commission of the unresolved issues. Under these circumstances, the parties are compelled to have their dispute resolved by final-offer arbitration -- with all economic issues as a single package and non-economic issues on an issue-by-issue basis. 63

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Other states which also utilize some form of final-offer arbitration to resolve labor disputes involving public safety employees are Wisconsin (1972), Michigan (1972), Massachusetts (1973), Iowa (1974), and Connecticut (1979). In Wisconsin and Massachusetts, the arbitrator is limited to choose among the parties' final offers on all issues as a single package. In Michigan, Iowa, and Connecticut, the arbitrator may choose among the parties' final offers on an issue-by-issue basis. The Michigan procedure is limited, however, to the resolution of economic issues.64

Compulsory arbitration has not been universally accepted as a worthwhile feature to have in a collective bargaining contract. On the contrary, while teachers' organizations usually push for its inclusion, school authorities usually do not want it contained within the contract. In the Handbook to Aid School Authorities there was an expression of displeasure with compulsory arbitration.

Some states have passed legislation requiring compulsory arbitration in some public employee disputes,... We do not recommend compulsory arbitration as a solution to collective bargaining in public schools. It erodes the basic principle of local control of schools and usurps

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64 Ibid., p.33.
the responsibility of elected officials to determine school policy.  

voluntary binding arbitration is what the name implies. The parties voluntarily submit an issue to arbitration, but once submitted, the parties are bound a priori to accept the arbitrator's decision. Only in rare instances may a decision be appealed and then only under clear, legally defined terms. Under voluntary binding arbitration, two variations exist. The first involves an arbitrator assisting the parties in the interpretations of their existing agreement. The second variation involves arbitration of the terms of an agreement with authority granted an arbitrator permitting him to write a portion of an agreement which the parties have been unable to draft themselves.

Labor-management relations, similar to other areas of study, has over the years developed a language specifically designed to better specify the intent of words commonly used in personnel practice in the private sector. As noted by a compiler of industrial terms:

The growth of job evaluations, time and motion study, the rapid expansion and development, of the collective


bargaining process, decisions by federal and state courts, and by arbitrators have been responsible for the widespread use of technical expression which is unfamiliar to the layman and occasionally even to the general practitioner who's not a specialist in any particular field. 67

The literature continually stresses the importance of contract language. After all the give and take of negotiations is over, what is finally said and the way it is said is extremely important. 68 The grievance area may well be a trouble area for the school boards for some time to come because some administrators have focused their attention on negotiating the contract with little attention being paid to administrating the contract. 69

Lee believed that the elimination of ambiguities in the written language of negotiated agreements is an almost impossible task.

In spite of the ease of demonstrating that a relatively few words are used to represent a vastly greater number of life facts, there persists, rather widely spread among those eager to philosophize, the curious notion that it is possible to discover the one "real and proper" meaning of any word. 70


The literature addresses itself to many of the possible problem areas that lead to grievances. Poorly drafted non-restrictive grievance procedures may give an aggressive union an opportunity to flex its muscles.\textsuperscript{71} Contract language gives rise to many problem areas especially when the language is ambiguous, using such terms as "just cause," "maintenance of standards," "school day," "reasonableness" "past practices," "discretion of," "corrective discipline," "unfair labor practices," "appropriate unit," and "impasse." Poor legal advice in drafting a contract and grievance procedures and failure to have administrative personnel inputs to the negotiated contracts contribute to a large number of grievances.\textsuperscript{72}

Some additional possible problem areas are: the existence of militancy in key association and school officials;\textsuperscript{73} the staff becomes convinced that the administrators are not executing the agreed to contract in

\textsuperscript{71}Raymond G. Gline, "What is put into a Grievance Clause, Advice on Semantics of Contract Grievances Based on Experience of Teachers and Administrators in Michigan," \textit{Journal of Collective Negotiations in the Public Sector I} (August, 1972), p. 27.

\textsuperscript{72}Ibid.

good faith; and states having laws permitting grievance arbitration have more grievances filed than other states. The importance of contract language becomes increasingly evident as more experience is gained in receiving arbitration cases that result from grievances arising out of the interpretation of written contracts. Larkin reported that in many instances in the public sector arbitrators are required to fill in a gap in contract language where the intent of the parties is not clear.

S.I. Hayakawa addressed himself to one of the most common misconceptions of the nature of language in the following:

The intellectually naive often objectify language as if it were something "out there" to be examined independently of speakers or hearers. But language, to be language, must have meaning and meanings are not "out there." Meanings are semantic reactions that take place in people. A language is therefore not such sounds and the spellings, but more importantly the whole repertory

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of semantic reactions which the sounds and spellings produce in those who speak and understand the language.\textsuperscript{78}

Cox identified five areas in which arbitrators regularly base awards on some other foundation than contract language. Normally, arbitration jurisdiction is limited to the adjudication of disputes concerning the interpretation or application of provisions of the agreement.

1. 

Pouring meaning into general phrases. Such language as "just cause" or "merit and ability" provides no criteria upon which to judge its meaning.

2. 

Silence on remedies. The power to determine whether a violation has occurred implies the power to grant a remedy for the violation. Contracts, for the most part, do not provide guidance on remedies and the arbitrator must make his award based on his own knowledge, experience, and feelings of fairness.

3. 

Notions of justice. Grievance arbitration sometimes involved the application of substantive doctrines which are not mentioned in the collective agreement.

4. 

Implied obligations of parties. There is an implied covenant in every contract of good faith and fair dealing. The principle applies that "where a party stipulates that another shall do a certain thing, he thereby promises that he will himself do nothing which will hinder or obstruct the other in doing that thing."

5. 

Impact of past practice. When the contract is silent as to a matter but the practice is clear,

the arbitrator may insist that it be introduced into the contract by inference.

Prasow and Peters stated in their book *Arbitration and Collective Bargaining: Conflict Resolution in Labor Relations*:

An examination of many reported arbitration decisions suggests there is widespread, although not unanimous, agreement among arbitrators as to some basic standards for interpreting contract language. Foremost among these criteria are:

1. Specific language is controlling over general language.

2. Clear and unambiguous language generally prevails over past practice.

The basis for many grievances has been the violation of "past practice." Past practice is "a course of action knowingly adopted and accepted by a union and a company over a significant period of time regardless of whether or not the contract explicitly permits such action." One arbitrator predicated his guidelines for evaluating the viability of binding past practice:

Certain indicia are sought with such regularity in these cases as to be signposts for future travelers down this, at times, tortuous road. Some of these are:

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1. Does the practice concern a major condition of employment?
2. Was it established unilaterally?
3. Was it administered unilaterally?
4. Did either of the parties seek to incorporate it into the body of the written agreement?
5. What is the frequency of repetition of the "practice"?
6. Is the "practice" a long standing one?
7. Do the employees rely on it?

In summary, Prasow and Peters listed three basic criteria used by arbitrators in working with the issue of "past practice."

1. If the contract is silent on the issue, mutual agreement is not required for the employer to modify or discontinue the practice when the contract is open for negotiations.

2. If the contract contains ambiguous language on the subject, then past practice is decisive in determinating meaning and mutual consent is required in negotiations for the practice to be altered or abolished.

3. If the contract contains clear and unambiguous language on the benefit, then the language takes precedence over past practice and mutual agreement is required to alter or eliminate the benefit.

The Arbitrator's Role

The arbitrator's role is governed by the collective

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bargaining or professional negotiation agreement which established the jurisdiction and authority of the arbitrator. It provides the procedure through which the arbitrator is selected, how he is to be paid for his services, and indicates whether the parties will accept the award of the arbitrator as a binding or advisory settlement of the grievance. 84

French made note of the position of arbitrator in relation to the courts and also the parties involved. The arbitrator's role is generally considered to be quasi-judicial. Three major differences existed between the arbitrator's role and that of a judge: (1) arbitration hearings tended to be much more informational than courtroom proceedings; (2) both parties had agreed to submit a problem to an impartial third party or a final and binding solution, and they had agreed in advance not to appeal the decision; and (3) the arbitrator was not bound by precedent to the extent that the judge was by the principle of 'stare decisis'. 85

The powers of an arbitrator are restricted in a number of important respects. His award cannot contradict or go beyond (1) the written collective bargaining agreement, (2)


the record developed by the parties at the hearing, and (3) the submission agreement which states the issue to be resolved. 86

The arbitrator’s role may be compared to that of a judge. He must possess those attributes and qualities of mind and temperament which will permit him to make impartial and dispassionate decisions. He must be able to evaluate objectively the facts of a case and be able to distinguish between the relevant and irrelevant testimony of witnesses. The arbitrator must have a working knowledge of the law; federal, state, and local, as it relates particularly to employer and employee disputes. Knowledge of how these laws are interrelated and interpreted by the courts and administrative agencies provides the arbitrator with special insight into how they can and should best serve, for example, administrations, boards, and faculties. 87

Two points of view exist regarding the scope of arbitrator authority authorized in the agreement. One position advocates the widest possible latitude in the definition of a grievance or the premise that any alleged grievance which is of significant concern to cause an employee or his organization to file a grievance is

87 Abersold and Howard, Cases in Labor Relations p. 3.
significantly important to require the parties, in the interest of good personnel relations, to discuss and resolve the issue. The other position would advocate a very strict and narrow limitation of the power of the arbitrator and the subjects within the contract subject to grievance arbitration.

Masters cited four problems which would interfere with an arbitrator's willingness to issue a decision: (1) Civil service laws and jurisdiction of public agencies and commissions overlapping and conflicting with public employee bargaining statutes and collective bargaining contracts; (2) doubt as to whether public employers, as agents of state governments, even in the local level may exercise power or give benefits not clearly authorized by statutes; (3) doubt as to whether an arbitrator even when relied upon voluntarily, may establish public policy for a public agency; and (4) questions as to how arbitrators will apply federal constitutional protections to public employee cases.  

An arbitrator cannot function as a freewheeling agent


but must be bound to the language of the agreement. He cannot make awards based on his own notions of justice in the language of Justice Douglas, writing the majority opinion in the "United Steel Workers v. Enterprise Wheel and Car Corporation":

An arbitrator is confined to the interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.  

Unpublished Literature

Kai Lloyd Erickson, Ph.D. employed the topic "A Study of Grievance Arbitration Awards in Michigan Public Schools" for his dissertation requirements at the Michigan State University in 1970. The purpose of the study was to investigate, analyze, and describe the nature of grievance arbitration affecting teachers in Michigan public schools since enactment of that state's public employee bargaining law.

The study was exploratory and descriptive, and the technique of content analysis by classification was used. The population consisted of 58 arbitration awards involving 65 grievances. To narrow the scope of the study, two

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90 Supreme Court of the United States, United Steel Workers v. Enterprise Wheel and Car Corporation, 363 U.S. 593 (1960).
objectives were developed. The first was to determine whether a new common law was being fashioned for school districts from the arbitration process. The second was to secure data dealing with the actual arbitration process itself, including such items as time periods required, costs, outcomes, and other information. The data, except for cost figures, were extracted from the contents of the arbitration awards.

The findings revealed:

1. The two most common sources for authority cited by arbitrators as basis for their decisions were the meaning of the contract language and the merits of the individual case.

2. The most common issues submitted to arbitrators dealt with computation of basic wages and compensation for additional duties or assignments.

3. Teachers were successful in 42 of 65 arbitrated grievances in the study and were most successful in areas of compensation for additional duties, in disputes over basic wages and where teachers were threatened with discharge or nonreappointment to nontenure positions.

4. Where violations by school districts were determined by the arbitrators, the most common remedies were to order payment for lost wages, new computations for compensation, or reinstatement of improperly released teachers.
5. The most frequent defenses by school districts included management prerogatives, parallel jurisdiction by another agency, or the merits of the case. Heavy reliance was also placed on past practice. A threshold argument of nonarbitrability was raised in nearly 30 percent of the cases. The most common defenses proved the least successful. When school districts argued the meaning of contract language, used emergency conditions as excuses for noncompliance, or raised the sole issue of arbitrability, they were the most successful.

6. The median time period between the original filing of grievance and the issuance of a final arbitration award was 212.5 days. The median time between an arbitration hearing and the issuance of an award was 36 days.

7. The fees and expenses of arbitrators ranged between $150 and $1,533 with the median cost at $450.

The conclusion of the study was that a new authority was present in school districts resolving grievances by arbitration. The authority of grievance arbitration has been supported by Federal and Michigan courts and is institutional in nature, bringing to the schools such established concepts as discharge for just cause, corrective discipline, and recognition of the right of management to manage. A new common law resulting from grievance arbitration in the "education industry" will likely define the role of school management, the role of teachers as
distinct from their roles as private citizens, definition of professional duties, appropriate teacher behavior, and a host of related matters of concern to the teaching profession.\footnote{91}

Scholtz performed research that analyzed the impact of decisions rendered in grievance arbitration cases involving public school professional personnel. The cases in the study included all of the cases reported by the American Arbitration Association during the year 1970 and were classified by the author as:

"Decisions Which Appear To Take Precedence"
"Cases Which Influence Administrative Decision Making"
"Issues of Universal Concern To Educators"
"Cases Which Identify Nonarbitrable Issues"

The diversified nature of the cases studied which covered all that a contract covers belies the number of findings. The study includes 65 findings indicating the breadth of the subject matter being brought before arbitration. Each case was coded and classified according to the subject matter to which it pertained, i.e., "Basic Wages", "Credit For Academic Work". Frequency tables illustrated the number of arbitration cases in each stage, the outcomes of the disputes according to subject matter and

\footnote{91 Kai Lloyd Erickson, "A Study of Grievance Arbitration Awards in Michigan Public Schools" (Ph.D. dissertation, Michigan State University, 1970).}
sustained.

The investigation revealed that arbitration has become a vital force shaping the future of public education. Sustentations and denials were approximately equal. Contract language was crucial. Practically every case dealt with some aspect of the language. A uniformity in decisions affecting "Past Practice" showed that school practices which had been recognized by the parties or had been permitted to be established served to interpret, amend, or implement the contract. However, these past practices could not overpower the written contract.

The authority of school administrators and Boards of Education was defined and limited by the decisions of arbitrators in the following areas: placing materials in a teacher's personal file, and using the written contract to abdicate spoken agreements made with employees. The Board's authority was upheld in respect to determining class size, arranging extended leaves of absences, assigning nonteaching duties and professional duties outside the classroom and in nonrenewal, with due process, of contracts.

The arbitrator's decisions further clarified issues of universal concern to educators. One of those areas dealt with leaves of absence and determined that teachers cannot use paid days of leave to perform duties which could be discharged outside of school hours. The decisions
consistently protected teachers from capricious discharge or discipline and guaranteed that teachers be given due process.

The need to recognize an impartial judge to settle contract disputes was felt in education. The arbitrator as a judge determined the relationship between the administrators and teachers and whether each party was discharging his duties in accord with the agreement. Arbitration clarified responsibilities, protected each party's rights, and reflected the concerns of teachers. It emerged as an authority with jurisdiction over any and all of the conditions of the contract.92

Another study that involved the review of arbitration awards was done by Costanza in 1972. The purpose of the study was to develop guidelines for the use of arbitration in resolving grievances of professional personnel employed in public schools. The guidelines are concerned with both theoretical and practical issues, and are directed toward effectively structuring the operational framework for teacher grievance arbitration. A stratified random sample of educational grievance arbitration decisions reported by the American Arbitration Association and the Bureau of National Affairs between July 1, 1968, and July 1, 1971, is

analyzed. Analytical structures were developed for classifying and examining various types of contract provisions subject to arbitration and for classifying and examining types of reasoning used by arbitrators in reaching decisions. Major findings and conclusions include:

1. The structure of the arbitration process is completely dependent on the parties.

2. The scope of the arbitration provision in the contract is the critical element in the operational framework of arbitration.

3. The judicial role in public sector grievance arbitration is unclear.

4. The specific contractual language is critical in judicial determination of the arbitrator's jurisdiction or authority.

5. The dispute submitted to arbitration most frequently concerned economic issues.  

A decision to conduct another study into arbitration awards was based upon the persuasion that arbitration will become an accepted procedure for the settlement of disputes in higher education as academic personnel become more knowledgeable about the total process of professional negotiations and grievance procedures in particular. The purposes of the Edmonson study were:

1. To provide an analysis of the arbitration process.
2. To present data resulting from an analysis of 61 grievance arbitration awards in higher education

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93 James F. Costanze, "The Use of Arbitration as a Means of Teacher Grievance Resolution In the Public Schools" (Ed. D. dissertation, Columbia University, 1972).
occurring between January 1, 1968, and December 31, 1971, as reported by the American Arbitration Association publication *Arbitration In The Schools* and Commerce Clearing House publication *Labor Arbitration Awards*.

3. To determine whether like issues are recurring and whether a body of principles are emerging which may be generally applicable in the settlement of disputes in higher education.

4. To recommend guidelines appropriate to the application of arbitration in the settlement of disputes in higher education, and to predict trends the arbitration process may take in the future as it relates to the settlement of professional negotiation disputes in higher education.

A summary of some of the findings and conclusions is as follows:

1. The largest concentration of higher education disputes submitted to arbitration between January 1, 1968, and December 31, 1971, occurred within the states of Michigan, New York, and Illinois.

2. The bulk of arbitration cases included in this study originated in community junior colleges.

3. Predominantly, the grievants to disputes included in this study were single individuals. This suggests that the bulk of negotiations between the faculty
organizations and administrations were settled prior to the submission to arbitration.

4. Of those issues brought before arbitrators, the discharge, discipline, and tenure problems of faculty outnumbered all others. The next most frequently considered issues concerned merit rating, promotion, and demotion. The third group of issues consistently submitted to arbitration concerned wages, either directly or indirectly, as in issues involving credit for academic work, new contract terms, and fringe benefits.

5. The parties' agreements were consistently the authority upon which the arbitrators relied for reaching their decisions.

6. The average time elapsed between the filing of the grievances and the issuance of the awards by the arbitrators was 202 days.

7. The boards of control and administrations were successful in almost 60 percent of the cases. Sawatzky studied the problem of determining what factors affect arbitration awards in Manitoba in the settlement of salary disputes, and how these awards compared with settlements made by negotiation or conciliation. With respect to the null hypothesis, two of the conclusions were:

94 Edmonson.
1. Neither school boards nor teachers could consider the number of days spent in arbitration as a basis for anticipating the direction of awards.

2. The number of days taken in arbitration proceedings could be used by neither teachers nor trustees as a basis for anticipating the level of settlement.  

Ms. Hill recommended in the area of California employer-employee relations that:

1. Public school districts which have not begun to use an honest and open negotiating process begin to do so.

2. School districts assign the task of negotiations to a staff member with appropriate training experience, and time to accomplish this assignment, or hire an outside negotiator.

3. All educators and school board members develop an understanding and appreciation of and participate in the total negotiation process.

4. Communications between educators and other public and private sector entities be established for a discovery and understanding of strengths and weaknesses of an existing negotiation system.  

The analysis of grievance arbitration decisions with respect to the importance of contract language was performed by Sanner. A total of 104 arbitration decisions, occurring between July 21, 1970, and December 31, 1973, involving professional personnel in the public schools in Pennsylvania


were analyzed with specific attention given to the background of the case, the pertinent contract provisions, and the principles used by arbitrators to interpret contract language. The author reports the following results:

1. Clear, precise contract language is generally controlling over past practice.

2. Past practice is important in the absence of specific contract language which is clear and unambiguous.

3. Substantial evidence of what happened at the bargaining table may be controlling over past practice and also be a basis for a decision when the contract is silent on the issue or the contract language is ambiguous.

4. The bargaining agent cannot gain through arbitration what he was unable to secure at the bargaining table.

5. If there is any doubt regarding the arbitrability of an issue, it is usually resolved in favor of arbitration.  

A basic assumption underlying this study was the importance of writing negotiated agreements in clear and unambiguous language.

Kocevar also concludes that the parties cannot gain in arbitration what they obviously could not achieve at the bargaining table. He further reports that arbitrators will not rewrite a contract for the parties but rather will interpret it for them. In the same vein, arbitrators will attempt to give meaning to the language of the contract

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before looking outside the agreement to determine the true intent of the parties. But if the language of the contract is ambiguous, then the arbitrators will go outside the contract to determine the true intent of the parties. 98

Except for the Edmondson paper, all of the research cited focused upon arbitration factors prevalent in elementary and secondary school systems. These studies drew upon the history of arbitration awards in one state (or the county for a year). The Michigan thesis (Erickson) was precipitated by the enactment of that state's public employee bargaining law. Barbara J. F. Hill anticipated legislation in California in her study of factors associated with grievance binding arbitration. Sanner confined his research activities to Pennsylvania K-12 systems.

SUMMARY

This chapter has dealt with a review of the literature on grievance arbitration in the general context and as it relates to the public education arena. There is little argument that the model which is used within public sector arbitration was the private sector experience placed in the public setting. In both sectors neutral arbitrators who were unbiased on the issues were chosen by the parties at impasse. The arbitrators were usually recommended through

professional organizations or federal agencies. The authority of the arbitrator was generally specified in the collective bargaining agreement or from a supplementary agreement of the two parties.

The review of literature served three purposes: (1) to study the extent to which grievance arbitration is used in the public and private sector as a means for settling disputes arising out of the interpretation of a collective bargaining agreement, (2) to provide a general overview of the basic principles used by arbitrators in making awards, (3) to emphasize the importance of writing collective bargaining agreements in clear, concise and precise language.

Inclusion of grievance procedures in labor agreements were identified as a necessary stabilizing factor in the collective bargaining process. Authorities have presented arguments, both condemning and applauding the transferring of private industry procedure to the public sector. A consistent theme prevailed in that the contract language and the merits of the individual case were the most common sources of authority cited by arbitrators.
CHAPTER III

RESEARCH METHODOLOGY

Introduction

Systematic methods of content analysis call for a sound design and strict adherence to procedures.¹ As Budd et al. have stated, research should be so conducted that the results obtained can be verified by other researchers who follow the procedures outlined by the original researcher.²

An attempt has been made in this chapter to construct a clear statement of the questions to be answered and to devise a step-by-step description of the procedures, including what analyses will be made. This chapter sets forth the history population, sources of data, and the manner in which the data are compiled. The objectives of the study are stated and classifications are developed for determining the specific relationships to the problems posed. Finally, the assumptions and limitations of the study are described.


Population of the Study and Sources of Data

The sources of data for the study were comprised of the original arbitration awards. These awards were obtained from the files of the Cook County College Teachers Union, Local 1600 as a courtesy of its President Norman G. Swenson. Invaluable aid was received from Miss Rita Silveri, Union Grievance Chair, in searching for necessary data that the author was unable to locate. These included Demand for Arbitration, arbitration evidence, hearing memos, awards and adjudications of court cases.

The search produced a total of 154 Demands for Arbitration filed with the American Arbitration Association during the years 1967 through 1976. A listing of the awards contained in the study, including the campus, date of award, grievance issue, and outcome are contained in Appendix A. The awards are arranged in chronological order.

Initial steps taken in efforts to obtain data included visiting the Chicago office of the American Arbitration Association (AAA). In response to the inquiry regarding availability of grievance awards involving College District #508, their office replied they could not release any information, and all files were forwarded to the Washington, D.C. Office. Permission of both parties would be necessary to obtain copies of the awards. The cost involved eliminated this avenue as a viable one. Reference was made
to a monthly review of school arbitration awards that their organization publishes. This publication, *Arbitration in the Schools*, has been available since March, 1970. (Negotiations Research Digest, 1970.) This monthly publication received its information from the NEA, AFT, the National School Boards Association (NSBA) and the AAA. Arbitration awards were abstracted. Full text photo copies of each decision could be purchased by writing the AAA. School boards could obtain copies from the NSBA.

After a search covering each issue of the periodical *Arbitration in the Schools*, its usefulness in this study was deemed marginal. The abstracts, which cover every jurisdiction in the United States, did not contain the information necessary to provide data needed for this research. Full text copies are available but cost considerations excluded this possibility. Another fact negating this avenue was that very few of the awards sought were published in the journal.

Therefore all grievance awards case information was obtained from the sources identified in the first paragraph of this section. The search produced a total of 154 grievances that reached the arbitration level, with sixteen outcomes determined by seven court adjudications.

Considering the sources available to obtain the necessary information, it was assumed that the population of this
study was a complete as possible.

Objectives of the Study

As noted in Chapter I, the purpose of the study was to explore, investigate, analyze and describe the nature of grievance arbitration in the City Colleges of Chicago system since the enactment of the first negotiated contract in 1966. The objectives of the study were derived from the search of the literature on grievance arbitrations as revealed in Chapter II of the study.

This study was designed to investigate, describe, and analyze the nature of the arbitration process between the central administration of a metropolitan multi-campus post-secondary education system and its unionized faculty. One goal was to identify the problematic areas between the Board of Trustees (the employer) and the professional teaching staff (the employee) based upon the written contract between the parties, which resulted in grievances reaching the final level (arbitration) for determination.

Unbiased written records exist in the form of arbitration awards by the American Arbitration Association. The adjudication process is stipulated in the board-union contract. Sufficient evidence existed to establish a longitudinal study for the years 1967 through 1976 of the City Colleges of Chicago. (The initial contract provided for the multi-layer grievance process to begin in
The completed dissertation was designed to reveal insights to the reader of the experiences of administrators who are faced with the daily management of an urban community college district.

A number of objectives were attained through the documentary analysis method of research. The objectives determined:

1. The kind of issues (grievances) that progressed to the arbitration level.
   a. Identified and classified arbitration cases which dealt with contract language according to the problematic elements of contract language.
   b. Identified the most common issues submitted to arbitration.

2. The initiating party(ies) of the grievance(s) and the grounds.

3. A review of the arbitrator's decisions:
   a. Whether the awards enhanced or delimited the autonomy of the administration, and in what areas.
   b. Whether the arbitrators' decisions had an impact on the contract language in successive Board-Union Agreements, Board rules, Academic Manual,

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District 508-CCCTU Contract.
c. The significant outcomes yielded as a result of the awards.
d. Which grievances advanced beyond the arbitration level for judicial decisions, and what the results were.

4. The rationales for the decisions.

5. A statistical analysis of the outcomes of arbitration cases.

6. A statistical analysis of the court cases resulting from grievances and/or arbitration cases.

7. An equation based on the sum of the variables identified as the components incorporated in the arbitration awards.

8. A reference document that summarizes each arbitration case studied based upon the variables of the equation.

No hypotheses were generated for this study because of its nature. It was deemed most appropriate to formulate questions to investigate and analyze the data that were available for use in answering the questions. The study includes the total population of arbitration awards under examination, and therefore sampling techniques were not used nor were tests of hypotheses required. Generalizations to a population other than that of the study
A study of arbitration cases involving Community College District No. 508, State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO during the period 1967 through 1976 was made. During this time span, 154 grievances were submitted to the arbitration process stipulated in the agreement between the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO Chicago, Illinois. As provided for in the board-union contract, the administration initiated five grievances.

Article X of the board-union contract states:

B.3.i. The decision of the arbitrator will be accepted in good faith as final by both parties to the grievance and both will abide by it.

B.3.k. The Board and the Union agree that neither party will appeal an arbitration award to the courts unless the arbitrator is believed by either party to have acted illegally.

The Board and the Union agree that all arbitration awards shall fully and immediately be followed. If an arbitration award is questioned, it will nevertheless be complied with subject to future adjudication.  

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4 Two Year Agreement between the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois and the Cook County College Teachers Union, Local 1600, AFT, AFL-CIO Chicago, Illinois (Chicago: 1973-1975), p.42.
Seven of the arbitrated grievances were referred to the Illinois State courts (three were decided in the Supreme Court) for adjudication.

The research technique utilized in this study was one of content analysis. The content analysis employed for this study was referred to as a form of "documentary-frequency study" which is used to determine the frequency of occurrence of the studied phenomenon.\(^5\) That is, the sought for information was taken from the contents of the original school arbitration awards, examined, classified, and tallied.

As pointed out by Borg, "the major purpose of descriptive research in education is to tell 'what is.'"\(^6\)

Descriptive studies serve several functions: in the face of conflicting claims regarding a new subject, it is often of great value to know the current state of the subject. Secondly, it is often a preliminary step to be followed by more rigorous control and methods of study. Third, descriptive studies are widely used as the basis for internal evaluation and educational planning by alert school systems.\(^7\)

A widely accepted definition of content analysis defines it as "a research technique for the objective, systematic, and quantitative description of the manifest

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\(^7\) Ibid., pp. 202-203.
Content analysis is distinguished from more subjective forms of analysis in that it requires the careful formulation of classification categories which are vigorously and systematically applied to all data in the sample. The results of this analysis are quantified to emphasize the importance of various aspects of the analysis. 9

Holsti asserted that content analysis is a multipurpose research method developed specifically for investigating a broad spectrum of problems in which the content of communication serves as the basis of inference. 10 Any study using the content analysis of written material should be clearly formulated and adapted to the problem and content. 11 The definition of categories requires that they be exhaustive to ensure that every item relevant to the study can be classified and that they be mutually exclusive, so that no item can be scored more than


11 Berelson, p. 147.
once within a category set.\textsuperscript{12}

Content analysis requires the establishment of precise classification, and is in keeping with the intent of the study, which was to establish the state of grievance arbitration during the first ten years of existence of the Board-Union contract with the City Colleges of Chicago. This technique is reported to be of particular benefit in descriptive studies for use by administrators and of particular value to the field of education.\textsuperscript{13}

The decision was made to conduct this study in a manner which would describe arbitration's use to date, to determine whether issues are recurring, and whether a body of principles is emerging which may lead to general applicability in higher education.

The format of the study and reference notation follows that recommended by Turabian;\textsuperscript{14} as suggested by the Graduate School of Education, Loyola University of Chicago.

Once the cases had been analyzed to determine categories they were briefed. The case briefing technique was similar to the method used by lawyers in the preparation

\begin{flushright}
\textsuperscript{12}Holsti, p. 646.  \\
\textsuperscript{13}Mouly, The Science of Education Research, pp. 281-282.  \\
\end{flushright}
of cases. It is comparable to the technique used by law students studying cases while at law school. The case system has been defined as "a method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method." Each grievance was recorded in a standardized format as follows:

Case number
Brief description
Contract provision
Opinion of arbitrator
Award

Each grievance was classified in one of these twenty-three (25) possible categories.

A. Arbitrability, Arbitration Procedure, and Time Limits
B. Extracurricular Assignments
C. Basic Wages and Working Conditions, New Contract Terms and Wage Reopenings
D. Discharge, Discipline, Reduction in Force, and Tenure Problems
E. Discrimination on Basis of Race, Religion, Sex or Age
F. Fringe Benefits and Pay for Time Not Worked
G. Hiring Policies, Rehiring Policies
H. Hours of Work
J. Individual Wage Rates
K. Educational Policies, Curriculum, Programs, and

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Academic Freedom

L. Leaves of Absence

M. Merit Rating, Promotion and Demotion

N. Grievance Procedure

O. Strikes and Work Stoppages

P. Pay for Working Time and Computation of Salary

Q. Chairmanship Elections

R. Rate of Pay Disputes

S. Physical Fitness and Medical Issues

T. Transfers and Position Posting Procedures

U. Duty to Bargain, Bargaining Units, and Status of Organizations

V. Work Loads, Work Assignments, and Class Size

W. Seniority and Rotation Points

X. Lane Change (Advancement)

Y. Payroll Deductions

Z. Not Elsewhere Classified

The outcomes of the disputes submitted to arbitration were also classified according to subject area. The number and percentage of disputes sustained and denied in each subject area has been reported. The nature of the remedies ordered in the cases where grievances were sustained have also been reported in number and by percentage. The remedies were classified in the following categories:

1. Additional pay
2. Back pay
3. Cease and Desist
4. Reappointment
5. Take affirmative action
6. Return situation to a condition that existed before the grievance was filed.
7. Other

A further examination of the cases which dealt with contract language was conducted. The problematic elements in each case were identified and placed in one of the following categories:

1. Construction
2. Interpretation
3. Absent Specific Language
4. Direct Violation of Language
5. Other

The following classifications were used to categorize defense arguments.

1. Past Practice
2. Intent of the parties
3. Contract Language
4. Emergency conditions
5. Non-arbitrable
6. Other

To secure definitive information regarding the source of authority used as the basis for an arbitral decision the following classifications were created. The frequency of response would indicate the major authorities relied upon by arbitrators.

A. State Statutes and Judicial and Agency Decisions
B. Federal Statutes and Judicial and Agency Decisions
C. Past Practice in Local School District
D. Industrial Arbitration Precedence
E. School Arbitration Precedence

F. Contract Language

G. Merits of Instant Care

H. Intent of Parties

I. Other

The in depth study concentrated upon the influence (or absence thereof) of the awards on:

1. subsequent board policy
2. contract negotiation
3. changes resulting in contract language and provisions

The initial and succeeding contracts for 1966 through 1976 were compared section and paragraph to section and paragraph to identify subsequent changes negotiated. A correlation between the changes and prior arbitration awards was accomplished so as to identify the impact of the grievance procedure upon contract language.

A comparable review of the Board rules was made to reveal alterations and/or additions in them. A similar correlation will be made so as to determine the impact the arbitration awards have had on the Personnel Handbook and Academic Policy Handbook. The central and campus administrators function under the aegis of these two handbooks. Ensuing changes that have occurred are denoted by the dates in the handbooks. A search was made of the revisions to ascertain what modifications resulted from arbitration decisions.
The analysis incorporated the success ratio for each party of the arbitrable issues, with an accompanying profile of the validity of each adversary's position. It was desired to ascertain the existence of a pattern of grievable issues. This issue includes the repetition of identical issues.

Assumptions and Limitations

The study was based on the assumption that it contained the total population of all grievance arbitration awards issued as a result of disputes arising from interpretation and application of collective bargaining agreements existing between the Board and Union. This presumed that all the awards in the study were available.

It was further assumed that the desired information would be included in the text of the arbitration awards. Limitations to this assumption included recognition that arbitration costs were not included. Preliminary examination of several arbitration awards revealed they varied in lengths and therefore comprehensiveness in the amount of information contained in the awards.

In an earlier study of the formality of arbitration, the examination of the decision making process was subject to qualification regarding the true basis for a decision. Hafen noted that his study, as this study, was limited by
the fact that the weights and sources of given precedents are not always clear from written opinion; that prior cases may be followed or rejected without any indication to that effect in the written award; that arbitration decisions are not necessarily attempting to conform to the procedural, or substantive standards of a common law.16

Regardless, the material presented herein should further knowledge of what has occurred in arbitration in the City Colleges of Chicago and promote a more knowledgeable discussion of the subject.

Summary

The purpose of this chapter was to present a systematic and objective description of the procedures followed in this study. There are certain problems which all content analysts share. What are the parameters within which the study will be conducted? What is the universe or population to be analyzed? What categories will be devised so as to extract relevant data? What unit of content will be classified? What system of enumeration will be used? All of these questions had to be answered before analysis could provide answers relevant to the purposes of this study.

Chapter IV presents the results of the review of individual arbitration case file.

CHAPTER IV

Documentary Analysis of Arbitration Cases

Introduction

Chapter IV contains the documentary analysis of the grievances processed through the procedures of the American Arbitration Association between Community College District #508, State of Illinois and the Cook County College Teachers Union, #1600, AFT, AFL-CIO. The preparation of each summary and analysis per individual grievance required a study of each Demand for Arbitration filed with the American Arbitration Association. The Demand for Arbitration provided the information regarding the issue, date filed, initiating party, and the pertinent contract provisions. The arbitration award yielded the case number, title, date of award, campus involved, arbitrator, the recipient of the award and rationale. The investigator evaluated the award to record the remedies, identified the problematic elements of contract language, the defense arguments, and major authorities relied upon by the arbitrator. The author furthermore evaluated the award to establish the effect upon the autonomy of the college administration, and identified the pertinent areas. Additional analysis involved the impact upon management documents, significant outcomes of
the arbitration process, and the judicial decisions resulting from the several court cases. The format employed to standardize the evaluation of the arbitration cases is illustrated in Figure 1.

This ten year longitudinal study was based on one hundred fifty-seven (157) grievances (all but six initiated by the union) assigned one hundred fifty-four (154) case numbers.

The American Arbitration Association differentiates its various files through an assignment of case numbers. The AAA case number has four components. For example, AAA Case Number 51-39-0431-74W represents that the case was filed in the Chicago region (51), is a dispute between parties in the public labor sector (39), was the four hundred and thirty first case in the public labor sector of that region during a period of one year (0431), and occurred during the year 1974 (74). The letter W is an in-house (AAA) code denoting the administrator supervising the case (W). Prior to 1970, all cases were coded 30. Subsequently, this code represented the private labor sector.
THE ISSUE:

PERTINENT CONTRACT PROVISIONS:

AWARD: Administration Union

REMEDIES: Additional Pay Back Pay Cease and Desist Return situation to a condition that exited before the grievance was filed.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Construction Interpretation Absent Specific Language Direct Violation of Language Other

DEFENSE ARGUMENT: Past Practice Intent of the Parties Contract Language Emergency Conditions Non-Arbitrable

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:

State Statutes and Judicial and Agency Decisions
Federal Statutes and Judicial and Agency Decisions
Past practice in local school district
Industrial arbitration precedence
School Arbitration precedence
Contract language
Merits of instant case
Intent of parties
Other

AUTONOMY OF ADMINISTRATION: Enforce Delimit

AREAS:

IMPACT: Board rules Academic manual Personnel manual Subsequent Union Agreement

SIGNIFICANT OUTCOMES:

WENT TO COURT:

Figure 1. Arbitration Case Summary, Evaluation and Analysis Form
Arbitration Cases Pertaining to the Year 1967

American Arbitration Association Case Numbers:

51-30-0181-67
51-30-0246-67
51-30-0247-67 (Grievance #1)
51-30-0247-67 (Grievance #2)
51-30-0264-67
AAA CASE NO.: 51-30-0181-67
DATE OF AWARD: February 15, 1968
TITLE: Dr. A. Silverman Gr.
CAMPUS: Wright
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"M." Promotion
ARBITRATOR: Albert A. Epstein

THE ISSUE:
1. Is the instant grievance involving the denial of a promotion in rank to Dr. Albert Silverman arbitrable under the terms of the labor agreement between the parties?

2. Was Dr. Albert Silverman wrongfully denied a promotion under the terms of the labor agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §§ X. B.
XV A, B.3a.,g.1.,g.2. D
XVI

AWARD: Administration
1. The instant grievance involving the denial of a promotion in rank to Dr. Albert Silverman is arbitrable under the terms of the labor agreement between the parties.

2. Dr. Albert Silverman was not wrongfully denied a promotion under the terms of the labor agreement between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Intent of the Parties
Contract Language
Non-Arbitrable - overruled
Public Junior and Community College Act
Board policy

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Reasons for promotion or non-promotion are solely within the discretion and knowledge and judgement of those designated by policy provisions"...the judgement of qualifications for academic positions does not lend itself to a fixed policy or procedure."
AAA CASE NO.: 51-30-0246-67
DATE OF AWARD: Resolved November 30, 1967
Withdrawn December 5, 1967
TITLE: Contact Hours for Physical Education Teachers
CAMPUS: All-City
FILED BY: Union October 6, 1967
CLASSIFICATION: "H." Hours of Work
ARBITRATOR: Reynolds C. Seitz

THE ISSUE: Contact hours for Physical Education teachers prior to agreement was 20 hours per week. Coaching of major teams was equivalent to 10 hours per week. The Agreement reduced the contract hours to 16 hours per week. The administration then arbitrarily reduced coaching time to 8 hours per week.

PERTINENT CONTRACT PROVISIONS: § XIII, B.1.

RESOLUTION: Union
December 1, 1967 letter from Oscar E. Shabat, Chancellor:

"...starting with the February 1968 semester, the formula for coaching time will be the same as it was prior to the present term. For example, a coach who in the past had received 10 hours of his 20 teaching hours for coaching will again receive 10 coaching hours, provided the sport which he coaches continues under the same conditions as in the past."

REMEDIES: Return situation to a condition that existed before the grievance was filed.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Rights of Board

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Reversal of position of Chancellor in letter or September 19, 1967.
"It is my judgment that the Chicago City College is within its rights to require physical education teachers who coach to be given 8 contact hours of credit for coaching, the remainder of their 16 contact hour program per week to be devoted to classroom instruction in physical education or to other assignments made by the campus head."

IMPACT: Personnel manual §46.52
Subsequent Union Agreement § VIII.B.1.b.
THE ISSUE: This grievance concerns § XVI of the two year agreement which states that "there shall be no unilateral reopening of this agreement by either party -- without prior consultation and negotiation with the Union." Twenty-seven rules and regulations dated July 11 and adopted July 13 are in violation of the agreement.

PERTINENT CONTRACT PROVISIONS: § XVI

AWARD: Union

1. The grievance is timely and arbitrable, per the findings herein.

2. The grievance is overruled insofar as it seeks to nullify all the Rules and Regulations promulgated by the Board unilaterally, because many of the Rules and Regulations concern matters unrelated to the members of the bargaining unit represented by the Union, and others may not be inconsistent with the terms of the Agreements; and besides, the Board has the statutory prerogative and obligation to promulgate appropriate rules and regulations to effectuate the purposes and objectives of the colleges under its administration.

3. The grievance is sustained insofar as any of the Rules and Regulations may be inconsistent with terms of the Agreement. Specifically, if there is any conflict between the Rules and Regulations and terms in the Agreement, the terms of the Agreement shall prevail.

4. The Arbitrator retains jurisdiction as regards specific complaints which may arise during the term of the Agreement as to alleged applications of the Rules and Regulations which impinge upon members of the bargaining unit because of alleged inconsistencies with the terms of the Agreement.

REMEDIES: Other

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language
DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable: Time limits, overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State statutes
Contract language
Other: Law texts
Encyclopedia Britannia

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "...The terms of the Agreement were negotiated, and during its terms they should remain unchanged, except insofar as they may be changed by negotiated."

"...if there is any conflict between the Rules and Regulations and terms in the agreement, the terms of the Agreement shall prevail."

IMPACT: Board rules

SIGNIFICANT OUTCOMES: see Grievance §2 of the Union concerning Board Rules; AAA Case No. 51-30-0247-67.
AAA CASE NO.: 51-30-0247-67
DATE OF AWARD: January 2, 1968
TITLE: Gr. #2 of the Union Concerning Board Rules
CAMPUS: All City
FILED BY: Union September 23, 1968
CLASSIFICATION: "L." Personal Leave
ARBITRATOR: John F. Sembower

THE ISSUE: The Union now alleges that Rule 2-24, Sections (b), (c) and (d), "Special Leaves of Absence," conflicts with Article XIV, Sections A, B, C, D and E, and Article XVI of the Agreement. Further, the Union alleges that a memorandum sent by the Vice Chancellor on August 26, 1968 to all campus heads, entitled "Policy on Personnel Leaves," and a reference to "Personal Leave" in Bulletin No. 1 to faculty members on the Amundsen-Mayfair campus, constitute violations of the agreement.

PERTINENT CONTRACT PROVISIONS: §§ XIV A.1, B., C.1., D., E.; XVI

AWARD: The grievance is sustained. Reference in Rule 2-24(b) to "at a time which is mutually agreeable to the faculty member and the College Head" must be disregarded in favor of the applicable objective criteria which are involved per the foregoing opinion. Administrative memoranda and bulletins inconsistent with the foregoing shall be corrected in the same form and prominence as their original issue. However, these need not take the form of "retractions," but instead they shall reflect the resolution of a bona fide dispute between the parties as to the criteria to be applied in connection with Leaves for Personal Business as referred to in Article XIV (D) of the Union-Board Agreement.

REMEDIES: Return situation to a conditon that existed before the grievance was filed.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Industrial Arbitration Precedence

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Past practice in local school district
School arbitration precedence
(AAA Case No. 51-30-0264-67)
Contract Language
Merits of instant case
Intent of parties
AUTONOMY OF ADMINISTRATION: Delimit

Areas: "...the Board, ..., had recognized the Union as the bargaining agent and had negotiated a detailed Agreement with it; and that, therefore, in any instance where the Rules and Regulations are found to be inconsistent with the Agreement, the latter must prevail."

IMPACT: Board rules 2-24 (b), (c), (d).

SIGNIFICANT OUTCOMES: Recognizing that the Board has a statutory obligation to promulgate appropriate rules and regulations, the Arbitrator ruled that the Board could not be required to withdraw them per se.

The Board Agrees with the basic proposition that if there is inconsistency between the Rules and the Agreement, the latter must prevail.
AAA CASE NO.: 51-30-0264-67
DATE OF AWARD: March 4, 1968
TITLE: Propriety of Union President's letter
CAMPUS: Local 1600
FILED BY: Administration
CLASSIFICATION: "Z." Not elsewhere classified
ARBITRATOR: Arthur A. Malinowski

THE ISSUE: Did the Union violate the Labor Agreement when it directed the membership to disregard the Board and Rules?

If yes, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS: § XV: B.3.g, F.1.

AWARD: Administration

The Union violated the Labor Agreement when it directed the membership to disregard the Board's Rules.

The grievance is sustained and the Union is ordered to rescind its directive.

REMEDIES: Other: Rescind its directive.

DEFENSE ARGUMENTS: Contract Language
Emergency Conditions
Industrial Arbitration
Act of informing union members of violations of contract in Rules

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract Language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Arbitrators have long held that the principal Parties to a collective bargaining relationship have mutual rights and responsibilities which must be respected. Unit employees have rights and duties as well; however, they may not simply choose for themselves, nor should they be told by their Union, which of the Employer's orders they will or will not follow. Although there may be a belief that a particular rule is improper or in violation of the Labor Agreement, except in cases not here applicable; for example, safety, health or morals, both the employees and the Union must comply with said reasonable rules without resorting to "self-help".(p.8.)

N.B. See AAA Case No. 51-30-0247-67.
Arbitration Cases Pertaining to the Year 1968

American Arbitration Association Case Numbers:

51-30-0042-68
51-30-0044-68
51-30-0088-68
51-30-0142-68
51-30-0272-68
AAA CASE NO.: 51-30-0042-68
DATE OF AWARD: Incomplete
TITLE: Thompson vs. College Union Voice
CAMPUS: Local 1600
FILED BY: Administration 2/12/68
CLASSIFICATION: "Z." Not Elsewhere Classified

THE ISSUE:
Exception is taken by the Chancellor in support of Mr. Donald Thompson, Chairman of the English Department at the Wright College to an article written by Albert H. Silverman in the December, 1967 issue of the College Union Voice. Remedy sought is a retraction of the charges made against him.

PERTINENT CONTRACT PROVISIONS: None stipulated

N.B. No retraction was published in the College Union Voice.
AAA CASE NO.: 51-30-0044-68
DATE OF AWARD: July 9, 1968
TITLE: Richard H. Lerner - Chairmanship
CAMPUS: Amundsen-Mayfair
FILED BY: Union
CLASSIFICATION: "Q." Chairmanship Elections
ARBITRATOR: Pearce Davis

THE ISSUE: That Mr. Lerner be appointed to Department Chairman of English at Amundsen-Mayfair College.

PERTINENT CONTRACT PROVISIONS: §§II B.; VIII

AWARD: Administration
The grievance cannot be supported and, accordingly, is denied.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract Language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: In truth and in fact the dean's power of appointment under existing contractual terms is virtually absolute." (§XIII Section H.)

"It follows that the dean's power to select a department chairman is not quite absolute." (§II, B.)

SIGNIFICANT OUTCOMES: "But, pursuant to present contract provisions, it is the dean's opinion of qualifications that counts. His qualitative judgement, be it emphasized, is not by contract subject to review by the faculty or by the impartial evaluation."

IMPACT: Subsequent Union Agreement, §IV
THE ISSUE: That Administrators at Wright Junior College ignored the procedure for consultation adopted in accordance with the contract provision set forth in Section F.1 for the purpose of being used in connection with the question of whether to renew the contracts of three non-tenured faculty members.

PERTINENT CONTRACT PROVISIONS: § XIII F.1.

AWARD: Union

Mrs. Mary Black, Mrs. Donna Holy and Mrs. Nancy Martin should be offered contracts for the academic year 1968-69 to teach in the English Department at Wright Junior College. They are all to have the right to evaluation for renewal of contract for the 1969-70 academic year under the provision of Section F.1. Mrs. Mary Black and Mrs. Donna Holy are entitled to have the 1968-69 academic year count as their second consecutive year of full time teaching at Wright Junior College. So that there will be no possible misunderstanding Mrs. Nancy Martin is not to achieve permanent tenure as a result of this decision.

The point of salary increment was not argued at the hearing. A salary increment is to go to the grievants if and only if all teachers receive such increments by virtue of entering another year of experience. If such is the plan all grievants are to receive the stated increment for their year of experience.

REMEDIES: Reappointment

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
   Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
   Federal Statutes and Judicial Decisions (Robinson Patman Act: Sec 2d. 2e.)
   Contract Language: §XIII F.1.
AUTONOMY OF ADMINISTRATION: Delimit

Areas: "The grievants were entitled to any protection which may be inherent in the 'due process' provision which had been approved by the eligible members of the English Department.

"The Board attorney at one point in the hearing stated that it was his position that under the contract a Dean had the power to make an utterly foolish decision in respect to the removal of contracts of teachers not on tenure. This may well be true. Because such is the fact, it is even more unimportant that the consultation procedure be followed which was agreed upon by the eligible members of the faculty."

AAA CASE NO.: 51-30-0142-68
DATE OF AWARD: October 2, 1968
TITLE: Board Grievance
CAMPUS: Local 1600
FILED BY: Administration May 8, 1968
CLASSIFICATION: "A." Timeliness
"U." Bargaining Unit
ARBITRATOR: John F. Sembower
THE ISSUE: Certain "guidelines" in connection with the hiring of new faculty members, released by the Union President to Chapter Chairmen, constitute an usurpation of Board and administration functions.

PERTINENT CONTRACT PROVISIONS: §X A. 3.
§XIII F.1.
§XV E.

AWARD: Administration

"...The Union shall prepare a statement in accordance herewith, and publish it among its members, including in its newspaper in the same general form as the publications have been made heretofore. The said announcement and clarification should not, however, attach any opprobium to either of the parties, for such is not the sense of this Award, which assumes that an honest difference of opinion arose among men of goodwill and high professional standing, none of which intended to commit wrong."

REMEDIES: Cease and Desist

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes
School arbitration precedence AAA Case No. 51-30-0247-67
Intent of parties

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Union gained objective of salient information regarding new hires in advance.

SIGNIFICANT OUTCOMES: A conflict between Union "guidelines" and the agreement must be resolved in favor of the Agreement.
AAA CASE NO.: 51-30-0272-68
DATE OF AWARD: December 27, 1968
TITLE: Farag Contract Renewal
CAMPUS: Bogan
FILED BY: Union
CLASSIFICATION: "D." Discharge
ARBITRATOR: John P. McGury

THE ISSUE: Can the College Board withhold approval of a renewal contract (accompanied with tenure) if the grievant holds a tenured position with another Board (university)?

PERTINENT CONTRACT PROVISIONS: §XIII B.3.
§III F.3.

AWARD: Union

The grievance is sustained. Within three days of the date of this award, the Board is to offer grievant a contract with the same terms as the contract signed by the grievant on January 29, 1968, including the restriction on outside teaching load. This contract to be in effect until the end of the Spring Semester, 1969, and is to constitute credit toward tenure status for the grievant.

Grievant to accept or reject the said contract within five days after it is offered to him.

Grievant, since he was not without fault in the matter, is to receive 50% of his loss of earnings from the beginning of the Fall Semester, 1968, until reinstatement under the terms of this award. The formula for loss to be as follows:
(a) determine amount he would have received teaching at Bogan during Fall Semester, 1968;
(b) deduct any amounts received from U.I.C.C. for teaching in excess of the limitations in the disputed contract;
(c) deduct any pay or payments in lieu of pay from any sources which commenced after September 1, 1968;
(d) any amount remaining to represent the grievant's loss and he is to receive 50% of this amount.

REMEDIES: Reappointment
Back Pay minus outside income

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Absent Specific Language
Direct Violation of Language

DEFENSE ARGUMENTS: Unwritten Board Policy
MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:

Contract Language

Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: (From the text of the Award);
1. The grievant had a right to reasonably assume that if the conditions required by the Dean of the College were complied with, his contract would be approved. The Board operates through a Chancellor and Deans. The conduct of the Dean within his sphere, which has been relied on by another, should not be changed by the Chancellor or the Board to the detriment of the one in reliance.

2. Tenure at another institution had never been set out in the contract or any published regulation, as automatic grounds to deny tenure with the Board. Nor has such an alleged policy ever been enforced against anyone.

IMPACT: Board Rules, Section 2-29 Outside Employment (August 12, 1969)


Subsequent Union Agreement, §VIII E.

(1969-70 contract)

SIGNIFICANT OUTCOMES: The Board had not published a regulation prohibiting a faculty member from being tenured at more than one institution (as of December 27, 1968.)

The Personnel Manual, published March 30, 1970 includes an article entitled "Outside Employment" (Article 80.0) prohibiting concurrent employment equivalent to another full-time position.

N.B. Section 2-29 of the Board Rules was deleted from the July, 1974 edition and subsequent editions.
Arbitration Cases Pertaining to the Year 1969

American Arbitration Association Case Numbers:

51-30-0111-69
51-30-0113-69
51-30-0165-69
51-30-0288-69
51-30-0324-69
51-30-0402-69
AAA CASE NO.: 51-30-0111-69
DATE OF AWARD: August 14, 1969
TITLE: Hauser renewal
CAMPUS: Amundsen-Mayfair
FILED BY: Union
CLASSIFICATION: "A." Timeliness
"D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Due process of faculty member foregone in non-renewal of contract because Dean did not "state his reasons in writing to the department chairman, who shall in turn inform the eligible members of the department."

PERTINENT CONTRACT PROVISIONS: §XIII F. (l), (3).
§XV B. l.
§X B. (l.), (3).

AWARD: Administration

It is the award of the Arbitrator that the grievance of Michael E. Hauser relating to the renewal of his contract for the academic year 1969-70 was filed beyond the applicable time limits and the grievance is hereby dismissed.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Interpretation
(Retroactivity of subsequent contract: denied)

DEFENSE ARGUMENTS:
Non-Arbitrable
1. Not Timely (sustained)
2. The remedy sought by the grievant is one which the arbitrator does not have the power or authority to grant.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract Language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Union took position that features of subsequent contract were retroactive. "...It is obvious that there could be no retroactivity relating to the proper time for filing a grievance..."

IMPACT: Subsequent Union Agreement time limit increased from 5 to 10 days. This grievance fell between the interim (extension of time span already agreed to).
THE ISSUE: The due process of the grievant was denied in considering her renewal of contract.

PERTINENT CONTRACT PROVISIONS: §XIII F.1., 2., 3.  
§XV B.3.  
§XVII

AWARD: Administration  
The grievance is denied.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Non-Arbitrable - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:  
School arbitration precedence AAA Case No. 51-30-0044-68  
Contract Language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "Generally, so long as a grievance is firmly anchored to a contract provision said to be violated, the grievance is arbitrable... what relief the arbitrator may award is another matter. But difficulty of framing relief does not impair arbitrability.

The Arbitrator's sole authority is to interpret and apply the contract in light of governing law. He has no power to review the decision of the faculty, the Dean or the Board."

The merits of the decision not to rehire are beyond the arbitrator's scope and his competence.
AAA CASE NO.: 51-30-0165-69
DATE OF AWARD: August 19, 1969
TITLE: Mrs. Donna Holy
CAMPUS: Wright
FILED BY: Union
CLASSIFICATION: "D." Discharge
ARBITRATOR: John F. Sembower

THE ISSUE: Grievant seeks renewal of her contract on grounds that the provisions of an arbitration award (51-30-0088-68) in her favor were not carried out and she was not accorded "due process under the Agreement, when the English Department faculty voted against her being tendered a new contract after it was told erroneously that she had falsified her credentials.

PERTINENT CONTRACT PROVISIONS: §XIII F.1., 2., 3., (Appendix Dl.) §XV B1,3.g.(1), (2.);

AWARD: Union

Mrs. Donna Holy shall be offered a contract for the academic year 1969-70 to teach in the English Department at Wright Junior College. She is to have the right to evaluation for renewal of contract for the 1970-71 academic year under the provision of Section J. d. of the current Agreement. Mrs. Holy also shall receive the appropriate salary increment by virtue of entering another year of experience. The arbitrator retains jurisdiction for sixty (60) days in connection with any disputes which shall arise in connection with this award.

REMEDIES: Additional Pay
Reappointment

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language - no requirement in contract requiring written instruction (overruled), Non-Arbitrable (overruled) Timeliness (overruled)

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes and Judicial Decisions
Federal Decisions
School arbitration precedence
(AAA Case No. 51-30-0165-69)
Contract Language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce Areas: "The final responsibility for hiring and firing, for retention and for non-retention, remains in the administration, and it cannot 'cop out,' as the saying goes, by contending that it turned this function over to 'the employees.'"
AAA CASE NO.: 51-30-0288-69
DATE OF AWARD: February 15, 1972
TITLE: Dr. D. Kober Gr.
CAMPUS: Southeast
FILED BY: Union
CLASSIFICATION: "M." Promotion
ARBITRATOR: David J. Shipman

THE ISSUE: Whether Dr. Dieter Kober was properly denied promotion to rank of Professor.

PERTINENT CONTRACT PROVISIONS: §X A. §XI

AWARD: Union
(1) that the Board is not barred by the time in rank provisions of the Criteria for Promotion from considering Dr. Kober's application, recommendations and qualifications for promotion to the rank of Full Professor;

(2) that the Board proceed to such consideration according to its normal and fair procedures and in the light of the opinion submitted herewith;

(3) that the Arbitrator retains jurisdiction of this proceeding, to assist any parties if requested by them or either of them, in the carrying out of this award;

(4) that in the event the Board decides that Dr. Kober should be promoted, and the question of the effective date of the promotion arises, it is suggested that the parties have in mind that the Union and the grievant shared with the Board and the Arbitrator in the responsibility for the prolonged delay from the time of the institution of these proceedings to the date hereof;

(5) that the parties inform him at their early convenience through the American Arbitration Association whether the matter has been disposed to their mutual satisfaction or whether they or either of them desire further meetings or other appropriate action; and

(6) that if he hears nothing from the parties before May 1, 1972, he will assume the matter has been disposed and will terminate his jurisdiction as of that date.

REMEDIES: Take Affirmative Action. (The Board settled for previous year's increment and promotion to full Professor.)
PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language
Board Policy

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Past practice in local school district
Contract Language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Board erred in denying the grievant a promotion from Associate Professor to full Professor, because:

1. The Board's action was based on the fact that the grievant had not fulfilled the "four years in rank" requirement;

2. The Board had not taken into account the grievant's qualifications;

3. The contract contained a grandfather clause stating that "time in rank limitation" shall not apply to persons who were members of the Chicago City College faculty on July 15, 1962, which applied to the grievant.

Contrary to the Board's belief, the "time in rank" requirement was not an "absolute bar" to consideration of the teacher's application for promotion.
THE ISSUE: That the Board does not have the right to force the transfer of a faculty member from one college to another except as it is specifically provided for in various provisions that have been negotiated between the Union and the Board and set forth in the collective bargaining agreement.

PERTINENT CONTRACT PROVISIONS: §VIII G.

AWARD: Union

The Agreement between the parties provides the Board with power to transfer faculty members from one campus to another without their prior consent. This power is limited by other provisions in the Agreement. One such limitation is that the transfer power in Article VIII G.2 is not to be used for disciplinary purposes, exclusively. The record of this case does not set forth fact situations which enable the Arbitrator to identify or describe other limitations on the exercise that power which may arise, not specifically referred to in the agreement. Accordingly, pending the event of a challenged involuntary transfer, no decision is made with respect to the nature and extent of the limitations, if any.

REMEDIES: Return situation to a condition that existed before the grievance was filed.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Absence Specific Language;
§III G.2 meaning of "good faith."
Direct Violation of Language

DEFENSE ARGUMENTS: Past Practice
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence
Contract Language
Merits of instant case
AUTONOMY OF ADMINISTRATION: Delimit

Areas: The transfer provisions of the Agreement were not to be resorted to for disciplinary measures and that the proofs presented by the Board were insufficient to sustain the disciplinary sanctions imposed on the two grievants and be ordered that they be reinstated to their positions at the Bogen campus

WENT TO COURT: Prior to grievance, a work stoppage ensued and a court order issued ordering the parties to proceed to arbitrate their differences.
AAA CASE NO.: 51-30-0402-69
DATE OF AWARD: May 1, 1970
TITLE: Merger of Southeast and Fenger
CAMPUS: Fenger/Southeast
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"U." Duty to Bargain
ARBITRATOR: John W. Noble, Jr.

THE ISSUE: As a condition precedent to a merger of two or more of the campuses of Junior College District No. 508, must the Board, under the terms of the Labor Agreement, consult with and negotiate with the Union, respecting terms and conditions of employment of employees covered by said Agreement which may be affected by the merger?

PERTINENT CONTRACT PROVISIONS:
§§I A., B.1., B.2; II A.,B.,E.; VIII G.3.; X
B.3.g.,h.1.,h.2.; XI.

AWARD: Union

The grievance of Local 1600 is sustained and the Board of Junior College District #508, County of Cook, State of Illinois, is ordered to engage in good faith consultation and negotiation with Cook County College Teachers Union, American Federation of Teachers, AFL-CIO, Local 1600. Such consultations and negotiation should include those matters affecting salary schedules, fringe benefits and working conditions of employees covered by the Agreement to the extent that such matters arise or might arise out of the proposed merger of the Fenger and Southeast campuses of the City Colleges of Chicago. The Board is also instructed to furnish the Union with such relevant information as will enable it to intelligently discharge its duty as collective bargaining representative.

REMEDIES: Take Affirmative Action

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Non-arbitrable; overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract Language

AUTONOMY OF ADMINISTRATION: Delimit
Areas: "The Arbitrator is of the opinion that § XI of the Agreement clearly required the Board to consult and negotiate with the Union prior to implementing any substantive action which may change salary schedules, fringe benefits and working conditions of the employees covered by the agreement ... The Arbitrator repeats that there is no provision in the contract requiring agreement on any matter subject to negotiation as a condition to effectuating the merger..."

Merit is also found in the Union's position that § II-E of the agreement requires the Board to make available to the Union "all job information, statistics and records which are relevant to negotiations..." and that the furnishing of the information to the Union by the Board is a necessary corollary to the effective consultation and negotiations which this opinion and award orders.
Arbitration Cases Pertaining to the Year 1970

American Arbitration Association Case Numbers:

51-39-0144-70
51-39-0171-70
51-39-0172-70
51-39-0203-70
51-39-0220-70
51-39-0266-70
51-39-0267-70
51-39-0297-70
51-39-0332-70
51-39-0333-70
51-39-0378-70
51-39-0432-70
51-39-0433-70
51-39-0434-70
51-39-0439-70W
51-39-0441-70W
AAA CASE NO.: 51-39-0144-70
DATE OF AWARD: July 18, 1972
TITLE: Physical Education Teacher Qualifications
CAMPUS: Kennedy-King
FILED BY: Union
CLASSIFICATION: "G." Hiring Policies
ARBITRATOR: Alex Elson

THE ISSUE: A violation of the Board Union contract resulted with the hiring of four persons as physical education teachers without meeting the master's degree requirement of the collective agreement.

PERTINENT CONTRACT PROVISIONS: Appendix D. §VIII. 1.b.

AWARD: Union

The grievance is sustained, the Board violated the agreement of the parties in failing to adhere to the requirement that a master's degree or its equivalent in the field of physical education must be met before any person may be employed in a teaching position in physical education. The Board shall henceforth cease and desist from violating the qualification requirements from teaching positions specified in the parties agreement.

REMEDIES: Cease and Desist

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: "Other" Teaching assignment is with a special funded project, (this is not the teaching involved in the arbitration.)

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "The Board shall henceforth cease and desist from violating the qualification requirements for teaching positions specified in the parties agreement."

AAA CASE NO.: 51-39-0171-70
DATE OF MEMORANDUM OF UNDERSTANDING: August 20, 1970
TITLE: Flynn Renewal of Contract
CAMPUS: Amundsen - Mayfair
FILED BY: Union April 29, 1970
CLASSIFICATION: "D." Discharge

THE ISSUE: Violation of Article VIII, Section J. of the Union-Board Agreement. That Mr. Flynn be given his tenure contract as a teacher in the Chicago City College at Amundsen - Mayfair.

PERTINENT CONTRACT PROVISIONS: §VIII J.

SETTLED BY MEMORANDUM OF UNDERSTANDING: Union

- Terminal employment contract for 1970-71 and 1st semester only of 1971-72 academic years.
- Cash settlement of $10,650 for 3 consecutive special leaves of absence of 5 months each without pay for 3 semesters of terminal contract.
- Eligible for insurance fringe benefits.
- Personnel file will not be merged with grievance file.
- Can apply for position at another college in 1-1/2 years

REMEDIES: Additional Pay ($10,650)
Reappointment (3 semesters)

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Unsuccessful attempt to discharge untenured faculty member.

Note: Grievance did not reach arbitration stage.
AAA CASE NO.: 51-39-0172-70
MEMORANDUM OF UNDERSTANDING: July 15, 1970
TITLE: Lundahl Renewal of Contract
CAMPUS: Amundsen Mayfair
FILED BY: Union April 29, 1970
CLASSIFICATION: "D." Discharge

THE ISSUE: Violation of Article VIII, Section J of the Union-Board Agreement. That Dr. Lundahl be given his tenure contract as a teacher in the Chicago City College at Amundsen-Mayfair.

PERTINENT CONTRACT PROVISIONS: §VIII J.

SETTLED BY MEMORANDUM OF UNDERSTANDING: Union
- Eligible for evaluation for renewal of employment for 1970-197 academic year (tenure contract).
- Will be recommended for annual salary increment (1970-71).
- Dr. Lundahl's file be purged of charges and materials relating to the grievance.
- If possible, - transfer to another college.

REMEDIES: Reappointment; non-tenure contract

AUTONOMY OF ADMINISTRATION: Delimit
- Areas: Unsuccessful attempt to discharge untenured faculty member.

Note: Grievance did not reach arbitration stage.
AAA CASE NO.: 51-39-0203-70
DATE OF AWARD: Withdrawn August 27, 1970 by joint action
TITLE: Summer School Grv.
AAA CASE NO.: 51-39-0220-70
DATE OF AWARD: Withdrawn
TITLE: New Attendance Reporting Guidelines
CAMPUS: All-City
FILED BY: Union June 16, 1970
CLASSIFICATION: "C." Working Conditions

THE ISSUE: Violations of the Board-Union Agreement are claimed as a result of the institution of "sign-in" sheets that were initiated at all campuses without prior negotiations or consultation with the Union.

PERTINENT CONTRACT PROVISIONS: §I.A.; §II C.1.; §VIII; §XI

The Union House of Representatives voted not to send the issue to arbitration, but to refer it to the Board-Union Working Conditions Committee.

AUTONOMY OF ADMINISTRATION: Enforce

AREAS: "Union attorneys concluded that arbitration tends to allow wide latitude to the employer on the question of payroll procedures."
AAA CASE NO.: 51-39-0266-70
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: McCarthy Promotion
CAMPUS: Wright
FILED BY: Union July 15, 1970
CLASSIFICATION: "M." Promotion

THE ISSUE: That Marilyn McCarthy be promoted to full professor.

PERTINENT CONTRACT PROVISIONS: §X A.2., §XI

WENT TO COURT: March 29, 1973, the Board filed in the Cook County Circuit Court its petition for an injunction alleging that the matter of promotions is not subject to arbitration. The Union moved to dismiss the Board's petition for injunction and to deny its motion for preliminary injunction. The Court denied the motion to dismiss, and temporarily enjoined the arbitration of the grievances. The union filed an interlocutory appeal. (58 Ill. 2d R. 307(a)(1)) The Appellate Court for the First District affirmed (22 Ill. App. 3d 1053), and the Illinois Supreme Court allowed leave to appeal.

The principal issue in No. 47138 at the Appellate Court level (22 Ill. App. 3d 1053) was whether the Uniform Arbitration Act provided the exclusive remedy for restraining arbitration. The Supreme Court of Illinois in No. 47138 declined to consider this narrow, procedural issue, since they held that the matter of faculty promotions is a nondelegable power of the Board which it cannot be compelled to submit to arbitration.

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The Illinois Supreme Court found nothing in the applicable collective bargaining agreements to indicate, as the union suggested, that promotions are subject to binding arbitration. It was stated that an agreement so providing would in fact, constitute an impermissible delegation of the Board's authority to grant or deny promotions.
AAA CASE NO.: 51-39-0267-70
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: Lerner-Riedy-Horan Promotion
CAMPUS: Amundsen-Mayfair
FILED BY: Union July 15, 1970
CLASSIFICATION: "M." Promotion
ARBITRATOR: Alex Elson

THE ISSUE: That Mr. Richard Lerner, Mr. James Riedy, and Mr. Martin Horan be promoted to associate professor.

PERTINENT CONTRACT PROVISIONS: §X.A.2., §XI

SIGNIFICANT OUTCOMES: See AAA Case No. 51-39-0266-70 (went to court)
AAA CASE NO.: 51-39-0297-70
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: "O." Benca Promotion
CAMPUS: Amundsen-Mayfair
FILED BY: Union August 4, 1970
CLASSIFICATION: "M." Promotion

THE ISSUE: That Mr. Otto Benca be promoted to full professor.

PERTINENT CONTRACT PROVISIONS: §X.A.2., §XI

SIGNIFICANT OUTCOMES: See AAA Case No. 51-39-0266-70 (went to court)
AAA CASE NO.: 51-39-0332-70
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: M. Benca Promotion
CAMPUS: Amundsen-Mayfair
FILED BY: Union August 19, 1970
CLASSIFICATION: "M." Promotion

THE ISSUE: That Mrs. Milada Benca be promoted to Associate Professor.

PERTINENT CONTRACT PROVISIONS: §X.A.2., §XI

SIGNIFICANT OUTCOMES: See AAA Case No. 51-39-0266-70 (went to court)
AAA CASE NO.: 51-39-0333-70
DATE OF AWARD: Incomplete
TITLE: N. Harari Contract Renewal
CAMPUS: Kennedy-King
FILED BY: Union August 19, 1970
CLASSIFICATION: "D." Discharge
ARBITRATOR: Sinclair Kossoff

THE ISSUE: Violation of the Agreement in the fact that Miss Noa Harari was not given a renewal contract.

PERTINENT CONTRACT PROVISIONS: §VIII J.1.d., J.2
AAA Case No.: 51-39-0378-70
Date of Award: Withdrawn June 28, 1976
Title: N. Johnson Promotion
Campus: Bogan
Filed by: Union
Classification: "M." Promotion

The Issue: That Mrs. Noel Johnson be promoted to Associate Professor.

Pertinent Contract Provisions: §X A.2, §XI

Significant Outcomes: See AAA Case No. 51-39-0266-70 (went to court)
AAA CASE NO.: 51-39-0432-70
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: Soten Rank Promotion
CAMPUS: Amundsen-Mayfair
FILED BY: Union
CLASSIFICATION: "M." Promotion

THE ISSUE: That Mr. Aristotle Soter be promoted to Associate Professor.

PERTINENT CONTRACT PROVISIONS: §X A.2., §XI
AAA CASE NO.: 51-39-0433-70
DATE OF AWARD: Withdrawn December 21, 1970
TITLE: Schnieder Seniority Gr.
CAMPUS: Southwest
FILED BY: Union November 2, 1970
CLASSIFICATION: "W." Seniority

THE ISSUE: The Board is crediting Mr. William Schneider with seniority from the date of his rehire. 

Note: The Union and Mr. Schneider reserved the right to bring a grievance at a later date as condition of withdrawal.
(Refiled as AAA Case No. 51-39-0481-72)

PERTINENT CONTRACT PROVISIONS: §VI.A., §VIII F., J.,
AAA CASE NO.: 51-39-0434-70
DATE OF AWARD: Withdrawn August 10, 1972
TITLE: R. Greene Contractual Terms
CAMPUS: Loop
FILED BY: Union November 2, 1970
CLASSIFICATION: "A." Timeliness
"F." Pay for Time Not Worked
"V." Work Assignments
ARBITRATOR: Pearce Davis

THE ISSUE: Denial of salary increment.
Denied salary from April 17, 1970 to May 1, 1970.
Denied the right to teach courses which were available in his field.

PERTINENT CONTRACT PROVISIONS: §VI.B.1.a.;
§VII.B.1.c., D.1.,3.
AAA CASE NO.: 51-39-0439-70W
DATE OF AWARD: September 29, 1971
TITLE: Weekend College Grievance
CAMPUS: Malcolm X
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"B." Extracurricular Assignments
"P." Pay for Working Time
"U." Duty to Bargain

ARBITRATOR: Robert T. Drake

THE ISSUE:
1. Was the extra work made available by the institution of the "Weekend College" advertised and assigned to teachers in a manner that was in keeping with the terms of the collective bargaining agreement?

2. When the Board established the "Weekend College" as a program of instruction offering courses for credit on Saturday and Sunday on a regular basis over the course of a semester did it take an action which might conceivably affect the salary schedules, fringe benefits and working conditions of teachers represented by the Union?

PERTINENT CONTRACT PROVISIONS: §VI.A.5.,
§VIII.F.4.,
§VIII.B.,
§XI

AWARD: Union

The Board shall:

1. Pay faculty members in accord with Article VI A5 if extra work is involved.

The Arbitrator is not aware of any provision governing a rate of pay for Sunday work and therefore if the work week scheduled by the Board for a teacher includes Sunday work the rate of pay for Sunday work is subject to negotiation between the Union and the Board.

A. Upon requests by the Union to Department Heads, take all necessary steps to assure that seniority and rotation lists are properly maintained and posted;

B. Engage in good faith negotiations with the Union in the event the Weekend College is continued during the 1971-72 academic year concerning the effect of such
continuation on the salary schedules, fringe benefits and working conditions of faculty members covered by the contract;

C. Furnish the Union with all information necessary for assuring the proper offering and assignment of extra work.

REMEDIES: Additional Pay
"Other": Post S&R Lists
Advertise all extra work
Negotiate in good faith

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable, overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Past practice in local school district
Industrial arbitration precedence
Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas:
- Eliminated possibility of "volunteer" work (without pay).
- Requires Department heads to maintain S&R Lists and post.
- Engage in good faith negotiations in the matter of the Weekend College.
- Must notify union of extra work.

SIGNIFICANT OUTCOMES: "The Arbitration ruled that the Union may file a grievance asserting a claim for any or all teachers without naming them..."
AAA CASE NO.: 51-30-0441-70W
DATE OF AWARD: February 7, 1972
TITLE: 30 Hour Work Week
CAMPUS: All City
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"C." Working Conditions
ARBITRATOR: John W. Noble, Jr.

THE ISSUE: May the Board establish a minimum on-campus work week for full-time teaching faculty and can the requirement be enforced with appropriate sanctions.

PERTINENT CONTRACT PROVISIONS: §I.A.,B
§VIII.B.1.,2;C;D.1,2.,4;
L.1.,2.
§X.D.
§XI.

AWARD: Union

The grievance of Local 1600 is sustained and the Board of Junior College District No. 508, County of Cook, State of Illinois, is ordered to engage in good faith consultation and negotiation with Cook County College Teachers Union, American Federation of Teachers, AFL-CIO, Local 1600. Such consultation and negotiation should include any establishment of a requirement that faculty members be present on campus for a minimum number of hours per week.

The College Board is also ordered to engage in consultation and negotiations with Local 1600 concerning any proposal for a change in the number of student conference and contact hours engaged in by faculty members each week.

The Board is ordered to notify Local 1600 of the recision of the order of October 26, 1970, and any unilaterally established order changing contractually established conference, and contact those employees covered by the collective bargaining agreement in effect between the parties.

REMEDIES: Additional Pay
Cease and Desist
Other: Board ordered to engage in good faith consultation and negotiation

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language
DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable: overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence AAA Case No. 51-30-0402-69
Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Union has the option of filing a grievance with the Chancellor or the campus head.

"...The employee should not be required to guess whether each condition announced will or will not be enforced to his detriment... the Union should not be required to wait to grieve until an employee has been denied 'increments, tenure, or new contracts'.

"It follows from the finding and order above, that the Board and its agents may not penalize any faculty member for violating the October 26 order and also requires that restitution be made to any faculty member who may have been so sanctioned."

IMPACT: Board rules (See Award).
Arbitration Cases Pertaining to the Year 1971

American Arbitration Association Case Numbers:

51-39-0139-71
51-39-0144-71
51-39-0145-71
51-39-0146-71
51-39-0171-71
51-39-0180-71
51-39-0181-71
51-39-0217-71
51-39-0249-71
51-39-0273-71
51-39-0274-71
51-39-0275-71
51-39-0276-71
51-39-0277-71
51-39-0309-71
51-39-0310-71
51-39-0340-71
51-39-0499-71
51-39-0500-71
51-39-0501-71
AAA CASE NO.: 51-39-0139-71
DATE OF AWARD: Withdrawn June 25, 1971
TITLE: English Department Grievance
CAMPUS: Wright
FILED BY: Union June 12, 1971
CLASSIFICATION: "V." Work Assignment

THE ISSUE: That those teachers be permitted to choose their courses in the usual manner in conformance with the Agreement and in conformance with past practices in the English Department.

PERTINENT CONTRACT PROVISIONS: §VIII.F.3.

N.B. The outcome of a 1978 grievance filed by Ellen Kollegan on this same issue was decided on July 28, 1980 in a First Division Appeal from the Circuit Court of Cook County.

"...The exclusive right of 'operation' of the colleges, which necessarily includes the right to assign teachers and pass upon their qualifications, is vested in the Board...." (79-1812)
AAA CASE NO.: 51-39-0144-71
DATE OF AWARD: August 14, 1972
TITLE: Grievance of John Riordan
CAMPUS: Loop (PSI)
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"D." Discharge, Tenure problems
ARBITRATOR: Arthur A. Malinowski

THE ISSUE: Whether the grievance of John Riordan was arbitrable?

Whether the grievant, John Riordan, was entitled to have received a fourth year contract for the academic year 1971-1972?

PERTINENT CONTRACT PROVISIONS: §VIII J.1.c.,d.,3.a.,k.1.b.

AWARD: Union

1. The grievance of John Riordan was arbitrable.

2. The grievant was entitled to have received a fourth year contract for the academic year 1971-1972. He shall be made whole for all earnings lost and in these earnings will be included the appropriate salary increment, if any, which he would have received by virtue of his having had another year of experience.

REMEDIES: Back Pay
Reappointment

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable - Overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Judicial Decisions
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "Accordingly, the arbitrator finds that President Heller's decision in this case was tainted with an anti-union motive and that this was in violation of the Labor Agreement."
WENT TO COURT: Illinois Supreme Court; September 1975, Docket No. 47137.

"...The Board's duties in appointing teachers are nondelegable, and it follows therefrom that the arbitrator is without authority to award an employment contract as remedy for the violation of a collective bargaining agreement since our holding here sets aside previously awarded employment contracts, the tenure awards simultaneously fall, and there is no need to consider independently the arbitrator's authority to award tenure." (See AAA Case No. 51-39-0152-72)
AAA CASE NO.: 51-39-0145-71
DATE OF AWARD: Withdrawn May 5, 1971
TITLE: Proctoring of TV Exams
CAMPUS: TV College
FILED BY: Union April 14, 1971
CLASSIFICATION: "V." Work Assignment

THE ISSUE:

1. Immediately issue a directive to Dean Zigerell and the TV Coordinators at each College instructing them to henceforth assign only faculty members to the proctoring of TV Exams.

2. Provide the Union with a list of the TV exams that have been proctored so far this semester by non academic employees.

3. Direct Dean Zigerel and the TV coordinators at each College to circulate a list of the TV exams and the dates on which they are to be proctored in the future to every faculty members so that interested faculty members may apply to proctor these exams.

PERTINENT CONTRACT PROVISIONS: §XI
AAA CASE NO.: 51-39-0146-71
DATE OF AWARD: Withdrawn July 24, 1973
TITLE: Rank Promotion
CAMPUS: All-City
FILED BY: Union April 14, 1971
CLASSIFICATION: "M." Promotion

THE ISSUE: That the college presidents be directed by the chancellor to withdraw the 1969 criteria and return to the 1965 criteria for rank promotion.

PERTINENT CONTRACT PROVISIONS: §X.A., §XI
DATE OF AWARD: Withdrawn November 14, 1972
TITLE: Retention of Emeritus Teachers
CAMPUS: All-City
FILED BY: Union April 26, 1971
CLASSIFICATION: "E." Discrimination on Basis of Age

THE ISSUE: Contracts for emeritus teachers for 1971-72 school year.

PERTINENT CONTRACT PROVISIONS:  § II
§ VI
§ VIII

IMPACT: Board rules Section 2-27(b)
Personnel manual


Under the 1978 amendments to section 12 of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, 631 (1976), compulsory retirement before the age of 70 will be prohibited after January 1, 1979. Pub. L. No. 97-256, Sec. 3(a), (b)(1), 92 Stat. 189 [to be codified as 29 U.S.C. § 631(a)]. However, under amended section 12(d) of the Act, the compulsory retirement at age 65 of tenured employees of qualified higher education institutions is not prohibited. Id., sec. 3(a) [to be codified as 29 U.S.C. § 631(d)]. This statutory exemption expires on July 1, 1982. Id. sec. 3(b)(3). Thereafter, the 70 year age limit will apply to qualified higher education institutions such as the City College of Chicago.

An unsuccessful class action was brought by the Union (78 Cl430) against the Board seeking relief from the operation of its rules and policies regarding compulsory retirement which allegedly violated faculty members fourteenth amendment rights. (November 28, 1978).

On November 13, 1981 the Illinois Supreme Court ruled that the prohibition against mandatory retirement before age 70 contained in the Human Rights Act is valid. The Court rejected the City Colleges' appeal from the ruling by Cook County Circuit Court Judge Arthur Dunne barring the forced
retirement at 65 of City Colleges of Chicago faculty members Luada Estell (Kennedy-King), Harold Messinides (Wright) and William Prince (Loop).
CASE NO.: 51-39-0180-71
DATE OF AWARD: May 3, 1973
TITLE: Department Chairman Gr.
CAMPUS: Malcolm X
FILED BY: Union
CLASSIFICATION: "Q." Chairmanship
ARBITRATOR: Lawrence F. Daly

THE ISSUE: That the new administrative structure replaces department chairman with associate deans.

PERTINENT CONTRACT PROVISIONS: §VIII. L.1,2,3.

AWARD: Union

The procedures and distinctions of Article VIII, Section L, should be implemented forthwith (a) in the faculty post factum consultation on the academic advantages or disadvantages of the administrative reorganization in the newly reorganized multi-disciplined departments, not for the purpose of changing the reorganization but to assure faculty participation in the academic effects of any future reorganization of the disciplines under consideration; (b) in the selection and appointment of department chairman in any extant unchanged departments.

REMEDIES: Take Affirmative Action

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Non-Arbitrable, overruled.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: State Statutes and Judicial Decisions

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "Therefore, it is clear from the record that the procedural rules and distinctions on the advisory role of eligible faculty members within a department (whether reorganized or not) in the selection and appointment of department chairman, was not complied with as required by the Collective Bargaining Agreement."
AAA CASE NO.: 51-39-0181-71
DATE OF AWARD: Consolidated with 51-39-0040-72W
TITLE: Splitting of Over Crowded Classes
CAMPUS: Malcolm X
FILED BY: Union April 30, 1971
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE: English 101 and 102 be rescheduled with Union-Board Agreement.

PERTINENT CONTRACT PROVISIONS: §VIII
AAA CASE NO.: 51-39-0217-71
DATE OF AWARD: August 11, 1972
TITLE: Lawrence Contract Renewal
CAMPUS: Loop
FILED BY: Union May 24, 1971
CLASSIFICATION: "D." Discharge
ARBITRATOR: Lawrence F. Daly

THE ISSUE: The Union demands that a contract for 1971-72 be given to Mrs. Judith Lawrence.

PERTINENT CONTRACT PROVISIONS: §VIII K lb, lc
§VIII.J.1.b.,c.,d.,
§X.B.3.

AWARD: Administration
Grievance denied

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation
DEFENSE ARGUMENTS: Non-Arbitrable - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes and Judicial Decisions
Federal Decisions
Contract language

AUTONOMY OF ADMINISTRATION: Enforce
Areas: Compliance with contract affords teacher contractual due process.

WENT TO COURT: Amended to No. 71-Ch-124 as part of Memorandum Ruling. Decided against grievant in Illinois Supreme Court case 47137. (See AAA Case No. 51-39-0144-71).
AAA CASE NO.: 51-39-0249-71

TITLE: Immediate Issuance of Contracts to Teachers at Malcolm X

CAMPUS: Malcolm X

FILED BY: Union June 11, 1971

CLASSIFICATION: "D." Discharge

ARBITRATOR: Albert A. Epstein

Combined with AAA No. 51-39-310-71

THE ISSUE: Immediate issuance of contracts to teachers at Malcolm X.

PERTINENT CONTRACT PROVISIONS: §VIII.J.2.
AAA CASE NO.: 51-39-0273-71
DATE OF AWARD: Withdrawn August 10, 1972
TITLE: Gr. of Mary Ford
CAMPUS: Malcolm X
FILED BY: Union June 29, 1971
CLASSIFICATION: "F." Pay for Time Not Worked
"V." Work Assignments
ARBITRATOR: Robert T. Drake

THE ISSUE:

1. Removal of Mary Ford from her teaching assignment.

PERTINENT CONTRACT PROVISIONS: §§ VIII.B., IX A.3., X.A.

N.B. Mary Ford assigned to the Loop College June 1, 1972.
AAA CASE NO.: 51-39-0274-71
DATE OF AWARD: Withdrawn
TITLE: Assignment of Rotation Points
CAMPUS: Southwest
FILED BY: Union
CLASSIFICATION: "V." Work Assignments

THE ISSUE:

1. That Mr. Smith be assigned six rather than three rotation points.

2. That Mr. Jeanguenat and Mr. Schuma be recompensed at standard rates for the 1971 summer school session.

PERTINENT CONTRACT PROVISIONS: §VIII F.4.
AAA CASE NO.: 51-39-0275-71
DATE OF AWARD: Withdrawn March 5, 1973
TITLE: New Insurance Program
CAMPUS: All-City
FILED BY: Union July 29, 1971
CLASSIFICATION: "F." Fringe Benefits

THE ISSUE: The Board acted unilaterally at its May 4, 1971 meeting to approve a new program of insurance without first reaching agreement with the Union.

PERTINENT CONTRACT PROVISIONS: §XI, Appendix C

WENT TO COURT: 71CH124 September 15, 1972

Decree: Board agreed to pay that portion of dependent health insurance which exceeds $15.36, and will do so for period beginning September 1, 1972 through June 30, 1973 without prejudice. Judge Nathan M. Cohen, Circuit Court.

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Board was unsuccessful in its attempt to pass on increased health insurance costs to members of the bargaining unit.

IMPACT: Subsequent Union Contract; Appendix C (1973-75 Contract).
AAA CASE NO.: 51-39-0276-71
DATE OF AWARD: Incomplete
TITLE: Teaching Assignments Gr.
CAMPUS: Malcolm X
FILED BY: Union June 29, 1971
CLASSIFICATION: "V." Working Assignment

THE ISSUE: The following teachers have been removed from teaching activities and put on "administrative assignment" at Malcolm College:

1. Beth Lehman
2. Christine Benanito
3. Rita Thomson
4. Teena Webb
5. Patricia Healy

PERTINENT CONTRACT PROVISIONS: §VIII D, §X A
AAA CASE NO.: 51-39-0277-71
DATE OF AWARD: Withdrawn
TITLE: Hiring Grievance
CAMPUS: Malcolm X
FILED BY: Union July 29, 1971
CLASSIFICATION: "G." Hiring Policies
ARBITRATOR: Samuel Edes

THE ISSUE: Hiring of Willis Johnson, Van Gerald Norwood, Blendell Spencer and Barbara Wakefield to perform duties ordinarily performed by faculty members.

The Board cease its practice of hiring unqualified individuals to perform teaching functions and that the individuals named above be required to obtain a minimum of a master's degree or its equivalent as a condition of continued employment.

PERTINENT CONTRACT PROVISIONS: §1, Appendix D
AAA CASE NO.: 51-39-0309-71
TITLE: Violation of Non-retaliation Pledge
CAMPUS: Malcolm X
FILED BY: Union July 26, 1971
CLASSIFICATION: "D." Discharge
Consolidated with AAA Case No. 51-39-0310-71

THE ISSUE: Violation of the non-retaliation pledge against Union members for strike activity. Namely, the following: Erlie Burton, John Yeatman, John Wenger, Joel Pichney, Judge Watkins, Melvin Burkes, Ruth Migdal, Mary Ford, Fe Abayon, Dorie Hill, Sal Ciarizzo, Zenaida Bongaarts, Teeena Webb, Pat Healy. All Union faculty members be given regular, non-terminal contracts for the 1971-72 school year.
AAA CASE NO.: 51-39-0310-71
DATE OF AWARD: February 14, 1972
TITLE: Issuance of Regular Contracts for all Teachers at Malcolm X
CAMPUS: Malcolm X
FILED BY: Union July 26, 1971
CLASSIFICATION: "D" Discharge
ARBITRATOR: Albert A. Epstein
AAA Case Nos. 51-39-0249-71 and 51-39-0310-71 combined with and became 51-39-310-71

THE ISSUE: Immediate issuance of regular contracts for all teachers at Malcolm X College.

PERTINENT CONTRACT PROVISIONS: § VIII J.l.b,c,d

AWARD: Union

1971-72 terminal contracts were awarded to the grievants: Mary Ford, John Wenger, John Yeatman, Patricia Healy, Harold Hefter, Ruth Migdal, Joel Picheney, Teena Webb on September 10, 1971 in an interim award. A subsequent award modified the interim award by stipulating that those faculty members were entitled to regular employment contracts for the 1971-72 academic year.

REMEDIES: Reappointment

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Provisions of contract (Board-Union) regarding renewal of contracts (teaching) are enforceable.

SIGNIFICANT OUTCOMES: Dr. Charles G. Hurst, President, Malcolm X College directed his security staff to bar five grievants from the campus. They were given involuntary off-campus assignments.

WENT TO COURT: 71CH124 Circuit Court of Cook County
Memorandum Ruling: September 14, 1972, "The Arbitrator may not award a renewal contract to any employee even if the collective bargaining agreement explicitly clothes him with that power." Judge Nathan M. Cohen Illinois Supreme Court: September 1975, Docket No. 47137
N.B. Board Rules: Section 2-11 Renewal of Faculty deleted from the July, 1974 edition, and subsequent issues.
AAA CASE NO.: 51-39-0340-71
DATE OF AWARD: Incomplete
TITLE: 1971 Summer Extra Work
FILED BY: Union June 11, 1971
CLASSIFICATION: "V" Work Assignments

PERTINENT CONTRACT PROVISIONS: §VIII.F.4

AWARD: Union

REMEDIES: Back Pay (approximately $25,000)

WENT TO COURT: Illinois Supreme Court September, 1975
Docket No. 47139
AAA CASE NO.: 51-39-0499-71
DATE OF AWARD: Withdrawn March 25, 1976
TITLE: Sabbatical Leaves Grv.
CAMPUS: All-City
FILED BY: Union December 16, 1971
CLASSIFICATION: "L." Leaves of Absence
ARBITRATOR: Paul Grant

THE ISSUE: That Richard Micon, Martha Mackin, Joan Schroeter, Andrew Sotter be given their sabbatical leaves in January 1972.

PERTINENT CONTRACT PROVISIONS: §X.A.2.

OUTCOME: Union

Withdrawn March 25, 1976 because the order by Circuit Court Judge Cohen suspending sabbaticals during the 1971-72 academic year was set aside. After the grievance was filed, the Board rescinded its action and voted to re-offer sabbatical leaves to the affected faculty members for the 1972-73 academic year. All of the individual faculty members involved in this grievance were offered leaves for the 1972-73 academic year. In addition the grievants were offered compensation for any out-of-pocket losses suffered by them as a result of having to take their leaves in the 1972-73 academic year.

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Board met the provisions of the contract after grievance was filed.

IMPACT: Subsequent Union Agreement

N.B. Board Rules: Section 2-20 Sabbatical Leaves was deleted in the July, 1974 edition and subsequent ones.
AAA CASE NO.: 51-39-0500-71
DATE OF AWARD: Withdrawn November 14, 1972
TITLE: Merger of Departments
CAMPUS: Southwest, All-City
FILED BY: Union December 16, 1971
CLASSIFICATION: "C." Working Conditions

THE ISSUE:

1. That the administration cease its merger of departments at Southwest College and all other campuses.

2. That the administration revert to pre-existing departmental status where mergers have taken place.

3. That the administration immediately enter into negotiations under Article XI, concerning this matter.

PERTINENT CONTRACT PROVISIONS:
Article X,
Article VIII,
Article XI

N.B. Board Rules: Section 2-30 Department Chairman was deleted in the July, 1974 edition and subsequent editions.
AAA CASE NO.: 51-39-0501-71
DATE OF AWARD: January 15, 1973
TITLE: Required Tutorial Sessions
CAMPUS: Olive-Harvey
FILED BY: Union
CLASSIFICATION: "H." Hours of Work
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the action taken by the College in the Fall of 1971 establishing a program requiring members of both the English and the Foreign Language Departments to attend tutorial sessions on an unpaid basis, a violation of the Agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §VI A.5
§VIII B.1., D.2, D.3
§XI

AWARD: Administration

The action taken by the College in the Fall of 1971 establishing a program requiring members of both the English and the Foreign Language Departments to attend tutorial sessions on an unpaid basis was not a violation of the agreement between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Past Practice
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract Language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

AREAS: Reduce overhead by distributing costs of tutorial instruction from formal course load in 3 credit hour segments of some instructors to component of teacher programs (1 hour) to all members of a department.
Arbitration Cases Pertaining to the Year 1972

American Arbitration Association Case Numbers:

51-39-0034-72
51-39-0039-72W
51-39-0040-72W
51-39-0116-72W
51-39-0152-72
51-39-0226-72
51-39-0227-72
51-39-0228-72 (First Phase)
51-39-0228-72 (Second Phase)
51-39-0252-72
51-39-0257-72
51-39-0258-72
51-39-0303-72W
51-39-0305-72W
51-39-0406-72
51-39-0412-72
51-39-0481-72
51-39-0590-72W

Administration Grievance
THE ISSUE:

1. Is the instant grievance concerning Mrs. June Greenlief Kessler arbitrable?

2. If the grievance is arbitrable was Mrs. Kessler a member of the faculty and entitled to a teaching assignment in September 1971? If so, what is the proper remedy?

PERTINENT CONTRACT PROVISIONS: § IX B.1.a. and b.; § X B.3. h.1., 2.; C.1.

AWARD: Administration
1. That the grievance involving Mrs. June Kessler is arbitrable under the terms of the labor agreement between the parties.
2. Mrs. June Greenlief Kessler was not a member of the faculty and not wrongfully denied a position in September 1971.

DEFENSE ARGUMENTS: Non-Arbitrable
1. denied as untimely
2. grievant not a member of bargaining unit, therefore uneligible to file grievance (overruled)

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The explicit provisions of the contract § IX, B.1.b superseded the normal procedural requirements for terminating tenured members of the faculty.

WENT TO COURT: Circuit Court of Cook County 72L 17022 resulted in Settlement Agreement: In return for Agreement to dismiss court civil action, Board agreed to employ J. G. Kessler part time for the Fall and Spring Terms of the academic year 1973-74.
AAA CASE NO.: 51-39-0039-72W
DATE OF AWARD: March 8, 1973
TITLE: Project Personnel
CAMPUS: Loop (PSI)
FILED BY: Union
CLASSIFICATION: "U." Bargaining Unit
ARBITRATOR: Willard J. Lassens

THE ISSUE:
1. Faculty contracts be issued to all full-time professional personnel currently employed by the Loop College
2. The salaries and fringe benefits of the above teachers be adjusted to the scale specified in the Union-Board Agreement, and
3. That retroactive adjustments be made in regard to salary and fringe benefits as specified in the Union-Board Agreement.
4. That all hiring of new faculty personnel be done in conformance with Article VIII of the Union-Board Agreement.


AWARD: Union

Full-time personnel of the Public Service Institute working under current projects, except for Dr. Salvatore Rotella, and except for personnel working on a research project for the State of Illinois, are "faculty members" under §I-A of the contract. No such Institute "faculty members" however, are awarded back pay. No such Institute "faculty members" shall be discharged in consequence of this Award. To the foregoing extent, the grievance is sustained. In all other respects they are denied.

REMEDIES: Other

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS:
Past Practice
Contract Language
MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Intent of parties

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Persons engaged full time in the specially funded projects with the governments are members of the bargaining unit for purposes of the agreement between the parties.

IMPACT: Board Rules; Section 2-20 Project Personnel added July, 1974 edition.
Subsequent Union Agreements; §I (1975-77),§VIII N. (1973-75)

SIGNIFICANT OUTCOMES: There appear to be no relevant reported arbitration awards. The parties have cited none and the arbitrator has found none in BNA Labor Arbitration Reports and the AAA Service, Arbitration in the School.

WENT TO COURT: 71CH124 Circuit Court of Cook County November 11, 1973 The Award of the Arbitrator in AAA Case No. 51-39-0039 72-W is vacated. Full-time faculty of the special programs, if not otherwise "regular" faculty, are not included within the bargaining unit of the Agreed Decree in case no. 71-CH-124. Judge Nathan M. Cohen
AAA CASE NO.: 51-39-0040-72W
DATE OF AWARD: Withdrawn November 20, 1972
TITLE: Splitting of Overcrowded Classes
CAMPUS: Malcolm X (Skills Center)
FILED BY: Union January 27, 1972
CLASSIFICATION: "C." Working Conditions
"V." Class Size
AAA Case No. 51-39-0181-71 was consolidated with
AAA Case No. 51-39-0040-72W

THE ISSUE:
1. Negotiations with the Union to end the pertinent contract violations.
2. Names and information on the educational background of the teachers involved is sought.
3. Splitting of overcrowded classes.

PERTINENT CONTRACT PROVISIONS: §§I., VIII. A., B.1., F.3.b. and 4., X

IMPACT: Subsequent Union Agreement; §VIII A.1.e,A.6. (July 1, 1975 - August 31, 1977 contract)

N.B. Similar to AAA Case No. 51-39-0257-72.
THE ISSUE: Whether, under §§ II 3 and VI A.3 of the contract between the parties, the union is entitled to certain information concerning the rank, salary and classroom placement of full time faculty members, and certain other information pertaining thereto. If so, when is the employer required to furnish such to the union?

PERTINENT CONTRACT PROVISIONS: §§II E, VI A.3

AWARD: Union

A. Under §VI A.3 of the contract between the parties the employer shall furnish the union the proposed rank and salary placement for all new faculty members immediately after such is proposed by the College President to the Chancellor. The union cannot be required to wait until at or about the time the Board acts on such proposal.

B. Under §II E of the contract between the parties:

1. The union is entitled to be furnished with the names of all persons at Malcolm X College performing faculty or teaching functions within the meaning of, and as covered by, the bargaining unit set forth in §I A of the contract, together with their qualifications therefor, as well as a list of all courses offered for credit together with the name of the teacher or teachers of the course;

2. The information above set forth, being of the type which is "public", shall be furnished to the union as soon as it is readily available to the employer. The union need not wait until such information is actually made public.

3. The employer shall compile and make available to the union the above information inasmuch as it is reasonably obtainable by the employer. The union need not compile such information
itself based on diverse documents distributed by the College and/or Board; and

4. The employer shall furnish the union the names of only those tutors, project co-ordinators and administrators who are performing faculty or teaching functions covered by, and within the meaning of, the bargaining unit set forth in § I A of the contract.

C. The arbitrator shall retain jurisdiction over this matter for the sole purpose of resolving any disputes over the proper effectuation of this Award.

REMEDIES: Other

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Board directed to conform with contract terms; the union shall be notified "immediately" of the "proposed" rank and salary placement of new faculty members.

N.B. Letter of September 6, 1977 from Donald W. Hill, Executive Vice Chancellor, to College Presidents titled "Notification of Rank and Salary Placement" advises that compliance with arbitration award is necessary.
AAA CASE NO.: 51-39-0152-72
DATE OF AWARD: Phase 1. January 24, 1974
TITLE: Termination of 37 Malcolm X Teachers
CAMPUS: Malcolm X
FILED BY: Union
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

WENT TO COURT: 71 CH 124 Circuit Court of Cook County
Memorandum Opinion: "... which held that in cases in which
the teacher merely alleges a violation of the procedures of
Article VIII J, the arbitrator has no legal authority to
grant employment contracts to teachers, and provided further
that only in cases in which the teacher alleges anti-union
discrimination does the arbitrator have the power to confer
employment and then if the teachers' proofs satisfy the
standards set forth by the court. In a separate order the
Court ordered the parties to resume the arbitration
hearing, but only in accordance with the rulings made in the
memorandum order. (Arbitrator A.A. Epstein then conducted
Phase 1. of the hearing.)

SIGNIFICANT OUTCOMES: Memorandum Opinion held that the
arbitrator, if he found noncompliance with the collective
bargaining agreement, could only order the Board to comply
with the evaluation procedures; he could not grant
employment contracts as a remedy.

THE ISSUE: Phase 1. Whether the failure of the Board to
review the employment contracts for any or all of the
faculty members involved, complied with the requirements of
the collective bargaining agreement between the parties.

PERTINENT CONTRACT PROVISIONS: §§I, VIII J.1, 2.; L.1,2.,3.

AWARD: Administration 3 Union 4
In those instances where the grievances are not denied, the
Arbitrator is limiting his findings to the Phase 1. issue
and holds that the grievants are to be afforded the
procedures of Article VIII J. The form of the remedy is not
considered in this portion of the proceedings.

Award
1. The grievance of Robert M. Smith is denied.
2. The grievance of Harold M. Dorsey is denied.
3. The grievance of John B. Mack III is denied.
4. Phase I of the grievance of Harold J. Hefter is
   sustained.
5. Phase I of the grievance of Teena Webb is sustained.
6. Phase I of the grievance of Loretta Dawson is sustained.
7. Phase I of the grievance of Edward L. Holmes is sustained.

REMEDIES: "Other" Unspecified

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract Language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "The Board cannot claim that there is 'substantial compliance' without having resorted to the specific procedures which the parties set forth in their Agreement, the benefits of which must be made available to eligible faculty members. Actual compliance with the procedure is required.

WENT TO COURT: Illinois Supreme Court; September 1975, Docket No 47137

THE ISSUE: Whether an arbitrator may award teaching contracts to non-tenured junior college teacher whose contracts were not reviewed without the prior advisory faculty evaluation and recommendation called for by the collective bargaining agreement between the Union and the Board.

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The School Code imposes upon the Board the duty to appoint teachers, and empowered it to terminate the employment of teachers by dismissal or the nonrenewal of probationary teachers' contracts; that these powers are discretionary and cannot be delegated.

SIGNIFICANT OUTCOMES: The Board's duties in appointing teachers are non-delegable, and it follows therefrom that the arbitrator is without authority to award an employment contract as a remedy for the violation of a collective bargaining agreement.

MAJOR AUTHORITIES RELIED UPON BY THE JUSTICES:

State Statutes (School Code) and Judicial Decisions
Federal Judicial Decisions
N.B. Union withdrew grievance June 28, 1976.
AAA CASE NO.: 51-39-0226-72
DATE OF AWARD: Withdrawn
TITLE: Released Time Gr.
CAMPUS: Loop
FILED BY: Union May 12, 1972
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: Pearce Davis

THE ISSUE: Payment of 2 contact hours for released time to Mr. Zehme and Miss Moffet.

PERTINENT CONTRACT PROVISIONS: § VIII.B.2.
AAA CASE NO.: 51-39-0227-72
DATE OF AWARD: June 1, 1973
TITLE: Right to Teach Law Enforcement Class
CAMPUS: Wright
FILED BY: Union May 12, 1972
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: William J. Lassers

THE ISSUE: Retroactive payment of salary for one overtime course each semester of 1971-72 school year, for James R. Lusk.

PERTINENT CONTRACT PROVISIONS: §VIII.F.4.b. and h.

AWARD: Union
The grievance is sustained. The Board shall pay to Grievant the salary he would have earned under Article VI A.5 had he been permitted to teach one section of the Law Enforcement courses offered at Wright Junior College in Spring 1972.

REMEDIES: Back pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes and Judicial Decisions
School arbitration precedence
Contract language

AUTONOMY OF ADMINISTRATION: Delimit
Areas: The Board lost on two points:
-- that the Applicant to teach a course (full time faculty member) who meets the qualification may not be rejected because he lacks current work experience in the subject matter of the course.
-- he may not be rejected because he did not receive the recommendation of his supervisor.
AAA CASE NO.: 51-39-0228-72
DATE OF AWARD: February 1, 1973
TITLE: Seymour Rosofsky Grievance
CAMPUS: Loop
FILED BY: Union May 12, 1972
CLASSIFICATION: "X." Lane Advancement
ARBITRATOR: Albert A. Epstein

THE ISSUE: First Phase It was agreed on October 9, 1972 at the first hearing that the threshold question concerning whether the Chancellor has violated the terms of the Contract by failing to establish criteria for approval by the Chancellor of graduate semester hours of credit or equivalencies which may be applied for advancement to a higher lane, should first be determined before the merits of the grievance would be considered.

PERTINENT CONTRACT PROVISIONS: §§II H.2., VI F.3.b.

AWARD: First Phase Union
It is the Award of the Arbitrator that the Chancellor has violated the provisions of § VI F.3.b. of the contract between the parties because he has failed to determine criteria for approval of graduate semester hours of credit or equivalence which may be applied for advancement to higher lanes for certain faculty members. The Chancellor is directed to issue such criteria within thirty (30) days from the date of receipt of this award, provided that guidelines have not been established by the working conditions committee as of that date.

REMEDIES: Take Affirmative Action

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS:
Past Practice
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: A diminishment in the right of the Board to "its complete and unfettered discretion in those areas not covered by the automatic salary lane advancement provisions."

AAA CASE NO.: 51-39-0228-72
DATE OF AWARD: December 9, 1977
TITLE: Seymour Rosofsky Grievance
CAMPUS: Loop
FILED BY: Union
CLASSIFICATION: "X." Lane Advancement
ARBITRATOR: Albert A. Epstein

THE ISSUE: Second Phase That Mr. Rosofsky be placed on the IV lane of the salary schedule retroactive to September 1, 1971.

PERTINENT CONTRACT PROVISIONS: §VI F.3.b.1.,

AWARD: Administration
On the basis of the facts presented in this case and on the basis of the applicable provisions of the Collective Bargaining Agreement between the parties, the Arbitrator has no jurisdiction to review the interim criteria promulgated by chancellor for determining the propriety of advancement to a higher salary lane for individuals whose fields of study did not come within the contractually specified objective criteria for advancement.

DEFENSE ARGUMENTS: Non-Arbitrable; sustained.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The Arbitrator conceded that he could not substitute his judgement for that of the Chancellor thru the act of reviewing the criteria established (by order) for lane placement.

IMPACT: Subsequent Union Agreement; §VI F.3.b was amended to remedy the situation (1975-77 contract, p. 16-17.)
AAA CASE NO.: 51-39-0252-72
DATE OF AWARD: Withdrawn August 14, 1973
No additional informational available.
THE ISSUE:
1. Assurance from the Chancellor that there will be no more overcrowded classes at Malcolm X.
2. The splitting of all classes which are now overloaded.
3. Payment of overtime pay at regular rates for all teachers teaching overcrowded classes.

PERTINENT CONTRACT PROVISIONS: § VIII A.1.,3,4,5,6.

N.B. See AAA Case No. 51-39-0040-72W
AAA CASE NO.: 51-39-0258-72
DATE OF AWARD: Withdrawn April 27, 1973
TITLE: Acting Department Chairman
CAMPUS: Amundsen - Mayfair
FILED BY: Union May 31, 1972
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: Williard J. Lassers

THE ISSUE:
1. Immediately rescind the appointment of Mr. Klopp as acting department chairman.

2. Immediately schedule a meeting of the Counseling - Social Science Department for the purpose of attempting in good faith to achieve mutual agreement with President Phillips on the choice of a new chairman.

PERTINENT CONTRACT PROVISIONS: §§ VIII L.1., X.A.2., XI

N.B. AAA Case No. 51-39-0306-72W was a duplicate of the grievance, and therefore dropped.
AAA CASE NO.: 51-39-0303-72W
DATE OF AWARD: March 2, 1973
TITLE: Five Month Contracts Grievance
CAMPUS: Loop
FILED BY: Union June 6, 1972
CLASSIFICATION: "G." Rehiring Policies
ARBITRATOR: Kalvin M. Grove

THE ISSUE:
1. Immediate assurance of regular annual contracts dated from the commencement of continuous full time faculty employment with all the rights and privileges of such contracts to the affected persons.

2. In the event that the special supplemental budget (July 1, 1972 to June 30, 1973) or any other budget shall provide sufficient funds to retain these positions: (a) all positions shall be advertised; (b) for all positions not filled by voluntary transfer preference be given to 5 month persons now filing these positions; (c) any vacancies created in Step a. above be offered preferentially to person's holding 5-month contracts.

PERTINENT CONTRACT PROVISIONS: § VIII.J.1, items a. through e. which governs procedures for initial employment

AWARD: Administration
The grievance is dismissed because it does not involve the application of interpretation of the agreement.

DEFENSE ARGUMENTS: Public Junior College Act
Contract language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: State Statutes (school code) and Judicial Decisions

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The law of the State of Illinois is well established that the Board's duty to "appoint and fix the salaries --" are among the powers and duties of a board that cannot be delegated or limited by contract.

The arbitrator declined to determine whether any of those full time faculty members were being denied their rights because of their "short term" contracts.

IMPACT: subsequent Union Agreement; § VII l.f.,g. (1975-77 contract)
AAA CASE NO.: 51-39-0305-72W
DATE OF AWARD: Settlement December 14, 1973 Withdrawn March 15, 1974
TITLE: Use of Project Personnel to Teach English
CAMPUS: Loop
FILED BY: Union June 6, 1972
CLASSIFICATION: "V." Work Assignment "G." Hiring Policies
ARBITRATOR: William Lassers (consolidated with AAA Case No. 51-39-0023-73)

THE ISSUE: That Barbara Foley, George Williams, Ann Karen Glass, Gloria Cohen and Irwin Alott were hired without proper advertising. The payment of salary for the extra work involved to the qualified members of the department whose position on the rotation list would have entitled them to the work and the assessment of rotation points to these same faculty members as a result of such retroactive award of salary.

PERTINENT CONTRACT PROVISIONS: § VIII.F.4.b. and h.

SETTLEMENT: Union
The Board will offer three (3) classes of extra work for one term, i.e., work beyond the declared allotment. Every effort will be made to offer these courses during the forthcoming summer session. The Union, in its turn, will withdraw the instant arbitration. The Board has further declared in writing that the grieved procedure is not now being practiced. Further, the Board affirms its intent to adhere to the extra work provisions of Article VIII.

REMEDIES: Additional Pay Cease and Desist

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Required atonement thru offering of extra work to aggrieved parties, the discontinuance of a past practice, and the Board's avowal to observe the extra work provisions of the contract.
THE ISSUE: Mrs. Stephanie Goldblatt be approved for the position of instructor in the secretarial program of the Business Department of the Wilbur Wright College.

PERTINENT CONTRACT PROVISIONS: §§ IV.B.; VIII.F.2, G.1.

AWARD: Administration

One who is hired under the provisions of Article VIII, section J.e. cannot possibly qualify for the right to transfer because they are being hired to fill a temporary vacancy created by the absence on leave of another faculty member. Because of such the grievance is denied.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract Language
Illinois Junior College Act

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: School arbitration precedence AAA Case No. 51-39-0303-72W Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "...The contract clearly denies the grievant the right to transfer when she is the occupant of a temporary position."

However, the arbitrator rejected the Board's argument that a decision in favor of the grievant would mean that he would be interfering with the Board's right to determine the length of employment of its teachers. The Board had already given up "some" of its exclusive rights through collective bargaining.
AAA CASE NO.: 51-39-0412-72
DATE OF AWARD: Withdrawn January 12, 1973
TITLE: Business 211 TV Position
CAMPUS: Kennedy-King
FILED BY: Union August 10, 1972
CLASSIFICATION: "V." Work Assignment

THE ISSUE: Mr. Keefe demands that entire selection procedure for selecting the instructor for the TV offering of Business 211 be repeated before qualified and impartial persons excluding Dr. Zigerell.

PERTINENT CONTRACT PROVISIONS: §VIII, F.2.b.; 4.a.,b.
AAA CASE NO.: 51-39-0481-72
DATE OF AWARD: Withdrawn May 20, 1974
TITLE: Schneider Rotation Points
CAMPUS: Southwest
FILED BY: Union September 26, 1972
CLASSIFICATION: "W." Seniority
Original grievance AAA Case No. 51-39-0433-70.

THE ISSUE: Proper placement on the department's rotation list in the summer of 1972 for Mr. William C. Schneider's extra work.

PERTINENT CONTRACT PROVISIONS: §VIII.F.4.b and g.
AAA CASE NO.: 51-39-0590-72W
TITLE: M. Gaines As Acting Chairman
CAMPUS: Southwest
FILED BY: Union May 7, 1973
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: Lawrence F. Doppelt
AAA Case No. 51-39-218-73 was consolidated with and became AAA Case No. 51-39-0590-72W.

THE ISSUE: The rescission of the appointment of Ms. Mirah Gaines as Acting Chairman of the Art, Humanities and Foreign Languages Department and the proper selection of a chairman who is a faculty member for the Art, Humanities and Foreign Language Department.

PERTINENT CONTRACT PROVISIONS: §VIII L 1.

AWARD: Union January 20, 1974

THE ARBITRATOR: "For purposes of this case, I have no problem finding, one, that the arbitrator does not have the authority to rescind the appointment of an administrator appointed by the Board to administrate the Learning Resource Center and I would not have that authority, regardless of whether that were bargaining unit work or non-bargaining unit work. I think that's the Board's right.

"Second, I don't think, for purposes of this case, that the arbitrator would have authority to order the Board to create a position in the Learning Resource Center where the Board did not deem that it was within the best interest of the Board to have such a position. Again, I think that is the Board's business.

"However, if the Board were to appoint someone to do bargaining unit work, whatever that is, it would seem to me that under the contract the arbitrator could direct that the bargaining unit work be filled under and in accordance with the contract...

    * * *

"As far as the desk, the authority of the arbitrator to tell the school board to move its desks back,...

    * * *

"...where the school board wants to place its desks for better educational purposes is the school board's business. I don't think the Union would say otherwise. I don't think they would, anyway...
"...However, if the school board is doing it for harassment purposes, as the Union is alleging, rather than for educational purposes, where the contract is silent, of course, I would think that the Union would have the authority to claim harrassment and as relief for that harrassment, ask for a return to the status quo; so, if the -- if it were done for harrassment purposes, I guess the arbitrator would have the authority to direct the Board to stop harrassing and to remove the effects of its prior harrassment, were harrassment to be proven by the Union."

The arbitrator then scheduled further hearings on the merits of the Union's grievance.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Absent Specific Language (harrassment provision)

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes (School Code) Decisions
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The arbitrator declared jurisdiction in a situation involving harrassment by management, if proven by the Union. His remedy would be to order the Board to cease and desist, and to remove the effects of its prior harrassment.

He also declared he had the legal power and authority to direct that the bargaining unit work be filled under and in accordance with the contract if the Board were to appoint someone to do bargaining unit work.

SIGNIFICANT OUTCOMES: On March 27, 1974, the Board's lawyer filed a Petition for Declaratory Relief requesting that the arbitrator's "Interim Award" be declared null and void.

WENT TO COURT: 74 CH 1751 Board (as plaintiff) v.s. Union
Returned to arbitration by the Court on July 12, 1974.
N.B. See AAA Case No. 51-39-0024-73.
TITLE: M. L. Gries Transfer
DATE OF AWARD: Resolution September 26, 1972
CAMPUS: Southwest
FILED BY: Administration August 2, 1972
CLASSIFICATION: "T." Transfers

THE ISSUE: That some members of the Union acted in a manner as to attempt to deprive Mrs. Gries of her right to transfer from Olive-Harvey College to Southwest College.

PERTINENT CONTRACT PROVISIONS: §VIII G,1.

GRIEVANCE RESOLUTION: Administration

Letter from Union assuring the Chancellor it would not be a party to the alleged act. Letter also informed Chancellor that the Natural Science Department of the Southwest College had voted to welcome Mrs. Gries into the Department.

REMEDIES: Take affirmative action
Arbitration Cases Pertaining to the Year 1973

American Arbitration Association Case Numbers:

51-39-0022-73
51-39-0023-73
51-39-0024-73
51-39-0025-73
51-39-0089-73
51-39-0103-73
51-39-0104-73
51-39-0129-73W
51-39-0174-73
51-39-0215-73
51-39-0216-73
51-39-0217-73
51-39-0218-73
51-39-0322-73
51-39-0440-73
51-39-0041-73
51-39-0475-73
51-39-0504-73

Administration Grievance
AAA CASE NO.: 51-39-0022-73
DATE OF AWARD: Settled April 4, 1974
TITLE: Loss of Seniority Due to Maternity Leave
CAMPUS: All-City (Wright)
FILED BY: Union January 17, 1973
CLASSIFICATION: "W." Seniority
ARBITRATOR: Prof. Paul B. Grant
See AAA No. 51-39-0518-74

THE ISSUE: That the period of Ms. Arlene J. Crewdson's maternity leave be added to and made part of her service credit for seniority purposes and all other purposes.

PERTINENT CONTRACT PROVISIONS: §§ IV. B, XII

15th Amendment of the U.S. Constitution, Illinois Constitution and laws

SETTLEMENT: Union
Settled as the result of the negotiated agreement July 1, 1973 - June 30, 1975 affording full medical coverage for all conditions of all employees of the Board, male and female.

REMEDIES: "Other"

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Absent Specific Language

IMPACT: Subsequent Union Agreement Accumulation of seniority on maternity leave resolved by Agreement of July 1, 1973, Article IX B.2. eliminates dependency charges to obtain maternity benefits (Life and Health Insurance, p.54.D.4.)

SIGNIFICANT OUTCOMES: She and other females have had their seniority dates adjusted.

WENT TO COURT: Grievant filed charges against the Board and Union with the Equal Employment Opportunity Commission. Charge No. TCH 4-0049 Commission determined that there is no reasonable cause to believe the five allegations to be true. Note these five allegations did not include the point settled in the arbitration.

N.B. Board Rules; Section 2-26 Maternity Leaves deleted from the July, 1974 and subsequent editions.
AAA CASE NO.: 51-39-0023-73
TITLE: Use of Project Personnel to Teach Microbiology.
DATE OF AWARD: August 23, 1973
CAMPUS: Loop
FILED BY: Union
CLASSIFICATION: "Y." Work Assignments
"G." Hiring Policies
ARBITRATOR: Alexander I. Lowinger
THE ISSUE: The hiring of Mr. Howard Golden to teach a section of Microbiology at Illinois Masonic Medical Center.

PERTINENT CONTRACT PROVISIONS: § VIII F. 4.a.,and b.

Settlement Stipulation: The Board agrees it will make available to Mr. Henry McDuffy an extra work offering. This stipulation is for settlement purposes only and by entering into it neither of the parties admit the validity of the positions taken in the grievance of the other party hereto.

REMEDIES: Additional Pay
AAA CASE NO.: 51-39-0024-73
DATE OF AWARD: November 16, 1973
TITLE: Appointment of Social Science Department Chairman
CAMPUS: Southwest
FILED BY: Union May 7, 1973
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Pearce Davis

THE ISSUE: (a) That the Board rescind the appointment of the Acting Chairman of the Department of Social and Behavioral Sciences, Southwest College.

(b) An order be created stipulating that a Chairman be chosen in accordance with the procedures of the new contract;

(c) A "declaratory opinion" indicating what the arbitrator believes the procedures are which the Board must follow in the appointment of Department Chairman.

PERTINENT CONTRACT PROVISIONS: § VIII, B.2, C, D, L 1

AWARD: Administration
For reasons stated in the opinion, the grievance cannot be supported and, accordingly, is denied.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation
DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The arbitrator could find nothing in Section L(1) which prohibits the appointment of an Acting Chairman from outside the department and who already is a full-time administrator.

IMPACT: Subsequent Union Agreement Agreement; § VIII L.2. (1975-77 contract).
AAA CASE NO.: 51-39-0025-73
DATE OF AWARD: May 13, 1974
TITLE: Faculty Program Grievance
CAMPUS: All-City
FILED BY: Union January 17, 1973
CLASSIFICATION: "H." Hours of Work
ARBITRATOR: Albert A. Epstein

THE ISSUE: The Union asks that the Chancellor's policy statement be rescinded and that departments be permitted to schedule faculty members as they have in the past. (The violations arise out of the Chancellor's Policy Statement of October 13, 1972, regarding Faculty Programs).

PERTINENT CONTRACT PROVISIONS: §§ VII C., D., X.A., Xl.

AWARD: Administration

1. The Arbitrator has the authority to grant the relief requested.

2. The time limit requirements of the grievance procedure have been met by the Union in the processing of this grievance.

3. The October 13, 1973, policy statement of the Board relating to faculty programs does not violate the Collective Bargaining Agreement between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract Language
Ill. Public Jr. College (Elder Doctrine); overruled.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
State Statutes (School Code) and Judicial Decision
School arbitration precedence
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "The essence of the matter is that the policy memorandum carries out the power of the Board to schedule a faculty member's classes."

IMPACT: Section 2-15 Seniority Applied to Regular Work, Faculty Members deleted from the July, 1974 edition and subsequent issues of the Board Rules.
N.B. The Elder Doctrine was concerned with the delegation of duties which the School Code specified were to be performed by the Board.
AAA CASE NO.: 51-39-0089-73
TITLE: Reinstatement of L.A. Dept. Chairman
CAMPUS: Southwest
FILED BY: Union March 5, 1973
CLASSIFICATION: "V." Work Assignment

THE ISSUE: Reinstatement of Ms. Lee Haupt as Chairman of Art, Humanities, and Languages without the duties of Language Lab Director.

PERTINENT CONTRACT PROVISIONS: § VIII.L.3.
AAA CASE NO.: 51-39-0103-73
DATE OF AWARD: Withdrawn June 6, 1973
TITLE: Mr. Thomas Agabati Gr.
CAMPUS: Loop
FILED BY: Union March 14, 1973
CLASSIFICATION: "D." Discipline

THE ISSUE: That the minutes of the December 7, 1971, Executive Committee of the Foreign Language Department, making allegations as to the professional conduct of Mr. Thomas Agabiti and filed with the President of Loop College on November 3, 1972, for insertion in his personnel file be removed.

PERTINENT CONTRACT PROVISIONS: §§ VIII k.1., X.A.
AAA CASE NO.: 51-39-0104-73  
DATE OF AWARD: Withdrawn June 6, 1973  
TITLE: Gr. Mr. Thomas Agabiti  
CAMPUS: Loop  
FILED BY: Union  
CLASSIFICATION: "D." Discipline  
THE ISSUE: That Mr. Agabiti be accorded all rights of seniority in the Foreign Language Department and the right to transfer to the Humanities Department and such rights of seniority to which he is entitled to in the Humanities Department.  
PERTINENT CONTRACT PROVISIONS: § VIII D.1., F.
AAA CASE NO.: 51-30-0129-73W
DATE OF AWARD: January 10, 1974
TITLE: R. Mukherjee Gr.
CAMPUS: Kennedy-King
FILED BY: Union
CLASSIFICATION: "A." Arbitrability
"D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: The Board was in violation of the terms of the contract between the parties in that it entered into five month contracts with Dr. Rabindranath Mukherjee and that the grievant was not evaluated in accordance with the procedures set forth in Article VIII J. The remedy sought is the immediate issuance of a regular annual contract to Mukherjee.

PERTINENT CONTRACT PROVISIONS: § VIII J.

AWARD: Administration

The Board of Junior College District #508 did not violate the terms of the Agreement between the parties in the matter of the non-retention of Dr. Rabindranath Mukherjee at Kennedy-King College for the 1972-1973 academic year. The grievance is hereby denied.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract language
Non-Arbitrable - overruled: moot
Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: The Arbitrator agrees with the Board's position that there would be no purpose in providing a departmental evaluation in the case of a faculty member who is fired for a position clearly temporary because of budgetary limitations and clearly obtained under a contract where he agrees that his position is temporary and that he has no right of being rehired. The grievant is not entitled to the benefits of § VIII J.

IMPACT: Subsequent Union Agreement; § VIII 1.f., g. (1975-77 contract).

N.B. See AAA Case No. 51-39-0475-73.
AAA CASE NO.: 51-39-0174-73
TITLE: Ms. Mirah Gaines
CAMPUS: Southwest
FILED BY: Union December 14, 1972
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: Dr. Pearce Davis
See AAA Case No. 51-39-0590-72W

THE ISSUE: That the position of Coordinator of Learning Resource Center at Southwest College be filled but that a vacancy be posted in the Learning Resource Center for a faculty-librarian who is a member of the bargaining unit.

PERTINENT CONTRACT PROVISIONS: §§ I. A., VIII.G.1, XI.

Affected by award in AAA No. 51-39-0024-73
THE ISSUE: Retroactive placement in Lane II for the 1971-1972 year; and recognition by the Board that John Wenger and Mary Ford have enjoyed tenure since the third anniversary of their respective contracts.

PERTINENT CONTRACT PROVISIONS: §§ VIII J.3a, X.F.3

WENT TO COURT: A mandamus suit was entered in the Cook County Circuit Court to pursue the remedy sought in grievance.

N.B. See AAA No. 51-39-0144-71 and 51-39-0310-71
John Wenger and Mary Ford are tenured faculty members at the Loop College.
AAA CASE NO.: 51-39-0216-73
DATE OF AWARD: Settled April 5, 1974 (withdrawn).
TITLE: S. Mendelson & D. Reber Gr.
CAMPUS: Loop
FILED BY: Union May 30, 1973
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: James P. Martin

THE ISSUE: Payment of salary to Saul Mendelson and Daniel Reber for two courses of Behavioral Science taught in the Department of Police Academy Services of Loop College which were not advertised in their department.

PERTINENT CONTRACT PROVISIONS: § VIII.F.4.

SETTLEMENT: Union
In exchange for the withdrawal of this case, the Board will grant to the Loop Social Science Department one class of extra work above and beyond the regular allocation of work. Whichever even member of the Department was entitled to extra work when access to extra work was denied and is qualified for said work shall be offered same. In addition, the Board agrees to a proposal that designees of the Union and the Board shall meet to discuss the problems attending extra work assignments and the elimination of such problems.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Provisions of contract were enforced by availability of arbitration process regarding requirement of Board to advertise to eligible faculty members overtime assignments.

IMPACT: Subsequent Union Agreement VIII F.C. (new Paragraph) (1975-77 Contract)
The issue: Preliminary Issues

A. Whether § VIII, Section J of the contract between the parties confers substantive rights to a non-tenured faculty member beyond the procedural rights therein set forth in the event the Board determines not to renew the contract of the non-tenured faculty member, Billy Hensley.

B. Whether the alleged violation of a non-tenured faculty member's substantive rights under § VIII, Section J of the contract, if any, is arbitrable on the basis that under Article X, Section B3(h) of the contract the arbitration does not have the authority to grant the relief requested, namely the issuance of a tenure contract.


Award: Union

Interim Award of Arbitrator: January 11, 1974

A. VIII, Section J of the contract between the parties does confer substantive rights to a non-tenure faculty member beyond the procedural rights therein set forth in the event the Board determines not to renew the contract of said faculty member. The Board determination in such situation should be based on reasons which are not arbitrary, capricious, or discriminatory.

B. The alleged violation of a non-tenured faculty member's substantive rights under Article VIII, Section J of the contract is arbitrable.

Therefore, it is directed that the hearing herein be reconvened on January 21, 1974, at 10:00 a.m. in the offices of the American Arbitration Association for purposes of hearing evidence on whether the Board violated grievants substantive rights under § VIII, Section J of the contract in its determination not to renew his teaching contract.

Problematic elements of contract language: Interpretation
DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Other: Schwartz, Constitutional Law (Law Text)

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Board argued that Article VIII, Section J is merely procedural, and confers no substantive rights on a non-tenured teacher. That is, avered the Board, the Board has unfettered discretion in not renewing the contracts of non-tenured teachers, including "the discretion to decide not to hire for purely arbitrary reasons." The arbitrator concluded that Article VIII, Section J of the contract does confer substantive rights to a non-tenured faculty member beyond the procedural rights therein set forth in the event the Board determines not to renew the contract of said faculty member such Board decision should be based on reasons which are not arbitrary, capricious, or discriminatory.

SIGNIFICANT OUTCOMES: On January 13, 1975, the Cook County Circuit Court (74L1053) entered an order finding that "the reasons of a Public Junior College Board for not rehiring a non-tenured teacher [are] not reviewable by an arbitrator."

WENT TO COURT: U.S. Court of Appeals No. 75-1557: "...we find and conclude that the district court did not err in dismissing plaintiffs' complaint. The order of the district court is affirmed." March 11, 1976.

This decision, in effect, holds that when a state court, as in contract to a state agency, rules that a contract is illegal, then there is no contract to serve as the basis of the alleged contract impairment and deprivation of a property right.

The effect of the decision of the Illinois Supreme Court in Docket No. 47137, agenda 29, September 1975 was that non-tenured faculty members are not protected under the grievance-arbitration procedure contained in the collective bargaining agreement with respect to questions of renewal and tenure considerations. The Illinois Supreme Court stated in unequivocal language that such matters are nondelegable by the Board, and therefore are inarbitrable. N.B. An Act to add § III B. (Senate Bill 147, the Tenure Bill) was passed by the State Legislature, and signed into law by Governor James Thompson during the 1979 session. Sections 3.B.2. and 3. incorporate provisions for substantive due process.
AAA CASE NO.: 51-39-0218-73
TITLE: Placement of LRC Desks
CAMPUS: Southwest
FILED BY: Union May 30, 1973
CLASSIFICATION: "C." Working Conditions
ARBITRATOR: Lawrence F. Doppelt
AAA Case No. 51-39-0218-73 was consolidated with
AAA Case No. 51-39-0590-72W and became
AAA Case No. 51-39-0590-72W.

THE ISSUE: The desks of the members of the Learning
Resource Center Department be returned to their original
placement, that their offices be restored to them and that
adequate working facilities be developed and maintained for
all professional members of the department.

PERTINENT CONTRACT PROVISIONS: §§ VIII K.2., XI
AAA CASE NO.: 51-39-0322-73
TITLE: Southern - Gutierrez Gr. One Year Terminal Contracts
CAMPUSS: Loop
FILED BY: Union August 15, 1973
CLASSIFICATION: "D." Discharge

THE ISSUE: The Union asks that Juanita Mosley, Charles Southern, and Richard Gutierrez be given an additional year of employment in compliance with § VIII J.2. and that Dr. Heller comply with § VIII J. 1.d. by giving his decisions in their renewals to the Loop English Deptment or whatever remedy is proper.

PERTINENT CONTRACT PROVISIONS: § VIII.J.1.c,d,2.

IMPACT: Subsequent Union Agreement; §VIII 1.f.,g. (1975-77 contract).
AAA CASE NO.: 51-39-0440-73
DATE OF AWARD: July 2, 1974
TITLE: Heinsy Renewal
CAPUS: Malcolm X
FILED BY: Union November 1, 1973
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Did the Board comply with the procedural provisions of Article VIII, J. of the Agreement between the parties with reference to the termination of the employment contract of Mrs. Helen Heinsy

PERTINENT CONTRACT PROVISIONS: § VIII J.

AWARD: Union
The Board did not comply with the procedural provisions of Article VIII J of the Agreement between the parties with reference to the termination of the employment contract of Mrs. Helen Heinsy.

REMEDY: "Other" unspecified

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Interpretation
Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: School arbitration precedence AAA Case No. 51-39-0152-73

Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "It is the administration's responsibility to obtain peer evaluation, and it is clear that in the instant case the Administration did not use all possible avenues to obtain such peer evaluations. The announcements made by the Department Chairman urging the faculty to make such an evaluation is not sufficient action to justify the Administration in processing without the essential peer evaluation which is provided for in Article VIII J."
AAA CASE NO.: 51-39-0441-73  
DATE OF AWARD: June 6, 1974  
TITLE: William Isaacs Grievance  
CAMPUS: Olive-Harvey  
FILED BY: Union  
CLASSIFICATION: "A." Arbitrability  
"X." Lane Advancement  
ARBITRATOR: Albert A. Epstein  

THE ISSUE: Was William Isaacs entitled to advancement from Lane II to Lane III of the salary schedule under the terms of the Labor Agreement between the parties?  

PERTINENT CONTRACT PROVISIONS: § VI F.3,4.  

AWARD: Administration Union  
William Isaacs was not entitled to advancement from Lane II to Lane III of the salary schedule under the terms of the Labor Agreement between the parties.  

DEFENSE ARGUMENTS:  
Contract Language  
Non-Arbitrable: overruled  
Timeliness: overruled  

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:  
Contract language  
Merits of instant case  

AUTONOMY OF ADMINISTRATION: Enforce  

Areas: "... the specific clauses which the parties placed into their Agreement do not provide the same equivalencies for college teaching experience in the case of advancements to a higher lane as they do in the case of the lane placement for new faculty members."
AAA CASE NO.: 51-39-0475-73
DATE OF AWARD: August 14, 1974
TITLE: Grievances of George Apostolopoulos, et. al.
CAMPUS: Kennedy-King
FILED BY: Union November 9, 1973
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the non-retention of George Apostolopoulos, Terry Converse, Samuel Jackson, David Joel, Richard Scharf and Edward Tenner a violation of their rights under the terms of the Collective Bargaining Agreement between the parties.

PERTINENT CONTRACT PROVISIONS: § VIII f.1., 2a, J.1.2.

AWARD: Administration
The non-retention of George Apostolopoulos, Terry Converse, Samuel Jackson, David Joel, Richard Scharf and Edward Tenner was not a violation of the their rights under the terms of the Collective Bargaining Agreement between the parties.

DEFENSE ARGUMENTS: Contract Language
Non-Arbitrable: Overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence
Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "... there is no basis supporting the claims that the six grievants who were not so hired were denied any rights to which they were entitled under the terms of the Collective Bargaining Agreement..."

IMPACT: Subsequent Union Agreement; § VIII f.1., g. (1975-77 contract)
THE ISSUE: An offer of an additional year's employment to Leopold Begne of Loop College or whatever remedy might be reasonable.

PERTINENT CONTRACT PROVISIONS: § VIII F.1, 2; J.1.

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Withdrawn because under the law of the State of Illinois, the question of renewal of a non-tenured teacher is a matter within the exclusive power of a board to determine and that power cannot be limited by a union, an arbitration, or a collective bargaining agreement."

Pertinent Court Cases
* 62 Ill. 2nd 127                      Illinois Supreme Court
   62 Ill. 2nd 470

33 Ill.App.3d 789                      Illinois Appellate Court
30 Ill. App 3d 67
TITLE: Union Dues Payroll Deduction
CAMPUS: Local 1600
FILED BY: Administration March 1973
CLASSIFICATION: "Y." Payroll Deduction

THE ISSUE: That the Union is depriving a full-time faculty member of his right to revoke the payroll dues collection deduction. March 16, 1973

PERTINENT CONTRACT PROVISIONS: § V, Appendix A.

No further information available.
Arbitration Cases Pertaining to the Year 1974

American Arbitration Association Case Numbers:

51-39-0157-74
51-39-0223-74
51-39-0268-74
51-39-0286-74
51-39-0329-74
51-39-0330-74
51-39-0331-74
51-39-0332-74
51-39-0333-74
51-39-0518-74
51-39-0554-74
51-39-0565-74
AAA CASE NO.: 51-39-0157-74  
DATE OF AWARD: April 6, 1976  
TITLE: Nursing Teacher Hours  
CAMPUS: All City  
FILED BY: Union April 4, 1974  
CLASSIFICATION: "V" Work Loads  
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the Board in violation of the contract between the parties when it assigned teachers of nursing to more than 13 contact hours of teaching during the Fall semester of 1973, and when it directed the Nursing Dept. to schedule teachers of nursing for more than 13 contact hours of teaching for the Spring semester of 1974?

PERTINENT CONTRACT PROVISIONS: §§ VIII B., VI A

AWARD: Administration  
The Board was not in violation of the contract between the parties when it assigned teachers of nursing to more than thirteen contact hours of teaching during the Fall semester of 1973 and when it directed the Nursing Department to schedule teachers of nursing for more than thirteen contact hours of teaching for the Spring semester of 1974.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Absent Specific Language definition under the contract of contact hours with respect to the nursing programs insufficiently clear. The Arbitrator relied upon the definition in actual practice, by the various departments.

DEFENSE ARGUMENTS: Past Practice  
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:  
Contract language  
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "As the evidence stands before me, I find that the Board's directive had no purpose other than financial aid from the state and no adverse effect such as contemplated by the grievants was created."
AAA CASE NO.: 51-39-0223-74
DATE OF AWARD: January 17, 1975
TITLE: Dept. Chairpersons Summer Released Time
CAMPUS: All City
FILED BY: Union
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE: Are the provisions of Article VIII B.2a applicable to the summer term?

PERTINENT CONTRACT PROVISIONS: § VIII B.1.,2.; L.3.

AWARD: Administration
The provisions of §VIII B.2.a of the agreement between the parties are not applicable to the summer term.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Absent Specific Language

DEFENSE ARGUMENTS: Past Practice
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Enforce
Areas: "...I find that the Union has failed to establish its position that the Board is obligated to grant summer released time..."

IMPACT: Personnel Manual
AAA CASE NO.: 51-39-0268-74
DATE OF AWARD: October 24, 1974
TITLE: Directive Requiring Department Chairperson to Schedule Released Time
CAMPUS: All City
FILED BY: Union June 12, 1974
CLASSIFICATION:"C." Working Conditions
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the directive issued by the Board requiring the scheduling of departmental or administrative released time in violation of the terms of the Agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §§ VIII B.2., D.2., L.3.; XI

AWARD: Administration
The directive issued by the Board requiring the scheduling of departmental or administrative released time was not in violation of the terms of the Agreement between the parties.

DEFENSE ARGUMENTS: Contract language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School Arbitration precedence
Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "...I find that the requirements of the directive are reasonable are within the guidelines of the Agreement between the parties and do not involve any violation of the terms of the said agreement..."
AAA CASE NO.: 51-39-0286-74
DATE OF AWARD: November 8, 1974
TITLE: Sabbatical Leave Grievances
CAMPUS: All City
FILED BY: Union
CLASSIFICATION: "L." Leaves of Absence
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the denial of sabbatical leave to faculty members who applied for sabbatical leaves for the 1972-1973, 1973-74, and 1974-75 school years in violation of the Agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §§IX A.1.d; XI

AWARD: Administration
The denial of sabbatical leaves to faculty members who applied for sabbatical leaves for the 1972-73, 1973-74 and 1974-75 school years was not in violation of the agreement between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Non-Arbitrable - overruled
Lack of funds
Timeliness: sustained for years prior to 1974.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Lack of funds is valid and sufficient for not granting the maximum number of sabbaticals stipulated in the contract.
AAA CASE NO.: 51-39-0329-74
DATE OF AWARD: November 10, 1975
TITLE: Grievances of Harold Levy and Peter Remus
CAMPUS: Kennedy-King
FILED BY: Union
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE: Are Harold Levy and Peter Remus entitled to Chairpersons' released time compensation for the 1973-74 school year under the terms of the Agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §§VI A.5.; VIII B.2b,L.3; X B.3.j.

AWARD: Union
Harold Levy and Peter Remus are entitled to Chairpersons' released time compensation for the 1973-74 school year under the terms of the agreement between the parties.

REMEDIES: Back Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Direct Violation of Language

DEFENSE ARGUMENTS: Contract language
Non-Arbitrable: overruled
Timeliness: overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence AAA Case No. 51-39-1330-74
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The Arbitrator supported the Union's contention that this case involves a request for the payment of the grievances of compensation for work actually performed which is a claim made under the terms of the contract and does not involve the issue raised by the Board relative to the exclusive jurisdiction of the Board in matters where the Arbitrator may not interfere.
AAA CASE NO.: 51-39-0330-74
DATE OF AWARD: November 10, 1975
TITLE: Released Time Gr.
CAMPUS: Malcolm X
FILED BY: Union July 25, 1974
CLASSIFICATION:"V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE: Were Buford Kirkwood, Joyce Moore and Noa Shinderman each entitled to receive six (6) hours of released time for the Spring 1974 school year?

PERTINENT CONTRACT PROVISIONS: § VIII B.2.b.,c.,d.

AWARD: Administration
Buford Kirkwood, Joyce Moore and NOA Shinderman were not entitled to receive six (6) hours of released time for the Spring 1974 school term.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract language
Public Junior College Act

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence
Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "...that under the terms of the contract between the parties, the Board had the right to merge departments and that it had the right to restrict released time on a departmental basis..."
AAA CASE NO.: 51-39-0331-74
DATE OF AWARD: December 22, 1976
TITLE: Consolidated Grievances: Otto Jelinek, Walter Fleisher, and Tom Roby
CAMPUS: Kennedy-King
FILED BY: Union July 25, 1974
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein
Consolidated with AAA Case No. 51-39-0638-75

THE ISSUE: Were the grievants deprived of Chairpersons' released time in violation of the terms of the Collective Bargaining Agreement? If so, what shall the remedy be?


AWARD: Union
The grievants, Otto Jelinek, Walter Fleisher and Tom Roby, were deprived of chairpersons' released time in violation of the terms of the Collective Bargaining Agreement between the parties.
They are awarded compensation to be computed upon the basis of the contractual released time to which they were entitled as department chairpersons during the period involved in this proceeding.

REMEDIES: Back Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Non-Arbitrable - timeliness: overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence AAA Case No. 51-39-0329-74
Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "There is no support for the Board's contention that as a public body, it cannot be prejudiced by the mistake of one of its Administrators (President),... who was a fully authorized member of the administration and the Board is bound by his actions."
AAA CASE NO.: 51-39-0332-74
DATE OF AWARD: June 28, 1978
TITLE: Terrence Tobin Gr.
CAMPUS: Kennedy-King
FILED BY: Union July 25, 1974
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Dismissal of untenured full-time faculty member at Kennedy-King College without publication of departmental procedures, without proper notification of alleged deficiencies, and without meaningful statement of reasons in a fully and complete manner by the College President in violation of VIII 2b and VIII 2d.

PERTINENT CONTRACT PROVISIONS: §VIIIJ.1.b.,d.

AWARD: Administration
The Arbitrator lacks jurisdiction in the matter of the grievance of Terrence Tobin and the grievance is hereby dismissed.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: State Judicial Decisions

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "The above case has been pending before me for sometime on the threshold issue of the Arbitrator's jurisdiction in light of the Illinois Supreme Court decision on that subject.

"After a review of the testimony, evidence and arguments of the parties and a review of the pertinent court decisions, I find that I am without jurisdiction in this matter."
THE ISSUE: Did the Board violate the terms of the contract between the parties when it assigned a full 12 hour load of 4 courses to Essien Udoh at Kennedy-King College in the Spring semester of 1974?

If so, what should the remedy be.

PERTINENT CONTRACT PROVISIONS: §VIII B.1.c.

AWARD: Union
1. It is the award of the Arbitrator that the Board was in violation of the terms of the contract between the parties when it assigned Essien Udoh a 12 hour teaching load at Kennedy-King College in the Spring semester of 1974.

2. The Board is directed to provide the grievant, Mavis Hoberg, with a 3 hour course assignment which she did not receive in the Spring semester 1974.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Intent of the Parties
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: The variable load agreement entered into between a faculty member and a college is binding even if he is transferred to another college. The transfer does not relieve the Board of its obligations under the terms of the contract, even if the receiving college's administration was not actually aware of the agreement when the assignments for the succeeding semester were originally made.
TITLE: Grv. Harriet Rosenman
CAMPUS: Wright
FILED BY:  Union November 14, 1974
CLASSIFICATION: "E." Discrimination on Basis of Sex
"W." Seniority
See AAA Case No. 51-39-0022-73
ARBITRATOR: Albert A. Epstein

THE ISSUE: Grievant, Harriet Rosenman was denied seniority for period of December, 1964 through January, 1967 after being compelled to resign her position at Wright College due to then existing Board rules. Grievant maintains she was wrongfully denied access to maternity leave which would have given her seniority and her right to redress flows from §§IX B2f and XII.

PERTINENT CONTRACT PROVISIONS: §§ IX B.2.F.; XII

SIGNIFICANT OUTCOMES: Went to State of Illinois Fair Employment Practices Commission Charges No. 74CF-739

Notice of Dismissal

October 16, 1974

You are hereby advised that the above captioned charge of unfair employment practice was ordered dismissed by the Commission at its meeting on October 16, 1974 for Lack of Jurisdiction.

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Board rules requiring resignation for medical disability (pregnancy) in 1963 was not deemed discriminatory when grievant requested restoration of seniority after acquiring tenure.
AAA CASE NO.: 51-39-0554-74
DATE OF AWARD: January 2, 1976
TITLE: Marva Watts Grievance
CAMPUS: Malcolm X
FILED BY: Union December 3, 1974
CLASSIFICATION: "W." Seniority
ARBITRATOR: Albert A. Epstein
Consolidated with 51-39-0011-75

THE ISSUE: Was the seniority date fixed by the Board for the grievants at Malcolm X College properly determined?

PERTINENT CONTRACT PROVISIONS: §§ VIII F.1.; X B.1.

AWARD: Administration
The grievances filed by Thomas Carroll, Richard Plantan and Marva Watts were not timely filed within the terms of the Collective Bargaining Agreement between the parties and their challenge of the seniority date fixed for each of them by the Board is therefore denied.

DEFENSE ARGUMENTS: Non-Arbitrable
Timeliness - sustained

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merit of instant case
THE ISSUE: Were three English Department members at Malcolm X College who held one-year terminal contracts during the 1973-74 school year denied their contractual rights when contracts were not offered them for the 1974-75 school year?

PERTINENT CONTRACT PROVISIONS: §VIII J.2.

AWARD: Union
Carol Belshaw, Kay Nelson, Richard Prince and Fredrick Salsman were entitled to employment in the English Department of Malcolm X College for the 1974-75 school year.

REMEDIES: Reappointment

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Non-Arbitrable – overruled
Good faith of Board

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "All of the conduct of the [College's] agents relative to the continuing employment of the grievants, including their evaluation and their placement on a priority list, leads to the conclusion that the [College] was not acting in good faith in this matter when it refused to rehire the grievants..."

IMPACT: Subsequent Union Agreement, §VIII l.f.,g. (1975-77 contract)
Arbitration Cases Pertaining to the Year 1975

American Arbitration Association Case Numbers:

51-39-0011-75
51-39-0012-75
51-39-0013-75
51-39-0014-75
51-39-0105-75
51-39-0106-75
51-39-0107-75
51-39-0253-75
51-39-0518-75
51-39-0633-75
51-39-0635-75
51-39-0636-75
51-39-0637-75
51-39-0638-75
51-30-0639-75
51-30-0639-75 (Supplemental Award)
51-39-0640-75
51-39-0641-75
51-39-0642-75
51-39-0643-75
51-39-0711-75
51-39-0745-75
51-39-0746-75
51-39-0747-75
51-39-0748-75
51-39-0749-75
51-39-0751-75
51-39-0752-75
51-39-0754-75

Administration Grievance
AAA CASE NO.: 51-39-0011-75
DATE OF AWARD: January 2, 1976
TITLE: T. Carroll & R. Plantan Grs
CAMPUS: Malcolm X
FILED BY: Union January 2, 1975
CLASSIFICATION: "W." Seniority
ARBITRATOR: Albert A. Epstein
Consolidated with 51-34-0554-74

THE ISSUE: Thomas Carroll and Richard Plantan pray for the adjustment of their anniversary date to include not only time employed as teachers at Kennedy-King but also time employed as teachers at Malcolm X College where employment is continuous.

PERTINENT CONTRACT PROVISIONS: §§VIII F.1; X B.1.
AAA CASE NO.: 51-39-0012-75
DATE OF AWARD: June 30, 1978
TITLE: Venita Ricks Gr.
CAMPUS: Loop
FILED BY: Union January 2, 1975
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: The Board has wrongfully denied the right to peer evaluation and acquisition of transfer in the event of staff reduction to one Venita Ricks of Loop College by the improper issuance of a terminal contract. Issuance of a regular contract covering the period of Ms. Ricks is requested employment thereby giving to her evaluation by peers and transfer in the event of staff reduction rights.

AWARD: Administration
Venita Ricks was not entitled to the employment contract renewal procedure for 1975-76 school year under the terms of the applicable contract between the parties.

N.B. Award was influenced by the Illinois Supreme Court's decisions on the threshold issue of an Arbitrator's jurisdiction.

There are no longer any five month teachers as the collective bargaining agreement resolved this question. (1975-77 agreement, §VIII J.1.f. pp. 34-35).

As of December 14, 1976 this case has become moot because the award of a regular faculty contract which the Union sought had come to pass.
AAA CASE NO.: 51-39-0013-75
DATE OF AWARD: December 22, 1977
TITLE: Anne Rainey Gr.
CAMPUS: Kennedy-King
FILED BY: Union January 2, 1975
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Did the Board violate the terms of the Labor Agreement between the parties when it terminated the position and employment of the grievant, Anne Rainey, as of June 28, 1974, and failed to reappoint her to her position in the project known as the "Language Skill Clinic", commencing in September of 1974? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS: §VIII.N.

AWARD: Administration
The board did not violate the terms of the Labor Agreement between the parties when it terminated the position and employment of the grievant, Anne Rainey, as of June 28, 1979, and failed to reappoint her to her position in the project known as the "Language Skill Clinic", commencing in September of 1974.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Absent Specific Language: Prior to July 1, 1975 - Arbitration was unavailable to Project Personnel.

DEFENSE ARGUMENTS: Non-Arbitrable - sustained

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

Areas: Board can release Project Personnel when the duties and functions of the employee are altered substantially.

IMPACT: Subsequent Union Agreement: §§I; VIIN.(1975-77)
AAA CASE NO.: 51-39-0014-75
DATE OF AWARD: Withdrawn November 3, 1977
TITLE: Laboratory Classes Maximum Size and Back Pay
CAMPUS: Kennedy-King
FILED BY: Union January 2, 1975
CLASSIFICATION: "V." Class size
ARBITRATOR: Albert A. Epstein

THE ISSUE: Establishment of vocational laboratory classes maximum enrollment at Kennedy-King College was unilaterally established and classes were in addition capriciously and arbitrarily enrolled over the possible maximum of 32.

Negotiation of laboratory class size at Kennedy-King College as appropriate to physical facilities of newly established technical laboratories and per capita back pay for any and all said classes enrolled beyond possible maximum of 32.
THE ISSUE: Was John Bowen assigned appropriate rotation points for the Fall Semester of 1974 when he returned to the Southwest College faculty from his administrative position?

PERTINENT CONTRACT PROVISIONS: §VIII F.4.c and g.

AWARD: Union
The grievant John Bowen should have been assigned rotation points based on the "Trimble formula" for the Fall semester of 1974 when he returned to the Southwest College faculty from his position as administrator.

REMEDIES: "Other": Recalculate Rotation points

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Absent Specific Language

DEFENSE ARGUMENTS: Non-Arbitrable - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: An administrator who returns to the bargaining unit comes under the coverage of the Labor Agreement upon his return.

AAA CASE NO.: 51-39-0106-75
DATE OF AWARD: Withdrawn April 26, 1979
TITLE: KK Terminal Contracts Gr.
CAMPUS: Kennedy-King
FILED BY: Union February 24, 1975
CLASSIFICATION: "G." Rehiring Policy

THE ISSUE: Whether the Board acted in violation of Union-Board Agreement by continuous issuing of terminal contracts to various faculty members at Kennedy-King College who are presently in their first, second, and third years regardless of conditions set forth in alleged authorizing arbitration decisions.

PERTINENT CONTRACT PROVISIONS: Conditions stipulated in prior arbitration decisions.

AUTONOMY OF ADMINISTRATION: Enforce

IMPACT: Subsequent Union Agreement; §VIII 1.f.,g. (1975-77 contract)

SIGNIFICANT OUTCOMES: Three grievances were withdrawn on April 26, 1979 because they were denied legally inarbitrable. They were #0504-73, #0106-75 and #0642-75. The underpinning of each of these grievances is the contractual right of non-tenured faculty to continued employment. This subject matter is clearly inarbitrable and any contract provisions dealing with such subject matter are legally unenforceable. The Illinois cases so holding are IEA and Henry Davis v. Ed. of Ed. of Dist. 218, 62 Ill. 2d 127 (1975); Bd. of Trustees of Comm. College Dist. 508 v. CCC, 62 Ill. 2d 470; Wesclin Ed Assoc. v. Bd. of Ed., 30 Ill. App. 3d 67 (1975); Lockport Assoc., 33 Ill. App. 3d 789 (1975).
AAA CASE NO.: 51-39-107-75
DATE OF AWARD: Withdrawn June 18, 1976
TITLE: Two OH Lectureships
CAMPUS: Olive-Harvey
FILED BY: Union
CLASSIFICATION: "V." Work Assignments

THE ISSUE: Whether the President of Olive-Harvey College properly followed appropriate contract provisions in filling two lectureships in the Humanities Department at said college.

PERTINENT CONTRACT PROVISIONS: §VIII F.4.h.
AAA CASE NO.: 51-39-0253-75
DATE OF AWARD: June 28, 1978
TITLE: Drs. Hoffen, Hu, Ni Gr.
CAMPUS: Malcolm X
FILED BY: Union April 24, 1975
CLASSIFICATION: "J." Individual Wage Rates
ARBITRATOR: Albert A. Epstein
Consolidated with 51-39-0745-75 and 754-75

THE ISSUE: Dr. Abraham Hoffer, Dr. Paula Hu, Dr. Robert Ni, faculty members of the Malcolm X College allege they were wrongfully assigned to step and lane of the salary schedule of the agreement prevailing at the time of their respective employment.

PERTINENT CONTRACT PROVISIONS: §VI F.2.b.

AWARD: Administration
The grievance of Maria J. Park, Twinet Parmer, Paula Ni, Robert Ni and Abraham Hoffer were untimely filed under the terms and provisions of the applicable contracts between the parties. The grievances are denied.

DEFENSE ARGUMENTS: Non-arbitrable: timeliness

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
AAA CASE NO.: 51-39-0518-75
DATE OF AWARD: November 14, 1975
TITLE: Harriet Rosenman Gr.
CAMPUS: Wright
FILED BY: Union
CLASSIFICATION: "E." Discrimination on Basis of Sex
            "W." Seniority
ARBITRATOR: Albert A. Epstein
See AAA Case No. 51-39-0518-74

THE ISSUE: Is Harriet Rosenman entitled to have her
seniority date adjusted to September, 1963?

PERTINENT CONTRACT PROVISIONS: §§IV B.;
                    IX B.1.,2.f.,F.3.;XII.

AWARD: Administration
Harriet Rosenman is not entitled to have her seniority date
adjusted to September, 1963.

DEFENSE ARGUMENTS: Unconstitutional
                    Contract language
                    Timeliness - sustained

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
                    Federal Statutes
                    Contract language

N.B. "A careful study of the major issues indicates that
there may be merit to the Union's contention that the
grievant is entitled to relief on the basis of her
constitutional and statutory rights. I find, however, that
I cannot rule on the merits of the case because the facts
presented with reference to the timeliness of the filing of
the grievance clearly indicate that the grievant is barred
from relief."
AAA CASE NO.: 51-39-0633-75
DATE OF AWARD: December 17, 1976
TITLE: Gr. of Dawson, Meadors, Puzzo, Shanafield
CAMPUS: Wright
FILED BY: Union October 7, 1975
CLASSIFICATION: "W." Rotation Points
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the work performed by faculty members, William Riordan and Frank Pasquale, in the Summer of 1974, at Wright College subject to rotation point assessment?


AWARD: Administration
The work performed by faculty members William Riordan and Frank Pasquale in the Summer of 1974 at Wright College was not subject to rotation point assessment.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation
DEFENSE ARGUMENTS: Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
   State Judicial Decision
   Contract language
   Merits of instant case

AUTONOMY OF ADMINISTRATION: Enforce

AREAS: "The work performed on this special project basis does not come within the scope of "extra work" covered in Article VIII F.4(e) as the Union argues and therefore is not work to be counted for purposes of assessing rotation points.

"With reference to the Union's contention that the Board has consistently proceeded on the basis that problems involving the assessment or computation of rotation points are left to the bargaining unit members for proper computation and that therefore the Board's position in this case is inconsistent, it must be noted that the Board's position with reference to issues of computation does not deprive the Board of its basic authority for determining the circumstances under which rotation points should be assigned in accordance with the terms of the collective bargaining agreement."
AAA CASE NO.: 51-39-0635-75
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: Union Seniority for "Closed Down" Teachers
CAMPUS: All-City (MX)
FILED BY: Union October 7, 1975
CLASSIFICATION: "D." Discharge (RIF)
"W." Seniority

THE ISSUE: Assuming timeliness of grievance, basic issue is whether initiation of seniority system leading to bumping is responsibility of faculty member affected by reduction of staff or the administration ordering the reduction, and furthermore whether non-tenured faculty member has access to bumping rights based upon accumulated seniority.

PERTINENT CONTRACT PROVISIONS: § VIII F.2.a.,b.
AAA CASE NO.: 51-39-0636-75
DATE OF AWARD: Withdrawn June 28, 1976
TITLE: Lathan - Townsend Termination
CAMPUS: Malcolm X
FILED BY: Union October 7, 1975
CLASSIFICATION: "D." Discharge (RIF) Tenure Problems

THE ISSUE: Whether grievants Benjamin Lathan and Walter Townsend had achieved tenure at the time of their termination due to a reduction in force, whether Board has responsibility to effect "bumping" in the event of such a reduction (irrespective of tenure status), whether Board can deny grievance regarding non-effecting same as untimely, and whether in the case of Townsend only a position exists for which he could bump.

PERTINENT CONTRACT PROVISIONS: § VIII F.2.a., b.

N.B. Benjamin Lathan was assigned to the Kennedy-King College.
THE ISSUE: Whether the Board has made "every effort" to meet professional standards regarding the number of librarians to be employed for student population when record discloses system is and has been below standard established by Illinois Librarian Association and has during period 1967-1975 increased librarian staffing by one person.

PERTINENT CONTRACT PROVISIONS: §§ VIII M., XI

AWARD: Administration
The Board is not in violation of the terms of Article VIII M. of the collective bargaining agreement between the parties insofar as the staffing of counselors and librarians at the Kennedy-King College is concerned.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Intent of the Parties
Contract language
Non-Arbitrable - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Intent of parties

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Issue was ruled arbitrable. Arbitrator disagreed with Board's contention that the provisions of Article VIII were not intended to be enforced. The Arbitrator strongly recommended that the Board increase its efforts to allot additional funds for the purpose of increasing the library staff at Kennedy-King College working toward the goal of achieving the ratios recommended by professional organizations.

IMPACT: Subsequent Union Agreement; § XI (1978-1980 Agreement contract)
AAA CASE NO.: 51-39-0638-75
TITLE: Jelinek and Fleisher Gr.
CAMPUS: Kennedy-King
FILED BY: Union October 6, 1975
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein
Consolidated with 51-39-0331-74

THE ISSUE: Whether grievants Jelinek and Fleisher were entitled to released time in an amount greater than that received under §VIII B.2. and whether denial of requested time on grounds Humanities department had been consolidated and § VIII B.2. time shared by chairs can be sustained in view of history of so-called merger.

PERTINENT CONTRACT PROVISIONS: § VIII B.2.
AAA CASE NO.: 51-30-0639-75
DATE OF AWARD: January 19, 1977
TITLE: Gr. of Louis Mangolin
CAMPUS: Olive-Harvey
FILED BY: Union October 6, 1975
ARBITRATOR: Albert A. Epstein

THE ISSUE: Did the Board violate the provisions of the Labor Agreement between the parties by refusing to uphold the grievance filed in this matter, which it conceded to be valid on the merits, because the grievant attempted to make a tape recording of the proceedings which took place at Step 1 of the hearing provided for by the grievance procedures of the Agreement, without first disclosing his use of the tape recorder to the representatives of the administration present at the hearing?

AWARD: Union
The Board violated the provisions of the Labor Agreement between the parties by refusing to uphold the grievance filed in this matter, which it conceded to be valid on the merits, because the grievant attempted to make a tape recording of the proceedings which took place at Step 1 of the hearing provided for by the grievance procedures of the Agreement, without first disclosing his use of the tape recorder to the representatives of the administration present at the hearing.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Absent Specific Language

DEFENSE ARGUMENTS: Disciplinary

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
- Contract language
- Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "I find that the Board had no authority to deny the grievance solely upon the basis of the grievant's alleged misconduct..."
AAA CASE NO.: 51-30-0639-75
DATE OF AWARD: August 17, 1977
TITLE: Gr. of Louis Margolin
CAMPUS: Olive-Harvey
FILED BY: Union
CLASSIFICATION: "R." Rate of Pay Disputes
ARBITRATOR: Albert A. Epstein

THE ISSUE: Supplemental Award On January 19, 1977, Arbitrator Epstein upheld the grievance filed by Louis Margolin finding that the grievant was entitled to the assignment to the course of Instrumentation 103 in the Spring of 1975. This supplemental proceeding arises because the parties are in disagreement about the amount of compensation to which the grievant is entitled as a result of the Award and the matter was resubmitted for determination on this point.

AWARD: Union
When it was determined that the grievant was entitled to the assignment and that the Board had erred in refusing him the assignment, it was obviously impossible to grant the assignment to the grievant after the particular semester was over. The remedy therefore is to award him the compensation covering a six hour course at the regular semester rate. This would amount to $5,510.00 as the Union contends, and the grievant having been paid $4,640.00, is entitled to the additional $870.00 compensation.

REMEDIES: Additional Pay
DEFENSE ARGUMENTS: Past Practice
MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "I find that the course in effect was not a summer school course even though the Board engaged in the fiction of categorizing it as a summer course in order to come within its alleged limitations as to overtime assignments."
AAA CASE NO.: 51-39-0640-75
DATE OF AWARD: February 18, 1977
TITLE: Gr. of Martin W. Horan
CAMPUS: Truman
FILED BY: Union October 7, 1975
CLASSIFICATION: "D." Discipline
ARBITRATOR: Albert A. Epstein

THE ISSUE: Did the placement in his personnel file of a letter dated February 15, 1971, derogatory to the grievant's conduct, violate the terms of the Collective Bargaining Agreement between the parties? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS: § VIII k.l.b.,c.

AWARD: Union
The placement in his personnel file of the letter dated February 15, 1971, derogatory to the grievant's conduct, violated the terms of the Collective Bargaining Agreement between the parties. The Board is directed to remove such letter from the grievant's personnel file.

REMEDIES: Take Affirmative Action

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Contract Language
Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "I find therefore that in effect no placement of derogatory material in a faculty member's personnel file is proper unless the affected faculty member is given an opportunity to affix his signature to the actual copy to be filed even though he may have knowledge of the material and of the intention to have such filing occur."
AAA CASE NO.: 51-39-0641-75
DATE OF AWARD: Open
TITLE: Lerner Grieves Program Assignment
CAMPUSS: Mayfair
FILED BY: Union October 7, 1975
CLASSIFICATION: "V." Work Assignment
ARBITRATOR: Albert A. Epstein

THE ISSUE: Question before arbitrator is whether R. Lerner of Mayfair College is qualified to teach Journalism courses offered at said college and thus entitled to bid on said courses as part of his regular teaching program.

PERTINENT CONTRACT PROVISIONS: § VIII F.2.b. and 3.b.1., 2., 3.
AAA CASE NO.: 51-39-0642-75
DATE OF AWARD: Withdrewn April 20, 1979
TITLE: Back Pay for Interim Five Month Teachers Gr.
CAMPUS: Kennedy-King
FILED BY: Union October 6, 1975
CLASSIFICATION: "F." Pay for time not worked

THE ISSUE: The Union grieves the denial to arbitrarily designated faculty members of work rightfully belonging to them by the refusal on the part of the Kennedy-King administration to promptly issue contracts even though the work covered by those contracts existed and was eventually, after a period of time ranging from one to four weeks, given; said being done for the purpose of avoiding the salary schedule, thus creating additional work for contracted faculty member and/or transferring the cost of instructional work from academic salaries account to the substitute pay account.


See Autonomy of Administration: AAA Case No. 51-39-0106-75.

N.B. Withdrewn because renewal of non-tenured teachers has been held by the Courts to be inarbitrable and a non-delegable decision of the Board.
MEMORANDUM AWARD: Union
The amount of cash stipend to be paid to faculty members of the Loop College for "Special Assignments" for the Fall Semester 1974-75 was an appropriate matter for negotiation between the Board and the Union under the terms of Article XI of the contract in effect between the parties.

REMEDIES: Other: Salary Terms Negotiable

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract Language

AUTONOMY OF ADMINISTRATION: Delimit
AAA CASE NO.: 51-39-0711-75
DATE OF AWARD: June 28, 1978
TITLE: Mercer Harbour Gr.
CAMPUS: Kennedy-King
FILED BY: Union October 21, 1975
CLASSIFICATION: "D." Discharge
ARBITRATOR: Albert A. Epstein

THE ISSUE: Whether grievant Mercer Harbour was denied due process under the agreement by virtue of President Bowie utilizing personnel file containing unallowable material in the course of making independent administrative evaluation. Further issue is whether such denial is sufficient to merit awarding of fourth annual contract and whether arbitrator has authority to make said award.

PERTINENT CONTRACT PROVISIONS: § VIII J.

MEMORANDUM AWARD: Administration
The Arbitrator lacks jurisdiction in the matter of the grievance of Mercer Harbour and the grievance is hereby dismissed.

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: State Judicial decisions

AUTONOMY OF ADMINISTRATION: Enforce

N.B.: Award was influenced by the Illinois Supreme Court's decisions on the threshold issue of an Arbitrator's jurisdiction.
AAA CASE NO.: 51-39-0745-75
DATE OF AWARD: June 28, 1978
TITLE: Gr. Maria J. Park
CAMPUS: Malcolm X
FILED BY: Union November 25, 1975
CLASSIFICATION: "J." Individual Wage Rate
ARBITRATOR: Albert A. Epstein

Consolidated with AAA Case No. 51-39-0253-75 and 0754-75

THE ISSUE: Grievant M. Park maintains she was incorrectly placed on the salary schedule by virtue of the fact administration refuses to credit her with experience not reported at the time of hiring although grievant was without knowledge at that time that all relevant work experience could be applied and reported experience in question in prompt manner when she realized her error.

AWARD: Administration
See AAA Case No. 51-39-0253-75
AAA CASE NO.: 51-39-0746-75
DATE OF AWARD: Open
TITLE: Seniority for Coordinators Doing Regular Work While Being Paid Out of Project Money
CAMPUS: Malcolm X
FILED BY: Union November 25, 1975
CLASSIFICATION: "W." Seniority

THE ISSUE: The Union contends there are presently employed faculty members who once were coordinators at Malcolm X College and they did not in fact perform coordination duties with coordinator working conditions but performed faculty duties and had faculty conditions but are today being denied the accumulation of time towards seniority for the period they were allegedly employed as coordinators.

PERTINENT CONTRACT PROVISIONS: ENTIRE CONTRACT §I.A §II.E.
AAA CASE NO.: 51-39-0747-75
DATE OF AWARD: Open
TITLE: Mathematics Department Schedule
CAMPUS: Kennedy-King
FILED BY: Union November 25, 1975
CLASSIFICATION: "V." Work Assignments

THE ISSUE: The Union contends that the changing of the schedule of three members of the Mathematics department, Kennedy-King College, was violative of the Agreement in that selection of program is right of employee which determinative of offerings is right of employer and that employee has right to request three classes in row if he/she chooses to waive qualified right not to have this done.

PERTINENT CONTRACT PROVISIONS: §VIII D.1., F.3.b.
AAA CASE NO.: 51-39-0748-75

DATE OF AWARD: December 26, 1980

TITLE: Gr. Kalk, Jenkinson, Shinn

CAMPUS: Loop/CCWC

FILED BY: Union

CLASSIFICATION: "A." Time Limits
"V." Work Assignments

ARBITER: Albert A. Epstein

Consolidated with AAA Case No. 51-34-0028-76

THE ISSUE:

1. Was the Kalk grievance timely filed?

2. Was a bargaining unit faculty member entitled to teach the course involved in the Kalk grievance under the terms of the 1973 agreement?

3. Were bargaining unit faculty members entitled to teach the courses involved in the Shinn and Jenkinson grievances?

4. Which agreement, if any, governs the issues in the Shinn and Jenkinson grievances?

5. If the grievance is upheld, are the individual grievants, Kalk, Shinn and Jenkinson, entitled as faculty members of Loop College to teach the course involved herein?

PERTINENT CONTRACT PROVISIONS: § VIII F.4; L.3 (a-d)

AWARD: Union

1. The Kalk grievance was timely filed.

2. A bargaining unit faculty member is entitled to teach the course involved in the Kalk grievance under the terms of the 1973 agreement.

3. Bargaining unit faculty members are entitled to teach the courses involved in the Shinn and Jenkinson grievances.

4. The 1975-1977 agreement governs the issues in the Shinn and Jenkinson grievances.

5. Grievants Kalk, Shinn and Jenkinson, as faculty members of Loop College, are entitled to teach the courses involved herein.
6. Herbert Kalk, Nora Shinn and Roy Jenkinson are entitled to be made whole for an extra class at the then prevailing compensation during the period in which they were adversely affected.

7. The parties are directed to negotiate the specific details and scope of the remedy. If they fail to come to a negotiated agreement, the undersigned will, with their consent, retain jurisdiction to determine any unresolved issues remaining between them.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Project work
Non-Arbitrable: interim periods between contracts

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
School arbitration precedence
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

AREAS: Subterfuges employed to deny extra work to bargaining unit members were overruled by the Arbitrator.

IMPACT: Subsequent Union Agreement: (1975-1977 contract) Article VIII.F.4.c,i.
AAA CASE NO.: 51-39-0749-75
DATE OF AWARD: December 29, 1977
TITLE: Gr. of Frank Banks
CAMPUS: Loop
FILED BY: Union November 25, 1975
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE:
1. Was the grievance timely?
2. Was the grievant's removal from a substitute teaching assignment effective December 10, 1974, contrary to the terms of the Agreement between the parties? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS:
§VIII F.4a.,b.
§X A.B.
§XI
§XII

AWARD: Administration
1. The grievance was timely filed.
2. The grievant's removal from a substitute teaching assignment effective December 10, 1974, was not contrary to the terms of the agreement between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation
"§VIII F.4 does not necessarily cover substitution work."

DEFENSE ARGUMENTS: Board Policy
(This is the first grievance whereby the Personnel Manual was referred to; §2.4, Continuity of Instruction Manual Policy).

Non-Arbitrable - overruled
Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Practice in local school district
Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "There is no basis for the Board's claim that the grievance was filed untimely because a grievance does not have to be presented in writing in the FIRST STEP."
Enforce

"I find that the Board's continuity of employment policy should properly prevail over any departmental practice with reference to the assignment of substitute work which would be contrary to that policy..."
AAA CASE NO.: 51-39-0751-75
DATE OF AWARD: January 27, 1978
TITLE: Gr. of E. Jaski & R. Vesecky
CAMPUS: Southwest
FILED BY: Union November 15, 1975
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE:

1. Was the Board's failure to assign Ernest Jaski to a summer school course in the Summer of 1975 in violation of the terms of the Collective Bargaining Agreement between the parties?

2. Was the Board's failure to assign Ralph Vesecky to a summer school course in the Summer of 1975 in violation of the terms of the Collective Bargaining Agreement between the parties?

PERTINENT CONTRACT PROVISIONS: §II.K. §VIII F.4.(a,b,d,e.)

AWARD: Union

1. The Board's failure to assign Ernest Jaski to a summer school course in the Summer of 1975 was in violation of the terms of the Collective Bargaining Agreement between the parties.

2. The Board's failure to assign Ralph Vesecky to a summer school course in the Summer of 1975 was in violation of the terms of the Collective Bargaining Agreement between the parties.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
Direct Violation of Language

DEFENSE ARGUMENTS: Interim period between contracts

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language
Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "The period of hiatus between the termination of one contract and the negotiation of another does not affect the rights of grievants to proceed through the
grievance and arbitration procedures on matters which substantially occurred under the terms of the contract which had expired.

"...Their (faculty) contract rights are paramount to any Board policy relative to the continuation of instruction so that the exercise of their bumping rights after the classes had begun with improper assignments is an appropriate action.

"...I find that the Board acted in violation of the Labor Agreement in the case of Jaski when it sought to maintain a salary limitation policy...

"In the case of Vesecky, I find that the Board's procedure for calling eligible employees was unreasonable and ineffective and therefore the grievant was eligible for the position he sought..."
THE ISSUE:

1. Was the grievance timely filed?

2. Did the Board violate the terms of the Contract when it enrolled 35 students in Art 115 during the Fall 1975 semester at Kennedy-King College?

PERTINENT CONTRACT PROVISIONS: §VIII A.1. (a.b.c.d) §X B.1.a §XI

AWARD: Administration

1. The grievance was not untimely filed.

2. The Board did not violate the terms of the contract when it enrolled 35 students in Art 115 during the Fall 1975 semester at Kennedy-King College.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Economics Past Practice Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Enforce Areas: "I agree with the Board it has the right to institute new classes and new facilities and to establish appropriate class enrollment numbers within the limitations of the contract... I am also impressed by the Board's argument that this particular type of laboratory arrangement did not require the assignment of one student for each situation or 'station' because that would not be economical or mandatory from the educational standpoint."
AAA CASE NO.: 51-39-0754-75
DATE OF AWARD: June 28, 1978
TITLE: Gr. Twimet Parmer
CAMPUS: Kennedy-King
FILED BY: Union November 25, 1975
CLASSIFICATION: "J." Individual Wage Rate
ARBITRATOR: Albert A. Epstein
Consolidated with AAA Case No. 51-39-0253-75 and 0745-75

THE ISSUE: Grievant T. Parmer claims that she was wrongly placed on salary schedule by virtue that contrary to practice Kennedy-King President, M. Bowie, refused to consider her elementary school teaching experience as relevant teaching experience and alleged it to be only substitute teaching whereas in reality it was full-time teaching and only administratively classified as substitute.

AWARD: Administration
See AAA Case No. 51-39-0253-75
THE ISSUE: The filing by the Cook County College Teachers Union of an action with the Equal Employment Opportunity Commission, alleging discrimination on the part of the City Colleges against minority group members. This discrimination, according to the allegations, results from the offering of 5-month employment contracts to certain personnel.

The Board and the Union are parties to a Collective Bargaining Agreement and the utilization by the Board of 5-month employment contracts is a matter which is currently the subject of grievance and arbitration procedures. It is the position of the Chancellor that until the remedies available under the Collective Bargaining Agreement are exhausted, the Union does not have a right to proceed with this claim to the EEOC.

N.B. On July 28, 1980, the First District Appellate Court (79-1812) decided against Local 1600 when it delivered its opinion "...It seems to us the principle that arbitration must first be had in each and every grievance without the right of initial review by the courts is not only contrary to law but would necessarily result in a waste of time and money."
Arbitration Cases Pertaining to the Year 1976

American Arbitration Association Case Numbers:

51-39-0025-76
51-39-0026-76
51-39-0027-76
51-39-0028-76
51-39-0029-76
51-39-0030-76
51-39-0031-76
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51-39-0327-76
51-39-0328-76
51-39-0599-76
51-39-0600-76
51-39-0601-76
51-39-0602-76
51-39-0603-76
51-39-0613-76
51-39-0767-76
AAA CASE NO.: 51-39-0025-76
STATUS: Open
TITLE: Oversize Classes at MX
FILED BY: Union January 9, 1976
CLASSIFICATION: "V." Work Loads

THE ISSUE: Union alleges that certain classes at Malcolm X College exceeded the class limits in the Fall semester of 1975.

PERTINENT CONTRACT PROVISIONS: §VIII A.
AAA CASE NO.: 51-39-0026-76
DATE OF AWARD: Withdrawn March 5, 1976
TITLE: Grv. Harold Brassfield
CAMPUS: Malcolm X
FILED BY: Union January 9, 1976
CLASSIFICATION: "G." Hiring Policies
ARBITRATOR: Albert A. Epstein

THE ISSUE: Union alleges that Harold Brassfield, a coordinator at Malcolm X College is entitled to faculty status and all that pertains thereto by virtue of administrative ruling that grievant would be deemed to have equivalent a Masters degree by two years of performance of faculty work.

PERTINENT CONTRACT PROVISIONS: §II.B
§VIII D.1; F.1, 2.b, 3.b
AAA CASE NO.: 51-39-0027-76
DATE OF AWARD: June 28, 1978
TITLE: English Department Class Hour Gr.
CAMPUS: Wright College
FILED BY: Union
CLASSIFICATION: "V." Work Loads
ARBITRATOR: Albert A. Epstein

AWARD: Union
1. The Arbitrator has jurisdiction to determine the above grievance.
2. The above grievance was timely filed.
3. The assignment of an extra class hour in the Spring of 1976 to grievants Walter Blinstrub, Anthony Brenner, June Brindell and Marguerite Thompson was in violation of the terms of the contract between the parties.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Non-Arbitrable - overruled
Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "...I find that there is no merit to the Board's position that the Arbitrator lacks jurisdiction in this matter and that the grievance was untimely filed."

IMPACT: Academic Manual -- Policy 2.16 Maximum Utilization of Faculty Teaching Load (August 9, 1977)
AAA CASE NO.: 51-39-0028-76
DATE OF AWARD: December 26, 1980
TITLE: Nora Shinn & Roy Jenkins Gr
CAMPUS: Loop/CCWC
FILED BY: Union
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein
Consolidated with AAA Case No. 51-39-0748-75
AAA CASE NO.: 51-39-0029-76
DATE OF AWARD: Withdraw on May 7, 1976
TITLE: Grv. Richard Ramis
CAMPUS: Kennedy-King
FILED BY: Union January 9, 1976
CLASSIFICATION: "W." Seniority
ARBITRATOR: Albert A. Epstein

THE ISSUE: Union alleges the failure of Administration to furnish the application for employment date of one Richard Ramis and further the expression that fellow Kennedy-King faculty member W. Senser would have seniority over faculty members with the same hire date regardless of application date because of non-continuous earlier part-time employment.

PERTINENT CONTRACT PROVISIONS: §§ II E., VIII F.1., L.d.
AAA CASE NO.: 51-39-0030-76
DATE OF AWARD: Withdrawn May 7, 1976
TITLE: Fifteen Credit Hours beyond M.A.
CAMPUS: Mayfair
FILED BY: Union January 6, 1976
CLASSIFICATION: "D." Tenure Problems
ARBITRATOR: Albert Epstein

THE ISSUE: Union alleges policy announced as to earning of fifteen (15) hours graduate credit beyond the masters and applied to various faculty members at Mayfair College at the beginning of the 1975-1976 academic year was a significant alteration in working conditions and further was an alteration in established tenure policy.

PERTINENT CONTRACT PROVISIONS: §VIII J.1., J.3.
§XI Appendix D. III C.1.

N.B. See Section 2-23 Additional Fifteen Hours Required to Attain Tenure; an addition to the Rules for the Management and Government of the City Colleges of Chicago, adopted July 7, 1981.

THE ISSUE: Union alleges that Winifred Chambers, Justine Cordwell, Kokuieeba Lwanga and Glenn Morris should have been hired by virtue of seniority over other holders of five-month terminal contracts when the Board agreed to grant seniority to such persons and hire a specified number for the 1975-76 academic year provided such persons met certain criteria which the Union alleges the above named did.

PERTINENT CONTRACT PROVISIONS: §VIII F., J.
AAA CASE NO.: 51-39-0032-76
STATUS: Open
TITLE: Oversize Classes
CAMPUS: Southwest
FILED BY: Union January 9, 1976
CLASSIFICATION: "V." Work Loads
ARBITRATOR: Albert A. Epstein

THE ISSUE: Union alleges that certain classes at Southwest College exceeded the class limits in the Fall semester of 1975.

PERTINENT CONTRACT PROVISIONS: §VIII A.
AAA CASE NO.: 51-39-0033-76
DATE OF AWARD: Withdrawn May 7, 1976
TITLE: Withholding of Salaries at Kennedy-King
CAMPUS: Kennedy-King
FILED BY: Union January 9, 1976
CLASSIFICATION: "P." Pay for Time Worked

THE ISSUE: Union alleges earned monies were wrongfully and illegally withheld from salaries of certain faculty members at Kennedy-King College for allegedly not performing certain "housekeeping" duties assigned to the faculty by written memorandum by one M. C. Bourie, President.

PERTINENT CONTRACT PROVISIONS: § VI, Appendix B.1.

SETTLED: Union
Resolved at Step II level.

Board paid monies due to Joel Shapiro for summer school, February 18, 1976.

REMEDIES: Back Pay
AAA CASE NO.: 51-39-0151-76
STATUS: Open
TITLE: Annual Increment Dates
CAMPUS: All City
FILED BY: Union February 27, 1976
CLASSIFICATION: "R." Rate of Pay
ARBITRATOR: Albert A. Epstein

THE ISSUE: The grievant Union alleges that the Board has wrongfully engaged in a practice wrongfully setting and changing increment dates, said practice being wrongful in that it involves a matter of wages and thus must be negotiated with the Union if there is to be any change from the rightful date of the beginning of the Fall semester, the date intended for Article VI.B.

PERTINENT CONTRACT PROVISIONS: §VI B, B.2, D. 
§XI
AAA CASE NO.: 51-39-0152-76
DATE OF AWARD: Withdrawn May 7, 1976
TITLE: Grv. Norman Phillips
CAMPUS: Mayfair
FILED BY: Union February 23, 1976
CLASSIFICATION: "P." Computation of Salary
ARBITRATOR: Albert A. Epstein

THE ISSUE: Grievant contends that policy of adjusting a faculty member's increment date to reflect time away from duties during period of unpaid leave of absence is violative of the Agreement in that the time "lost" constitutes a loss of benefit as forbidden by Article IX B.1.c., harm from said policy having been done to grievant Norman Phillips of Mayfair College.

PERTINENT CONTRACT PROVISIONS: § IX B.1.c.
AAA CASE NO.: 51-39-0158-76
DATE OF AWARD: April 10, 1976
TITLE: Systemwide Rotation Points
CAMPUS: All City
FILED BY: Union March 1, 1976
CLASSIFICATION: "W." Rotation Points
ARBITRATOR: Albert A. Epstein

THE ISSUE: The College Administration in computing rotation points did not include the earnings of faculty members who worked during the strike which occurred from August 25 to September 14, 1975.

PERTINENT CONTRACT PROVISIONS: §VIII F.4.d.2, 3.g. §XII Appendix E.1

AWARD: Union
"Applying the clear language of the contract, I must sustain the Union's grievance, and I find that the Union's position is not in violation of any law under the terms of Article XII of the Agreement between the parties."

REMEDIES: Take Affirmative Action

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

"Although it is possible that the Board may have reason to claim that inequity is created because the non-striking workers are charged with more rotation points and are therefore lower on the list of eligibility for summer school work in the subsequent summer, the terms of the contract simply do not cover such a situation. Whatever discussion took place between the parties and whatever one or the other may have intended, the contract language is clear on the subject. It provides a new system for rotation points to be based upon the earnings of faculty members over their base pay, without qualification or exemption."

WENT TO COURT: Supreme Court of Illinois Docket No. 50360, Agenda 10, November 1978
"An arbitration award may not stand, however, if it results in the contravention of paramount considerations of public policy... Illinois courts have repeatedly expressed a reluctance, long-established in the maxims of the common law, to allow persons to profit from their intentionally committed wrongful acts... Accordingly, we reverse the judgment of the appellate court and affirm the judgement of the circuit court."
THE ISSUE: That the Board for the purpose of avoiding overtime assignment of work it created pursuant to its legislatively derived power awarded such work to a person under Appendix D.III.A who does not meet the criteria specified therein for said person to perform faculty work.

PERTINENT CONTRACT PROVISIONS: Appendix D.III.A.2. § VIII F.4., J.1

SETTLEMENT AGREEMENT: Union
It is hereby agreed between the parties:
1. That Lena Pope was erroneously given the MAT Intern appointment by the Board's administration at Olive-Harvey College.

2. That Ms. Pope was employed by the Board for the period of January 16, 1976 through March 29, 1976.

3. That Eric Mork, as represented by the Union, was entitled to that position for the above stated period of time.

4. That compensation of $944.00 is due and owing Eric Mork by the Board.

5. That the Union agrees to dismiss with prejudice the grievance/arbitration presently pending on this matter.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Could not employ a part-time lecturer in preference to full-time qualified faculty member.
AAA CASE NO.: 51-39-0160-76
DATE OF AWARD: Withdrawn May 7, 1976
TITLE: Grv. Shelia M. French
CAMPUS: Southwest
FILED BY: Union March 1, 1976
CLASSIFICATION: "W." Seniority
ARBITRATOR: Albert A. Epstein

THE ISSUE: Grievant Shelia M. French alleges that during her first year of employment she was not a non-faculty member called a coordinator but a regular faculty member contrary to administration contentions and this status can be confirmed by an examination of this history of her employment and the duties performed that year. Establishment of seniority and increment date in September 1974 and payment to her of annual increment as of her increment anniversary in September 1978.

PERTINENT CONTRACT PROVISIONS: § VI B.1., §XI
AAA CASE NO.: 51-39-0161-76
DATE OF AWARD: July 12, 1980
TITLE: Literature 109
CAMPUS: Daley College
FILED BY: Union
CLASSIFICATION: "K" Curriculum
ARBITRATOR: Albert A. Epstein

THE ISSUE: Was the Board in violation of the labor agreement between the parties when it failed to schedule Literature 109, Language Arts for the Young Child, in the Spring of 1976, in the Communications Department at Daley College?

PERTINENT CONTRACT PROVISIONS: §§ VIII C., XI

AWARD: Administration
The Board was not in violation of the labor agreement between the parties when it failed to schedule Literature 109, Language Arts for the Young Child, in the Spring of 1976, in the Communications Department at Daley College.

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation

DEFENSE ARGUMENTS: Intent of the Parties
Contract Language

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
Contract language

AUTONOMY OF ADMINISTRATION: Enforce

Areas: "...I find that the Board's action must be upheld since it is within the Board's rights and power under the terms of the labor agreement..."
AAA CASE NO.: 51-39-0164-76
DATE OF AWARD: Settled March 23, 1976
TITLE: Vocational/Technical Scheduling
CAMPUS: Kennedy-King
FILED BY: Union March 3, 1976
CLASSIFICATION: "H." Hours of Work

THE ISSUE: Grievant Kennedy-King Chapter alleges that Kennedy-King administration violated Article VIII D by compelling changes justified by Chancellor's Policy of October 23, 1973 but which in alleged fact are not so mandated because of factual circumstances surrounding original schedule ordered changed and in so ordering thus acted unlawfully and capriciously.

PERTINENT CONTRACT PROVISIONS: § VIII D

GRIEVANCE SUSTAINED: Union
"At my direction, Dr. Stevens held a meeting with President Bowie on this complaint, and Dr. Stevens has reported to me that President Bowie is quite agreeable to following the policy as outlined in Section 2.1 of the Academic Policies Manual. Consequently, since this constitutes in essence the remedy (as revised at the hearing) sought by the Union, so that the events which formed the grounds for the grievance do not occur in the future, I am granting the remedy in that form. The grievance is therefore sustained." Oscar E. Shabat, Chancellor

N.B. See Section 2-26, Programming of Full-time Regularly Employed Faculty, Rules for the Management and Government of the City Colleges of Chicago adopted July 7, 1981.
THE ISSUE: The union herewith alleges the failure of the Board to meet its contractual obligation to provide two semesters of bargaining unit work "teaching" to Grievant Rosencranz even though by providing one semester of work the Board acknowledged him as being in possession of a property interest entitling him to the second semester.

PERTINENT CONTRACT PROVISIONS: §VIII J.l.g.
14th Amendment of the Constitution
AAA CASE NO.: 51-39-0298-76
STATUS: Open
TITLE: Failure to Appoint Chairperson
CAMPUS: Kennedy-King
FILED BY: Union April 23, 1976
CLASSIFICATION: "Q." Chairmanship

THE ISSUE: The Grievant Kennedy-King Chapter of the Cook County College Teachers Union grieves the failure of Kennedy-King College President Maceo T. Bowie to observe the procedures of Article VIII L.1. and therewith in accordance to appoint a chairperson for the Natural Science Department at Kennedy-King College.

PERTINENT CONTRACT PROVISIONS: § VIII L.1
AAA CASE NO.: 51-39-0327-76
DATE OF AWARD: July 10, 1980
TITLE: Gr. of Judge Watkins
CAMPUS: Malcolm X
FILED BY: Union
CLASSIFICATION: "R." Rate of Pay Disputes
"A." Time Limits
ARBITRATOR: Albert A. Epstein

THE ISSUE:
1. Was the grievance timely filed?
2. If so, was Judge Watkins entitled to full contact hour credit for the Summer session of 1975 in Med. Lab Tech 103 at Malcolm X College?

PERTINENT CONTRACT PROVISIONS: §VIII B.1.a.,b.,c.  
§X B.1.,C.2.

AWARD: Union
1. The grievance in this case was timely filed.
2. The grievant, Judge Watkins, was entitled to full contact hour credit for Med Lab Tech 103 at Malcolm X College in the Summer of 1975. The Board is directed to compensate the grievant for the loss of earnings which he incurred as a result of the Board's 83 1/3 per cent computation credit for said Summer school course in 1975.

REMEDIES: Back Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Direct Violation of Language

DEFENSE ARGUMENTS: Timeliness - overruled

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR: Contract language

AUTONOMY OF ADMINISTRATION: Delimit

Areas: Unilateral reduction in teachers rate of pay by 16 2/3% can not be sustained.
AAA CASE NO.: 51-39-0328--76
STATUS: Open
TITLE: K. K. Air Conditioning Gr.
CAMPUS: Kennedy-King
FILED BY: Union

No further information available.
AAA CASE NO.: 51-39-0599-76
STATUS: Open
TITLE: Appointment of Humanities Department Chairperson
CAMPUS: Kennedy-King
FILED BY: Union September 22, 1976
CLASSIFICATION: "Q." Chairmanship

THE ISSUE: To what extent, if any, is a president bound by the Union-Board Agreement as it relates to the appointment of a department chairperson?
AAA CASE NO.:  51-39-0600-76
STATUS:  Open
TITLE:  Class-Size Gr.
CAMPUS:  Malcolm X
CLASSIFICATION:  "V." Class Size

THE ISSUE:  Whether various classes at Malcolm X College were overruled.
AAA CASE NO.: 51-39-0601-76
STATUS: Open
FILE BY: Union
CLASSIFICATION: "W." Seniority

THE ISSUE: Seniority provisions contained in Articles VII N.2, 3, 8, 9, 10 and Article 1.A among others of the Board-Union Agreement apply to project personnel.
AAA CASE NO.: 51-39-0602-76
STATUS: Open
FILED BY: Union
CLASSIFICATION: "G." Hiring Policies

THE ISSUE: Whether or not "first opportunity to teach in funded courses, such as courses funded under Title IV-D should be extended to the faculty."
AAA CASE NO.: 51-39-0603-76
DATE OF RELIEF: December 8, 1977
TITLE: Bette Slutsky Gr.
CAMPUS: Mayfair
FILED BY: Union September 22, 1976
CLASSIFICATION: "X." Lane advancement

THE ISSUE: Whether or not a University of Illinois course entitled Math E398 - Special Topics in Mathematics (Measurement and Metric System) should be counted toward lane advancement.

PERTINENT CONTRACT PROVISIONS: §I.F.3.b.(1)

RELIEF GRANTED: Union
Oscar E. Shabat, Chancellor, re-reviewed the issue on December 8, 1977, and granted the requested remedy; acceptance of the course credit towards lane advancement.

REMEDIES: Other

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE: Interpretation
AAA CASE NO.: 51-39-0613-76
DATE OF AWARD: January 17, 1978
TITLE: Mohammed Younis Gr.
CAMPUS: Southwest
FILED BY: Union September 24, 1976
CLASSIFICATION: "V." Work Assignments
ARBITRATOR: Albert A. Epstein

THE ISSUE: Under the terms of the Labor Agreement between the parties, was Mohammed Younis entitled to the additional Biology class assignment which was denied to him in the 1976 summer school session at Southwest College?

PERTINENT CONTRACT PROVISIONS: §VIII F.3.b.(3.d); 4

AWARD: Union
Under the terms of the Labor Agreement between the parties, Mohammed Younis was entitled to the additional Biology class assignment which was denied to him in the 1976 summer session at Southwest College.

REMEDIES: Additional Pay

PROBLEMATIC ELEMENTS OF CONTRACT LANGUAGE:
  Direct Violation of Language

DEFENSE ARGUMENTS: Contract Language
  Board Policy

MAJOR AUTHORITIES RELIED UPON BY ARBITRATOR:
  Contract language
  Merits of instant case

AUTONOMY OF ADMINISTRATION: Delimit

Areas: "I agree with the Union's position that the terms of the Labor Agreement are paramount to the Board's Continuation of Instruction Policy... I find no basis for support of the Board's contention that the bumping rights do not apply to summer school assignments."
AAA CASE NO.: 51-39-0767-76
STATUS: Open
FILED BY: Union

THE ISSUE: Failure to fill counseling department vacancy.
Summary

The raw data derived from the Demand for Arbitrations and subsequent arbitration awards were summarized, evaluated, analyzed and recorded in a standard format. Chapter V presents the detailed statistical analysis of the arbitration cases based upon the raw data compiled in this chapter, using the procedures presented in Chapter III.
CHAPTER V
THE REPERCUSSIONS OF ARBITRATION CASES
AND ANALYSIS OF THE DATA

Introduction

The grievances included in this study were those that were assigned American Arbitration Association (AAA) Case Numbers. These were the grievances that resulted from a lack of resolution at the first level (Campus), and also at the second level (Chancellor). A Demand for Arbitration could then be filed with the Association. One hundred fifty-four (154) grievances were assigned American Arbitration Association Case Numbers. Only three of these cases were initiated by the college administration. Three additional grievances (without AAA Case Numbers) were included in the study, illustrating the total census of Board initiated grievances (six) in the ten year period.

A synopsis of each arbitration case was prepared. The critiques are listed in Chapter IV in chronological order. The date of the Demand was stated in the synopsis, adjacent to the party identified as the complaintant. Petinent raw data regarding each grievance were listed on synopsis tabulation forms filed in Appendix 1 and 2. Chapter V is
devoted to discussions about the summaries of various characteristics identified during the ten year period (1967-1976) studied. The outcomes of the arbitration cases have been studied and are presented herein. In those instances where the courts were involved, that information and the ensuing decisions have been incorporated. A total of one hundred fifty-four (154) arbitration cases were studied.

The first portion of this chapter is an interpretation of the statistical data resulting from the research. The remainder of Chapter V is a presentation of the impact of the cases upon rules, policies, manuals and subsequent labor contracts.

Characteristics and Analysis of Data

A total of one hundred fifty-four (154) grievances were assigned American Association of Arbitrators Case Numbers during the time period 1967 through 1976. This time span represents the first ten year period that the grievance procedure existed between the Board of Trustees, District 508 (Board) and the Cook County College Teachers Union, Local 1600-AFT (Union). Both the Board and the Union were recipients of thirty-four (34) arbitration awards. (These totals included two split decisions, AAA Case Nos. 51-39-0152-72 and 00228-72; each valued as one-half an award in the totals. Two grievances were returned to arbitration for a second determination, resulting in second confirmations of
awards to the Union. These two grievances, AAA Case No. 51-30-0247-67 and 51-39-0639-75 were valued as one award each to the Union). Of the 154 arbitration cases studied, 151 had been filed by the Union. The Board initiated six grievances against the Union, three of which were assigned AAA Case Numbers. The Board was successful in two of these cases (AAA Case Nos. 51-30-0264-67, 0142-68). The files of the third case were incomplete, (AAA Case No. 51-30-0042-68). Of the three remaining grievances, none of which went to arbitration, one was resolved in favor of the administration. The outcome of the other two grievances were indeterminable. See table 1.

Twelve of the arbitration cases were settled between the Board and Union, in favor of the Union's position, prior to the necessity of an award by the arbitrator. A permanent arbitrator, Albert A. Epstein, was agreed upon as a result of the negotiations of the fourth contract (July 1, 1973-June 30, 1975.) That provision was retained in subsequent Agreements. (Article X. B.3.b.)

Forty-five (45) grievances assigned AAA Case Numbers were withdrawn by the Union. In some situations, the Union was influenced by court decisions that resulted in declarations that certain grievances were inarbitrable; or parallel grievances were unsuccessful at the arbitration stage. Records of five (5) of the case histories were
incomplete. Fifteen (15) grievances are still considered open cases because they have not been concluded. Also nine (9) cases were consolidated into other awards. See table 1

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<th>Total</th>
<th>Won</th>
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</table>

Legend: S - Settlement
W - Withdrawn
I - Incomplete information
O - Open Case as of January 12, 1981

The summary of arbitration awards was reflected by the equation:

\[ \sum A = f(C + D + M + R + A/A + I) \]

In this equation "A" represents the Award; "C" is the Problematic Elements of the Contract Language; "D" is the Defense Argument; "M" is the Major Authorities relied upon by the Arbitrator; "R" is the Remedies; and "A/A" is
Autonomy of Administration; and "I" equals the subsequent Impact. ¹

Each of these variables consist of subvariables. They are:

Problematic Elements of the Contract Language (C):
- Construction
- Interpretation
- Absent Specific Language
- Direct Violation of Language
- Other

Defense Argument (D):
- Past Practice
- Intent of the Parties
- Contract Language
- Emergency Conditions
- Non-Arbitrable
- Board Policy
- Public Community College Act
- Industrial Arbitration
- Other

Major Authorities relied upon by the Arbitrator (M):
- State statutes and judicial and agency decisions
- Federal statutes and judicial and agency decisions
- Past practice in local school district
- Industrial arbitration precedence
- School arbitration precedence
- Contract language
- Merits of instant case
- Intent of parties
- Law texts
- Other

Remedies (R):
- Additional pay
- Back pay

¹ Source: Primary
Cease and desist
Reappointment
Return situation to a condition that existed before the grievance was filed
Take affirmative action
Other

Autonomy of administration (A/A);

Enforce or delimit
Areas

Impact (I);

Rules for the management and government of the City Colleges of Chicago
Manual on academic policies
Manual on personnel policies and procedures
Subsequent union agreement
Significant outcomes
Went to Court
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<th>Sub-total Awards To:</th>
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<th>Total</th>
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<th>Reappointment</th>
<th>Return to Prior Situation</th>
<th>Take Affirmative Action</th>
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</table>
As table 2 shows, of the thirty-four (34) arbitration awards favorable to the Union's position, there were twenty-seven (27) instances of a violation of the Board-Union agreement, four (4) cases lacked specific language addressed to the grievance, and five (5) situations when a dispute occurred over the interpretation of the contract. None of these arbitration cases involved problems resulting from the construction of the contract language, or other items that were not categorized in the evaluation instrument.

The unsuccessful defense arguments in the thirty-four (34) awards to the Union are categorized as: (see table 2)

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In the thirty-four cases awarded to the Union, the major authorities relied upon by the arbitrator were: (see table 2)

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
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<tr>
<td>Federal statutes and judicial and agency decisions</td>
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<tr>
<td>Past practice in the local school district</td>
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<td>Industrial arbitration precedence</td>
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<td>Contract language</td>
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<tr>
<td>Merits of the instant case</td>
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<tr>
<td>Intent of the parties</td>
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<td>Law texts</td>
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<tr>
<td>Other</td>
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</table>
Remedies stipulated by the arbitrators in the thirty-four arbitration awards to the union are summarized as:

(see table 2)

- Additional pay: 8
- Back pay: 7
- Cease and Desist: 2
- Reappointment: 6
- Return the situation to a condition that existed before the grievance was filed: 2
- Take affirmative action: 6
- Other: 8

In the twelve (12) cases that were settled between the Board and Union, foregoing complete arbitration proceedings, the Union accepted "Additional pay" in three (3) instances, "Reappointment" in two (2), an agreement by the "Board to Cease and Desist" a contested practice, an additional stipulation to "Return a disputed case to its original situation," and one settlement was resolved by "Taking affirmative action." Problematic elements of the contract included one instance involving "Interpretation," another regarding "Absence of specific language," and four grievances pertaining to "Direct Violation of the Contract." (see table 2) Because no awards by an arbitrator were issued, lack of records of proceedings and opinions eliminated the feasibility of analyzing the defense arguments of the Board, or the influence major authorities had on the outcome of the settlements.

As table 2 shows, the Board received thirty-four (34) awards from the arbitrators during the ten year span that
One hundred fifty-four (154) grievance cases were assigned AAA case numbers. Two of the awards received were for grievances the Board filed against the Union. Eighteen (18) of these grievances involved different interpretations of the contract by both parties, three were based on the absence of specific language in the contract. The Board's successful defense in these thirty-four awards were based on the employment of the following arguments:

- Past Practice: 19
- Intent: 5
- Contract language: 2
- Non-Arbitrable: 1
- Board policy: 2
- Public Community College Act: 4
- Other: 2

Also, in these thirty-four (34) cases, the major authorities relied upon by the arbitrators were: (see table 2)

- State Statutes and judicial and agency decisions: 6
- Federal Statutes and judicial and agency decisions: 2
- Past Practice in District #508: 1
- School arbitration precedence: 5
- Contract language: 1
- Merits of the instant case: 10
- Intent of the parties: 4

The defenses of the Union in the awards to the Board in their two initiated grievances in which an arbitrator yielded judgment, were: (see table 2)

- Contract language: 2
- Emergency conditions: 1
- Industrial arbitration: 1
- Other: 1
Twenty-five categories of arbitration type were identified in the design of the classification system. The total listing of the categories in the classification variable was incorporated in Chapter III, and, again in the Legend to Appendix 1. The frequency of item occurrence by classification was recorded in Table 3. No arbitration cases were generated in the categories of "N". Grievance Procedure, "O." Strikes and Work Stoppages, "S." Physical Fitness and Medical Issues and therefore were omitted from Table 3.

Many of the arbitration cases were classified in more than one category because of multiple issues. Table 4 was constructed from data illustrated in Appendix 2. Another source of data for this item analysis was the individual arbitration case synopsis published in Chapter III, "Documentary Analysis of Arbitration Cases."
### TABLE 3.

**SUMMARY OF THE FREQUENCY OF GRIEVANCE ITEM OCCURRENCE BY CLASSIFICATION REFLECTING YEAR INITIATED, AWARD RECIPIENT AND NUMBER OF OTHER CLASSIFICATIONS INVOLVED**

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Legend: *Board vs. Union Grievance*
TABLE 3 (CONTINUED)

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B. Total

| # | 1 | 3 |

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C. Total

| # | 1 | 3 | 2 | 2 |

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Subtotal

| # | 9.5 | 7.5 | 2 | 2 | 1 | 2 | 5 |

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Subtotal

| # | 1 | 2 | 2 |

Reduction-in-Force

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Subtotal

| # | 2 | 2 |

D. Total

| # | 9.5 | 10.5 | 2 | 8 | 2 | 2 | 8 |
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<td>1.5</td>
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<td>Y. Payroll Deductions</td>
<td></td>
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</tr>
<tr>
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<td>1973*</td>
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<tr>
<td>Z. Not Classified Elsewhere</td>
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<tr>
<td></td>
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<td></td>
<td>1968*</td>
<td></td>
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<td>Z. Total</td>
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<td>1</td>
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</tr>
</tbody>
</table>

Legend: *Board vs. Union Grievances

- **S** - Settlement
- **W** - Withdrawn
- **I** - Incomplete information
- **O** - Open case
Category "A.", Arbitrability and Time Limits had the largest frequency of item occurrence in the analysis of one hundred and fifty-four (154) arbitration cases studied. This was the result of the Board responding to a Demand for Arbitration by posturing defensively that the Union's position was inarbitrable twenty-five (25) times, and/or that the time limits had been exceeded in eighteen (18) cases, as per the provisions of the agreement. Because arbitrability is a defense mechanism, all cases classified as such were also identified with at least one other category.

Thus, forty-three of the grievances processed through arbitration are identified with non-arbitrability, that is the arbitrator found it necessary to resolve questions pertaining to the legitimacy of the party on offense (Union). The summary of the results in category "A." is illustrated in table 3 and 4. The Board was overruled twenty-three (23) times and sustained twice when its position was that the issues at hand were inarbitrable. Of the twenty-five (25) cases in which the Board employed the inarbitrability defense, it received thirteen (13) of the final awards.

When the Board contended that the time limits had expired, it was overruled in thirteen (13) of the eighteen (18) arbitration cases where time limits were made an
issue. The Board received the final arbitration award in ten (10) of the eighteen cases.

### TABLE 4.

**RESULTS OF ARBITRABILITY & TIME LIMITS AS A DEFENSE BY THE BOARD**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Board Position</th>
<th>Final Award to:</th>
<th># Other Classifications</th>
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<tr>
<td></td>
<td>Sus-</td>
<td>Over-</td>
<td>tained</td>
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<tr>
<td>A. Arbitrability</td>
<td>2</td>
<td>23</td>
<td>13</td>
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<tr>
<td>Time Limits</td>
<td>5</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Totals</td>
<td>7</td>
<td>36</td>
<td>23</td>
</tr>
</tbody>
</table>

Considering that category "A.", Arbitrability and Time Limits resulted from grievance challenges, in the form of Demands for Arbitration, the classification with the largest number of disputes was "V. Work Loads, Work Assignments, Class Size" (thirty-six [36] issues). "C. Working Conditions" should be considered an adjunct classification to "V." with six (6) issues. The second largest grouping of occurrences was "D. Discharge, Tenure Problems, Reduction-In-Force and Discipline" (thirty-four [34] items).

"Seniority and Rotation Points, W.," with thirteen disputes ranked third in the census count. The other twenty-one (21) classifications had fewer than ten items each. Three (3) classifications had zero occurrences. They were:

- "N." Grievance Procedure
- "O." Strikes and Work Stoppages
- "S." Physical Fitness and Medical Issues
In table 5, a compilation of the issues addressed to by the arbitrators is illustrated. Because many of the arbitration cases were based on more than one issue, the totals in tables 1 and 5 were unequal. Both tables 3, 4 and 5 have a column titled other classifications. The numbers contained therein demonstrate that the arbitration cases itemized in the various categories (A. through Z.) may be listed more than once.

A comparison of table 1 and table 5 yields numerical values of balanced results to both parties. The Board received thirty-four (34) awards based on sixty-one (61) issues. The Union received thirty-four (34) awards based on sixty-two (62) issues. The balance was tipped to the Union when settlements in its favor were taken into account. Fourteen (14) issues were resolved in the resolution (settlement) of twelve (12) grievances assigned American Arbitration Association case numbers prior to adjudication by an arbitrator.
TABLE 5

FREQUENCY OF ARBITRATION CLASSIFICATION OCCURRENCE
ACCORDING TO GRIEVANCE AWARD RECIPIENT,
SETTLEMENTS WITHDRAWALS, INCOMPLETES,
OPEN CASES & NUMBER OF OTHER
CLASSIFICATIONS INVOLVED.

<table>
<thead>
<tr>
<th>Classification</th>
<th>Award to:</th>
<th># Other Classifications</th>
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</thead>
<tbody>
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<tr>
<td>Time Limits</td>
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<td>8</td>
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<tr>
<td>B. Extracurricular Activities</td>
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</tr>
<tr>
<td>C. Working Conditions</td>
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<td>3</td>
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<td>Reduction-in-Force</td>
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<td>Discipline</td>
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<td>age</td>
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<tr>
<td>F. Pay for Time Not Worked</td>
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<td>J. Individual Wage Rates</td>
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<td>L. Leaves of Absence</td>
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<td>P. Pay for Working Time</td>
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<td>Class Size</td>
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<td>W. Seniority</td>
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<td>Y. Payroll Deductions</td>
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</table>

Totals 61 62 14 50 6 11 78

Legend:  S - Settlement
W - Withdrawn
I - Incomplete
O - Open case as of June 21, 1981
As illustrated in table 6, of the one hundred fifty-four (154) arbitration case files studied, the Board received thirty-four (34) awards. The outcomes of the arbitration cases in thirty-seven and one-half (37.5) cases resulted in enforcement of the autonomy of the Administration. (One case award was divided between the Board and the Union.) In forty-three and one-half (43.5) cases, the Union achieved results that inhibited the autonomy of the Board. (These figures do not include the outcomes of succeeding court cases, discussed later, that overturned the arbitrator).

In nine cases, the position of management was strengthened by withdrawal of the cases by the Union; thereby reinforcing the autonomy of administration. (Six of these nine withdrawals come after the Illinois Supreme Court supported the Board on the issue of promotions. The other three (3) withdrawals were attributed to court decisions supporting the Board in matters of renewal of contracts.)

In 1969, Arbitrator Sembower awarded his decision to the Union, but enforced the Board's authority by declaring that its officers cannot delegate their responsibilities in the matter of hiring and firing.
TABLE 6.

EFFECT OF ARBITRATION CASES UPON THE AUTONOMY
OF THE ADMINISTRATION ACCORDING TO YEAR,
TOTAL CASES, & AWARDS RECEIVED

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<th>Delimit</th>
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<td>43.5</td>
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</table>

A 1968 grievance by the Board against the Union achieved an award for the administration, but delimited its autonomy because Arbitrator Sembower aided the Union in gaining its objective of obtaining salient information regarding prospective teachers in advance of Board action.

Two 1975 arbitrators' awards went to the Board, but the opinions delimited the autonomy of the administration by ruling the issues arbitrable.

Four grievances resulted in arbitration awards affecting the "Rules for the Management and Government of the Chicago City colleges". The Union filed three of the four grievances and obtained limited success in each. (One decision was split, another overturned subsequently in
court.) The Board succeeded in its grievance against the Union.

In AAA Case No. 51-30-0247-67, phase I, Arbitrator John F. Sembower decreed that "if there is any conflict between the 'Rules and Regulations' and terms in the agreement, the terms of the Agreement shall prevail."

TABLE 7.
IMPACT OF ARBITRATION CASES UPON THE "RULES FOR THE MANAGEMENT AND GOVERNMENT OF THE CITY COLLEGES OF CHICAGO"

<table>
<thead>
<tr>
<th>AAA Case Numbers affected</th>
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<th>Filed by:</th>
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<tr>
<td>phase 2</td>
<td>2-24.b., c.,d.</td>
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<tr>
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</table>

Three of the arbitration cases filed by the Union and resulting in favorable awards caused revisions or implementation of new provisions in the "Manual on Personnel Policies and Procedures". See Chapter IV for specific cases identified in table 8.
TABLE 8.

IMPACT OF ARBITRATION CASES UPON THE "MANUAL ON PERSONNEL POLICIES AND PROCEDURES"

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<th>AAA Case Number</th>
<th>Policy Concerned</th>
<th>Awarded to:</th>
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Legend:  S - settled

The Manual of Academic Policies was affected by three awards to the Union as a result of its grievances. The three policy additions are listed below in Table 9, Impact of Arbitration Cases Upon the Manual of Academic Policies.

TABLE 9.

IMPACT OF ARBITRATION CASES UPON THE "MANUAL OF ACADEMIC POLICIES"

<table>
<thead>
<tr>
<th>AAA Case Number</th>
<th>Policy Concerned</th>
<th>Awarded to:</th>
<th>Filed by:</th>
</tr>
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<tbody>
<tr>
<td>51-30-0088-68</td>
<td>4.9, App. G.</td>
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<td>51-39-0228-72</td>
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<tr>
<td>51-39-0027-76</td>
<td>2.16 (8/9/77)</td>
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</tbody>
</table>

Twenty-five (25) of the grievances filed by the Union resulted in modifications and additions to the Board-Union Agreement. The Union received ten (10) awards, settlements in their favor in three (3), and withdrew five (5). The Board received favorable awards in eight (8) of these selected twenty-five cases. The Board objected to two of the awards favorable to the Union, and pursued their legality in the courts. One decision was granted to the Board. These twenty-five grievances identified problem
areas that were addressed in subsequent contract negotiations. The affected contract provisions are identified in each AAA Case Number filed in the Appendix II. See table 10, "Impact of Arbitration Cases Upon Subsequent Agreements between the Board and Union" for the identity of the pertinent summaries.

**TABLE 10.**

**IMPACT OF ARBITRATION CASES UPON SUBSEQUENT AGREEMENT BETWEEN THE BOARD AND UNION BY AMERICAN ARBITRATION ASSOCIATION CASE NUMBER, AWARD RECIPIENT, SUBSEQUENT JUDICIAL ACTION & INITIATOR**

<table>
<thead>
<tr>
<th>AAA Case Number</th>
<th>Award to: Union</th>
<th>Board</th>
<th>Went to Court</th>
<th>Filed by: Union</th>
<th>Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>51-30-0246-67</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-0247-67</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0044-68</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0088-68</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0272-68</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>51-39-0144-70</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0275-71</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Union</td>
</tr>
<tr>
<td>-0500-71</td>
<td>W.D.</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0039-72W</td>
<td>X</td>
<td>Board</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0040-72W</td>
<td>W.D.</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0228-72</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0303-72</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0305-72W</td>
<td>S</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0022-73</td>
<td>W.D.</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0023-73</td>
<td>S</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0024-73</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0129-73</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0216-73</td>
<td>S</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0322-73</td>
<td>W.D.</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0475-73</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0565-74</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0013-75</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0106-75</td>
<td>W.D.</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0637-75</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>-0748-75</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**Legend:**  
S - Settlement  
W.D. - Withdrawn
When the Board of Trustees, District #508 believed the arbitrator erred in the Union's behalf, the Board pursued the matter in court. During the period 1967 through 1976, four (4) suits proceeded through the levels of the state court system to reach the Illinois Supreme Court. These four suits were precipitated by ten AAA Case Numbers. (See table 7 for specifics). The Illinois Supreme Court Justices awarded decisions in three (3) of the four (4) cases to the Board. The Union subsequently withdrew fourteen additional cases. The net result of the Illinois Supreme Court decisions in these four (4) suits was that the Board overcame twenty-five (25) arbitration cases, and the Union was sustained in one suit, based on one case.

The Board won the only U.S. Court of Appeals Case resulting from an arbitration award.

The Cook County Circuit Court was involved in five (5) conflicts between the Board and Union precipitated by arbitration cases. Each party was awarded one decision. A settlement was arrived at favoring the union in one situation, in return for an Agreement to dismiss the court action. In the fourth case, the court returned it to arbitration. The outcome of a mandamus suit filed by the Union was indeterminable.
TABLE 11.

SUMMARY OF COURT SUITS BETWEEN THE BOARD AND UNION, AND EFFECT UPON OTHER AMERICAN ARBITRATION ASSOCIATION CASES

<table>
<thead>
<tr>
<th>Court Suit (subject)</th>
<th>Awarded to:</th>
<th>Precipitated by AAA Cases</th>
<th>Effect Upon Other AAA Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois Supreme Court Docket No. 47139 Union (1971 Summer Work)</td>
<td></td>
<td>51-39-n.a.-71</td>
<td></td>
</tr>
<tr>
<td>Illinois Supreme Court Docket No. 50360 (Rotation Points-Strike) Board</td>
<td></td>
<td>51-39-0158-76</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 11. - (Continued)

<table>
<thead>
<tr>
<th>Court Suit (subject)</th>
<th>Awarded to:</th>
<th>Precipitated by AAA Cases</th>
<th>Effect Upon Other AAA Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Court of Appeals</td>
<td>Board</td>
<td>51-39-0217-73</td>
<td></td>
</tr>
<tr>
<td>No. 75-1557</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Hensley Renewal)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cook County Circuit Court</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>71CH-124</td>
<td>Union</td>
<td>51-39-0275-71</td>
<td></td>
</tr>
<tr>
<td>(Insurance)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>71CH-124</td>
<td>Board</td>
<td>51-39-0039-72W</td>
<td></td>
</tr>
<tr>
<td>(Project Personnel)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>72L17022</td>
<td>Union</td>
<td>51-39-0034-72</td>
<td>Settled Court action</td>
</tr>
<tr>
<td>(Kessler Reinstatement)</td>
<td></td>
<td></td>
<td>dismissed</td>
</tr>
<tr>
<td>74 CH 1751</td>
<td>Returned</td>
<td>51-39-0590-72W</td>
<td>to Arbitration</td>
</tr>
<tr>
<td>(SW Learning Resource Center)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mandamus Suit</td>
<td>Undetermined</td>
<td>51-39-0215-73</td>
<td></td>
</tr>
</tbody>
</table>

Of the five grievances initiated by the Board against the Union, three AAA Case Numbers were assigned. The Board was successful in obtaining favorable awards in two instances. A third was resolved in the Board's favor. One of the grievances not assigned a case number was resolved in the Board's favor. The outcome of the other grievance was unavailable.
TABLE 12.
GRIEVANCES INITIATED BY THE BOARD AGAINST THE UNION

<table>
<thead>
<tr>
<th>Grievance</th>
<th>Awarded to:</th>
<th>Articles of Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>51-30-0264-67</td>
<td>X</td>
<td>XV:B.3.g., F.1.</td>
</tr>
<tr>
<td>-0042-68</td>
<td>settled</td>
<td>none</td>
</tr>
<tr>
<td>-0142-68</td>
<td>X</td>
<td>XIII.F.1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>XV.E.</td>
</tr>
</tbody>
</table>

August 2, 1972 grv. resolution VIII G.1.
June 6, 1975 (incomplete)

As an outgrowth of a grievance (successful settlement), the grievant independently filed five allegations against the Board and Union regarding gender discrimination with the Equal Employment Opportunity Commission. The Commission determined that the charges could not be substantiated. A second arbitration case (unsuccessful) involved with the maternity rights of a bargaining unit member was carried to the State of Illinois Fair Employment Practices Commission. It was dismissed for Lack of Jurisdiction.
TABLE 13.
Complaints to Commissions

<table>
<thead>
<tr>
<th>Commission</th>
<th>AAA Case No.</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>51-39-0022-73</td>
<td>- Settlement achieved in favor of faculty member</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Provisions (2) of Board-Union Agreement Modified</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Five allegations before Commission unsuccessful</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dismissed</td>
</tr>
<tr>
<td>Fair Employment Practices Commissions</td>
<td>51-39-0518-74</td>
<td></td>
</tr>
<tr>
<td></td>
<td>51-39-0518-75</td>
<td></td>
</tr>
</tbody>
</table>

Arbitration Awards and Subsequent Modifications of the "Rules for the Management and Government of the City Colleges of Chicago"

The Board of Junior College District No. 508, County of Cook and State of Illinois, was created under the authority of the Public Junior College Act (Chapter 122, Sections 101-1 et seq., Illinois Revised Statutes, 1965) by action of the Illinois Junior College Board with the approval of the State of Illinois Board of Higher Education.

As provided by the Public Junior College Act with respect to cities having a population of 500,000 or more inhabitants, the Mayor of Chicago appointed seven persons to the Board, with the approval of the City Council, and on June 27, 1966, the new Board held its organization meeting by electing a president, vice-president, and acting secretary, and fixing a time and place for regular
meetings. Subsequently, the Board declared itself ready to begin operation of its program of studies as of July 1, 1966.

On October 11, 1966, the Board approved pertinent and applicable Rules and Regulations of the Board of Education of the City of Chicago as valid for the Board of Junior College District No. 508, County of Cook and State of Illinois, until new rules could be drafted and enacted by it for its own governance.

Pursuant to its authority under the Public Junior College Act to adopt and enforce all necessary rules for the management and government of the colleges of its district, the Board of Junior College District No. 508, County of Cook and State of Illinois, adopted and promulgated rules at a recessed regular meeting held on July 13, 1967 (Board Resolution No. 242) and readopted them as revised at a regular meeting held on July 2, 1968 (Board Resolution No. 515).


The first instance of arbitration to be directly concerned with the Rules (AAA No. 51-30-0247-67) occurred after the Board undertook to restate in "Rules and for the
Management and Government of the City Colleges of Chicago" various of the propositions which already had been encompassed in the initial Agreement. The Union complained that the Board breached the Union-Board Agreement by issuing Board Rules which the Union contended were contrary to the language of the Agreement in 27 specific instances. It has been recognized that the Board has an obligation under the law which creates it and the institutions which it administers, "to adopt and enforce all necessary rules for the management and government of the colleges of its district (Ill. Rev. Stats. Ch. 122, Sect. 103-25)." Large areas of the "Rules and Regulations" which the Board adopted July 13, 1967 were concerned with the mechanics of the Board's own functioning, business and financial policies, the students, and non-bargaining unit personnel. Arbitrator Sembower judged that there could be no quarrel with the Board's exercising its perogative to promulgate "Rules and Regulations" in these connections. The trouble arose exclusively with respect to Article II, "Personnel Policies and Administrative Organization." The arbitration observed that the Board may have tried to reflect exactly what it had undertaken in its Agreement with the Union, but that the trouble was that different language was used.

The grievance was overruled insofar as it sought to nullify all the "Rules and Regulations" promulgated by the
Board unilaterally, because many of the Rules and Regulations concerned matters unrelated to the members of the bargaining unit represented by the Union, and others inconsistent with the terms of the Agreement. In addition, the arbitrator reiterated that the Board has the statutory prerogative and obligation to promulgate appropriate rules and regulations to effectuate the purposes and objectives of the colleges under its administration.

Arbitrator Sembower did sustain the grievance insofar as any of the "Rules and Regulations" were inconsistent with the terms of the Agreement. His award, stipulated that if there were any conflict between the "Rules and Regulations" and terms of the Agreement, the terms of the Agreement shall prevail.

He also stipulated that the arbitrator retains jurisdiction as regards specific complaints which may arise during the term of the Agreement as to alleged applications of the "Rules and Regulations" which impinge upon members of the bargaining unit because of alleged inconsistencies with the terms of the Agreement.

Subsequent to the award, the Union sought relief from Arbitrator Sembower when it alleged that Rule 2-24, Sections (b), (c) and (d), "Special Leaves of Absence," conflicts with Article XIV, Sections A, B, C, D and E, and Article XVI of the Agreement. Further, the Union alleged that a
memorandum sent by the Vice Chancellor on August 26, 1968 to all campus heads, entitled "Policy on Personal Leaves," and a reference to "Personnel Leave" in "Bulletin No. 1" to faculty members on the Amundsen - Mayfair Campus, constituted violations of the Agreement.

The grievance was sustained. The award stated that Reference in Rule 2-24(b) to 'at a time which is mutually agreeable to the faculty member and the College Head' must be disregarded in favor of the applicable objective criteria which are involved per the foregoing opinion. Administrative memoranda and bulletins inconsistent with the foregoing shall be corrected in the same form and prominence as their original issue. However, these need not take the form of 'retractions,' but instead they shall reflect the resolution of a bona fide dispute between the parties as to the criteria to be applied in connection with Leaves for personal business as referred to in Article XIV(D) of the Union-Board Agreement.

In one of five grievances that the Board has filed against the Union, the Board took exception to the Union's President Norman G. Swenson instruction to members to disregard the board's rules alleged to be in violation of the contract, (AAA No. 51-30-264-67).

The arbitrator, Arthur A. Malinowski decreed that it was a violation of the collective bargaining agreement for the union president to address a letter to union members instructing them to "disregard" new rules which the Board of Education had promulgated and which were at the time of the letter still awaiting an arbitration hearing. "The letter did more than inform, advise, or set out a statement of
position... Considering the source of the letter, the language can reasonably be interpreted as an order, a directive, even a mandate."

In AAA No. 51-30-0272-68, Arbitrator John P. McGury noted that the Board as of December 27, 1968 had not published a regulation prohibiting a faculty member from being tenured at more than one institution. The grievant's case was sustained, and therefore eligible for renewal of contract even in the light of an acknowledgement that he held a tenured position with a state university.

Subsequently, the Board adopted on August 12, 1969 revised Rules which incorporated a new section, 2-29, Outside Employment, (p. 33).

Effective September 1, 1969, no full-time faculty member and no member of the administration of the college a campus may hold a concurrent full-time position or positions equal to a full-time position, with any other employer or employers while he is engaged in full-time duties in the college. All personnel of the college, including faculty members, employees, and members of the administration must notify the Chancellor of all outside employment.

Judge Nathan M. Cohen vacated the award of Arbitrator Willard J. Lassers in favor of the Union (AAA No. 51-39-0039-72W). Judge Cohen decreed in case No. 71-CH-124, Circuit Court of Cook County, November 11, 1973, that full-time faculty of the special programs, if not otherwise "regular" faculty are not included in the bargaining unit of the Agreed Decree. Subsequently, the Board incorporated

Notwithstanding any of the rules for the management and government of the City Colleges of Chicago, the working conditions, salaries and fringe benefits for project personnel are governed by the specific limitations and restrictions issued by the fund granting agency.

A comparison of the "Rules for the Management and Government of the City Colleges of Chicago" adopted July 3, 1973, and its successor adopted July, 1974 yields a reduction of sections from 35 to 20 in Article II, Administrative Organization and Personnel Policies. It appears that the Board terminated past efforts to replicate the terms of the Board-Union Agreement in its Rules. Additions to the Rules that were of significant concern to the bargaining unit are:

Section 2-20 Project Personnel - 1974
Section 2-23 Residence within the 1977 Community College District
Section 2-23 Additional 15 hours required to attain tenure - 1981
Section 2-24 Qualifications to teach - 1981
Section 2-25 Extra work load for regularly employed full-time faculty
Section 2-26 Programming of full-time regularly employed faculty
Section 2-27 Adult Education instructors.
"The Manual on Personnel Policies and Procedures" was published on March 30, 1970. The goal of the manual was to facilitate communication and coordination of personnel activity throughout the City Colleges of Chicago. The main purpose of the Manual was to codify policies and procedures concerning personnel matters. It also pulls together, updates, explains and in some cases, supersedes statements of uniform policies and practices followed at all colleges and currently contained in various policy memoranda, Board Rules, Union Agreement provisions and reports. The Manual contains descriptions of paperwork and procedures to carry out these policies and practices, and explanations of selected Union Agreement provisions with a discussion of problems encountered in grievance and arbitration procedures and other problems anticipated in connection with these provisions.\(^1\)

The Manual is published in looseleaf form, classified by major subject (chapters) and subpoints (sections). As new chapters were published or existing chapters revised, new pages were distributed for insertion in the Manual. All pages show date of issue. Personnel Manuals were

distributed to selected central administration staff and local College administrators. Their instructions were to insert new pages as they were issued, and destroy those which were replaced.

In AAA Case No. 51-30-0246-67, resolved at the Chancellor's level, the Chancellor agreed not to proceed with his plan to reduce physical education teachers' coaching assignments from 10 contact hours to 8. The "Manual on Personnel Policies" and Procedures published subsequently states in 46.5 "Release Time for Librarians, Counselors, and Physical Education Teachers".

46.5 A faculty member teaching physical education who is assigned coaching duties shall receive released time for such duties on the same basis as that given in the past. 2/1/72.

In AAA #51-30-0272-68 the grievant, Farag, was able to retain his teaching position with the City Colleges of Chicago despite his holding of a second tenured position with another college Board. The Board of District #508 did not publish a regulation prohibiting a faculty member from being tenured at more than one institution, until August 12, 1969. Subsequently, it did incorporate in the Personnel Manual Article 80.0, Outside Employment, prohibiting concurrent employment equivalent to another full-time position published March 30, 1970.

In the award of AAA case no. 51-39-0228-72, the Chancellor was directed by Arbitrator Epstein to issue criteria of graduate semester hours of credit or
equivalencies for advancement to a higher lane within thirty (30) days after February 1, 1973. No revisions were made to Chapter 84, Advancement to a Higher Lane (faculty).

In AAA 51-39-0105-75, John Bowen, former Vice President of the Loop College, contended that he was not assigned an appropriate number of rotation points upon his return to the classroom in 1974. Arbitrator Epstein found that the union's position was correct insofar as the allocation of rotation points for returning administrators was concerned. He agreed that the Trimble Letter\(^2\) was, in effect, an administrative interpretation of the rotation point provisions to which the Union agreed, and it was therefore subsequently binding upon the parties until they mutually agreed to modify or eliminate that interpretation. "No such thing occurred here, and the Board's unilateral formula established in its Manual (Section 20.5 -- June, 1973) cannot contravene a formula agreed to by its parties."

The latest revision to a Chapter in the Personnel Manual was dated October 10, 1973. On September 9, 1976, a memorandum was issued by William L. Stevens, Vice Chancellor for Personnel and Labor Relations stating that the "Personnel and Procedures Manual" was rescinded.

\(^2\) Turner H. Trimble, Vice Chancellor for Administration, March 8, 1971.
Select Arbitration Awards and the "Academic Policies Manual"

"The Academic Policies Manual" was published on August 1, 1973. The goal of the manual was to facilitate communication and coordination of academic activity throughout the City Colleges of Chicago. The main purpose of the manual was to codify policies and procedures concerning academic matters. It also pulls together, updates, explains and, in some cases, sequences statements of uniform policies and practices followed at all colleges and currently contained in various policy memorandum, Board Reports, Union agreement provisions, and selected Illinois Community College Board Guidelines and Policies. All policies include their source and effective date.

The manual contains descriptions of paperwork and procedures to carry out these policies and practices. The Manual is published in looseleaf form and consists of four parts and appendices. As new policies were published or existing ones revised, new pages were distributed for insertion in the manual. All pages show date of issue. Academic manuals were distributed to selected central administrative staff and local college administrators. The instructions are to insert new pages as they were issued and destroy those which are replaced.
Appendix G of the manual is entitled "Renewal and Tenure of Faculty - Minimum Criteria." It includes a five page position paper titled "Recommendations for Contract Renewal and Tenure of Faculty Members" dated October 27, 1970. It was prepared by E. Akin, Vice-President for Academic Affairs, Kennedy-King College and T. Sunko, Vice-president for Academic Affairs, Wright College. The second paragraph of the rationale states:

The Holy-Black-Martin Arbitration (AAA No. 51-30-0088-68) points out the need to satisfy 'due process' requirements for non-tenured teachers. In it, the arbitrator states, 'The contract does not say that the Dean is to rubber stamp the recommendation forwarded to him. Yet, it is not realistic to think he will not to anything else unless he has some means of establishing that he is not acting merely in an arbitrary fashion.

This position paper became Appendix G to Article 4.9 "Renewal and Tenure of Faculty -- Minimum Criteria" with an effective date of May 19, 1971.

In AAA No. 51-39-0228-72, Arbitrator Epstein directed the Chancellor to issue criteria of graduate hours of credit or equivalences for advancement to a higher lane thirty (30) days after February 1, 1973, thereby meeting the provisions of the contract.

With an effective date of March 8, 1973, the Chancellor published his policy in compliance with the decree of the arbitration award. Part 4.82, "Lane Placement -- Criteria for Graduate Credit and for Equivalence for
Advancement in Lane" was inserted in the "Academic Policies Manual" on September 4, 1973.

**Arbitration Awards and Permutations upon Subsequent Contracts**

In AAA Case No. 51-30-0246-67, resolved at the Chancellor's level, the Chancellor agreed not to proceed with his plan to reduce physical education teachers coaching assignments from 10 contact hours per week to 8. In the second agreement, January 1, 1969 to December 31, 1970, Article VIII Conditions of Employment, B. Teaching load, l.b. was modified to:

Faculty members teaching physical education shall have a regular teaching load of 16 class contact hours. A faculty member teaching physical education who is assigned coaching duties shall receive released time for such duties on the same basis as that given in the past.

In AAA No. 51-30-0247-67 (Second Phase), the Union alleged that Board Rule 2-24 "Rules and Regulations was inconsistent with the Agreement. The grievance was sustained. The arbitrator's award stipulated that reference in Rule 2-24(b) to "at a time which is mutually agreeable to the faculty member and the College Head must be disregarded..." The results of the succeeding contract negotiations (January 1, 1969 - December 31, 1970) resulted in modifications to Article IX Leaves. The specific Paragraph in question (IX.A.3. Leaves for personal business) was not altered. In Phase One of the arbitration proceedings, the Union complained that the Board breached
the **Union-Board Agreement** by issuing Board Rules which the
union contended are contrary to the language of the
Agreement in 27 specific instances. Recognizing that the
Board has a statutory obligation to promulgate appropriate
rules and regulations, the Arbitrator ruled that the Board
could not be required to withdraw them *per se*.

However, the Arbitrator pointed out that the Board,
acting upon legal advice of its counsel, had recognized the
Union as the bargaining agent and had negotiated a detailed
Agreement with it; and that, therefore, in any instant where
the "Rules and Regulations" are found to be inconsistent
with the Agreement, the latter must prevail.

The facts regarding AAA No. 51-30-0044-68 are that
under an agreement which provided that eligible members of a
department "shall advise" the dean on the appointment of the
department chairman (a bargaining unit job) but that the
chairman "shall be appointed by the dean, who must state in
writing the reasons for his choice," it was not a violation
for the dean, after receiving the advice of the faculty, to
select a chairman whom they had not approved. The evidence
was convincing that the teacher who was passed over did have
an "anti-administration attitude," but the dean cited other
reasons to believe the teacher was unqualified, and it could
therefore not be said that the decision was based solely on
attitude or union activities. Under the contract; "it is the dean's opinion of qualifications that counts."

In the second contract (January 1, 1969 - December 31, 1970) Article IV Academic Freedom and Democracy in Public College Education, was expanded. One modification to this article was paragraph B. Non-Discrimination.

The Board and the Union shall not discriminate against any faculty member or applicant for employment by the Board or for membership in the Union on the basis of race, creed, color, national origin, sex or marital status or membership or participation in, or association with the lawful activities of any organization.

N.B. See AAA No. 51-39-0144-71

In AAA No. 51-30-0088-68, the arbitrator stated
"...the grievants were entitled to any protection which may be inherent in the 'due process' provision which had been approved by the eligible members of the English Department."

The second agreement was extensively expanded in Article VIII Conditions of Employment:

J. Employment and tenure policy, I. Initial Employment and Renewal of Employment.

The role of the department chairman recommending initial and renewal of contracts to the administration after consulting eligible department members was deleted.

1.a. Recommendations on initial employment, including initial rank and salary assignment, and renewal of employment contracts of non-tenured faculty members shall be made by the eligible members of the department or a committee of their democratically chosen representatives...

1.d. ... If a faculty member is not recommended for renewal of employment contract by either the department or Campus Head, the written decision
informing him of such denial shall state fully and completely the reason or reasons for such action...

In AAA No. 51-30-0272-68, the College Board was unable to withhold approval of a renewal contract (accompanied with tenure) because the grievant held a tenured position with another Board (University). The Arbitrator noted in his award that tenure at another institution had never been set out in the contract or any published regulation, as automatic grounds to deny tenure with the Board.

Article VIII "Conditions of Employment, Section E Outside Employment" in the 1969-70 Agreement was rewritten and states:

A full-time position in the College is accepted with the understanding that the faculty member will not continue, or at a future date accept, a concurrent full-time position with any other employer or employees while he is teaching full-time position or positions equal to a full-time position equal to a full-time position with any other employer or employers while he is teaching full-time in the College. However, present faculty members shall have until September 1, 1969, to comply with this section.

AAA No. 51-39-0144-70, award of July 18, 1972 decreed that "the Board shall henceforth cease and desist from violating the qualification requirements for teaching positions specified in the parties' Agreement."

The issue evolved about the Board's employment of four persons as physical education teachers without meeting the master's degree requirement of the collective agreement.
Incorporated in the third agreement, January 1, 1971 - June 30, 1973, was a sentence added to Appendix D.l.:

... Up to fifteen (15) faculty members in physical education in the City Colleges of Chicago as a whole, may be employed with a baccalaureate degree, or its equivalent, to teach courses numbered under 200 or in coaching activities.

N.B. Project personnel (training specialists) were added to the bargaining group in the fifth contract dated July 1, 1975 to August 21, 1977 in Article I.A.

On July 29, 1971 the Union filed a Demand for Arbitration stating that "The Board acted unilaterally at its May 4, 1971 meeting to approve a new program of insurance without first reaching agreement with the Union. (AAA No. 51-39-0275-71W)" In the Circuit Court of Cook County, No. 71 CH 124 in a Decree presented September 15, 1972, by Judge Nathan M. Cohen, the Board agreed to pay that portion of dependent health insurance that exceeds $15.36... In Appendix C, Group Insurance Provisions of the Fourth Agreement, 1973-75, the negotiated terms were published.

AAA No. 51-39-500-71 was filed by the Union to impede the Board from its efforts to reduce its overhead through the merger of selected departments, and to bring about negotiations under Article XI. This grievance was withdrawn on November 14, 1972. In the ensuing contract: July 1, 1973 - June 30, 1975; Article VIII Conditions of Employment,
B. Teaching Load, 2. Department Released Time was increased from one paragraph to four. The additional paragraphs read:

b. Released time for Department Chairpersons as it existed during the spring semester 1973 shall be implemented to the fullest extent possible during the fall semester 1973, and completely during the spring semester 1974.

c. The faculty members at Malcolm X College who are present by fulfilling the functions and performing the duties of Department Chairpersons, or who are appointed to such positions, shall be granted released time provided in the 1971-73 Agreement.

d. The Chancellor agrees to meet with Department Chairpersons at each College to discuss and consider their proposals concerning department structure and related matters.

Another 1972 Grievance (AAA No. 51-39-0228-72), raised the threshold question concerning whether the Chancellor had violated the terms of the contract by failing to establish criteria for approval by the Chancellor of graduate semester hours of credit or equivalencies which may be applied for advancement to a higher lane. In the first phase it was the award of the Arbitrator that the Chancellor had violated the provisions of Article VI.F.3.B. of the contract between the parties because he had failed to determine criteria for approval of graduate semester hours of credit or equivalencies which may be applied for advancement to higher lanes for certain faculty members. The Chancellor was directed by Arbitrator Albert A. Epstein to issue such criteria within thirty (30) days from receipt of the Award dated February 1, 1973, provided that guidelines have not
been established by the Working Conditions Committee as of that date. Article VI.F.3.b - Advancement to a higher lane of the 1975-77 contract was amended to remedy the situation.

Demands for Arbitration were filed in 1972 complaining of overcrowded classes, in part. AAA 51-39-0040-72W was withdrawn on January 18, 1974 and AAA 51-39-0257-72, withdrawn on August 13, 1973. The fifth contract, July 1, 1975 - August 21, 1977, included an amendment to Article VIII.A.1.e. It stated:

Effective with the fall semester 1976, additional students, up to five (5) may be assigned.

In addition, Article VIII.A.6. was revised in that "all class size limits... shall be determined as of the end of the eighth school day or the fourth class meeting, whichever comes first, following the end of the registration period" was increased from the fifth school day and "or the fourth class meeting,..." added.

A number of grievances were escalated to arbitration status based on the Board's practice instituted in the early 1970's of awarding five (5) month terminal contracts to new hires. The issues were based upon the Union's demand for issuance of regular annual contracts with preference to those on five month contracts. Arbitrators yielded awards to the Board on these issues in the following cases:

In the issue of one year terminal contracts, the union withdrew AAA Case No. 51-39-0322-73; the union won AAA Case No. 51-39-0565-74, and withdrew 51-39-0106-75.

Arbitrator Albert Epstein held in AAA Case No. 51-30-0129-73W that holders of terminal contracts had no right to evaluation. The assumption underlying this finding was that terminal contracts are intended to fill a temporary need.

In AAA Case No. 51-39-0475-73, the Union argued terminal people were at least entitled to bumping rights based on seniority. Arbitrator Epstein held against the Union. Terminal contracts were to meet a temporary situation created by budgetary uncertainty. He held that in as much as they were temporary, one can reasonably assume that the people possessing them will not return, and it would be illogical to assume they carry any form of future expectation. One may conclude from a reading of these cases that terminal contracts cannot be used to replace budgeted positions and cannot be used in situations which are not temporary.

New provisions were added to Article VIII Conditions of Employment, J. Employment and Tenure Policy of the July 1, 1975 - August 21, 1977 Agreement. Paragraphs f. and g. read:

f. 1) Except for the replacement contracts referred to in sub-section "e" above, the Board agrees to institute a freeze on the issuance of five month
and/or self-terminating contracts to faculty members, and to issue only regular annual employment contracts to all newly employed faculty members. However, the Board and the Union may, by mutual agreement, determine that in a particular case, a contract of less than one academic year's duration should be issued to meet the academic needs of the City Colleges. The freeze shall terminate at the expiration of this Agreement.

2) A faculty member shall receive full service credit for all faculty employment on five-month and/or self terminating contracts through the Spring Semester 1975, provided that such employment covers consecutive semesters.

g. The Board shall offer regular annual employment contracts for the 1975-76 academic year to each faculty member employed on a five month and/or self terminating contract during the Spring Semester 1975, with the exception of those faculty members

1) on replacement contracts;

2) who were evaluated by their departments and not recommended by their departments for retention;

3) who cannot be employed because they have been "bumped" by other faculty members with greater seniority under the terms of Article VIII.F.2.a;

4) for whom classes do not materialize and who cannot be employed at their College, or transferred to another College, through the exercise of their seniority rights under the terms of Article VIII.F.2.

However, in no case shall the Board employ fewer than the number of faculty members employed on five-month or self terminating contracts during the Spring Semester 1975. There shall be the following number of such positions at each College as follows:
Kennedy-King--43; Malcolm X--23; Loop--6; Olive-Harvey--8; Southwest--1; Mayfair--2; Wright--3.

Several arbitration cases were instituted by the Union as a reaction to the Board employing project personnel to

In AAA Case No. 51-39-0039-72W, Arbitrator Willard J. Lassers agreed with the Union on March 8, 1973 that most full-time personnel of the Public Service Institute working under current projects are "faculty members". Judge Nathan M. Cohen vacated the arbitration award on November 11, 1973, stating that "full-time faculty of the special programs, if not otherwise regular faculty; are not included with in the bargaining unit."

The Agreement of July 1, 1973 - June 30, 1975, incorporated a new section in Article VIII Conditions of Employment; N. Project personnel. The five provisions in section N were the first joint commitments to this category of employee. This section was expanded in the July 1, 1975 - August 21, 1977, contract. Also, in this contract, Article I Union Recognition and Definitions, brought the "project personnel (training specialist)" into the bargaining unit.

On January 17, 1973 the Union filed a Demand for Arbitration defining the issue as "that the period of Ms. Arlene J. Crewdson's maternity leave be added to and made part of her service credit for seniority purposes and all other purposes." This action resulted in AAA No. 51-39-
It was withdrawn on May 1, 1974 as a result of a settlement. Article IX Leaves B. Leaves of Absence without pay 2. Maternity leave f. of the January 1, 1971 - June 30, 1973, contract read:

Absence on maternity leave shall not be considered a break in service, but the period of such absence shall not be included in determining seniority. This provision was altered in the July 1, 1973 - June 30, 1975, contract. It reads: Absence on maternity leave shall not be considered a break in service insofar as seniority is concerned. As a side light, the July 1, 1975 - August 21, 1977, contract (fifth) incorporated a new section, Article IX.B.3. Paternal Leave, in which part c. states Absence on a paternal leave shall not constitute a break in service insofar as seniority is concerned.

The Union lost an Arbitration Award to the Board contesting a) that the Board rescind the appointment of the Acting Chairman of the Department of Social and Behavior Sciences, Southwest College; b) an order be created stipulating that a new Chairman be chosen in accordance with the procedures of the new contract; c) a "declaratory opinion" indicating what the arbitrator believes the procedures are which the Board must follow in the appointment of Department Chairman. (AAA No. 51-39-0024-73). The November 16, 1973 Award by Pearce Davis said "for reasons stated in the opinion, the grievance cannot be supported and, accordingly is denied." His rationale was that he could find nothing in Article VIII Section L.1. which prohibits the appointment of an Acting Chairman from outside the department and who already was a full-time
administrator. In the succeeding contract, (July 1, 1975 - August 21, 1977) a sentence was added to Section L.2. It read "If two-thirds of the eligible faculty members of the department petition the College President to recall the Department Chairperson, the President shall hold a formal hearing to consider and act upon the petition."

AAA No. 51-39-0216-73 was based upon the "Payment of Salary to Saul Mendelson and Daniel Reber for two courses of Behavior Science taught in the Department of Police Academy Services of Loop College which were not advertised in their departments." It was settled in favor of the grievant's prior to an award by Arbitrator James P. Martin, as a condition of withdrawal, on May 5, 1974. The July 1, 1975 - August 21, 1977 Agreement included a new paragraph in Article VIII Conditions of Employment; F. Seniority and Rotation; 4. Application of departmental seniority and rotation to extra work.

c. Notice of the availability of extra work beyond the normal workload on funded projects or special assignments for research and development shall be communicated in writing to all department chairpersons and to the Union. Faculty members shall be given first consideration for such work before it is offered to outsiders. The qualification for such work shall be determined by the Administration. Assignments to such work shall be made by the Administration Special Assignments shall not include the teaching of classes.

In the case of the Anne Raimey grievance, (AAA No. 51-39-0013-75) the issue was: Did the Board violate the terms
of the Labor Agreement between the parties when it terminated the position and employment of the grievant, Anne Rainey, as of June 28, 1974, and failed to re-appoint her to her position in the project known as the "Language Skill Clinic," commencing in September of 1974? Arbitrator Albert A. Epstein dated the award December 22, 1977, and replied in the negative. The grievance was filed under the provisions of the Agreement dated July 1, 1973 - June 30, 1975. He acknowledged that under the terms of this contract, arbitration was unavailable to Project Personnel.

Subsequently, thirteen amendments were incorporated in Article VIII.N. Project personnel.

Paragraph 10 stipulates: "Full-time project personnel (training specialists) whose projects end shall, upon application, be considered on a seniority basis and have priority over any outside applicant for any City Colleges position which becomes available. Such applicants must possess a master's degree or any other necessary qualifications."

Paragraph 15 designates the specific provisions of eleven articles and two appendices that were negotiated as applicable to project personnel (training specialists). Article X Grievance Procedure was one of the eleven articles providing a new umbrella to this category of employee. Article I Union Recognition and Definitions was altered to read"... The term 'faculty member', or 'teacher,' and the term 'project personnel (training specialists)' as used in this Agreement means a person in the bargaining unit employed by the Board..."

The Kennedy-King Library staffing grievance (AAA No. 51-39--637-75) raised the question whether the Board has made every effort "to meet professional standards regarding
the number of librarians employed..." Article VIII.M. Counselors and Librarians states,

Every effort shall be made by the Board to increase the number of counselors and librarians in each College toward achieving the ratios recommended by professional organizations.

Arbitrator Albert A. Epstein in his award dated December 30, 1976, decreed that "The Board is not in violation of the terms of Article VIII.M. of the collective bargaining agreement between the parties insofar as the staffing of counselors and librarians at the Kennedy-King College is concerned."

Subsequent agreements incorporate the following statement in Article XI Scope of Agreement:

If unforeseen additional educational funds or revenues become available to the Board after passage of the final budget during the period of this Agreement, such additional funds or revenues shall be distributed or allocated only after negotiation with the Union. The Board will notify the Union of the availability of such additional funds or revenues at least one month prior to any Board action to adopt a supplemental budget to allocate these funds. Negotiations on these funds shall begin within one week of notification to the Union.

In such reopened negotiations, such unforeseen additional funds may be allocated for the following items: faculty and project personnel salary increases and fringe benefits, employment of additional counselors and librarians, restoration of sabbatical leaves.

Demands for Arbitration were filed for two grievances during the period of negotiations for the fifth contract. It was effective as of July 1, 1975, but not ratified until
November 4, 1975. These two grievances, AAA Nos. 51-39-0748-75 and 51-39-0028-76 were consolidated and Arbitrator Albert A. Epstein made his award on December 26, 1980. The award, in part, was based on two new provisions negotiated into that Agreement. They are:

Article VIII.F.4 Application of departmental seniority and rotation to extra work

c. Notice of the availability of extra work beyond the normal work load on funded projects or special assignments for research and development shall be communicated in writing to all department chairpersons and to the Union. Faculty members shall be given first consideration for such work before it is offered to outsiders. The qualifications for such work shall be determined by the Administration. Assignments to such work shall be made by the Administration. Special assignments shall not include the teaching of classes.

i. ... Notice of all extra work available at any College or at any other academic location of the Board except work on funded projects or special assignments shall contain no requirement of qualifications other than those specified in Article VIII.F.2.(c).

The Effect of Court Cases Upon Arbitration Awards

During the time span under study, 1967-76, ten court suits were initiated by the Board in response to unfavorable arbitration awards to the Union. The Board was successful in nullifying arbitration awards to the Union in three of the four judgements handed down by the Illinois Supreme Court. The Board won another case before the U.S. Court of Appeals. The Cook County Circuit Court honored the Board's petition in one case, the Union's in a second, dismissed a
third because of a settlement arrival, and returned a fourth case to arbitration. An analysis of these ten court suits follows.

As a result of the Union processing five grievances to the arbitration level in 1970, demanding that five faculty members be promoted in rank, the Board filed a petition for injunction on March 29, 1973 in the Cook County Circuit Court. The Board alleged that the matter of promotions is not subject to arbitration. The Union moved to dismiss the Board's petition for injunction and to deny its motion for preliminary injunction. The court denied the motion to dismiss, and temporarily enjoined the arbitration of the grievances. The Union filed on interlocutory appeal (58 Ill. 2dR. 307(a)(1).) The Appellate Court for the First District affirmed (22 Ill. App. 3d 1053), and the Illinois Supreme Court allowed leave to appeal. (Docket No. 47138).

The principal issue at the appellate court level (22 Ill. App. 3d1053) was whether the Uniform Arbitration Act provided the exclusive remedy for restraining arbitration. The Supreme Court of Illinois, declined to consider this narrow, procedural issue, since they held that the matter of faculty promotions is a nondelegable power of the Board which it cannot be compelled to submit to arbitration.

The Illinois Supreme Court found nothing in the applicable collective bargaining agreements to indicate, as
the union suggested, that promotions are subject to binding arbitration. It was stated that an agreement so providing would, in fact, constitute an impermissible delegation of the Board's authority to grant or deny promotions.

As a result of the decision rendered by the Illinois Supreme Court, in September of 1975 the following arbitration cases were withdrawn:

AAA Nos. 51-39-0266-70
51-39-0267-70
51-39-0297-70
51-39-0332-70
51-39-0378-70
51-39-0432-70
51-39-0217-73

The third agreement between the Board of Trustees of Junior College District No. 508 and the Cook County College Teachers Union was made under the supervision of Judge Nathan Cohen of the Circuit Court of Cook County. To terminate a 22 day teachers' strike, students successfully sought the intervention of the court. This Agreement was effective as of January 1, 1971 and was in effect through June 30, 1973. The umbrella court case number was 71 CH 124.

In addition to bringing to closure the successful negotiation of the labor contract, Judge Cohen was involved with three arbitration cases. In AAA No. 51-39-0275-71 the Union took exception to the Board acting unilaterally at its May 4, 1971 meeting to approve a new program of insurance
without first reaching agreement with the Union. One facet of No. 71 CH 124 was a decree stipulated by Judge Cohen on September 15, 1972, in which the "Board agreed to pay that portion of dependent health insurance which exceeds $15.36, and will do so for the period beginning September 1, 1972 through June 30, 1973 without prejudice."

The second arbitration case to be mitigated under 71 CH 124 was AAA No. 51-39-0039-72W. The arbitrator, Willard J. Lassers, had ruled in favor of the union when he ruled that persons engaged full time in the specially funded government projects are members of the bargaining units for purposes of the agreement between the parties. Judge Nathan M. Cohen vacated the award of the arbitration in this case. He decreed that full time faculty of the special programs, if not otherwise "regular" faculty, are not included within the bargaining unit.

Early in 1972, the president of Malcolm X College recommended that the Board not rehire eight non-tenured teachers after the expiration of their one-year contracts. The Union filed grievances on behalf of the teachers, based upon an alleged failure to comply with relevant provisions of the collective bargaining agreement. Those provisions are contained in Article VIII, Section J, of the collective bargaining agreement and established a procedure whereby faculty advice regarding the Board's decision whether to
review employment contracts of non-tenured teachers in each college department could be transmitted to the governing authorities. Eligible faculty members or a committee of their democratically chosen representatives were to evaluate non-tenured teachers according to published criteria, and make a recommendation as to future employment which was to be forwarded to the college president, who was free to accept or reject it. The collective bargaining agreement, including the evaluation section, is incorporated into the teachers' employment contracts with the Board. It was undisputed that no such evaluation was made.

The grievance was denied and arbitration requested by the union, which urged as a remedy that the arbitrator grant employment contracts to the teachers. The case was docketed by the American Arbitration Association (AAA No. 51-39-0152-72) and set for hearing. Prior to that hearing on July 18, 1972, the Board filed in the circuit court of Cook County a petition for declaratory relief (71 CH 124), requesting the court to declare that the arbitrator could not grant employment contracts to teachers because sole power to do so was vested in the Board by statute and could not lawfully be delegated to another. After evidence and arguments were heard, the court filed a memorandum opinion holding that the

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3 Docket No. 47137, Illinois Supreme Court, Agenda 29, September 1975.
arbitrator, if he found noncompliance with the collective bargaining agreement, could only order the Board to comply with the evaluation procedures; he could not grant employment contracts as a remedy.4

A decree incorporating the provisions of the opinion was entered on September 15, 1972, and the parties were ordered to proceed to arbitration. Subsequently, as part of an order entered October 23, 1972, the court made its memorandum opinion equally applicable to two earlier arbitration cases (AAA 51-39-0144-71 and 51-39-0217-71) between the Board and the Union, vacating those awards insofar as they purported to grant employment contracts or tenure to teachers. The Union appealed from both orders, and the First District Appellate Court affirmed (22 Ill. App. 3d 1060.)5 The Illinois Supreme Court allowed leave to appeal.

In September of 1975, the Illinois Supreme Court, in Docket No. 47137, stated:

...the Board's duties in appointing teachers are non-delegable, and it follows therefrom that the arbitrator is without authority to award an employment contract as a remedy for the violation of a collective bargaining agreement. Since our holding here sets aside previously awarded employment contracts, the tenure awards simultaneously fall, and there is no need to consider

4 Ibid.
5 Ibid.
independently the arbitrator's authority to award tenure.

This foregoing decision terminated any further consideration on the part of the Union to achieve resolution of the question regarding renewal of contracts for untenured faculty members as petitioned for in AAA Nos. 51-39-0144-71; 51-39-0217-71; 51-39-0310-71; 51-39-0152-72; 51-39-0504-73; 51-39-0636-75; 51-39-0026-76.

Also, because of this judicial decision, Arbitrator Albert A. Epstein dismissed AAA Case Nos. 51-39-0332-74 and 51-39-0711-75 on June 28, 1978, stating in his memorandum award that he lacked jurisdiction.

A settlement agreement was made between June Greenleaf Kessler and the Board of Trustees of Junior College District No. 508 in 1973. Kessler had filed a civil action in the Circuit Court of Cook County against the Board, 72 L 17022, seeking, among other things, to vacate an arbitration award (AAA No. 51-39-0034-72) rendered by Arbitrator Paul Grant denying her claim of tenure and reinstatement, and to obtain a judicial declaration that she is a tenured teacher entitled to be reinstated as a full time faculty member. Kessler agreed to cause the said action to be dismissed without prejudice and release the Board from all claims of any kind or nature arising out of the facts asserted in the civil action 72 L 17022. In return, the Board assigned
Kessler part-time employment during the Fall and Spring terms of the academic year 1973-74.

In the Circuit Court of Cook County, Chancery Division, No. 74 CH 1751, the Board, as plaintiff, filed an action for declaratory judgment and injunction requesting that Arbitrator Lawrence F. Doppelt's "Interim Award" in AAA Case No. 51-39-0590-72W be declared null and void. The controversy arose in the context of this grievance filed by the Union objecting to, and seeking review of, the decision of the Board to hire an administrator at Southwest College to supervise the operations of the college library that the Union contends was "bargaining unit work", and the decision of that administrator to relocate certain librarians' desks in the Southwest College Library. On July 12, 1974, the Union's Attorney filed with the Court a memorandum of Law in Support of the Defendants' Motion to Dismiss. In July of 1975, the Court returned this case to arbitration. The status of CCC arbitration cases as of July 16, 1976 states that this case was "Pended by Grievant." This case was deleted from subsequent status reports as of January 21, 1977.

In a case before the United States Court of Appeals for the Seventh Circuit, No. 75-1557, plaintiff Billy Hensley was a full time faculty member at Southwest College, employed by the Board as a non-tenured teacher under three
successive one year contracts for the academic years 1970-1973. Under provisions of the collective bargaining agreement, renewal of his contract for a favorable year would have amounted to a grant of tenure. Although Hensley was recommended for renewal by his department, the Board determined not to renew his teaching contract. The Board notified him in writing of its decision, and the reasons for it in February 1973.

The Union subsequently filed a grievance on Hensley's behalf, challenging the sufficiency of the Board's stated reasons for renewal. The grievance was submitted to arbitration (AAA No. 51-0217-73) at a hearing held on November 6, 1973, before Lawrence F. Doppelt, Arbitrator. At the hearing the Union conceded that the Board did not violate the procedural requirements of the collective bargaining agreement. The Union contended, however, that the procedural rights guaranteed by the contract were intended to protect a non-tenured teacher's substantive right to a Board decision on renewal not based on unreasonable, capricious, arbitrary or discriminatory considerations. It sought review under these standards of the sufficiency of the Board's reasons for not renewing Hensley's contract. In opposition, the Board argued that the collective bargaining agreement created only procedural rights and that it did not empower an arbitrator to review
the Board's reasons for its decision not to renew a contract. The Board further contended that the grievance was not arbitrable because the arbitrator was without power to order the Board to grant the tenure contract which the grievant sought.

The preliminary questions of arbitrability and contract interpretation raised by the Board's contentions were submitted for decision by the arbitrator prior to presentation of evidence on the merits of Hensley's grievance. On January 11, 1974, the arbitrator issued his Interim Award and Opinion, finding the grievance arbitrable and interpreting the collective bargaining agreement to confer on non-tenured teachers the substantive right to a Board determination on renewal not based on arbitrary or discriminatory considerations. The arbitrator declined to decide whether its ultimate remedy could be enforced against the Board until consideration of the merits of the grievance and set the case for a further evidentiary hearing to be held on January 21, 1974.

The Board notified the Union that it would not comply with the arbitrator's award and would not participate in the scheduled hearing. The Union, in response, filed an action (No. 74 CH 150) in the United States District Court seeking to compel the Board to arbitrate Hensley's grievance. Claiming federal jurisdiction under the Civil Rights Act, 42
U.S.C., Article 1983, the Union alleged that the Board violated Hensley's due process rights by refusing to arbitrate the reasonableness of its decision not to renew his contract. Three days after commencement of the federal action, the Board filed its own suit in the Circuit Court of Cook County, Illinois (Case no. 74 L 1053), seeking an order setting aside the arbitrator's Interim Award and a declaratory judgment that the Board's decision not to renew Hensley's contract was not reviewable by an arbitrator.

The United States District Court granted a Board motion to stay the federal proceedings pending resolution of questions of state law in state court. On January 13, 1975, the Cook County Circuit Court entered an order finding that "the reasons of a Public Junior College Board for not rehiring a non-tenured teacher are not reviewable by an arbitrator." No appeal was taken from the decision of the Cook County Circuit Court, and this decision became the law of the instant case. On authority of that decision, the district court concluded that plaintiff Hensley had no legitimate claim of entitlement to arbitration and dismissed the complaint. On March 11, 1976, the U.S. Court of Appeals found and concluded that the district court did not err in dismissing the plaintiffs' (Union's) complaint, and affirmed the order of the district court.
In AAA Case No. 51-39-0215-73, the Union was seeking retroactive placement in Lane Two of the salary schedule for the 1971-72 year; and recognition by the Board that John Wenger and Mary Ford enjoyed tenure since the third anniversary of the respective contracts. In the Spring of 1974, the Cook County College Teacher's Union's House of Representatives authorized a mandamus action suit to secure tenure for John Wenger, Mary Ford, and Patricia Healy as of the time their fourth individual contracts were issued. The disposition of this case was indeterminable. John Wenger, Mary Ford, and Patricia Healy received tenure at Loop College.

In Docket No. 50360 Agenda 10, Illinois Supreme Court, November 1978 an action was brought by the Board of Trustees of Community College District No. 508. Initially, they had sought relief in the circuit court of Cook County by requesting it to declare void and unenforceable an arbitration award (AAA No. 51-39-0158-76) which was rendered pursuant to a collective bargaining agreement with the Cook County College Teachers Union, Local 1600, AFT, AFL/CIO. The effect of the arbitrator's award, the Board alleged, was to give priority in the assignment of extra work to those faculty members who had participated in an illegal strike. The trial court issued a declaratory judgment and injunction in favor of the Board and ruled that the arbitrator's award
was null and void because it required the plaintiff to perform "an act illegal and contrary to public policy." The appellate court, in a majority decision, reversed the lower court. (55 Ill. App. 3d 435) It held that the issue of extra-work assignments was arbitrable and that the arbitrator's determination was, therefore, binding upon the parties to the collective bargaining agreement. The Illinois Supreme Court granted the Board leave to appeal.

On January 26, 1979, the Supreme Court opinion was filed whereby it reversed the appellate court, and affirmed the circuit court.

"...the arbitrator's award drew its essence from the collective bargaining agreement. If it were not for the involvement of an issue of overriding public policy, our inquiry would end here and we would not disturb the arbitrator's award.

An arbitration award may not stand, however, if it results in the contravention of paramount considerations of public policy. ...Nevertheless, just as we will not enforce a private agreement which is repugnant to established norms of public policy, we may not ignore the same public policy concerns when they are undermined through the process of arbitration...

The injustice which results when persons gain advantage from their illegal acts is graphically illustrated in this case... Because the arbitration award dictates so unjust a result, it must be vacated as being repugnant to public policy."

The principal issue before the Illinois Supreme Court in Docket Number 47139 - Agenda 29, September of 1975 was whether an arbitrator's award of back pay to certain faculty members for which no services were required to be performed
was an illegal expenditure because it constituted a gift of public funds in violation of Article VIII, Section 1, of the Illinois Constitution.

On June 11, 1971, the Union filed a grievance (AAA Case No. unknown) on behalf of several teachers, alleging that the Board had violated Article VIII, Section F.4 of the January 1, 1971 - June 30, 1973 agreement, which established a procedure for equalizing the distribution of extra work assignments among the faculty. That work consisted of teaching extra courses during the summer months, for which additional compensation was paid. The agreement required this extra work to be offered to qualified teachers on a rotational basis so that every teacher would receive an equal opportunity to perform extra work. In the summer of 1971, certain teachers were passed over in favor of other teachers who were behind them on the rotational scale, precipitating the grievance ultimately arbitrated before the American Arbitration Association. The arbitrator expressly found that the teachers could be made whole only by receiving retroactive compensation for the income lost to them (approximately $25,000) during the 1971 summer session as a result of the Board's failure to comply with its contractual obligations.

Thereafter, the Board applied to the circuit court for declaratory relief and modification of the arbitrator's
award. The court granted summary judgment in favor of the Board and modified the arbitrator's award. The court granted summary judgment in favor of the Board and modified the arbitrator's award by directing that the teachers be required to perform extra work in the future instead of receiving back pay with no obligation to perform extra duties. The Appellate Court for the First District affirmed (22 Ill. App. 3d 1066), and the Illinois Supreme Court allowed the Union's petition for leave to appeal.

In its opinion, the Court stated that it does not have any problem on the question of non-delegability posed in Nos. 47137 and 47138 with the binding agreement to allocate extra teaching assignments in an equitable fashion, for "the Board retains the authority to select extra courses and to offer rotational employment only to teachers it has determined to be qualified to teach the offered courses."

The Court stated, "It is clear that the collective bargaining agreement grants authority to the arbitrator to determine grievances based on an alleged violation of the rotational employment scheme, and to issue an appropriate award if the allegation is proved. The arbitrator found, and the Board conceded, that the Agreement was violated..."

The question before the Supreme Court was a determination whether the back-pay award was lawful. The Board contended that the instant back-pay award made the
teachers more than whole, thus constituting an illegal use of public funds. The Court was not persuaded by the Board's defense. The opinion stated that

...the Board is mistaken in its assertion that the work can be made up, either during a summer or an academic year, without financial prejudice to the teachers, for, in either situation, the teachers, in order to accept the proffered extra work, would be forced to forego other work which might be available to them. That the work was overtime, rather than regular time, does not change this plain fact.

It was the judgment of the justices that the teachers involved were entitled to an unqualified award of back pay unless the Board could establish that they were actually employed at work incompatible with the work which should have been offered them during the summer of 1971. The judgements of the circuit and appellate courts were reversed, and the cause remanded to the circuit court of Cook County for such further proceedings as may be consistent with this opinion.

The Union received a serious judicial set-back in a case involving the arbitration-first clause. The collective bargaining agreement provides (Article X.B.3.k.):

The Board and the Union agree that neither party will appeal an arbitration award to the courts unless the arbitrator is believed by either party to have acted illegally. The Board and Union also agree not to appeal any arbitration case to the courts until the arbitrator has heard the case and rendered an award, even if either the Board or the Union believes the arbitrator has acted illegally.
On July 28, 1980, the First District Appellate Court (79-1812) decided against Local 1600 when it delivered its opinion "...It seems to us the principle that arbitration must first be had in each and every grievance without the right of initial review by the courts is not only contrary to law but would necessarily result in a waste of time and money."

Arbitration Cases and Complaints to Commissions

An alternate path a grievant may travel is the filing of a complaint to a government commission. Two faculty members elected to pursue their objectives by approaching the Equal Employment Opportunity Commission and the Fair Employment Practices Commission respectively.

The first complaint occurred when Arlene Crewdson alleged that both the Board and the Union, in Charge No. TCH 4-0049 before the Equal Employment Opportunity Commission, through the collective bargaining agreement discriminated against females in terms of disability benefit requirements for maternity leaves. The Commission ruled on February 4, 1977, "... there is no reasonable cause to believe the allegation is true."

Crewdson also alleged that the Board's maternity leave policy was discriminatory with respect to contributions to pension/retirement plans and in that returning females were required to submit to a physical exam, in that females do not return to their original positions after leaves of two
(2) years, and in that their application of such leave is restricted. Again, the commission ruled that "...there is no reasonable cause to believe the allegation is true."

Crewdson was successful in achieving a settlement in her grievance against the Board (AAA Case No. 51-39-0022-73). The issue was "that the period of Ms. Arlene J. Crewdson's maternity leave be added to and made part of her service credit for seniority purposes and all other purposes." She and other females have had their seniority dates adjusted. Also, Article IX.B.2 was modified in Board-Union Agreement of July 1, 1973 (and subsequent contracts) wherein the accumulation of seniority on maternity leave is addressed to.

Crewdson also was able to achieve an improvement in the Life and Health Insurance benefits, page 54 paragraph II.D (of the 1973-75 agreement) dealing with maternity health benefits which are provided by the Board. This negotiated agreement affords full medical coverage for all conditions of all employees of the Board, male and female. This agreement eliminates any dispute which might arise as to the discriminatory effect of a health insurance program which provided maternity care benefits only upon payment of an additional fee.

The second complaint occurred when Harriet Rosenman contended she was denied seniority for the period December,
1964 through January, 1967 after being compelled to resign her position at Wright College due to their existing Board rules. She alleged she was wrongfully denied access to maternity leave which would have yielded her seniority. She filed her charges with the Fair Employment Practices Commission - State of Illinois, on June 6, 1974. (Charge No. 74 CF-739). She was issued a Notice of Dismissal dated October 16, 1974, stating:

You are hereby advised that the above captioned charge of unfair employment practice was ordered dismissed by the Commission at its meeting on October 16, 1974 for Lack of Jurisdiction.

The Union then filed a Demand for Arbitration on November 14, 1974, AAA Case No. 51-39-0518-74, which became AAA Case No. 51-39-0518-75, on November 14, 1975. Arbitrator Albert A. Epstein, in his award, stated that "Harriet Rosenman is not entitled to have her seniority date adjusted to September, 1963."

Grievances filed by the Board Against the Union

The Board filed six grievances against the Union. Three were assigned arbitration case numbers.

Article X Grievance Procedure of the Agreement incorporates Section E. Administrative Grievances.

Paragraph 1 states:

It is agreed that under this Agreement there may be occasions when grievances by the Administrative against the Union may arise and when in their judgement it is desirable for the Administration representatives to utilize the grievance and arbitration procedure hereof...
paragraph 3 states:

If an Administrative grievance is not resolved in Step 2 of the grievance procedure, the Administration may invoke the arbitration procedures of Step 3.

The first grievance the Board filed questioned the propriety of a letter from Union President Norman G. Swenson to members whereby they were directed to disregard new Board Rules passed without Union consultation and negotiation. Arbitrator Arthur A. Malinowski, in AAA Case No. 51-30-0254-67 agreed with the Board that the Labor Agreement had been violated and ordered the Union to rescind its directive.

On February 12, 1968, Chancellor Oscar E. Shabat filed the Board's second grievance against Local 1600 because of an article written by Albert H. Silverman in the December 1969 issue of the "College Union Voice". Dr. Silverman alleged discrimination against Donald G. Thompson, Chairman of the English Department at the Wright Campus, in the matter of recommendations for promotions in rank. This grievance was assigned AAA Case No. 51-30-0042-68. A settlement was referred to in the records, but the remedy sought of a retraction in a subsequent issue of the "College Union Voice" was not achieved.

On May 8, 1968, the Board filed its third grievance which was subsequently assigned the AAA Case No. 51-30-0142-68. Arbitrator John F. Sembower concurred with the Board that "certain guidelines in connection with the hiring of
new faculty members, released by the Union President to
Chapter Chairman, constitute a usurpation of Board and
administrative functions.

In the fourth grievance filed August 2, 1972, and
settled by resolution, the Board contended that some union
members acted in a manner as to attempt to deprive Mary Lou
Gries of her right to transfer from Olive-Harvey College to
Southwest College. A letter from the Union denied it would
be a party to the violation of Mrs. Gries transfer rights
and stated she was to be welcomed into the Natural Science
Department at the Southwest College.

The Board contended that the Union deprived a faculty member
of his right to venoke the payroll dues collection deduction.
The outcome of this grievance was indeterminable.

On June 6, 1975, the Board filed a sixth grievance
against to the Equal Employment Opportunity Commission,
foregoing the arbitration procedure stipulated in the
agreement. The outcome of this grievance was
indeterminable. An arbitration number was not assigned.
The reader is referred to the concluding paragraphs in the
section "The Effect of Court Cases Upon Arbitration Awards"
in this chapter regarding the outcome of a court case based
upon "The Arbitration - First Clause" of the contract.
Summary

This chapter had two major thrusts. The first portion was devoted to a detailed evaluation of the collective characteristics of the data derived from individual synopses of grievances assigned American Arbitration Case numbers during the period 1967 - 1976. The illustrations resulted from the condensation of the case studies and raw data filed in the appendices.

The latter part of this chapter presented a descriptive narrative of the impact these arbitration cases had upon the management of the City Colleges of Chicago. Some of the arbitrator's opinions affected the day by day management of the individual colleges, and the judicial decisions handed down can be categorized as landmarks in higher education administration.

A summary of this longitudinal research, with conclusions and recommendations is presented in the succeeding chapter.
CHAPTER VI
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

A total of one hundred fifty-four (154) grievances were assigned American Association of Arbitration case numbers during the time period 1967 through 1976. This time span represents the first ten year period that the grievance procedure existed between the Board of Trustees, District #508 (Board) and the Cook County College Teachers Union, Local 1600, A.F.T. (Union.) Both the Board and Union were recipients of thirty-four (34) awards. (These totals include two split decisions, each valued as one-half [1/2] an award in the totals. Two grievances were returned to the arbitrator for a second determination, resulting in second confirmations of awards to the Union.) Of the one hundred fifty-four arbitration cases studied, one hundred fifty-one (151) had been filed by the Union. The Board initiated six (6) grievances against the Union, three of which were assigned A.A.A. Case Numbers. (The Board was successful in two (2) of these cases. The files of the third case were incomplete.)
Twelve (12) of the arbitration cases were settled between the Board and Union, in favor of the Union's position, prior to the necessity of an award by the arbitrator. Forty-five (45) arbitration cases were closed by the Union's action of withdrawal. (In some situations, the Union was influenced by court decisions that resulted in declarations that certain grievances were inarbitrable; or parallel grievances were unsuccessful at the arbitration stage.) Records of five (5) of the case histories were incomplete. Fifteen (15) grievances are still considered open cases because they have not been concluded. Also nine (9) cases were consolidated into other awards.

The summary of arbitration awards was reflected by the equation: \[ E_A = f(C + D + M + R + A/A + I) \]. "A" represents the award; "C" is the problematic elements of the contract language; "D" is the defense argument; "M" is the major authorities relied upon by the arbitrator; "R" is the remedies; and "A/A" is the autonomy of the administration; and "I" equals the subsequent impact. These six (6) variables represented thirty-six (36) sub-variables.

Of the thirty-four (34) arbitration awards favorable to the Union's position, there were twenty-seven (27) instances of a violation by the Board-Union Agreement, four (4) cases lacked specific language addressed to the
grievance, and five (5) situations when a dispute occurred over the interpretation of the contract.

The two categories with the largest number of unsuccessful defense arguments by the Board were "Contract Language" (21) and "Non-arbitrable" (20). The two (2) dominant sub-variables in the category of "Major Authorities Relied Upon by the Arbitrators" were "Contract Language" (31) and "Merits of the Instant Case" (15). Remedies stipulated by the arbitrators in the thirty-four awards to the Union were fairly well distributed over the seven (7) sub-variables.

In the twelve (12) cases that were settled between the Board and Union, foregoing complete arbitration proceedings, the Union accepted additional pay in three (3) instances, reappointment in two (2), and agreement by the Board to cease and desist a contested practice, an additional stipulation to return a disputed case to its original situation, and another settlement was resolved by taking affirmative action. Problematic elements of the contract included one instance involving interpretation, another regarding specific language, and four (4) grievances that pertained to direct violation of the contract.

The Board of Trustees received thirty-four (34) awards from the arbitrators. Two (2) of the awards received were for grievances initiated by the Board against the Union.
Eighteen (18) of these grievances involved different interpretations of the contract by both parties; three were based on the absence of specific language in the contract. The Board's most successful defense in these thirty-four (34) awards was contract language (19). Contract language was relied upon twenty-nine (29) times as the major authority relied upon by the arbitrator.

The Board's record in employing arbitrability (non-arbitrability and timeliness) as a defense mechanism was unsuccessful in thirty-six (36) of forty-three (43) attempts. In the sub-category of non-arbitrability of the issues at hand, the Board sustained twice, and overruled twenty-three (23) times; when its position was that the time limits had expired, it was successful in only five of eighteen attempts. Because the arbitrator faced other issues beyond arbitrability, the Board was successful in the final award for thirteen (13) of twenty-five (25) cases where non-arbitrability was an issue. When the Board contended the issue was moot because the time limits were exceeded, it received favorable decisions in ten (10) of eighteen (18) awards.

The classification with the largest number of disputes was "Work Loads, Work Assignments, Class Size" (thirty-six [36] issues.) "Working Conditions," an adjunct classification, had six (6) issues. The second largest
grouping of occurrences was "Discharge, Tenure Problems, Reduction-in-Force (R.I.F.) and Discipline" (thirty-four [34] items.) "Seniority and Rotation Points" with thirteen (13) disputes ranked third in the census count. The other twenty-one (21) classifications had less than ten (10) grievances each.

Of the one hundred fifty-four (154) arbitration case files studied, the Board received thirty-four (34) awards. The outcomes of the arbitration cases in thirty-seven and one-half (37.5) cases resulted in enforcement of the autonomy of the administration. (One case award was divided between the Board and Union.) In forty-three and one-half (43.5) cases, the Union achieved results that delimited the autonomy of the Board. (These figures do not include the outcomes of succeeding court cases, discussed elsewhere, that overturned the arbitrator.) In nine (9) cases, the position of management was strengthened by withdrawal of the cases by the Union. The Board and Union succeeded in receiving one award a piece for grievances filed on their behalf, but the arbitrator's opinion strengthened their adversary's position. And in two arbitration cases, the Board received awards, but the opinion delimited the autonomy of the administration.

Four grievances resulted in arbitration awards affecting the "Rules for the Management and Government of
the Chicago City Colleges". In a 1967 case, Arbitrator John F. Sembower decreed that "if there is any conflict between the "Rules and Regulations" and terms in the Agreement, the terms of the Agreement shall prevail."

Three successful arbitration cases filed by the Union caused revisions or implementation of new provisions in the "Manual on Personnel Policies and Procedures".

The "Manual of Academic Policies" was affected by three awards to the Union as a result of their grievances.

Twenty-five (25) of the grievances filed by the Union resulted in modifications and additions to the Board-Union Agreement. The Union reviewed ten (10) awards, three (3) settlements in their favor, and withdrew five (5). The Board received favorable awards in eight (8) of these selected twenty-five cases. These twenty-five grievances identified problem areas that were addressed in subsequent contract negotiations.

When the Board of Trustees staff believed the arbitrator erred in the Union's behalf, the Board pursued the matter in court. During the period 1967 through 1976, twenty-two of the arbitrated grievances were referred to the court system, and four (4) suits proceeded through the levels of the state court system to reach the Illinois Supreme Court. These four cases were the outcome of ten grievances. The Illinois Supreme Court justices awarded
decisions in three (3) of the four (4) cases to the Board. The Union subsequently withdrew fourteen other arbitration cases.

The net result of the Illinois Supreme Court decisions in these four (4) court cases was that the Board overcame twenty-five (25) arbitration cases, and the Union was sustained in one.

The Board won the only U.S. Court of Appeals case resulting from an arbitration award.

The Cook County Circuit Court was involved in five (5) conflicts between the Board and Union precipitated by arbitration cases. Each party was awarded one decision. A settlement was arrived at favoring the Union in one situation, in return for an agreement to dismiss the court action. In the fourth case, the court returned it to arbitration. The outcome of a mandamus suit filed by the Union was indeterminable.

Of the five (5) grievances initiated by the Board against the Union, American Arbitration Association Case Numbers were assigned to three (3). The Board was successful in obtaining favorable awards in two (2) instances. A third was resolved in the Board's favor. One of the grievances not assigned a case number was resolved in the Board's favor. The outcome of the fifth grievance was unavailable.
As an outgrowth of a grievance (successful settlement), the grievant independently filed five (5) allegations against the Board and Union regarding gender discrimination with the Equal Employment Opportunity Commission. The Commission determined that the charges could not be substantiated. A second arbitration case (unsuccessful) involved with the maternity rights of a bargaining unit member was carried to the State of Illinois Fair Employment Practices Commission. It was dismissed for lack of jurisdiction.

**Conclusions and Recommendations**

During the time span 1967 through 1976, a total of one hundred fifty-four grievances were assigned American Arbitration Association Case Numbers. Both the Board and the Union received 22 percent of the awards (thirty-four [34] apiece). Eight percent (twelve) of the cases were settled between the Board and Union, in favor of the Union's position, prior to the necessity of an award by the arbitrator. Twenty-nine percent (forty-five) of the arbitration cases were withdrawn by the Union. Three percent of the case histories (five) were incomplete. Ten percent of the grievances (fifteen) are still open cases. Six percent of the arbitration cases (nine) were consolidated into other awards. Ninety-eight percent of the
arbitration cases (one hundred fifty-one) were initiated by the Union. Of the 2 percent filed by the Board (total of three), two were successful.

In 28 percent of the cases (forty-three), the Board of Trustees staff employed arbitrability (non-arbitrability and timeliness) as a defense. The Board's success rate was 16 percent (seven cases). (Because the arbitrator faced other issues beyond arbitrability, the Board achieved twenty-three awards.) It appears that the Board staff uses non-arbitrability and timeliness as a mechanism to forestall a remediable solution and to prolong the conflict. If the objective of the Board is to exacerbate the situation, then the low success rate of concurrence by the arbitrators tends to support the employment of this category ("A.") as its prime advantage. The Union should pursue arbitration cases even when the Board contends its grievances not arbitrable or filed too late.

Twenty-three percent of the cases filed (thirty-six) were categorized as "Work Loads, Work Assignments, Class Size" disputes. The second largest body of grievances (22 percent -- thirty-four cases) were classified as "Discharge, Tenure Problems, Reduction-In-Force and Discipline."

"Seniority and Rotation Points" accounted for 8 percent (twenty-one cases). The other twenty-one (21) categories (contains 63 cases) had less than ten grievances (6 percent)
each. Only one arbitration case could be considered directly related to classroom management -- that is, an educational issue ("K." Curriculum). This could be attributed to an agreement that does not incorporate provisions concerned with "environmental issues" such as sufficient supplies, laboratory equipment, space, audio-visual material and equipment, etc. Also absent as a practice was direct classroom supervision of faculty members, which is usual management practice. The preponderance of arbitration cases fall in the labor relations area. Ninety-eight percent (98%) of the arbitration cases were instigated in response to management practices. Many of the grievances should not have progressed to the second level, where the Board was placed in a position of possibly withholding support, and thereby undermining the local campus staff. Employment of good management practices would have precluded their escalation with the accompanying expenditure of high time and costs. A close scrutiny of the case studies yields a "push come to shove" coexistence. The focus prior to arbitration hearings has often been not who got the ball rolling, but who stopped it. On the other hand, many cases were the result of administrative mandates given to campus staffs. In pursuing these directives, local staff become enmeshed with controversies stemming from a practice of "remote testing of
the waters" by central administration leadership. A will of powers follows, with observers and participants anxiously waiting to see who will flinch first. This practice in part is attributed to management negotiating away some of its crucial perogatives in the first and subsequent contracts. The first strike concluded successfully for the faculty due to their coherence, preparation and use of the element of surprise. Some of the grievances resulted from a "hit and run" practice of the management practice selecting targets that were vulnerable, expendible, and who may have been ignored in a non-union shop.

In 24% of the arbitration cases filed (thirty-seven cases), the outcomes resulted in enforcement of the autonomy of the administration. In 28 percent of the total number of arbitration cases filed (forty-three), the Union achieved results that delimited the autonomy of the Board. (These figures do not include the outcomes of succeeding court cases that overruled the arbitration.) Six percent of the cases filed, and subsequently withdrawn by the Union, strengthened the position of management. The risk taken by an aggressive administration is that the losses its suffers may outweigh the advantages of being forceful. Professional personnel may loose their incentive to perform at an optimum level if their perceptions lead them to believe they are being coerced to provide services they had
previously freely presented and enjoyed. With lifetime positions, the effects of a successful administrative gain may be lost in years to come. In those cases wherein the Union was successful in reducing the autonomy of the Board, the effects may not have been as damaging as the awards indicate. The Board staff, in some cases, may have elected to ignore the arbitrators directive. This has been achieved by building up a backlog of cash awards, attempting to reimburse the grievant at less than contractual rates, assigning variable loads in lieu of overtime, attempting to overturn the arbitrator award at the next level (the courts) in spite of contractual obligations. These tactics merit a study of the abeyance of arbitrator's awards.

In an elementary sense, if the Board had avoided arbitrators opinions, the Union could not have achieved results that delimited the autonomy of the administration in 28 percent of the total number of cases filed.

When the Board of Trustees staff believed the arbitrator erred in the Union's behalf, the Board pursued the matter in court. During the period 1967 through 1976, four (4) suits proceeded through the levels of the state court system to reach the Illinois Supreme Court. These four (4) cases were the result of ten (10) grievances. The Illinois Supreme Court justices awarded decisions in three (3) of the four (4) suits to the Board. The Union
subsequently withdrew fourteen other arbitration cases. The net result of the Illinois Supreme Court decisions in the four (4) court cases was that the Board overcame twenty-five (25) arbitration cases (16 percent) and the Union was sustained in one.

The Board won the only U.S. Court of Appeals case resulting from an arbitrator's award.

Three percent (five cases) involved the Cook County Circuit Court. Each party was awarded one decision; a settlement was arrived at favoring the Union in another; a fourth case returned to arbitration proceedings; and the outcome of a mandamus suit was undetermined.

As a result of the negotiated contracts legitimizing the Union's concerns with management merit's perogatives, the score card for the Board at the Agreement's tenth year of existence showed negative results. Under provisions of the Board-Union agreement, both parties pursued a formalized resolution to disputes that formerly could have been selectively squelched. The Board was unable to retain 100% of its former ability to unilaterally apply its policies and decisions, regardless of propriety. The Board has found it necessary to rely on a third party to maintain some of its perogatives, and strengthen others. As itemized above, the Board of Trustees was required to retrieve other management perogatives through court action lost in the third party
process of arbitration. Compared to the period prior to 1967, the Board has not gained anything.

The Board's determination to overcome arbitrator's decisions by pursuing their objectives through the various courts yielded several landmark decisions. The majority of judicial decisions in the state of Illinois regarding education have been precipitated by situations in elementary and secondary school districts. The Board of Trustees of District #508 does have the hallmark of achieving clarifications of issues at the post-secondary level through adjudication that should have the effect of strengthening other school boards who find it necessary to rely on stare decisis.

The rapid expansion of the districts teaching staffs and campuses during its first ten years as a separate entity from the public school system brought in an influx of younger, and lower paid faculty. Their objectives of achieving equity with their "blue-collar" parents concurred with the Union goals. An unprogressive board employing the hard line become vulnerable in the ensuing vitriolic strikes. Concessions were made by management in order to reopen the classrooms. The Board's day-by-day management team has not been drawn from the ranks of trained and experienced labor relations personnel. In general, the upward movement through the bureaucratic ranks of
administrative personnel has found its source in former classroom teachers. This would not necessarily be detrimental to good management practices if efforts were expended to acclimatize professionally those educational leaders who assume responsibility and are delegated authority to affect the efficiency of a large school district. An inbred leadership can exhibit qualities that negate the principle purposes of a public agency. It is herein recommended that provisions be made by the Board to institute in-service training for its staff in the area of labor relations, including its policies and rationales; and released time considerations, including tuition reimbursement for staff to attend seminars and graduate school courses. No formal salary structure exists whereby a commitment is made by the Board of Trustees to acknowledge advanced training of its administrative staff, comparable to the faculty salary lane advancement system. Executive education is limited by the six day weeks line administrators work. An alternative to this recommendation is for the Board of Trustees to seek individuals from business and industry who have demonstrated the ability to evaluate the effect of management strategy upon productivity of staff.

Three percent (four cases) of the arbitration cases resulted in awards affecting the "Rules for the Management and Government of the Chicago City Colleges".
Two percent (three cases) of the cases awarded to the Union caused revisions or implementation of new provisions in the "Manual on Personnel Policies and Procedures". Three other cases (2 percent) awarded to the Union affected the "Manual of Academic Policies".

Sixteen percent (twenty-five cases) of the arbitration cases identified problem areas in the Board-Union Agreement, and were addressed in subsequent contract negotiations. The grievance and arbitration procedure did serve to provide relief for disenchanted faculty by virtue of identifying trouble areas. Mutual resolution was achieved belatedly through revised Board-Union contracts. The positive aspects of required contract negotiations are the amelioration of labor-management problems.

Two percent of the arbitration cases (three) were initiated by the Board. (Two other grievances initiated by management were not assigned American Arbitration Association Case Numbers.) The Board was successful in obtaining favorable awards in two (2) instances. A third was resolved in the Board's favor.

The absence of a compilation of grievance outcomes deprives interested parties from equitable applications of the terms and provisions of a labor agreement. In a multi-campus system repetitive grievances have been initiated at the first step, that expeditiously could have been resolved
if the local campus administration was aware of previous
decisions regarding identical conflicts. Similarly, the
rights of the faculty member could be better determined
through "stare decisis". A continuation of the work accomplished
in Chapter IV to incorporate subsequent years is recommended.
Inasmuch as the time period experienced to obtain the awards for
some cases is several years, a follow-up study of the second
decade is suggested in the future (a large number of cases
are still outstanding for 1977, and successive years.)

A synopsis of this dissertation could be published for
use by Chicago City College officials responsible for
administering and interpreting the Board's current
Collective negotiations agreement with the Cook County
College Teachers Union covering the entire instructional
staff, and for hearing and deciding and arbitrating
grievances arising under that Agreement. It can also serve
as a compendium of the College's intensive arbitration
experience for other persons with more general interest.
Furthermore, such a reference manual would enable the
arbitrator to review prior arbitration decisions covered by
the volume.

This study was devoted to the analysis of awards
yielded by the arbitrators and courts. Further analytical
dissertations could be accomplished subsequently in the
following areas:
1. Verify if there was compliance with the awards.

2. Determine if a model of predictability as to the recipient of future awards can be established.

3. Find the effect of state and federal laws encouraging and/or inhibiting the implementation of arbitration processes in the public sector as compared to the private sector.

4. Determine the techniques and strategies used by the College Board to circumvent the arbitration process.

5. Develop alternatives to using collective bargaining agencies when one party seeks appeal from the courts from an adverse arbitration award.

6. Collate other landmark court cases (i.e., those that affect the latitude of a College Board's autonomy to administer.)

The review of literature yields insight into the limited quality of research regarding arbitration practices and results between the boards of administration of post-secondary institutions and their faculty. For students of administration, this is a fertile area of study and research.

The stature assumed over the years by the Board of Trustees, and the Union may have limited alternative roles. A "fight to the death" attitude on the part of both
parties has shifted what should be a dominant focus of concern with classroom success to predominance of who will step over the most recently drawn lines. There is a distinct absence of leadership at the central administration level concerned with the inhibiting factors to the success of the classroom teacher. Direct supervision of faculty is lacking, uniform and consistent evaluation of all faculty absent. Compliance with evaluation teams such as the North Central Association of Secondary Schools and Colleges, the State of Illinois Division of Adult, Vocational and Technical Education occurs. But the formal reports, in general, are shelved; and the documented recommendations ignored at budget time, only to be visibly resurrected in preparation for the next visitation.

The costs to both parties for numerous arbitration cases and the ensuing court cases have been exorbitant. The Unions treasury has been able to support its legal efforts, but a high percentage of dues collected were expended in its support of arbitration cases and law suits. The adverse affect the cost of litigation played in throttling issues of union concern that did not reach the arbitrator and/or courts was undeterminable. On the other hand, as a tax supported body, the Board was in a stronger financial position to press the button when sensitive issues arose.
The total cost in legal fees, staff efforts, and hours invested to achieve each party's objectives were undeterminable. A review of some of the cases could yield an opinion that positions were taken and support rendered to justify one's existence.

There was an absence of visible attempts by the central administration staff to mollify the hard line practices between both parties. Such a policy may not have been spectacular, newsworthy, or even morale building, but the prime purpose of this educational agency could have been enhanced through devotion of comparable energies expended in yielding additional support to its chartered role - instruction. Excellence in education is not necessarily a by-product of an arbitrator's award or judge's decree.
APPENDIX 1
TABLE 14

ITEM ANALYSIS BY ARBITRATION CASE ACCORDING TO ORIGINATING CAMPUS, CLASSIFICATION, AWARD, RECIPIENT, REMEDIES, DEFENSE ARGUMENTS OF THE CONTRACT LANGUAGE, MAJOR AUTHORITIES RELIED UPON BY THE ARBITRATOR, AND IMPACT UPON THE BOARD OF TRUSTEES

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# American Arbitration Association Case Number

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## CAMPUS

### CLASSIFICATION

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**TABLE 14 - CONTINUED**
**LEGEND**

* Filed by Administration

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**Classification:**

A. Arbitrability, Arbitration Procedure, and Time Limits
B. Extracurricular Assignments
C. Basic Wages and Working Conditions, New Contract Terms and Wage Reopenings
D. Discharge, Discipline, Reduction in Force, and Tenure Problems
E. Discrimination on Basis of Race, Religion, Sex or Age
F. Fringe Benefits and Pay for Time Not Worked
G. Hiring Policies, Rehiring Policies
H. Hours of Work
J. Individual Wage Rates
K. Educational Policies, Curriculum, Programs, and Academic Freedom
L. Leaves of Absence
M. Merit Rating, Promotion and Demotion
N. Grievance Procedure
O. Strikes and Work Stoppages
P. Pay for Working Time and Computation of Salary
Q. Chairmanship Elections
R. Rate of Pay Disputes
S. Physical Fitness and Medical Issues
T. Transfers and Position Posting Procedures
U. Duty to Bargain, Bargaining Units, and Status of Organization
V. Work Loads, Work Assignments, and Class Size
W. Seniority and Rotation Points
X. Lane Change (Advancement)
Y. Payroll Deductions
Z. Not Elsewhere Classified
Award:  R - Resolved in favor of/
        U - Union
        A - Administration
        S - Settled
        W - Withdrawn
        I - Incomplete
        C - Consolidated with another grievance
        O - Open

Went to Court:  A - Court sent to arbitration
                C - Charges filed with E.E.O.C.
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TABLE 15 - CONTINUED

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Pertinent Contract Provisions -- Articles

I.; VIII.A., B.1., F.3.b., 4.; X
VIII
VIII.A.1., 3., 4., 5., 6.
VIII.A.1.a., b., c., d.; X.B.1.a.; XI
VI.A.; VIII.F., J.
VIII.F.4.b., g.
IV.B.; XII
VIII.F.1., X.B.1
IV.B.; IX.B.1., 2.f., F.3; XII
VIII.F.4.c., g.;
VIII.F.4.a., b., d., e., f.;
VIII.F.4.g.;
VIII.F.4.d.2., 3.g.; XII; Appendix E.1.
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Legend: Contract No. Dates

5. July 1, 1975 - August 21, 1977
SELECTED BIBLIOGRAPHY


City Colleges of Chicago Catalog. Chicago: City Colleges of Chicago, 1972.


Forty-Seventh Annual Convention of the American Federation of Teachers.


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The dissertation submitted by Paul E. Rupprecht has been read and approved by the following committee:

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Dr. Max A. Bailey, Associate Professor Department of Administration and Supervision, Loyola

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Education.

Date ___________________________ Director's Signature ______________________