In the Matter of the Arbitration	)	
	)	
between	)	
	)	
AFT GUILD, LOCAL 1931	)	
(Union)	)	OPINION AND AWARD
	)	WORK EXPERIENCE
	)	GRIEVANCE
And	)	
	)	CSMCS CASE NO.
SAN DIEGO COMMUNITY	)	ARB-04-3109
COLLEGE DISTRICT	)	
(Employer)	)	

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES:

For the Union:

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I. INTRODUCTION

San Diego Community College District (District or Employer) has three college campuses: San Diego City College (City College), San Diego Mesa College (Mesa) and San Diego Miramar College (Miramar). American Federation of Teachers Guild, California Federation of Teachers, Local 1931 (AFT Guild or Union) represents the District's college faculty as well as certain counselors.

In the Fall of 2003, management at City College implemented a one hour reduction in paid non-classroom instruction time (per student) for instructors in the work experience program. The Union filed a grievance on behalf of affected work experience instructors alleging the District violated Article VIII, Section B/C 9.0 of the parties' 2002-2005 Collective Bargaining Agreement.

The parties selected the Arbitrator from a list provided by California Mediation and Conciliation Service. A hearing was held on December 12, 2005 at which both parties were accorded a full opportunity to present evidence and argument in support of their respective positions. A transcript of the proceedings was reported by Thomas R. McPhail CSR No. 12544 and the transcript was provided by Morin Reporting, 266 Glendora Avenue, Suite 3, West Covina, California 91790. The parties elected to submit post hearing briefs which were mailed simultaneously on March 13, 2006. The Arbitrator officially closed the record on March 17, 2006 after receiving the parties' briefs.

II. STATEMENT OF THE ISSUES

AFT Guild states the issues as:

> Did the San Diego Community College District violate Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement, with respect to City College's decision to change the compensation structure and hours of compensation paid to its work experience instructors beginning with the fall of 2003 semester? If so what is the appropriate remedy?

The District proposes the issues as follows:

> Did the San Diego Community College District violate Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement when City College changed the educational program of work experience instructors which resulted in a change in compensation? If so, what is the appropriate remedy?

Based upon the evidence and submission of the parties, the Arbitrator frames the issues as:

> Did the District violate Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement when it reduced by one hour per student the paid non-classroom instruction time of work experience instructors?
>
> If so, what is the appropriate remedy?

The parties agreed that the Arbitrator may retain jurisdiction for a period of sixty (60) days if the grievance is sustained in order to address issues, if any, regarding the remedy awarded. Transcript 9.

III. RELEVANT CONTRACT PROVISIONS

ARTICLE VIII – SALARY

* * *

SCHEDULE B

* * *

B/C 9.0 COMPENSATION

> Faculty members employed for the purpose of work experience supervision shall be compensated at a rate not to exceed five (5) hours of non-classroom pay for each completing student, and three (3) hours of non-classroom pay for each student who begins a program but does not complete the course.
>
> Joint Exhibit 2.

IV. STATEMENT OF FACTS

Background information as well as basic facts concerning this dispute are set forth below. Additional facts bearing upon the Arbitrator's decision are contained in the discussion.

This dispute concerns instructors of the District's work experience program, which has existed for many years. The District instituted this program pursuant to California Administrative Code Title V Section 55250 et seq. (Title V) which sets forth provisions for Cooperative Work Experience Education (CWEE). Union Exhibit 6. The purpose of the work experience program is to provide students an opportunity to gain on-the-job experience in occupations they are interested in and considering for employment. Students sign up for the program as they would a class and receive credit for their participation. They work at a job either as a volunteer or paid employee. The students are assigned an instructor who often has experience in the occupation. The instructor provides assistance and guidance to the student and also monitors and grades the student's performance.

The contract language at issue concerns instructor compensation for work experience assignments. This language has existed in the parties' successive collective bargaining agreements since at least 1987. Joint Exhibit 3.

In accordance with Title V, the District adopted and submitted a plan for its work experience program to the State Chancellor for California Community Colleges. Union Exhibit 6; Union Exhibit 3. In the spring of 2001, the District submitted a revised work experience plan to the Chancellor. Union Exhibit 3. That submission included the following documents for the Chancellor's review and approval: CWEE check list; the Board of Trustees docket approving the plan reflecting changes in Title V; the District Instructor/Staff Manual; and the Student Manual.

The 2001 District Instructor/Staff Manual (Instructor Manual) includes among its provisions a section regarding instructor compensation.[1] It provides in part:

> Work Experience Instructors shall be paid:
>
> 1. A total of four (4) hours of time at the instructor's current non-classroom hourly rate for services performed in support of an individual work experience student who completes the course. The Instructor's duties to support a completing student normally include a minimum of two (2) site visitations- one for initial introduction and one for follow-up and evaluation. Extenuating circumstances that prevent two work-site visits must be documented and recommended to the Dean by the Work Experience Coordinator and approved by the appropriate Dean.
>
> 2. A total of three (3) hours will be paid at the instructor's current non-classroom hourly rate for services initiated and performed in support of an individual work experience student. Examples of duties relating to a beginning student are: orientation of students and completing a training agreement, making direct employer contacts and site visits on behalf of a specific enrolled student, and attendance counting.

[1] Prior to 2001, the District had an Instructor's Manual dated 6/95. It, too, detailed compensation for work experience instructors and contained paragraphs similar to 1 and 3 in the 2001 manual. Union Exhibit 1.

> 3. A total of five (5) hours will be paid at the instructor's current non-classroom hourly rate for services performed in support of an individual work experience student who completes the course for whom an exceptional effort or unusual circumstance compels an investment greater than normal involvement. Unusual circumstances may include excessive travel time for visits on behalf of an individual student and/or extensive placement activity in order to initiate employment. Activities falling into this category which qualify for the additional hour of compensation must be approved in advance by the designated Work Experience Coordinator and appropriate dean. The same excessive travel or placement activity, when performed on behalf of more than one enrolled student may only be associated with one student within the group (i.e., travel to a single employer on behalf of more than one student would warrant consideration of the fifth hour once only).
>
> 4. The fullest cooperation by all instructors is necessary to assure proper payment to them of both mileage and hours worked, including turning in time cards according to the San Diego Community College District payroll procedures.
>
> Union Exhibit 2.

At each college campus, the District has a work experience coordinator who provides leadership and supervision of the CWEE program. There also is a district manager/school dean who oversees the CWEE program because the individual duties of the coordinators vary at each campus. Work experience coordinators at the three colleges developed and decided content of the above Instructor Manual. Transcript 48, 56. The manual was not collectively bargained, but its compensation terms were intended to be consistent with the labor agreement and to specify compensation practices in more detail. Transcript 47, 57, 64-65.

Nancy Shelton was the work experience coordinator at Mesa College from 1993-2004. Before 1993, for about twenty years, she was an instructor as well

as a full-time professor of the vocational program she was teaching. During her tenure as coordinator at Mesa, instructors were compensated in accord with the District's Instructor Manual. Transcript 59-60. Similarly, Miramar Coordinator Laurie Vasallo-Dusa reported that Miramar has followed the compensation provisions of the Instructor Manual since she began in 2002.[2] Union Exhibit 4, 5. Both Mesa and Miramar continue to follow the same compensation practice.

Zedenka Geisberg is the senior student services assistant at City College. Geisberg has held that position for about 12 years. Among her duties, Geisberg deals with paperwork for instructors including their time cards and compensation. Geisberg reported that prior to 2003 work experience instructors at City College were paid two hours for each of two site visits, i.e. four hours, per completing student. If there was a second visit but the student did not complete the program, Geisberg was told the instructor was to be paid for one hour for the second visit, but she did not remember that circumstance as ever happening. She explained that instructors did not request salary for the "second visit" if students dropped the program before completing it. Transcript 37, 39.

Lydia Signorelli-Brown was an adjunct instructor at City College from 2000 until August 2004 at which time she became the coordinator of the work experience program at Mesa. Signorelli-Brown confirmed that prior to 2003 City College paid her two hours per site visit per student. She described the duration

[2] The Union submitted Miramar information via affidavit and email communications from Vasallo-Dusa because she was unavailable to testify at hearing. Union Exhibit 4, 5. The District objected to this evidence as hearsay. The Arbitrator admitted the evidence. Hearsay may be admitted and considered in arbitration if the Arbitrator finds it to be genuine. I find this evidence trustworthy. The evidence was not contradicted and there was no reason to doubt its reliability.

of site visits as typically 10-30 minutes. Signorelli-Brown explained that she was paid once a "trip slip" was submitted which included a notation of the amount of time at the work site. Signorelli-Brown understood that she was being paid for not only the time spent at the student's work site but also for other various duties associated with this work, for example, time spent setting up the visit, contacting the student and setting up objectives. Transcript 73-74.

In 2003, the District faced significant budget problems. Larry Brown, Vice President of Student Services at City College, assigned Duane Short, then-Department Head of Student Transition Services, to research and suggest ways to cut 25% of the variable expenses of City College's work experience program. Short reviewed the Collective Bargaining Agreement and spoke to Les Nimo, then coordinator of City College's work experience program. Short also contacted other non-District community colleges who had work experience programs to determine how they handled site visits and hours of instructors. Short concluded there were two feasible options: either reduce the number of enrolled students by 25% or reduce the hours of each site visit from two hours to 90 minutes. Short recommended the latter option because he believed it was better for students and for long-term survival of the program. Brown decided to accept Short's recommendation.

In May of 2003, Short notified work experience instructors that City College had decided to conduct two 90-minute visits at the student workplace rather than two, two-hour visits, thereby reducing one hour of paid non-classroom instruction time. Short sent a letter to each instructor which said:

As you know we are facing a very bleak budget situation next year. As a district, we must cut an additional 13.6 million in expenses to arrive at a balanced budget for the 2003-2004 schoolyear. We are attempting to achieve this reduction without deep cuts to our instruction program and without extensive layoffs. As a result, virtually every department and program is being looked at for ways to reduce operating expenses, including the Cooperative Work Experience program.

In an effort to reduce expenses without drastically changing or eliminating our program, a decision has been made to modify the amount of time each Cooperative Work Experience instructor spends on student workplace visits. Effective Fall 2003, instead of two different two-hour visits to each student's workplace, we will be conducting two different 90-minute visits to each student's workplace. This is a reduction of one hour of paid nonclassroom instruction time per student, representing a savings of approximately 25% in variable operating expenses.

This decision was made only after careful thought, discussion, and investigation into other options. Our administration recognizes the value of the Cooperative Work Experience program and is supportive of maintaining the high quality program we have here at City. We believe the decision to conduct two 90-minute visits meets the requirement to lower our operating expenses while still serving approximately the same number of students and maintaining the quality interactions between City College faculty, students, and local industry. While there will be 30 fewer minutes per visit to spend with your students and their workplace supervisors, we believe ample time will still remain to provide guidance, facilitation, and evaluation of the student's on-the-job learning. Les and I will help you identify strategies to enhance your workplace visits under these time constraints.

We hope that you will continue your assignment with us next semester. However, if you decide you would be unable to successfully teach in the program under these new time requirements I ask that you please inform me as soon as possible, so we can find another instructor to assume your assignment. * * *

Joint Exhibit 4.

Signorelli-Brown contacted Union President Jim Mahler about the one-hour reduction in paid non-classroom time. Mahler believed the one-hour reduction and corresponding reduction in pay violated the parties' labor

agreement. Mahler first tried to resolve the matter informally with City College supervisors. Joint Exhibit 5. The parties, however, disagreed about the interpretation of the labor contract so the Union filed a grievance on behalf of all City College work experience instructors. Joint Exhibit 1. After further unsuccessful attempts to resolve the matter in the grievance process, the dispute was submitted to arbitration. The parties agree this matter is properly before the Arbitrator for decision and there are no issues of arbitrability. Transcript 9.

V. SUMMARY OF POSITIONS

A. The Union

The Union claims the District violated Article VIII, Section B/C 9.0 of the parties' Collective Bargaining Agreement (CBA) when it changed the compensation structure and hours to be compensated of work experience instructors at City College in the Fall of 2003. AFT Guild contends that Article VIII, Section B/C 9.0 makes clear the parties' intent that work experience instructors be paid at a rate of: no more than five (5) and no less than four (4) hours of pay per completing student and three (3) hours of pay per non-completing student.

The Union argues that arbitral contract interpretation rules must be used to ascertain the intent of the parties. For example, the Union asserts that words of the agreement must be given their ordinary and popular meaning. The Union argues the language of Section B/C 9.0 is ordinary and simple. That is, under basic rules of English grammar the comma and conjunction "and" in the sentence separate the phrase "not to exceed five (5) hours of non-classroom pay for each

completing student" from the phrase pertaining to the rate of three (3) hours for non-completing student. Under that language, according to AFT Guild, the instructor may be compensated at a rate of four (4) hours per completing student or five (5) hours per completing student in extraordinary circumstances but must be paid three (3) hours for a non-completing student. The District has no discretion, argues the Union, with respect to non-completing students under the contract language.

AFT Guild argues if the arbitrator finds ambiguity in the contract language, the Union's interpretation is consistent with the long established past practice between the parties and with the District's Work Experience Instructor Manual.

According to the Union, for many years over successive labor agreements the District followed the nearly uniform practice at its three colleges of paying instructors four hours of non-classroom pay for each completing student in the work experience program and three hours for each student that did not complete the course. Instructors received five hours of pay only under unusual circumstances when the student required additional assistance. The only variation in practice among the three District campuses was the rate of payment for non-completing students at City College where (unbeknownst to the Union) it paid instructors for two (2) hours while the other campuses paid three (3) hours. AFT Guild argues this slight variation is not enough to override the "predominant pattern of practice" established across the three colleges.

The Union contends its interpretation of the CBA not only is consistent with established practice but also with the Instructor Manual adopted by the

District's Governing Board to govern the Work Experience Program. The Union emphasizes that work experience coordinators at all three colleges participated in the drafting of the Instructor Manual. The intent was that its provisions create a uniform program throughout the District as well as having a compensation structure consistent with the CBA. AFT Guild argues the fact that the Instructor Manual was not bargained is irrelevant because the compensation structure is consistent with the CBA and was drafted by the District, adopted by Trustees, and used by the District officials. The Instructor Manual, therefore, was binding on the District.

AFT Guild further argues that the District's interpretation of Section B/C 9.0 leads to harsh, absurd and unreasonable results. Pursuant to contract interpretation principles, this result should be avoided if there is an equally plausible, alternative interpretation—as there is here—which leads to just and reasonable results. The District's "clear" language and parallel structure argument, opines the Union, implies that the District has the ultimate discretion to compensate instructors zero hours per student if it chooses to do so. The Union urges that it would be unreasonable to assume that AFT Guild would negotiate a contract provision which would permit the District to have the ultimate discretion not to compensate instructors.

The Union argues that the testimony of the District's expert witness to assist in interpretation of the CBA is irrelevant. AFT Guild contends that it is the Arbitrator's job to determine the parties' intent and the expert cannot do so as he was not a part of negotiation of the CBA. Furthermore, the Union asserts if the

contract was unambiguous as the District argues, the expert's testimony would not be necessary.

In addition to the above arguments, AFT Guild claims the District and/or City College did not have the authority to make a unilateral change in established past practice. The Union contends inexperienced management at City College disregarded the District's Plan, Instructor Manual, and other campus practices. The Union emphasizes manager Short, who made the recommendation, did not contact or notify AFT Guild and/or negotiate changes in the compensation structure in violation of the CBA. Also, the Union argues that City College management incorrectly based their reduction compensation on the duration of the work site visit. According to the Union, the evidence shows the length of such visits was not the controlling factor in the amount of compensation but rather duties performed by the instructor regarding each student.

The Union requests that the Arbitrator uphold the grievance and remedy the District's violation of the CBA by providing (1) that all the District's sites adhere to the AFT Guild's interpretation of Article VIII, Section B/C 9.0 of the CBA for future payment of all work experience instructors and (2) for retroactive payment for all affected City College work experience instructors.

B. <u>The Employer</u>

The District argues it did not violate Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement when it changed the educational program of work instructors at City College. The Employer claims that faced with a severe

budget crisis, it had the flexibility under the language of the Agreement to cut down the time of site visits from two, two-hour visits to 90 minutes for each visit.

At the onset, the District stresses that the only issue before the Arbitrator is whether City College violated the Collective Bargaining Agreement in the manner in which it paid its work experience instructors. The grievance identifies only Article VIII, Section B/C 9.0 as allegedly violated and the Arbitrator's authority is limited to the interpretation of the Agreement consistent with such allegations.

The District contends that where contract language is clear, it should be given its plain meaning. Under such circumstances, it is unnecessary to resort to extrinsic evidence to interpret the Collective Bargaining Agreement. According to the District, the language of Article VIII, Section B/C 9.0 is clear and unambiguous: the "not to exceed" language should not be rendered a surplusage; there is no fixed number of hours of compensation. The District urges that the parties only provided for a cap and flexibility was written into the contract. Applying the grammatical rule of parallel structure, the contract language allows for compensation to instructors not to exceed five hours for a completing student and not to exceed three hours for a non-completing student. The District argues the change to 90-minute site visits does not run counter to this express language.

The Employer emphasizes that its decision to alter the educational program in this instance is no different than its decisions about what courses to

offer, the times of courses and how many students may enroll in a course at each college; such decisions may vary from college to college.

Assuming *arguendo* that past practice is necessary to interpret the contract provision at issue, the District claims AFT Guild has failed to prove that any past practice supports its proffered interpretation. The Employer asserts the parties have always recognized that the "not to exceed" language applied to non-completing students because City College has not paid three (3) hours to instructors for such students; rather, it has paid two (2) hours. In addition, argues the District, the parties always have recognized the "not to exceed" language with respect to completing students because none of the campuses paid five (5) hours.

The Employer further contends the mere fact that the program was set up to utilize two, two-hour site visits does not mean the Collective Bargaining Agreement requires the District to maintain that organization. No such contract language exists, the plan provides for flexibility, and the handbooks merely describe the program then in existence.

The District emphasizes the past practice at City College was that work experience instructors were compensated based upon the length established for the site visits. The instructor was paid after each established site visit and the submission of a time slip from the visit. In this way, argues the District, past practice at City College remains unchanged and does not support the Union's interpretation of the contract language. The Employer also points out that when it reduced site visits to 90 minutes, instructors were informed they were being

paid on the new length of the visit and invited to discuss individual ways to reduce the length of site visits with Coordinator Nimo and Mr. Short at City College.

The District contends that any past practice must be viewed based on the underlying circumstances in which the practice developed and consistent with the discretion allowed by the Collective Bargaining Agreement. Here, District colleges established two, two-hour site visits. City College compensated instructors after each site visit; other colleges paid instructors for three (3) hours after the first visit for non-completing students. Thus, the Employer argues, there was no consistent past practice.

The District claims the Arbitrator should deny the grievance because of the discretion provided by the language of the Agreement. The Employer opines that the decision to alter the program at City College was not arbitrary and instructors were forewarned about the change in the amount of time allotted for the site visits. They could have declined to participate in the program but none passed up the opportunity to teach as a result of the new structure.

VI. DISCUSSION

In the Fall of 2003 the District reduced by one hour the paid non-classroom time of work experience instructors at City College. The Arbitrator concludes the District violated Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement when it did so.[3] The following is my reasoning.

[3] I agree with the District that the only issue before me is whether the District violated Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement.

The basic goal of contract interpretation is to decide and give effect to the intent of the parties as expressed by the written contract. In issues of contract interpretation, arbitrators are controlled in the first instance by the contract language. Bargaining history, past practice, and other extrinsic evidence may be important in ascertaining the meaning of the contract where the language is ambiguous or unclear. Article VIII, Section B/C 9.0 contains ambiguity and therefore extrinsic evidence of the parties' intent is appropriate to consider.

Article VIII, Section B/C 9.0 provides:

> Faculty members employed for the purpose of work experience supervision shall be compensated at a rate not to exceed five (5) hours of non-classroom pay for each completing student, and three (3) hours of non-classroom pay for each student who begins a program but does not complete the course.
>
> Joint Exhibit 2.

The ambiguity in the above paragraph primarily concerns the phrase "not to exceed." As demonstrated by the parties' respective positions, there are at least two plausible interpretations of Article VIII, Section B/C 9.0.

The District claims the parties intended to use parallel structure in the above sentence so that "not to exceed" is read into the second half of the sentence before the reference to three (3) hours. The District contends the express contract language, applying the use of parallel structure, gives it the discretion and flexibility to reduce by one hour the paid non-classroom time to instructors for both completing and non-completing students.

In contrast, the Union argues the express contract language together with the clarifying past practice requires the payment of four hours for completing students, three hours for non-completing students and five hours only under

unusual circumstances when a student requires additional supervision. The Union argues the parties' did not intend to use parallel structure in the formation of the sentence at issue; rather, three hours is a minimum. Otherwise, under the District's interpretation, it has the authority to reduce compensation of work experience instructors to zero—an interpretation which the Union argues is harsh and unreasonable.

The Arbitrator finds the more convincing evidence supports the Union's interpretation of the Agreement. My conclusion is based upon the plain language of Section B/C 9.0, past practice, and principles of contract interpretation.

First, the express language of Section B/C 9.0 does not support the District's position which requires the addition of "not to exceed" after the comma and before three (3) hours in the second half of the sentence. On its face, there is no flexibility in the amount to be paid instructors in the situation of a non-completing student. That is, the District is to pay instructors three (3) non-classroom hours for each student who begins the program but does not complete it.

The language of Section B/C 9.0 shows that the parties knew how to specify flexibility in the amount of compensation. They did so by placing "not to exceed" before five (5) hours for completing students. There is a comma and the conjunction of "and" separating this first part from the second part concerning non-completing students. The omission of "not to exceed" in this context literally indicates the parties did not intend to treat these situations the same.

Accordingly, the plain language of Article VIII, Section B/C 9.0 does not suggest the broad discretion urged by the Employer.

The District's argues that the Arbitrator should read into the second half of the sentence the words "not to exceed." The Employer urges that this reading should be assumed and is justified by the English grammar principle of parallel structure. The District provided expert testimony about parallelism from Charles Chamberlain, lecturer at the University of California San Diego. Chamberlain teaches English grammar among other subjects.

Chamberlain offered that parallelism is signaled by the use of "and" in Article VIII, Section B/C. He advised that whatever is on one side of "and" is presumed to appear on the other side. On cross-examination, Chamberlain admitted that he was not present when the language at issue was negotiated nor was he aware of the parties' intent when it was adopted.

Parallel structure is not a principle typically used by arbitrators as an aid in contract interpretation, particularly as an axiom for adding words to existing language of a labor agreement. Rather, more commonly, it is a grammar rule used in sentence formation. Here, the existing words used by the Employer and the Union do not suggest the parties intended the same idea between the first and second half of Section B/C 9.0. As explained above, the express omission of that phrase after the comma and conjunction indicates independence between the two parts of the sentence.

There is no bargaining history which supports the District's position that the phrase should be presumed after the conjunction. Indeed, Union President

Mahler testified the notion of parallel structure had never been "uttered" in the twenty years he has been at the bargaining table with the District. Transcript 137.

The parties' practice also disfavors the District's interpretation and instead supports the interpretation advanced by AFT Guild.

Custom or past practice is often used by arbitrators to interpret ambiguous contract language. The rationale is that the parties' intent is likely manifested in their actions. In order for past practice to be binding certain evidentiary elements must be met. The evidence must demonstrate that a practice is clear, consistent, and accepted by the parties. Elkouri & Elkouri, *How Arbitration Works*, 608, 623 (6th Ed. 2003).

As explained below, I find the evidence establishes a binding past practice concerning the compensation for work experience instructors. Because practice at the District's colleges has been directly influenced by the terms of the Instructor's Manual I discuss it first.

The District created the Instructor Manual as a part of the District plan submitted for review and approval by the State Chancellor. The District's CWEE Plan and Instructor Manual, like the Collective Bargaining Agreement, cover all three District colleges.

Among its terms, the Instructor Manual addresses compensation for work experience instructors. In short, the manual provides the instructors are to be paid four hours for each completing student, three hours for each non-completing student and five hours in unusual circumstances when additional work is required

for a student. Union Exhibits 1-3. The manual was developed and revised by work experience coordinators at the District's three colleges. Transcript 48, 56. Its terms were intended to be consistent with the labor agreement and to specify compensation practices in more detail. Transcript 47, 57.

At Mesa, former Coordinator Shelton testified that the manual's compensation provisions were followed during her tenure (about 11 years). Signorelli-Brown, who replaced Shelton as coordinator at Mesa, reported this practice has continued. Similarly, Coordinator Laurie Vasallo-Dusa confirmed that practice at Miramar since she began in 2002.

Until this dispute, for at least 12 years, City College also paid instructors fours hours for each completing student. More specifically, City College paid instructors two hours after they turned in "trip slips" for each of two site visits. For non-completing students, Zedenka Geisburg was told the instructor was to be paid for one hour for the second visit, but she did not remember that circumstance as ever happening. She explained that instructors did not request salary for the "second visit" if students dropped the program before completing it. Transcript 37, 39.

The Arbitrator concludes that these facts, taken together, show a clear, uniform and accepted practice that is binding upon the parties. The Collective Bargaining Agreement expressly covers all three District colleges as does the District's CWEE Plan and Instructor Manual. The language of Article VIII, Section B/C 9.0 and the Instructors Manual establish basic terms for compensation and show that instructor compensation was intended to be uniform

District-wide. The CWEE Plan, which includes the Instructors Manual, was approved by the District Trustees and submitted to the State Chancellor demonstrating the District's acceptance of it. These documents in tandem with conduct spanning years at each college campus establish a past practice that is enforceable under Article VIII, Section B/C 9.0.

The District argues that the 2003 change it made at City College was a change to the educational program over which it maintained discretion and flexibility. The Employer also contends its staffing, operations and compensation practices for the work experience program at City varied from that of other District colleges.

Regardless of how this change is characterized, there is no doubt it directly concerns and affects calculation of paid work time and compensation for work experience instructors. Although the District may retain discretion and flexibility in other areas, the language of the parties' Agreement together with District CWEE documents establish that compensation to be paid to work experience instructors was intended to be uniform across college campuses.

The Employer argues that compensation differences existed at City College, particularly with respect to non-completing students. The District urges that at City College instructors were clearly paid based upon the length established for site visits and if a second one was not done, the instructor was not paid for it. According to the Employer, such differences show there was no definitive District-wide practice.

In terms of the connection between length of the site visit and compensation, the record indicates that instructor compensation at City College was not based strictly on actual length of time at the work site. By all accounts, instructors did not always spend two hours at the work site during such visits. According to Signorelli-Brown, time spent at the site generally was between 10-30 minutes. Work experience instructors, however, performed other associated duties included with this compensation, such as setting up the visit, establishing goals for the student, preparing paperwork and traveling to and from the work site. Transcript 73-74. Short confirmed that site visits were "sometimes" less than two hours and that time was used for travel as well as administrative tasks. Transcript 178.

The evidence also leaves no doubt that for many years City College, like the other two District colleges, paid work experience instructors four hours for each student who completed the program. Unlike Mesa and Miramar, City College's conduct is less clear with respect to non-completing students. Geisburg's testimony indicates that instructors simply did not ask for pay for a second sight visit for non-completing students and therefore were paid for only one visit (i.e. two hours). This limited evidence, however, is insufficient to overcome the greater weight of evidence that reveals clarity and uniformity of a District-wide practice with respect to instructor compensation. See, Elkouri & Elkouri at 626.

One of the common principles used by arbitrators to interpret labor agreements is the rule that when one plausible interpretation of ambiguous

language would lead to harsh, absurd or nonsensical results and another does not; the latter interpretation will be used. Elkouri & Elkouri at 470-471. I agree with the Union that this interpretative aid further buttresses the AFT Guild's interpretation of Section B/C 9.0.

The District's claim that the language "not to exceed" should be presumed to apply to both completing and non-completing students leads to the harsh and nonsensical result that the parties meant the District would have the discretion to reduce instructors' compensation conceivably to zero. Short conceded this was a possibility, but not a practical one, because the District would have no "takers" if it did so. Transcript 156.

In contrast, the interpretation advanced by the Union provides for a definitive range of compensation—five hours maximum for completing students and three hours minimum for non-completing students. Five hours, the maximum authorized by Section B/C 9.0, has been reserved for unusual or extraordinary circumstances as clarified by the Instructor Manual. This latter interpretation is more logical and reasonable. Otherwise, Section B/C 9.0 would have little meaning as a bargain between the parties.

For all the above reasons, the Arbitrator concludes the Union has established that the District violated Article VIII, Section B/C 9.0 of the Collective Bargaining Agreement when it reduced by one hour per student the paid non-classroom instruction time of work experience instructors at City College. In arriving at this conclusion, I have considered all of the evidence, authority and arguments of the parties even if not specifically discussed in this decision.

As a remedy, AFT Guild requests that the District be ordered to adhere to Article VIII, Section B/C 9.0 at each college campus in the future and to pay retroactive compensation to all affected City College work experience instructors.

This dispute arose under the parties' 2002-2005 Agreement. Under the circumstances, I find that an appropriate remedy is traditional declaratory and make whole relief. I will issue an award that sustains the grievance, declares the District violated Article VIII, Section B/C 9.0 of the 2002-2005 Agreement and orders retroactive pay to affected City College work experience instructors consistent with this decision.

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
AFT GUILD, LOCAL 1931	)	
(Union)	)	AWARD
	)	WORK EXPERIENCE
	)	GRIEVANCE
And	)	
	)	CSMCS CASE NO.
SAN DIEGO COMMUNITY	)	ARB-04-3109
COLLEGE	)	
(Employer)	)	

Having carefully considered all evidence, authority, and argument submitted by the parties concerning this matter, the Arbitrator concludes that:

1. The grievance is sustained. The District violated Article VIII, Section B/C 9.0 of the 2002-2005 Collective Bargaining Agreement when it reduced by one hour per student the paid non-classroom instruction time of work experience Instructors.

2. The District shall make whole affected work experience instructors at City College by paying them retroactive pay from the Fall of 2003 consistent with this decision.

3. Pursuant to Article IV, Section 4.2, Step 3 of the Agreement, the fees and expenses of the arbitrator shall be shared equally by the District and AFT Guild.

Respectfully submitted,

Kathryn T. Whalen
Arbitrator

Date: April 12, 2006