

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

HUMBER COLLEGE

(THE COLLEGE)

A N D :

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(THE UNION)

AND IN THE MATTER OF THE GRIEVANCE OF SHAH WASI AHMAD
#02A014

BOARD OF ARBITRATION:

H.D. BROWN, CHAIR
JACQUELINE CAMPBELL, COLLEGE NOMINEE
SHERRIL MURRAY, UNION NOMINEE

APPEARANCES FOR THE COLLEGE:

W.J. HAYTER, COUNSEL

APPEARANCES FOR THE UNION:

GEORGE RICHARDS, GRIEVANCE OFFICER
ROBERT MILLS, CHIEF STEWARD

FURTHER HEARINGS IN THIS MATTER WERE HELD AT TORONTO ON
APRIL 25, MAY 8, 9, AND OCTOBER 28, 2003.

AWARD

The grievance which was filed in accordance with the terms of the collective agreement between the parties concerns the denial of the College of a merit increase for the Grievor relating to his performance as a Professor in the Academic Year 2000-2001 as well as a claim that he had been unjustly disciplined by a Letter of Warning dated August 27, 2001. The Grievor requests reinstatement of his salary step increase effective September 2001 and removal of the Letter of Warning from his personal file.

It was agreed by the parties that the Board has jurisdiction in this matter. The Board has reference to two Interim Awards issued on May 16, 2002 and November 8, 2002. Following the completion of the evidence and submissions for the parties in this matter, the Board met in executive session on November 11, 2003 to consider the issues of the grievance and the preparation of its award which is set out herein.

The College denied the annual increment to the Grievor on the basis of his poor performance in the preceding academic year which it claimed was at least as poor as in the prior academic year in which the increment had also been denied which was not grieved. The College withheld the step increment in accordance with its application of Article 14.03 A 2 (a) as follows:

“Annual increments to the control point are based on experience, at the rate of one step for each completed year on-the-job experience. Above the control point, but not beyond

the maximum, one step will be granted where performance in the past year was satisfactory. For the purposes of this paragraph the following shall be considered as on-the-job experience: leave for union activities, paid leave of absence, secondment.”

The Grievor was also given a Written Warning dated August 27, 2001 by letter of the Dean, Bob Moulton, which in part sets out his concerns leading to the disciplinary Written Warning which was placed on the Grievor’s employment file as follows:

“ A review of your record indicates that there have been several consultational meetings between myself and yourself with respects to your work performance. Most recently, in May 2001, we met to discuss your conduct with students and challenges you made to them regarding their evaluations. In February 2001, we addressed the results of a Fall 2000 classroom visit and Student Feedback Questionnaires and made recommendations on how to improve your performance in the classroom. Also, on August 29, 2000 we met to discuss the lateness of your course outlines, which necessitated several calls to your home, we also discussed, at that time, the fact that you would not be receiving a step increase due to your overall poor performance as detailed in the responses on Student Feedback Questionnaires from Winter 2000.

One purpose of this letter is to bring to your attention the results received from the Winter 2001 Student Feedback Questionnaires. The details are as follows: ...

As a result, I must advise you that, given the results above, your performance over the past year is unsatisfactory. Pursuant to Article 14.03 A 2(a) you will not be receiving your annual increment in September 2001, and you will therefore continue remain at Step 19...”

Reference was also made by Counsel for the College to the Class Definition contained in the collective agreement for a Professor which states in part:

“Under the direction of the senior academic officer of the College or designate, a Professor is responsible for providing academic leadership and for developing an effective learning environment for students. This includes:

- a) The design/revision/updating of courses...
- b) The teaching of assigned courses, including...
- c) The provision of academic leadership, including:...”

The College also relied on the Student Feedback Questionnaires (SFQ) which the Board earlier ruled are applicable in the period between September 1, 2000 and August 31 or September 1, 2001 and stated:

It is the circumstances of that period of time which are relevant to the Board’s decision on this issue.”

Robert Moulton testified that he discussed the Grievor’s performance with him in the fall of 2000 as to a need to improve his performance. The Grievor was directed to work with the Program Department for professional development for that Academic year. The preparation of

course outlines are the responsibility of a faculty member and are required in the Spring prior to the following academic year commencing that fall and are normally provided in June prior to the faculty member leaving for summer vacation. Faculty members are also required to attend the orientation week prior to the commencement of the Fall term. He said that neither by June 2000, the Grievor had not provided his course outlines nor had he done so by the start-up week prior to the Fall term and had not attended the cluster activities in the orientation week. He met with the Grievor on August 29th when he told the Grievor that his absence from the orientation week was not acceptable and that his course outlines had not been turned in on time which could lead to disciplinary action. He also informed the Grievor that because of his overall performance and especially of the student complaints in the SFQs, that he would not be receiving his performance increment for the coming year.

Mr. Moulton subsequently received a memo from the Associate Dean, Stephen Bodsworth dated November 8, 2000 in which among other items, reference was made to a student complaint as to the performance of the Grievor which they discussed. This was to be followed by a class survey as a result of an ongoing problem that they had been addressing with the Grievor. He instructed Mr. Bosworth to conduct a class audit which would involve his observation of the Grievor's classroom which he did on November 29th. It was reported after that visit that the classroom management was confused and said he was depressed when he left the class.

SFQs are issued to the students typically in late October or early November with their responses compiled by computer following which Mr. Moulton obtains a Chair Summary applicable to each faculty member. The student comments are referred to the faculty member and he sees only this summary which are usually available about a month after their compilation but these were not available until the next semester as a result of a delay in the computer program. Mr. Moulton reviewed the SFQ summaries which he reviewed for the Fall and Winter terms of the Grievor pointing out the warning signals of the percentage of disagreement by the students with the Professor. He detected an inability to get material across to the students, a lack of feedback with the students and poor class management where the students came in late and were not paying attention. He said that he conducts an open forum each semester where the students can air their concerns and which he attended in February 2001. At this meeting, there were issues raised as to the Grievor's performance in the classroom and several complaints about lack of understanding and communication with the professor.

The Winter term SFQs were issued in February, the outcome of which were generally not too positive. He agreed that there had been a change in the program in the spring of 2000 when there was low enrollment for the third year in the course which was then cancelled except for those students who had finished their second year and were returning for the following year but those in their first year of the course would not have a third year available. He did not feel that this change had an effect on the SFQs in the fall of 2000. He said he did not see any improvement in the SFQs in the winter term 2001 from what he had seen in the Fall term as to the Grievor's performance.

Mr. Moulton referred to a discussion with the Grievor on April 20th when he reported that a number of students:

“were concerned about challenges you had made to them re their responses on the students’ evaluation form for one of your courses. Apparently, they were told that they had erred because of the impact the responses might have on the security of your position at Humber College. They were somewhat intimidated by your reaction and now fear they will be punished by having their final mark lowered...”

Mr. Moulton said he was concerned based on the report from Mr. Bodsworth in this matter that a faculty member would intimidate students based on their response in their SFQ. The Grievor’s response that he had been encouraged by Ruth McLean while taking professional development to “talk with students following their evaluation as part of a continuous improvement strategy”, was of a concern to him as it would reinforce the results of the SFQs that the communication was not clear in the class but was confrontational. The report from Mr. Bodsworth of his meeting with the Grievor on April 20th continued as follows:

“It was understood that student evaluations are meant to be formative and not punitive. That faculty are encouraged to gain further feedback from students but at no time are students to feel intimidated that there will be negative repercussions if their responses are not positive or, at best, ambivalent. You are cautioned that the College takes such matters very seriously and

that there were obvious consequences to such behaviour towards students.

You made a commitment to focus your efforts toward improving the delivery of courses assigned to you and that you welcomed any feedback and support you were given...”

Mr. Moulton issued the written warning based on the Grievor’s failure to meet the Class Definition of a Professor, to provide academic leadership and develop an effective learning environment as set out in the collective agreement. He said that he uses the same measurement of the performance of each faculty member consistent with that definition. He does not compare the performance of faculty members but considers only whether a faculty member meets that Class Definition.

Mr. Moulton said that a class audit of a professor is one of the factors used as an indicator to judge a professor’s performance. It is College policy that notice of a class audit is to be given to a professor of the day of the visit to which a professor could respond. He was not told that the Grievor did not receive such notice or that it was not a good class to visit on the day chosen by Mr. Bodsworth. He was of the opinion that one class audit is indicative of an overall standard. He said that about 100 teachers report to him and have as their goal an effective learning environment for the students but in his judgment from the results from his classes, the Grievor is a poor teacher. He however, does not doubt that the Grievor has a reasonably good pass and fail rate in his classes but that factor does not in his opinion, connect to reaching the goals of the College. He had not examined the Grievor’s tests to see if they

were appropriate nor did he look at any of the Grievor's class assignments as to clarity. He did not question that the Grievor had posted his hours when he was available to the students and had not questioned students who had complained about the Grievor's unavailability. He accepted that the Grievor met his five hour obligation but should have made more time available for his students. Reference was made to Article 11.01 F where it is set out that an allowance within the five-hour total weekly workload shall include "three hours for routine out of class assistance to individual students" but said he accepted the overall statistics from the SFQs that the Grievor was not sufficiently available to the students.

Stephen Bodsworth is the Associate Dean in the School of Applied Technology and is responsible for the teaching quality in the School including student concerns and faculty evaluations. He said that the SFQs have been used since 1986 as a tool in those evaluations of faculty. He testified that he met with the students of the Grievor on October 26th in his office at their insistence following which he wrote a memo to the Dean reflecting their concerns at that time which included their major problems with the Grievor's teaching. He said he did not see the connection between those concerns and the cancellation of the third year program. He testified that he made a class visit on November 29th at the Dean's request and that he had tried to contact the Grievor the day before the visit but saw him outside of the classroom on the day of the visit and said the Grievor did not express any concerns about his visit to the computer lab. He said he was there for an hour of observation of the students who were involved in a project. The Grievor gave them instructions and clarification of the project and he and the Grievor observed what they were doing. He also noticed six students who wandered in late to the class

which caused a disturbance without apology as well there were students not paying attention to the Grievor while he was giving clarifications about the assignment. He said that some students did not know what the class was about or what was expected of them and had congregated around two or three students who knew the questions. He was in the class for about fifty minutes for his observations.

The SFQs were given to the students on November 29th which was in the 14th week of the 16-week semester. His report of the class visit was not given to the Grievor until February after he had an assessment of the SFQs which were not received until well into January. He was also aware that the Grievor was working with Ruth McLean on professional development during this term. The individual student's comments written at the bottom of the SFQ are given only to the professor. He prepared a memo concerning the class visit and the result of the SFQs on February 28th but said that he had tried to contact the Grievor in January to review the class visit but they had not met at that time. He said there was some correlation between the SFQs and what he had observed at his class visit in that concerns were raised by the students as to what was expected and what they were learning.

Following preparation of his memo to the Grievor on February 28, 2001 which was copied to the Dean, concerning his class visit in November and the SFQs he reviewed it with the Grievor who said that he would continue to work on professional development with Ruth McLean. Mr. Bodsworth does not receive any feedback from that program. He then referred to the meeting with the Grievor on April 20th and the subsequent memo to the Dean dated May

8th when they discussed the students' concerns about alleged challenges to their responses to their evaluations on the student component of the SFQs which are given to the faculty member. He said the Grievor had given them the impression that these responses put the security of his teaching position in jeopardy and feared that they would be punished with lower marks. The Grievor told him that he had been encouraged by Ms. McLean to follow up with the students after their evaluations as part of his improvements. They discussed the intent of the evaluation which was for information and not punitive and that while faculty are encouraged to obtain feedback from the students they should not feel intimidated and he cautioned the Grievor that the College takes these matters seriously.

The summary of the SFQs from the Winter semester in the Engineering Program involved only 8 of 23 students which were printed which he said was a flag that something else was going on in the class having regard to the results of the SFQs which were not satisfactory. In his class visit, he said that students were not paying attention and some did not understand what they were expected to do and there was not an effective learning process in the class from what he observed. He believed that the students were disrupted by noise while they went on with their assignments and wandered around the classroom conversing with other students which should have been stopped. Some students were late for class and he expected them to apologize to the Professor rather than joining the class but had not done so. He agreed there were three rooms required for this project and two plotters were located in another room used by the students which caused some to be late arriving in the Grievor's classroom.

On April 20th, he met with the Grievor concerning students' reaction to what they thought was his intimidation and referred to his memo to the Dean dated May 8th. He said the students came to his office and told him they felt threatened and said his memo reflects his notes of that meeting. He said there was nothing improper for the Grievor to have such a discussion with the students but should not intimidate them and there was no need to be afraid of the results of the SFQs which are not used for punitive purposes.

Mr. Bodsworth did not know if the Grievor completed his course outlines in June before he went on vacation but they were not received until August 25th. He said there had been some problems which had delayed his course outlines.

The Grievor testified that he is a professional engineer holding a M. Eng. from Western University in 1984 and has been a Professor at the College since 1986 prior to which he worked as a tool and die designer and engineer following employment in India. He testified that every week he puts his hours of availability for discussion with the students on the blackboard and that is made known to them at the beginning of the term and said it is well known that he is available in his office to meet with students. After he received the SFQs in April 2001, he wanted to find out about the discrepancies when only 8 of 23 students responded but did not discuss the impact of their responses on his job security. He had contacted Ruth McLean to learn how to improve his SFQ results starting in the spring of 2000 and had consulted her about techniques. The Grievor received the memo dated February 28th on March 8th from Mr. Bodsworth who talked to him about his class visit and the SFQs. He said he learned about the class visit just before he was to start the class and that had he known of the visit in advance, he

would have said it was not suitable for a visit because of the printing and plotting required of the students who were working on the project which was scheduled at the end of the semester. He said that in this class, he used a chalkboard and computer projector which he wanted the students to use rather than looking at him and take notes as he wrote on the board. He said some of the students were in the plotting room before they came to the lab and were then told about the requirements in the course. He moved around the class and looked at what they had produced on their screens and responded to their questions. He said it was an individual project but there was emphasis on a group effort which is common in projects involving computers. One group involved was in Mechanical Design and the other in CNC and have common courses but come from different backgrounds and with two software packages used in the production of drawings.

The Grievor said that he always provides on-going detailed instructions to the students and gives them the results of their projects. Outside of the class, he uses e-mails and office hours to review their work. He always keeps regular attendance and is never late for class. Students however are not obliged to attend classes but always checks the students in the class and observes their work and gives advice as to their shortcomings in the course objectives.

He said that he received his teaching assignments in the late spring and prepared his course outlines which were printed and copies sent to the Chair in May prior to his summer vacation. Programs were changed over the summer, one of the course outlines he had submitted was no longer required and he was asked to teach an additional course. As well, he

had to provide outlines in Microsoft format rather than Word Perfect which he had used to prepare the course outline in May. He returned for orientation week on Monday, August 21st and was sick on Tuesday and Wednesday and on his return on Thursday was told to do three course outlines again by that Friday as a deadline, the revisions on which he worked at home though still sick. He finished the course outlines on Friday and sent them on Sunday to the Programme Co-ordinator over the internet and on Monday, provided him with the hard copies.

He said there was discontent among students in the Manufacturing School with the curriculum and course format and the sudden changes in the program including the cancellation of the third year in the mechanical cluster which was announced in the winter of 2001. After the third year, graduates could proceed to a university which would give credit for the three year course. In his letter to the Dean dated October 4, 2001, he wrote:

“These students vented their anger on everyone in the system. Being the first in the line of sight, the faculty could not escape the students ire. Being most directly involved with the affected programs, more than anyone else, I was on the receiving end of adverse students comments...”

In cross examination the Grievor said that he did not normally discuss SFQs with the students in that the students' comments on these forms about faculty are personal and not involved in any decision. He had however, followed the advice of Ruth McLean who told him to raise these matters with his students so that he discussed the SFQs with two different groups

of students in the Design and Dynamics courses. As to the course outlines, he said he provided three course outlines to the Co-ordinator, Ed Espin on May 20, 2000 in Word Perfect which he told Mr. Moulton at in their meeting on August 29th. He said that he was sick during the Orientation Week and could not get the required revised course outlines before Friday but had then sent them to Ed Espin on Sunday, August 27th on the Internet followed by hard copies. He said he attended on Monday of the Orientation Week but was ill with the flu on Tuesday and Wednesday and provided a doctor's note for August 24th. He said that on Thursday morning, Ed Espin told him to convert his course outlines to Microsoft and as he was not familiar with that program he could not complete those outlines by Friday as requested but was only one day late.

The Grievor said that there are a number of teachers involved in the courses so that course outlines are distributed amongst the teachers with the preparation of outlines given to those persons who traditionally teach the course. He prepared course outlines for the courses he taught on May 14th and gave them to Ed Espin on May 20th. He said that Mr. Moulton did not ask him about a specific course in their meeting in August or explain the practice for the preparation of outlines in the department and said the Dean was not prepared to listen when he maintained that he had provided the course outlines for which he was responsible.

The Grievor agreed that it was expected of a Professor to provide an effective learning environment for students and that their feedback is of some value as is a classroom visitation but which are not the only relevant factors. He accepted that some improvement was required of

him and had been trying to make an extra effort through professional development counselling. He said the students are told that the SFQs are used to improve the classes and had used his students' not to intimidate or threaten them but to deal with discrepancies on the forms. These forms are not used to create adverse assessments when students are critical of the professor and are not used by Faculty in a manner adverse to the students.

The Grievor said that on the morning of Mr. Bosworth's class visit, he had received an email at 8:15 a.m. about the visit and was met outside of the Design class which started at 9:55 a.m. with others who were waiting because the prior class had not finished on time. He did not mention to Mr. Bodsworth of his concern of this class visit but had he had advance notice of the visit, he would have told him about the class project which was scheduled for that day and which he discussed with the students at the start of the class along with the nature of the work to be done. Students would be talking to others in the class in the use of the computer program as some had different backgrounds for that class. Some students were in another room to use the plotter which could have made them late for his class but students were going from or coming into the classroom or engaged in interaction with other students on the computers. He said that this was not a basis to consider that it was not a satisfactory class. He had walked around the class to remind the students what was required and had answered their questions during which time, there was no class instruction.

The Grievor disagreed with the recommendations indicated by Mr. Moulton in his memo dated February 28, 2001 and said he was always trying to improve and was taking

professional development counselling. He said that he was regular in his attendance and always punctual and kept student attendance. He gave the students their objectives and a summary of the class. He said that his performance on the day of the class visit was quite satisfactory. He recognized the value of the SFQs but said they do not correlate to his performance as a teacher and felt he was satisfactory but he would not disregard the results of the SFQs. He continued to take professional development to improve his evaluations. He said the cancellation of the third year courses had a very strong influence and was a factor in the results of these SFQs as the atmosphere following the notice of the cancellation had some affect on these students' evaluations. He agreed that the fall and winter course summaries show a high degree of dissatisfaction and did not deny that they did not look good and admitted a weakness.

The Grievor met with some students after the March break and the distribution of the SFQs for the Winter term as he was concerned with the discrepancies on the forms and intended to find out what the students' expectations were in order to match his conduct with their thoughts. At that meeting, he had discussed his availability to the students and their comments that he was not clear in class as well, whether the questions as answered on these forms were a fair indication of their concerns. He did this to find a way to improve himself and not to create concerns for the students and denied the discussion was coercive but that he tried to emphasize that it was an effort to improve himself.

The submission for the College is that the Grievor had been notified that there was a need to improve his performance as a Professor and was aware of the standards to which he

was being assessed under the class definition of a Professor in the collective agreement which included academic leadership and a requirement to develop an effective learning environment for students. The College relied for the purposes of discipline on whether there was satisfactory performance by the Grievor with reference to one of the factors of the SFQ as being a relevant evaluation of the academic leadership of the teacher. The questions in the SFQs are relevant to these standards and have been used at least since the Grievor was employed by the College in 1986, as part of the evaluation process. The Grievor was required to produce course outlines prior to the summer vacation in 2000 but it was Mr. Moulton's evidence that he did not receive them nor on an enquiry made of

Mr. Espin that he had he received them from the Grievor nor was his explanation given by the Grievor at their meeting on August 29th. So that in its submission, the Grievor's evidence should be rejected as to the preparation and timely production of the course outlines as required.

There was no corroboration of the Grievor's testimony by Mr. Espin who was not called as a witness from which an adverse inference should be drawn by the Board in rejecting the Grievor's evidence in this matter.

As a result of a student complaint, Mr. Bodsworth made a class visit to audit the Grievor's performance in class on November 29, 2000. His evidence of his observations of the Grievor in that class is consistent with the student complaints about the Grievor. It was submitted that the Grievor lacked insight and did not care enough to see a problem with his performance in the class but concluded Mr. Bodsworth's report of that class audit as positive but which was in fact critical of his teaching.

It was submitted that the most serious issue in this case is the intimidation by the Grievor of the students after receipt of the winter term SFQs as indicated in the complaints of the students at that time who were concerned according to Mr. Bodsworth's memo dated May 8, 2001 about his challenges to their responses on the evaluation forms yet the Grievor did not see any legitimacy for their comments. The students felt threatened when he had enquired about their reasons for the discrepancy between the SFQs comments and the reality which presupposes that he was right. This was the wrong way to perform his job as a teacher. The incidents involving the Grievor with students spans two semesters with consequences that were not consistent with his providing effective teaching and academic leadership for the purposes of receiving a step increment. A written warning which is the lowest level of discipline was issued to bring to his attention the necessity of changing his methods and to improve his performance as a Teacher with reference to those concerns. As a result of the Grievor's failure to recognize his need to improve his classroom teaching and to provide a positive learning environment for the students as set out in the written warning letter dated August 27, 2001 justified this disciplinary action.

The submission of the Union is that the College relied on hearsay evidence of the SFQs because no students were called as witnesses to the nature and content of the Grievor's statements in class and therefore the SFQs cannot be the sole basis for a finding of fact by the Board as that evidence is not reliable. The discipline issued on August 27th was unreasonably issued in that at the meeting on April 20th, there was no indication that discipline would be

imposed either then or in the memo of Mr. Bodsworth dated May 8th to indicated that they had not believed the Grievor's explanation. The Grievor accepted their comments as counselling and not discipline and did not challenge the report. It was submitted that one brief visit to audit a class is not sufficient to show the Grievor's performance was not satisfactory. The details of that visit in November were not reported to the Grievor until February and prior to when the Grievor received the second set of SFQs which made it difficult for him to make any improvements if he had poor performance. There was no evidence of a follow-up class visit by Mr. Bodsworth to check the Grievor's performance. That circumstance is not justification to withhold the Step Increment. The Grievor was not advised in time of the visit which was a lab class on a die design project which did not involve teaching as much as a description of what was required of the students which instructions the Grievor gave at the outset of the project in the class but it was not the best forum to view the class. There was a problem with the software used by students who were taking different courses with other requirements. There was no suggestion that there was a fundamental communication problem in that class.

It was submitted that the SFQs were used as a significant factor to withhold the Step Increment yet the College considered these evaluations as formative and not punitive according to Mr. Bodsworth's memo dated May 8th. Reference was made to the memo of Richard Hook, Vice President, Academic who on January 20th referred to the SFQ that as initially developed "was explicitly intended as only part of total faculty evaluation". It was also stipulated that data from individual classes would not be relied upon but rather than any

assessments by a manager would be based upon cumulative results and would only pertain to a specify portion of the form...”

On this basis, it was submitted that the College was wrong to use the SFQs as a basis for discipline in August as it is a report designed to help the teacher rather than being a disciplinary measure which process was not followed by the Dean and was unfair to the Grievor. There was no evidence of any standard which was used by the College for salary progression for Professors. The class definition in the collective agreement is used to differentiate the Professors from other employees but is not a measure of their quality of performance. There is no evidence of what standard the College uses as to the performance of other teachers and without such comparative data it is submitted, it cannot be found that if the Grievor was being fairly treated with the reliance of the College on the SFQs relating to the Grievor without a comparison to other Professors. The College discounted the Grievor’s explanation of his problems which were outside of his control as well as his undertaking of professional development. Even using the class definition as a standard, it was not established that the Grievor’s performance was not satisfactory without detailed information relating to the headings in that definition or of ancillary areas to the role of a Professor. Reference was made to Re Algonquin College and Civil Service Association of Ontario 1 L.A.C.(2d)94 (Weatherill).

It was further submitted that the relevance of the evidence concerning the Grievor’s late provision of the course outlines is debatable as any delay in August is not relevant to the academic year of 2000/01 as the College referred to the prior year. Alternatively, if it is found

that the course outlines were relevant to the current year, it is a very small part in the overall decision and the Grievor's explanation with the problem of the change in the computer program and his illness should be accepted as his explanation of the delay of a few days which was not serious.

Firstly, the Board finds on the evidence that there is no basis for the imposition of discipline against the Grievor by a written warning dated August 27, 2001. While there were obvious difficulties and concerns of Mr. Moulton and Mr. Bodsworth of the Grievor's teaching, there was no evidence to connect those concerns with any form of resistance to authority of an insubordinate nature or any other form of culpable conduct which would support the right of the College to impose discipline against employees under Article 6 of the collective agreement as we find on the evidence that there was no cause for the warning to be issued and placed on the Grievor's employee file.

The concerns of the College as expressed by Mr. Moulton in the letter of warning relate to the Grievor's performance and the alleged challenges made by him as to their evaluations as well as the reference to the class visit and lateness of the course outlines. None of these headings involve the Grievor in any inappropriate and culpable conduct towards the administration of the College for which discipline could be justified. While there are obvious differences in the perception of the College as to the Grievor's teaching performance from those of the Grievor, there was an admission of the necessity for his improvement and he had entered into a professional development program as suggested which continued through the

winter term 2001 and was in effect while these incidents referred to in Mr. Moulton's letter of warning and his recommendations therein, were made. The evidence does not demonstrate any reasonable cause for disciplinary action but is contrary to the concept of using disciplinary penalties as corrective of an employee's behaviour which is clearly not relevant to the issue of the Grievor's performance as a teacher during the period of evaluation. We accept the Grievor's explanation of his reason to discuss the results of the evaluations with the students to have, as directed in his professional development programme, more personal contacts and feedbacks as to his performance. Without direct evidence of adverse effects of this meeting as set out in the letter of warning, we are not prepared to find that the Grievor intended or did engage in any inappropriate conduct with his students. More particularly, we cannot conclude from the evidence that the Grievor intended and had intimidated or had engaged in a reprisal against the students but rather his direct evidence is that his intentions were misconstrued by the students. That may have resulted from his manner of speaking to them but this incident was not established as his conduct of the Grievor to justify disciplinary action.

The alleged late provision by the Grievor of his course outlines was reasonably explained by the Grievor whose evidence we accept in this regard at the hearing, that he had filed a doctor's note with regard to his illness in the orientation week and that the conversion of the course outlines to another computer program took him some time to complete. In total, he was not rejecting the request to submit the revised course outlines but was delayed for these reasons by a day or two and had a valid excuse for his absence during the orientation week. It is not necessary in these circumstances for the Board to determine whether in fact the Grievor

had delivered his course outlines on the word perfect system to Mr. Espin in May before he left for summer vacation as that was not a concern until August when the circumstance which caused the one or two days of delay in providing the revised course outlines was adequately explained by the Grievor. We are not persuaded to draw an adverse inference from the absence of testimony by Mr. Espin as we find that he would not be a necessary witness to be called in this regard.

The second issue is the denial by the College of the Step salary increment to have been effective in September 2001 under the terms of Article 14.03 A 2 (a) in which it is stated as a condition for such payment, “where performance in the past year was satisfactory.”

The SFQs are part of an evaluation process of Faculty and as set out in Mr. Hook’s memo which indicated that:

“data from individual classes would not be relied upon but rather that any assessments by a Manager would be based upon cumulative results and would only pertain to a specified portion of the form...”

On the evidence, there can be no doubt that Mr. Moulton based practically a total reliance of the results of the SFQs in the fall and winter term together with one class visit in November by Mr. Bodsworth along with a reference to the Class Definition of a Professor in the collective agreement to assert that the Grievor did not provide:

“a positive learning environment to our students and this feedback is an indicator that you are not meeting this requirement. Furthermore since we have reviewed the SPQs over several semesters there appears to be a continuing pattern of behaviour.”

in order to conclude that the Grievor’s performance was not satisfactory and that a Step increase would not be paid.

There can be no doubt on the face of the SFQs that problems as to the nature of the Grievor’s teaching in class was defective in the problem areas of reference on these forms. The Grievor had acknowledged that improvements were necessary and had agreed to undertake professional development which as noted above, he had continued though these teaching terms and which caused him to obtain student feedbacks. The SFQs however, were delivered late in both terms which did not give the Grievor time to improve his teaching methods based on his program of professional development, within that academic year. Further, the only class visit made by Mr. Bodsworth in November turned out not to be of a regular class but a class project at the end of the term and was not shown to be a fair assessment of the Grievor’s classroom teaching. In that circumstance, there should have been a follow up visit with proper notice to the Grievor who could have had an input as to an appropriate class for such an evaluation but which was not undertaken. The result of this class visit was not brought to the attention of the Grievor until some four months after the event by which it lost its value as an evaluation indicator of deficiencies of performance as the Grievor was not given a fair opportunity to deal with Mr. Bodsworth’s criticisms from that class visit and make adjustments. A second class visit after a

critique was given of the class visit in November would have resulted in our view, a more objective and reasonable evaluation of his teaching.

We do not find on the evidence that SFQ results are considered as the standard for Faculty evaluations but are guidelines for improvements to the learning environment but here the evidence discloses that Mr. Moulton relied on the SFQ student responses as an evaluation standard for the purposes of Article 14.03 A 2 (a) as set out in the written warning. The results of these SFQs are hearsay evidence which and cannot be relied on by the Board to base a finding of the facts relied on by the College in denying the step increment. Mr. Moulton's decision in this issue was clearly set out in his letter, that the evaluation of the Grievor's overall poor performance "as detailed in the responses and student feedback questionnaires from winter 2000" determined that the Grievor's performance for the purposes of Article 14.03 A 2 (a) was not satisfactory. SFQs are not to be used in a punitive fashion and are only part of evaluation of Faculty so that there are limitations as indicated in the memo of Mr. Hook to the use and application by the College of the SFQs. The reliance of the College on the results of these forms are not established as the standard of evaluation for Faculty nor are the SFQs in this case confirmed by evidence on which the Board could rely.

The Class Definition of a Professor in the collective agreement provides the headings by which an employee in that classification is differentiated within the job classification plan from other positions in the bargaining unit. Certainly, it is a guideline to be considered in the general evaluation process of Faculty but does not constitute for that purpose a standard of

performance on which to judge the application of the Step level payment provided in Article 14.03 A (2). Clearly, the College placed substantial if not exclusive reliance on the results of the SFQs in denying the increment to the Grievor but this being designed only as part of an evaluation process and that no common evaluation standard was established for the evaluation of all Faculty, the Board cannot conclude on this form of evidence that the College established that the Grievor failed to meet a teaching standard required by its Faculty and of therefore by the Grievor.

For all of these reasons, we find that the College did not have cause to impose discipline against the Grievor and that the Written Warning was therefore not justified. Further, the Board finds that the annual increment in September 2001 was improperly denied. Pursuant to Article 14.03 A 2 (a), therefore we find that the Grievor is entitled and shall be paid his annual increment as of September 2001.

Having regard to all of the evidence and the submissions of the parties and for all these reasons, it is the Board's award that the grievance is allowed. The Board will retain jurisdiction as to the implementation of its award.

DATED AT OAKVILLE THIS 3RD DAY OF MARCH, 2004

HOWARD D. BROWN, CHAIR

JAQUELINE CAMPBELL, COLLEGE NOMINEE

SHERRIL MURRAY, UNION NOMINEE

DISSENT

This grievance deals with two issues: the imposition of discipline by written warning and the denial of a salary increment for unsatisfactory performance.

I do agree that a teacher whose performance is deemed to be unsatisfactory should only be disciplined if the shortcoming identified is of a culpable nature. In this case, the evidence dealt with the difficulties and concerns the College had with respect to the grievor's teaching and no indication was given that the grievor displayed insubordination in any way. However, I am troubled by the grievor's evidence in cross-examination with respect to his exchange with students regarding the negative SFQs. Although the Board has not reproduced the cross-examination, it is clear from the words that he used when speaking to the students that their adverse reaction was warranted and corroborates the substance of their subsequent complaint to Steven Bodsworth. Even if we accept that the grievor may not have intended to intimidate the class, that was clearly the result. When asked if he was surprised that students may have been intimidated he stated "some people could have that impression". In my opinion, the grievor was aware that his comments to students could create an adverse impression. This in itself raises an issue of culpable conduct and supports the College's concerns with his overall performance.

With respect to the denial of the increment, the evidence is clear that the College was justified in its concerns. The SFQs, student complaints, the classroom visit assessment and the grievor's own admissions during cross-examination all point to a professor whose performance could not be said to be satisfactory. The award contains several references in this regard "there were obvious difficulties", "obvious differences in the perception of the College as to the grievor's teaching performance from those of the grievor" and there was an admission from the grievor of the necessity for improvement which was the basis for his entering a professional development program. The Board also states "there can be no doubt on the face of the SFQs that problems as to the nature of the grievor's teaching in class was defective in the problem areas of reference on those forms". The delay in providing the grievor with the classroom visit assessment does not negate the fact that his performance during that class was unsatisfactory.

The Board dismisses the SFQs as hearsay evidence. The fact is that this form of feedback has been sought from students at Humber for more than 15 years and has been a consistent factor in evaluating a professor's performance. There is nothing in the collective agreement that requires the College to evaluate professors only having regard to facts which might be admissible in an arbitration proceeding according to the laws of evidence. The assessment of the students as stakeholders is obviously relevant to the performance evaluation of a professor. There is no reason, therefore, why the College cannot rely on this information.

The Board also takes issue with the use of the class definition as a "standard" for performance evaluation. While I appreciate that the class definition in the collective agreement is used to identify the various job classifications, it can nevertheless be considered as a standard for performance expectations of professors. Demonstrating academic leadership, creating an effective learning environment cannot be said to be irrelevant criteria in assessing such performance. These requirements are at the core of what a professor does. If a common performance standard was established for the evaluation of faculty, it is likely that these very factors contained in the class definition of professor found in the collective agreement would be an important aspect of such a standard.

For all of these reasons, I would have found that the College was justified in denying the grievor a salary increment in September 2001 and that the grievance in this regard should have been dismissed.



Jacqueline Campbell
Employer Nominee