

94D565 ALGONQUIN VS OPSEU

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Algonquin College,

Employer,

- and -

Ontario Public Service Employees Union,

Union

BEFORE: Michael Bendel, Chair
Ron Cochrane, Union Nominee
Hugh John Cook, Employer Nominee

APPEARANCES: For the Union:

Gavin Leeb, Grievance Officer
Tom Fernie, Steward
Mercy Allegakone, Grievor

For the Employer:

Wallace Kenny, Counsel
Beth Ada, Director of Human Resources
Joan Bernard

Heard in Ottawa, Ontario, on December 7, 1994, and June 7, 1995.

ARBITRAL AWARD

In her grievance, Ms. Mercy Allegakone, a teacher, claims that the employer, contrary to paragraph 3 of Appendix VIII of the collective agreement, has failed to credit her with having completed the first year of her two-year probationary period and has failed to treat her as being subject to the collective agreement.

The grievor has been working as a sessional employee since 1987. Sessional employment is recognized by the collective agreement, but is not regulated by it. The collective agreement does provide, however, that a sessional employee who is a full-time employee for more than 12 full months in a 24-month period shall be considered as having completed the first year of a two-year probationary period, and shall thereafter be subject to the other provisions of the agreement. The grievor claims that she has passed the threshold and is now covered by the agreement. The employer denies it. The dispute is partly one of fact, and partly one of interpretation.

The parties agree that, during a 24-month period, the grievor worked full time for eleven full months. The union claims that there are two other months that qualify, namely May and June 1993. It is common ground that, in order for the grievance to succeed, the union must satisfy us that either May or June 1993 was a full month of full-time employment, or that both were. The parties advance different arguments as to what is a "full month" (a term used in paragraph 1 of Appendix VIII). The parties also disagree as to whether, for certain work the grievor performed in those months, she was replacing a regular teacher "for unplanned absences" (a term used in paragraph 4 of Appendix VIII). The status of this replacement work is critical to a determination of whether the month of May 1993 is a month which the grievor can count for the purpose of crossing the threshold.

The provisions of the collective agreement referred to in argument are these:

**Article 1
RECOGNITION**

1.01 The Union is recognized as the exclusive bargaining agency for all academic employees of the Colleges engaged as teachers, counsellors and librarians, all as more particularly set out in Article 14, Salaries, except for those listed below:

...

(v) teachers, counsellors and librarians employed on a part-time or sessional basis.

NOTE A: Part-time in this context shall include persons who teach six hours per week or less.

NOTE B: Sessional in this context shall mean an appointment of not more than 12 months duration in any 24 month period.

**Article 14
SALARIES**

...

14.04 A Persons who teach over six and up to and including 12 hours per week on a regular basis shall be referred to as "partial-load" employees...

...

**Article 27
JOB SECURITY**

...

27.02 B The probationary period shall also consist of 24 full months of non-continuous employment (in periods of at least one full month each) in a 48 calendar month period. For the purposes of 27.02 B, a calendar month in which the employee completes 15 or more days worked shall be considered a "full month".

If an employee completed less than 15 days worked in each of the calendar months at the start and end of the employee's period of employment and such days worked, when added together, exceed 15 days worked, an additional full month shall be considered to be completed.

...

APPENDIX VIII
SESSIONAL EMPLOYEES

1 A sessional employee is defined as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period. Such sessional employee may be released upon two weeks' written notice and shall resign by giving two weeks' written notice.

...

3 If a sessional employee is continued in employment for more than the period set out in Appendix VIII, 1, such an employee shall be considered as having completed the first year of the two year probationary period and thereafter covered by the other provisions of the Agreement. The balance of such an employee's probationary period shall be 12 full months of continuous or non-continuous accumulated employment during the immediately following 24 calendar month period.

4 A person assigned to replace a full-time regular employee for up to 14 working days for unplanned absences in any month shall not have such period(s) considered as sessional employment for the purpose of the computation of the 12 months sessional employment. During such periods such a person shall be paid as if partial-load and within the range of partial-load hourly rates as set out in Article 14.

...

During the relevant period, the grievor taught what she referred to as her "regular" courses, as well as filling in for other teachers when they were absent. We were provided with several Temporary Employment Payroll Authorizations, which indicate the courses she was assigned to teach. Of particular relevance to this grievance is Authorization No. 72. Pursuant to this Authorization, which was signed by management on January 14, 1993, she was assigned to teach a course known as ENL 5950 for the period from January 5 to June 18, 1993, at the rate of five hours per week.

The grievor, during this period, also filled in on a number of occasions for full-time regular employees, particularly for Mr. Pat Kennedy, who taught at the Boys' and Girls' Club of Ottawa-Carleton. The circumstances in which she did so are the subject of disagreement between the parties. These circumstances bear on the issue of whether she was replacing him for "unplanned absences" or not.

Mr. Kennedy was the union's representative on the College Employment Stability Committee. This Committee, which is established by Article 28 of the collective agreement, set up a sub-committee, on which Mr. Kennedy also served. The sub-committee met much more often than the full Committee. Management was represented on the Committee and sub-committee by human resources officers, including the Director of Human Resources.

Mr. Kennedy testified that the sub-committee, at its meetings, would identify a number of possible meeting dates over the coming week. Whether or not it actually met on those dates depended mainly on the availability of information it needed. According to Mr. Kennedy, he informed Ms. Jennifer Powell, a clerk in his programme, of the tentative meeting schedule as soon as it was set, since one of Ms. Powell's responsibilities was to find someone to teach his classes at those times. If a meeting did not proceed as scheduled, he would so inform Ms. Powell as soon as he was aware, which would usually be one or two days in advance. He asserted in his testimony that it never occurred that he informed Ms. Powell of a meeting only on the day of the meeting itself. He added that he would often inform the grievor of the times at which he would be absent since he expected that she would substitute for him.

Ms. Powell's testimony on these matters was in sharp conflict with Mr. Kennedy's. She testified that she normally received very little notice of Mr. Kennedy's absences on account of his meetings. Usually, she was informed on the morning of the meeting or at 3:30 p.m. the previous day. Since Mr. Kennedy's teaching was at an off-campus site, it was

difficult for her to arrange for a substitute at such short notice. Two days' notice, she stated, would have been adequate.

Ms. Powell testified that the normal practice for replacing a regular teacher who knew of a forthcoming absence was for the teacher to inform her of the absence, whereupon she consulted her list of possible replacement teachers. Ms. Powell stated that it was her responsibility to assign someone to fill in for an absent teacher, not the responsibility of the absent teacher. According to Ms. Powell, however, Mr. Kennedy sometimes personally arranged for someone to fill in for him. On occasions, he left a message on her answering machine to say that he would not be teaching his course the next morning, and she had to telephone the Boys' and Girls' Club in the morning to find out who was replacing him. Once, she made such a telephone call and learned that the grievor was replacing him. Ms. Powell testified that she would not have arranged for the grievor to fill in for him that day since the employer was consciously trying to avoid giving her enough work for her to qualify as a bargaining unit member. Ms. Powell instructed the grievor on that occasion not to teach. Ms. Powell was not sure whether this incident occurred in May/June 1993, or at some other time. She told Mr. Kennedy that he had to allow her to arrange for replacements, but it did not put a stop to his practice of asking someone to teach his class for him.

Of the three witnesses who testified about the grievor filling in for Mr. Kennedy, the grievor was the first to do so. At that stage, no issue had yet been identified about the process whereby she was assigned to substitute for him, and her testimony on this was therefore sparse. She testified that she normally received two days' notice that she would be replacing Mr. Kennedy when he was due to attend meetings as a union representative, but she did not say who gave her the notice. During the months of May and June 1993, she was not only replacing Mr. Kennedy when he was at these meetings, but also when he was on sick leave and when there was a bereavement in his family.

We received conflicting evidence on the hours and days worked by the grievor in May 1993. The evidence came from three sources. Firstly, the grievor testified from her own notes and recollection as to when she substituted for the other teachers and the reasons occasioning the substitutions. Secondly, the employer presented information on the same matters, culled from Temporary Employment Payroll Authorization forms. Finally, the employer presented other information drawn from "sign-in sheets", which employees are required to sign when they teach a class. In the final analysis, we do not think that anything turns on a choice between these different sources of information; the differences in the evidence on these matters are not substantial and would not affect the final result in the case. We do not think it is necessary to present in detail all the data we received on this matter. The information drawn from the sign-in sheets appears to us to be the most reliable, and we intend to proceed on the assumption that it is correct.

We therefore find that the grievor worked for a total of 74 hours in May 1993. Thirty-four hours were for courses she was originally scheduled to teach, and the remainder were to replace other teachers. Of the replacement hours, 24 were to replace Mr. Kennedy and another teacher while they were attending meetings as representatives of the union, and the remainder (16) were to replace them while sick. The employer's data do not reveal that the grievor replaced Mr. Kennedy while he was on bereavement leave that month.

In that month, the grievor worked on 16 days. If we eliminate the days on which her only teaching was to replace a teacher on sick leave (i.e., May 10, 17 and 21), she worked on 13 different days.

In June 1993, the grievor worked a total of 62 hours, on 11 different days. Ten hours of that were to replace Mr. Kennedy while he was on union business.

No awards, we were informed, have considered the meaning of "unplanned absences" in paragraph 4 of Appendix VIII.

The union, in its submissions, argued that the question whether an absence was "unplanned" had to be viewed from the perspective of the regular teacher. If the regular teacher had plans to be away on a particular day, the absence was not "unplanned" for the purposes of paragraph 4. Notice by the teacher to his or her manager was of no particular relevance. However, in the present case, since the Director of Human Resources was a member of the sub-committee, her knowledge of the sub-committee's schedule constituted notice to the employer that Mr. Kennedy would be absent on the days the sub-committee was scheduled to meet.

The employer's submission was that only the employer could "plan" an absence, for the purposes of paragraph 4. A planned absence was therefore one of which management had adequate notice and for which a replacement had been scheduled by management. The employer did not dispute that, if Mr. Kennedy did give adequate notice of his absences to Ms. Powell and if Ms. Powell did arrange for the grievor to substitute for him, this work would not be excluded from the calculation of the grievor's period of sessional employment.

Paragraph 4 of Appendix VIII reads as follows:

4 A person assigned to replace a full-time regular employee for up to 14 working days for unplanned absences in any month shall not have such period(s) considered as sessional employment for the purpose of the computation of the 12 months sessional employment. During such periods such a person shall be paid as if partial-load and within the range of partial-load hourly rates as set out in Article 14.

In the view we take of this matter, it is not necessary for us to attempt an exhaustive definition of the concept of "unplanned absences". We would, however, make a few

observations on the role of paragraph 4. The rationale underlying paragraph 4, it appears to us, is that if a sessional employee is sent in to teach as a last-minute substitute for the regular teacher, the sessional employee's responsibility for the class, particularly in terms of preparing and planning the class and correcting papers, etc., is not nearly the same as it would be if he or she had overall responsibility for the course. It seems logical to assume, as a general proposition, however, that if a sessional employee knows sufficiently in advance that he or she will be replacing the regular teacher the sessional employee will be expected to prepare and deliver a better performance than if it is a last-minute replacement. This, in our opinion, would appear to be why the parties to the agreement were not prepared to treat the replacement of the regular teacher on unplanned absences as qualifying for the purposes of calculating the duration of the sessional employment and why the final sentence in paragraph 4 establishes a lower rate of pay for such work. Accordingly, we are inclined to believe that the reason why the regular employee is absent is of far less importance, in deciding whether the absence is "unplanned", than the amount of advance notice given by the regular teacher to management and by management to the sessional employee.

The evidence we received in relation to the grievor's replacement of Mr. Kennedy left much to be desired. During the months of May and June 1993, the grievor filled in for him, when he was engaged in union business, no fewer than eight times. Some charts were prepared for the purpose of the arbitration, on the basis of Temporary Employment Payroll Authorizations in the employer's possession, showing the days and hours the grievor worked and the reason for her working each of those days and hours. However, no documentary evidence was presented to establish when Mr. Kennedy gave notice to Ms. Powell, or when or by whom the grievor was asked to teach each of Mr. Kennedy's classes. No evidence, oral or documentary, on these matters was adduced relating to any single, specific occasion. The evidence presented by both parties consisted of generalities about the practice or process whereby Mr. Kennedy informed

Ms. Powell of his anticipated absences and whereby Ms. Powell (or Mr. Kennedy) notified the grievor, and this evidence was conflicting.

The evidence we received makes it impossible for us to say with any degree of confidence, in respect of any of the occasions when the grievor filled in for Mr. Kennedy, whether his absence was unplanned. We simply do not know whether, in any of these situations, Mr. Kennedy gave adequate notice to Ms. Powell (as he claimed) or last-minute notice (as Ms. Powell claimed). We do not know whether the grievor was assigned to teach the classes by Ms. Powell (as Mr. Kennedy claimed) or by Mr. Kennedy (as Ms. Powell claimed). What actually happened, it seems to us, is likely that not all the replacement situations were handled the same way and, two years after the fact, memories have faded. We are not prepared to hold that any of the witnesses was lacking in credibility or that any of the testimony received was inherently improbable.

In these circumstances, we have no alternative but to examine whether the onus lies on the employer to establish that the grievor was replacing Mr. Kennedy on these occasions for unplanned absences, or whether the onus lies on the union to prove the contrary.

As we read Appendix VIII, all work performed by a sessional employee qualifies, prima facie, for the purposes of the calculation called for by paragraph 1. Paragraph 4 establishes an exception, in that it provides for a certain type of work to be excluded from the calculation. In the present case, the employer is saying that the work performed by the grievor while she was substituting for Mr. Kennedy during his absences at meetings comes within paragraph 4.

It was held in Re United Rubber Workers, Local 80, & Uniroyal Ltd. (1972), 24 L.A.C. 408 (Palmer) that a party seeking to bring itself within an exception to a general obligation has the onus of proving that it has satisfied the exception. Although this rule is not

perhaps as clear-cut as it once was, it can still apply if, as a matter of interpretation (whether of a contract or a statute), it makes sense to allocate the onus to that party. One of the factors that can properly be taken into account in allocating the onus of proof in such a situation is the ease with which it can be proved whether or not the exception is applicable: see Sopinka, Lederman & Bryant, The Law of Evidence in Canada (1992), at pages 84-90.

As we noted, we are inclined to agree with Mr. Kenny's submission that only the employer can "plan" an absence, as that expression is used in paragraph 4. It seems to us that the evidence of whether an absence was planned or not is a matter within the peculiar knowledge of the employer. It might be impossible for the sessional employee to know by what process he or she was assigned to teach a particular class as a substitute or how much notice management had of the absence. The employer, on the other hand, necessarily has (or has had) this information. This suggests to us that the employer should bear the onus of establishing that, in such a situation, an absence was "unplanned", and we so hold.

In light of the evidence we received, the employer has manifestly failed to satisfy that onus. We therefore intend to credit the grievor, for the purpose of calculating whether she crossed the threshold referred to in paragraph 1 of Appendix VIII, with all the time she worked filling in for Mr. Kennedy and the other teacher while they were attending union meetings.

It was conceded by the union that the absences of Mr. Kennedy on bereavement leave and sick leave in May 1993 were "unplanned".

As a result of the foregoing, we conclude that, in the month of May 1993, the grievor should be credited, for the purpose of the calculation called for by paragraph 1 of Appendix VIII, with having taught for a total of 58 hours on 13 different days. In June 1993, she should be credited with having taught for a total of 62 hours on 11 different days.

The employer maintains that neither May nor June 1993 counts as a "full month" of employment since a month of work can only count as a "full month", for the purposes of Appendix VIII, if the employee taught on at least 15 days in the month. This test has been endorsed, according to the employer, in certain awards relating to this collective agreement, specifically Re St. Lawrence College and Ontario Public Service Employees Union (Arsenault grievance) (award of arbitrator Brent, dated November 16, 1982), and Re Mohawk College and Ontario Public Service Employees Union (Sobczak grievance) (award of arbitrator Mitchnick, dated April 30, 1993). It was also implicitly approved in a recent award (Re Niagara College and Ontario Public Service Employees Union (LeFaive grievance) (award of arbitrator Swan, dated June 22, 1995)). This test, the employer maintains, has been consistently applied and relied upon by the colleges (although it was not followed in one recent case). It provided a rational, understandable and practical approach to determining the conditions for sessional employees to cross the threshold into probationary employment.

The union, on the other hand, argues that although the requirement to have worked on 15 different days in a month has been endorsed in some awards, it is not a requirement found in the collective agreement. The "15 day rule", the union observes, was specifically considered and rejected in Re St. Lawrence College and Ontario Public Service Employees Union (Nutley grievance) (award of arbitrator Mitchnick, dated February 7, 1994). The union urged us to follow this award.

The requirement to have worked on at least 15 days in a month is not expressly stated in Appendix VIII. Where, we must ask, is the source for this requirement to be found? Two different answers have been given in the cases, and Mr. Kenny, in his submissions, suggested a third answer.

In the St Lawrence College (Arsenault grievance) award, the arbitration board found a source for the "15 day rule" in what is now Article 27.02 B of the collective agreement (previously Article 8.01 (b)). At page 7 of the award, the board wrote the following:

Accordingly, while we can conclude that, when Article 8.01 (a) speaks of the probationary period for full-time employees, it refers to two years of continuous employment as a full-time employee, we must look to the second paragraph of Article 8.01 (b) to determine what a month of such employment means. That paragraph says, in part, "a calendar month in which the employee completes fifteen (15) or more days worked shall be considered a 'full month'". Therefore, we would conclude that any month in which the grievor completed fifteen or more days worked as a full-time employee should count as a month of full-time employment for the purpose of her probationary period.

A variation on this theme was offered in Re Mohawk College (Sobczak grievance). There, the board of arbitration held that the grievor had attained 12 full months of full-time employment whichever of the competing interpretations of the term "full month" were adopted. The issue there was not one of counting the grievor's hours and days of work, but of deciding whether partial months at the beginning and end of a contract could be combined to make a "full month". The employer had argued that Article 8.01 (b), which allows for partial months to be added together, was inapplicable, since sessional employees were not subject to the collective agreement. However, the board expressed the view that a plausible way of deciding whether a month was a "full month" was to use Article 8.01 (b) as a "rule of thumb". This is what the board wrote at pages 11-12:

However, there is another even more plausible way of dealing with the question. Article 8.01 (b) of the main body of the agreement, as the parties have noted, specifically addresses this type of issue for probationers in the bargaining unit...We are mindful of the College's argument that Article 8.01 (b) does not strictly apply to sessionals, who, so long as they remain so, are not covered by the main body of the collective agreement. However, if one were to ask what "rule of thumb" the parties in dealing with this issue of part-month counting under Appendix [VIII] would most likely contemplate as a reasonable method of doing so, it is hard to ignore as a guide what is set out in Article 8.01 of this very collective agreement.

A third possible source of the requirement that a sessional employee must work 15 days in a month for the month to qualify was identified by Mr. Kenny in his submissions. He drew our attention to Appendix VII, relating to the calculation of seniority for employees who had worked at predecessor institutions, where the "15 day rule" was also used. He argued that it could scarcely have been intended that sessional employees should acquire seniority at a more advantageous rate than employees who had worked for predecessor institutions.

The "15 day rule" was not followed, however, in Re St. Lawrence College (Nutley grievance). The board of arbitration in that case felt that a claim by a sessional teacher to have completed one year of probationary employment should not depend on "the happenstance of the number of days over which the College had spread the grievor's hours or courses" (page 10). The number of days worked in the month was not a factor of any particular relevance. The board set out, at pages 10-11, how it believed such matters should be approached:

The better view, it seems to us, on facts like the present is to disregard Article 27.02 B entirely, as being both legally inapplicable and of little use as a blueprint, and to attempt to give a reasonable meaning to a "full month" of "full-time employment" in Appendix VIII. In our view, the Union's approach does that, in looking to see whether the contract employee on the whole demonstrates full-time hours (more than 12 a week) throughout the month, on a relatively consistent basis. That is the Union's claim, and is all in this case that we have to decide. The result, in our view, is a less capricious one than adopting an interpretation that leaves it to the happenstance of how the College chooses to spread a teacher's courses to determine the matter, while at the same time maintaining consistency with the essential purpose of the "probationary period", being to provide the employer an opportunity to assess the adequacy of a teacher through his or her performance on the courses assigned.

The board expressed the view that no one test was always applicable, since account had to be taken of the grievor's employment pattern. That is the significance of the words "on facts like the present" in the opening sentence of the passage just quoted. A distinction was drawn by the board between a case where there was no contract of employment at all for the period under review and the relationship was constantly fluctuating (as in the case before it and as in Re St.

Lawrence College (Arsenault grievance)), and a case where a sessional employee, pursuant to a contract, had a workload that very much resembled that of a regular full-time employee.

Paragraph 1 of Appendix VIII, it appears to us, requires, first and foremost, an examination of the sessional employee's period and terms of appointment rather than of the hours and days worked by him or her. The paragraph refers to "a full-time employee appointed on a sessional basis for up to twelve (12) full months of continuous or non-continuous accumulated employment in a 24 calendar month period". Thus, in principle, the terms of the appointment - i.e. its duration and the full-time or non-full-time status of the employee - should determine whether the sessional employee attains bargaining unit status.

This was the approach of the board of arbitration in Re Mohawk College (Sobczak grievance). It noted, at pages 9-10 of the award, that the grievor there, unlike the one in Re St. Lawrence College (Arsenault grievance), was clearly appointed by contract as a full-time employee on a sessional basis and, since the employer had taken no steps to alter that relationship, he continued to be so employed. Nothing turned, noted the board at page 11, on what the individual was actually assigned to do during a period covered by a contract of employment. (The only issue for the board therefore in that case was whether partial months could be added together to create a full month of sessional employment.) We also note that the board in Re Mohawk College (Sobczak grievance) stated, at page 12, that the "15 day rule", when applicable, referred to a month "with at least 15 days of employment", and not to a month with at least 15 days of actual classroom teaching. (On this last point, we have difficulty understanding how any significance could be attached to the number of classroom teaching days (or "contact days"), since counsellors and librarians (according to Article 1.01 (v) of the collective agreement) could be appointed on a sessional basis. Would it not be incongruous to credit sessional counsellors and librarians with all time worked and to credit sessional teachers only with contact time?)

The same approach of focusing on the terms of appointment was followed in the recent award in Re Niagara College (LeFaive grievance). There, the board of arbitration had to decide whether the grievor, who had been under contract for all 14 working days in the month of December, could count that as a full month for the purposes of attaining the status of a bargaining unit member. The board examined that question in terms, not of the number of days or hours he taught, but of the duration of the sessional employment relationship.

It appears to us that the preoccupation with the number of hours and days worked by sessional employees properly arises only where the employee cannot pass the threshold on the basis of his or her terms of appointment, and particularly where the sessional employee's courses and hours of work fluctuate, with the teacher picking up hours or courses as the academic year progresses. Arbitration boards have not aborted their inquiry when the terms of appointment do not support the crossing of the threshold, but have looked at the hours and days worked by the employee. While, in our view, there is little or no justification in the language of Appendix VIII for concluding that a sessional employee can pass the threshold by virtue of the number of hours and days he or she actually works, there has been a general acceptance by the parties and by arbitration boards of the legitimacy of this sort of calculation. It would appear that the reason for this unanimity is to be found, not in the language of Appendix VIII or in the other provisions cited in argument, but in the perceived danger of employers abusing their recourse to sessional employees, a danger which the parties themselves have recognized in Article 2.03 A, B and C. These provisions read as follows:

2.03 A The College will give preference to the designation of full-time positions as regular continuing teaching positions rather than sessional teaching positions including, in particular, positions arising as a result of new post-secondary programs subject to such operational requirements as the quality of the programs, enrolment patterns and expectations, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students, and the community. The College will not abuse sessional appointments by failing to fill ongoing positions as soon as possible subject to such operational requirements as the quality of the programs, attainment of

program objectives, the need for special qualifications, and enrolment patterns and expectations.

2.03 B The College will not abuse the usage of sessional appointments by combining sessional with partial-load service and thereby maintaining an employment relationship with the College in order to circumvent the completion of the minimum 12 months sessional employment in a 24 month period.

2.03 C If the College continues a full-time position beyond one full academic year of staffing the position with sessional appointments, the College shall designate the position as a regular full-time bargaining unit position and shall fill the position with a member of the bargaining unit as soon as a person capable of performing the work is available for hiring on this basis.

The difficulty facing boards of arbitration in cases where hours and days of work fluctuate, and the reason for the confusion in the case-law, is that, while there is a general acceptance of the notion that, regardless of the terms of appointment, hours worked can be added up to produce "full months" of "full-time" sessional employment, Appendix VIII offers no guidance on the method of doing so. See, e.g., the two awards in Re St. Lawrence College (Nutley grievance).

The present case, however, does not require us to examine any of the competing formulae for determining what constitutes a "full month". As noted earlier, the grievor was appointed, in January 1993, to teach a course known as ENL 5950 for the period from January 5 to June 18, 1993. The month of May 1993, which is entirely within the period of the grievor's assignment to teach this course, must count, it seems to us, as a "full month" of employment. Every day that month, the grievor was employed as a sessional employee as a result of this assignment. It would be torturing the language of Appendix VIII, paragraph 1, and introducing notions alien to the Appendix, to hold that a month that was completely encompassed by an assignment as a sessional employee was not a full month of sessional employment.

This understanding of the term "full month" is supported by both the award in Re Loyalist College and Ontario Public Service Employees Union (Daniels grievance) (award of

arbitrator Delisle, dated February 7, 1985) and the dissent by the employer's nominee in that case.

The question still remains, however, whether the grievor should be considered as a "full-time employee" for that month.

While the grievor was not appointed as a full-time employee, the case-law recognizes (as did the submissions from both Mr. Kenny and Mr. Leeb) that a sessional employee who works full-time hours in a full month of employment is entitled to count the month for the purposes of passing the threshold.

We set out earlier in this award the hours the grievor worked in May 1993. According to the evidence we received and our determination that Mr. Kennedy's absences to attend union meetings could not be regarded as "unplanned absences", the grievor must be credited with 58 hours worked in May 1993. Those hours were distributed throughout the month as follows:

Week starting May 3	7 hours
Week starting May 10	13 hours
Week starting May 17	15 hours
Week starting May 24	21 hours
May 31	2 hours

The meaning of "full time", as it applies to teachers, was considered in Re St. Lawrence College (Arsenault grievance). We have no reason to question the logic or the rationale for the definition found in that award, which were expressly endorsed by the parties in their submissions to us. It was held in that award that "full time" meant teaching for (a) more than 6 hours per week and (b) not between 7 and 13 hours per week on a regular basis. At the time of that award, the definition of "partial-load" (found in Article 3.03 (b) of the collective agreement then in force, set out at page 6 of the award) extended to employees who taught "up to and including thirteen (13) hours per week on a regular basis". This has since been changed:

under Article 14.04 of the current agreement, quoted earlier in this award, a teacher is partial-load if he or she teaches "up to and including 12 hours per week on a regular basis". As a result of the change in the terms of the agreement, we would define "full time" as teaching for (a) more than 6 hours per week and (b) not between 7 and 12 hours per week on a regular basis.

We therefore hold that the grievor was employed as a full-time employee during the month of May 1993. Since this was also a "full month" of employment, the grievor can include the month of May 1993 in her calculation of whether she passed the threshold.

This conclusion makes it unnecessary for us to examine whether the month of June 1993 also counts.

We therefore declare that the grievor continued in employment as a sessional employee for more than the period set out in Appendix VIII, paragraph 1, and that she must be considered as having completed the first year of her probationary period and as being covered by the collective agreement. As requested by the parties, we remain seized for the purpose of resolving any disputes arising from the implementation of this award.

DATED at Thornhill, Ontario, this 1st day of March 1996.

Michael Bendel,
Chair

I concur/~~I dissent~~

Ron Cochrane,
Union Nominee

~~I concur~~ **I dissent**

DISSENT ATTACHED

Hugh John Cook,
Employer Nominee