

IN THE MATTER OF AN ARBITRATION

BETWEEN: CONESTOGA COLLEGE

AND: ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE GRIEVANCES OF SHEILA BARKLEY ET AL -  
VIOLATION OF ARTICLE 4.01 OF THE COLLECTIVE AGREEMENT

BOARD OF ARBITRATION:

Kevin M. Burkett, Chairman  
K. Hallsworth, College Nominee  
Peter Warrian, Union Nominee

APPEARANCES FOR THE  
COLLEGE:

R.J. Drmaj, Counsel  
A.W. Hagar, Director, Academic  
& College Planning  
John Podmore, Director, Personnel  
Services  
David Putt, Director, Waterloo  
County  
Bob McIvor, Former Chairman,  
Applied Arts & Business

APPEARANCES FOR THE  
UNION:

N. Luczay, Grievance-Classification  
Officer  
Frank Hicks, Chief Steward  
Mel Fogel  
Sheila Barkley, Grievor  
Martha Baur, Grievor  
Sheila McLeven, Grievor  
Gail Douglas, Grievor

A hearing was held in this matter in Toronto on April 8, 1982

A W A R D

1. The union grieves in this matter that the college violated article 4.01 of the collective agreement between the parties which expired August 31, 1981, when it assigned teaching hours in excess of 20 hours per week to the grievors without first obtaining "voluntary agreements" in accord with article 4.01. Article 4.01 provides:

"Effective on the commencement of the second semester of the 1978-79 Academic Year, the College will establish teaching schedules that adhere to the following:

	<u>Group 1</u> <u>(Academic Post</u> <u>Secondary)</u>	<u>Group 2</u>
Maximum teaching hours per week	20	22
Maximum teaching hours per year	700	900
Maximum teaching hours for Nursing per year		775
Maximum contact days per year	180	190

Each contact day (being a day in which one or more teaching hours occur) or part thereof assigned by the College and performed in excess of the annual maximum number of contact days for the Group concerned as set out above shall be paid on the basis of 1/180th of the employee's annual salary for Group 1 and 1/190th of the employee's annual salary for Group 2, provided, however, any payments for work in excess of time limits will not be pyramided.

A contact day assigned by the College which the employee would have otherwise performed except for illness and for which contact day the

employee is not replaced shall be considered a contact day for the purpose of determining the number of contact days beyond which an extra payment allowance may be paid to the employees, as set out above.

It is understood that no teacher shall be assigned teaching hours in excess of the maximum teaching hours provided for herein except by voluntary agreement between the teacher and the College providing fair compensation (which may be by way of equivalent reduction in other teaching or non-teaching assignments or by way of monetary payments).

It there is no such agreement or if there is a dispute arising out of such agreement a claim by an employee concerning compensation as referred to above for teaching hours in excess of the maximum teaching hours is subject to the grievance and arbitration procedure.

All individual arrangements between the teacher and his immediate supervisor shall be set out in writing within ten (10) days and filed by them with the Local Union President and the College for information purposes. If requested by either the Union Local or the College, the other party will indicate whether a particular agreement has been filed with it and a copy will be provided upon request."

There is no dispute between the parties with respect to the authority of this Board to hear and determine this matter. The parties are agreed that should we find in favour of the union we should remain seized with respect to the quantum of compensation.

2. The facts in this matter are relatively straightforward. The grievors are teaching masters assigned to the Secretarial Department, Doon Campus of Conestoga

College. Prior to the 1980-81 academic year, and at the time the collective agreement under which we have been appointed was entered into, there were two distinct types of students at the college each with a more or less separate curriculum. There were those who had completed Grade 12 and there were those who were enrolled as part of an adult retraining programme and did not have Grade 12 equivalent. The courses taught to the Grade 12 graduates fell under the heading of "Group 1 (Academic Post Secondary)" in article 4.01. The maximum teaching hours per week for a teaching master teaching courses within Group 1 is set at 20 hours per week. It is to be noted that the Group 1 courses extended over a two year period leading to a diploma. The courses taught to those in the one year adult retraining programme fell under Group 2 in article 4.01. The maximum teaching hours are set out at 22 hours per week for Group 2 courses. There was no adult retraining at the Doon Campus prior to September, 1980 so that the only courses taught by the grievors were Group 1 courses with the maximum 20 teaching hours per week.

3. Effective September 15, 1980 a restructuring of the overall programme took effect. The first year post secondary and the adult retraining courses were integrated so that, in the words of Mr. A. Hagar, the college's Director of Academic and College Planning, "the skills and knowledge taught were essentially the same." The basic programmes

consisted of clerk-typist, secretary - machine transcription, bookkeeper-typist and secretary shorthand. At the same time the former second year post secondary legal, medical and executive secretarial speciality courses were opened to adult retraining students who qualified on the basis of their first year performance.

4. As part of the above described restructuring of its programme, the college decided that effective from September 15, 1980 all first year courses within the Secretarial Department would fall within the Group 2 category referred to in article 4.01, while all second year courses would fall within Group 1. The effect of this decision was to increase the maximum number of teaching hours for those teaching masters assigned first year courses (now Group 2) who had previously taught only post secondary courses (then Group 1). If a teaching master's teaching load is split between first and second year courses, the college arrives at the maximum number of teaching hours by prorating between the first year (Group 2) and the second year (Group 1) courses. The maximum teaching hours of the grievors were increased as a result of the above-described restructuring. The evidence is, however, that the course content taught by the grievors did not change. None of the grievors entered into voluntary agreements and none of the grievors

received increases in their annual salaries (as set out in Appendix 1 to this agreement) to compensate for their additional hours of teaching.

5. The union does not dispute the right of the college to classify its employees, nor does it dispute the right of the college to assign the courses to be taught, nor does it claim that the prorating of Group 1 and Group 2 courses to arrive at a maximum number of teaching hours per week violates the collective agreement. The position of the union in this matter, simply put, is that the courses taught by the grievors were at all relevant times Group 1 courses so that the maximum number of teaching hours they were required to teach per week was fixed at twenty hours. In the absence of a voluntary agreement allowing the college to exceed this maximum number of teaching hours, the union submits that the scheduling of teaching hours in excess of the maximum permitted violates article 4.01 of the collective agreement.

6. The college reminds the Board that the onus is upon the union to establish a breach of the collective agreement in this matter. In the absence of a definition of "academic post secondary" in the collective agreement or of any reference to the meaning of the term in any prior arbitration awards, and in the face of a broad management rights clause, the college maintains that the union cannot show, without resort to past practice, that

the grievors taught exclusively Group 1 courses as would have limited their maximum teaching hours per week to twenty hours. The college maintains that under the management rights clause, it is entitled, in the absence of a definition, to designate courses as either Group 1 or Group 2. The college argues that the first year courses were properly designated as Group 2 by the college and accordingly, the union cannot show that the grievors taught exclusively within Group 1. Alternatively, if the Board decides that the language of article 4.01 is ambiguous and looks to extrinsic evidence to aid in the interpretation, the college argues that the past practice is equivocal. It is the college's position that there is no restriction upon its right to designate a course's grouping under article 4.01 as it sees fit.

7. We start with the trite observation that when the parties agreed to article 4.01 they were agreed that there are two types of teaching assignments and that there is a substantive distinction between them. Unfortunately, the language used to express this agreement is ambiguous in so far as it pertains to the substance of the distinction. We are entitled, therefore, to rely on extrinsic evidence as an aid in determining the intent of the parties when they entered into their agreement. (See Leitch Goldmines and Texas Gulph Sulphur Co. (1969) 3 DLR (3d) 151.)

8. The extrinsic evidence establishes that at the time the parties entered into their collective agreement

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and for a considerable period of time following, Group 1 teaching assignments were those that required the teaching of courses leading to a 2 year diploma. These courses, both first and second year, were open to students holding Grade 12 qualification. In contrast, Group 2 teaching assignments were those that relate to the non-diploma adult training programme open to persons not holding Grade 12 qualification. On this evidence we are satisfied that the parties intended Group 1 to encompass courses taught to Grade 12 graduates as part of a 2 year diploma course and that Group 2 encompassed the courses taught as part of the adult training programme.

9. The effect of article 4.01 is to restrict management in the scheduling of maximum hours of work. Whatever might be said about the breadth of the management rights clause under this agreement, there is an express restriction on management's right to schedule hours of work beyond the maximum number of hours stipulated in article 4.01. In the result, if it is established that the grievors continued to undertake Group 1 teaching assignments but had their teaching hours increased without entering into a "voluntary agreement", then, on the language of article 4.01, the grievance must succeed. However, if it is established that the grievors' teaching assignments during the relevant period were other than Group 1 assignments, then the twenty teaching hours per week restriction does not apply and the grievance must fail.

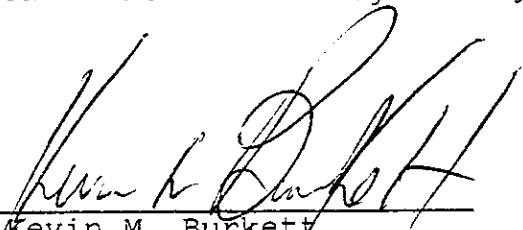
10. The evidence in this case discloses that the courses which are the subject matter of this grievance continue to be courses which, given satisfactory performance, lead to a 2 year diploma. There is no evidence that in moving from diploma to certificate accreditation upon the successful completion of the 2 year programme the academic standards were reduced in any way. The evidence in this case further establishes that the present first year course content has continued virtually unchanged from that which comprised the first year Group 1 course content prior to the reorganization. The courses which the college has now designated as Group 2 teaching assignments are essentially the same as those which had previously been taught by the grievors as Group 1 courses. Finally, whereas the students enrolled in the previously designated Group 1 courses had been exclusively Grade 12 graduates, these courses are now open to both Grade 12 graduates and those in the adult retraining programme without Grade 12 qualification. In terms of course content, stream or programme (i.e. 2 year certificate) and student qualification, the only element of the current first year teaching assignments which has changed from the prior first year Group 1 assignments is the make-up of the student group which is no longer comprised entirely of Grade 12 graduates.

11. The purpose of the Group 1 and Group 2 distinction established in article 4.01 is to recognize that certain teaching assignments are more difficult (namely the Group 1

assignments) in that they may require more preparation time, increased classroom concentration and additional marking and follow-up. When reference is had to the purpose of the clause and to the intent of the parties with respect to the substance of the distinction between the Group 1 and Group 2 teaching assignments, and to the evidence with respect to the nature of the current assignments which are at issue we are compelled to conclude that these assignments fall within Group 1 and accordingly, the maximum 20 teaching hours per week applies.

12. Having regard to all of the foregoing, this grievance is sustained. We hereby declare that the college violated the collective agreement when it assigned in excess of 20 teaching hours per week to the grievors. We hereby direct the college to compensate the grievors for the hours taught in excess of the maximum required under the collective agreement. We will remain seized in the event the parties are unable to agree on the amount of compensation owed to each of the grievors.

DATED at Toronto, Ontario this 25th day of May,  
May, 1982.

  
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Kevin M. Burkett  
Chairman

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"Peter Warrlian"  
Union Nominee

DECISION OF K. HALLSWORTH, COLLEGE NOMINEE:

Having examined the Award of the Chairman, I regret that I am unable to concur. In my view, the College did not violate the collective agreement but, in fact, established maximum teaching hours in a fair and equitable manner entirely consistent with the provisions of the collective agreement.

In their collective wisdom, when the negotiators for the Union and the Colleges agreed to Section 4.01 of the Collective Agreement they distinguished between the teaching needs of the Academic Post Secondary (group 1) students and those having lesser academic credentials (group 2).

Without knowing what was in the minds of the negotiators, one could assume, with as much logic as any other assumption, that they agreed that students having less than grade 12 education required more careful, time-consuming classroom teaching and less out-of-classroom preparatory than those in the Academic Post Secondary Group. Hence the maximum teaching hours of 20 per week for Group 1 and 22 for Group 2 students were established.

As long as students attend different classes in two distinct groups, the application of section 4.01 is clear. Teachers of classes made up entirely of Academic Post Secondary Groups have maximum teaching hours of 20 per week, teachers of others have 22 hours.

Once Conestoga College combined Academic Post Secondary and other students in the same classroom, however, this tidy distinction disappeared. Once the Academic Post Secondary Group contained students with less than Grade 12 education, it lost the special characteristics that warranted a maximum of 20 teaching hours per week. In effect, it was no longer an Academic Post Secondary Group, but had the same classroom and out-of-classroom requirements as other classes in Group 2.

It appears to me this would have met the requirements of Section 4.01.

The College did not go this far. Instead only first year courses were treated on the same basis as those in Group 2 while second year courses, in spite of the presence of students with less than grade 12 academic credentials, were treated on the same basis as Group 1. Presumably, the rationale was that successful completion of the first year course would screen out differences between the two groups of students proceeding to the specialized second year courses. Teachers required to teach first and second year courses had their maximum hours prorated between 20 and 22 hours per week.

In this way the College was able to meet the special needs of the new groups of students and moderate the effect on its teaching staff.

It is my view that this does not violate the collective agreement and the grievance should fail.

DATED at Toronto, Ontario this 25th day of May, 1982

"K. Hallsworth"  
College Nominee

