

91 B

Local 556

CAAT (A)

IN THE MATTER OF AN ARBITRATION

BETWEEN

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- and -

GEORGE BROWN COLLEGE

Grievance of L. D. Benhaggai, OPSEU #91A209

|         |                 |   |                  |
|---------|-----------------|---|------------------|
| Before: | M. G. Mitchnick | - | Chairman         |
|         | J. McManus      | - | Union Nominee    |
|         | R. Hubert       | - | Employer Nominee |

Appearances:

|                |                         |
|----------------|-------------------------|
| For the Union: | David I. Bloom, Counsel |
|                | Amy Thornton            |
|                | Tom Tomassi             |
|                | Theresa Sheenan         |
|                | David Benhaggai         |

|                   |                               |
|-------------------|-------------------------------|
| For the Employer: | F. G. Hamilton, Q.C., Counsel |
|                   | S. Layton                     |

Hearings in Toronto: April 5, October 8, November 4, 1991;  
February 13, February 14 and July 3, 1992.

## A W A R D

This grievance is filed on behalf of David Benhaggai, and as will be seen, raises squarely the issue of the status of "Continuing Education" teachers at the College. The grievor was hired in 1983 to teach one 3-hour class in "Introduction to Photography" as part of the College's Continuing Education program in the Visual Arts. By 1985 the request for his services was up to as much as five such classes per week, giving him 15 hours a week for at least the fall and winter terms. As of September of 1988, that 15-hour week was extended to all three terms, and that pattern was repeated for the September 1989 school year as well. In June of 1990, at the end of that year, the grievor testified that he was given an indication by the Chairman of his department that the Dean was out to "sack" him. At the same time an arbitration decision issued for Canadore College which indicated that the assignment of Continuing Education classes, at least for regular "full-time" teachers, were subject to the overall workload restrictions of the collective agreement. That decision will be discussed further below, but for present purposes it can be said that the response to it of the administration at George Brown College was to issue a directive to all Chairs and Deans to restrict any one Continuing Education teacher to a maximum of 6 hours a week (the limit for exclusion as "part-time" under the collective agreement) while the full impact of the Canadore decision was

being assessed, and an attempt made to work out a "Local Agreement" with the union which would deal with the matter. The grievor was one of those affected by the restriction, and accordingly the offer that was mailed to him in August of that year to continue his teaching in the Continuing Education program for September of 1990 was limited to two classes, or 6 hours a week. With the comments of the Department Chairman as to "being sacked" still fresh in his mind, however, the grievor regarded this offer as a "constructive dismissal", and made no reply to the College whatsoever. Instead, the grievor filed a complaint of unfair discharge with the Ontario Labour Relations Board. Discussions on that complaint produced an agreement to have it withdrawn, in return for acknowledgement of the right of the grievor to file a grievance under the terms of the collective agreement, which in effect would provide a test for the issue of the grievor's status. The College agreed to waive any objection as to "arbitrability", reserving only the right to challenge the grievor's entitlement with respect to certain remedies, on the ground of "laches", or untimeliness on the basis of the provisions of the collective agreement itself. The relevant provisions in that regard are 11.02 and 11.05(a), which provide:

#### **11.02 Complaints**

It is the mutual desire of the parties hereto that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall discuss it with the employee's immediate Supervisor within twenty (20) days

after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate Supervisor an opportunity of adjusting the complaint. The discussion shall be between the employee and the immediate Supervisor unless mutually agreed to have other persons in attendance. The immediate Supervisor's response to the complaint shall be given within seven (7) days after discussion with the employee.

\* \* \*

#### 11.05 General

(a) If the grievor fails to act within the time limits set out at any Complaint or Grievance Step, the grievance will be considered abandoned.

What the grievance actually seeks by way of remedy is:

- (1) A declaration that I am a full-time permanent employee and have been a member of the bargaining unit throughout the term of the current collective agreement.
- (2) Payment of all salary & benefits flowing from this recognition, retroactive to September 1, 1989.
- (3) Reinstatement to the grievor's former full-time position.
- (4) Full interest on all monies payable.

On the question of "delay", it might be noted that the grievor's evidence initially was that he had no knowledge whatever of the existence of the union or a collective agreement until he began to make his inquiries following the remark of the Chairman in June of 1990. Upon cross-examination, however, the grievor conceded that the presence of the union was known to him at least

as of 1984, with the strike of the bargaining unit and its attendant picket lines, but then added that there was a difference between the question of whether or not there was a union at the College, and whether one was represented by and covered by the terms of its collective agreement.

Currently there are some 9-1200 teachers teaching Continuing Education courses at George Brown College. These may be teachers already on staff with a department of the College and part of the regular "day-time" courses, or they may be hired from outside, solely to teach Continuing Education. In the latter case they receive an hourly rate only, have no entitlement to benefits, and are not treated as going through a "probationary" period. Unlike "day"-program teachers, including long-term sessionals, their hiring is not done through a formal committee process, nor is it subject to advance approval by senior management as to complement. The courses are taught evenings and weekends, and generally do not qualify as a credit towards the post-secondary diplomas offered by the college. Where it is sought to make them a "credit" course, this can only be done through approval of the course by the Ministry of Colleges and Universities. And in that event the course becomes "funded" by the Ministry, although on a lesser formula than that applying to full-time courses. The vast majority of Continuing Education courses are not "credit" courses, however, and are considered "General Interest" only. That means, in turn, that they are

required to be self-financing - i.e., carried only by the tuition fees of the students, or by contributions from an outside agency interested in having the course offered.

Apart from the aforesaid "diplomas", which do have post-secondary recognition, the College also has developed a practice with respect to some of its Continuing Education courses or course-groupings of making "certificates" available on completion because, as one of the witnesses put it, students tend to want to walk away with a piece of paper at the end of it all. The description of these certificates in the Continuing Education catalogue seems to vary from year to year, and their effect is not entirely clear, but at least one of the excerpts filed set out the following:

**Certificate in Photography**

This is a general interest program designed to help students develop technical skills and aesthetic sensibilities in photography. Students with appropriate skill levels may receive advanced standing, and may enter the program at the intermediate or advanced levels. While students may register for individual courses, a certificate is awarded upon successful completion of the four required courses and one elective.

**REQUIRED**

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|           |                                |
|-----------|--------------------------------|
| PHOT 8000 | Introduction to Photography    |
| PHOT 8010 | Intermediate Photography       |
| PHOT 8020 | Advanced Photography           |
| PHOT 9220 | Black-and-White Print Workshop |

Photography is also offered as a "day" program for career purposes, and the grievor testified that his students were a mix

of general-interest and career-oriented individuals, with some using it for "remedial" purposes for their "day" course and, as the grievor understood it from some of the comments, even receiving credit for it. In that respect the grievor was more directly involved in writing letters of reference for some of his students to other Colleges, where, he gathered, some measure of equivalent credit was being accorded his course. That limited awareness on the part of the grievor, however, is in contrast to the evidence of the Department's Chairperson, having responsibility for the Department's courses and budget, and who indicated that from the College and the Ministry's point of view, the course (as with all Continuing Education courses in Photography) was treated purely as a non-credit General Interest one, and not funded - and that had it been a requirement to pay for it at the salary scales negotiated for "day" programs under the collective agreement, it would simply not have been economically feasible to offer the course.

The Union argues simply that there is no exclusion for individuals like the grievor under the parties' collective agreement. Article 1.01, the Union submits, is in broad, all-inclusive terms, and persons like the grievor, unlike "part-time" or "sessional" teachers, do not fall within any of the specified exclusions. Article 1.01 provides:

The Union is recognized as the exclusive collective bargaining agency for all academic employees of the Colleges engaged as teachers, counsellors and librarians, all as more particularly set out in Appendix 1 hereto save and except Chairs, Department Heads and

Directors, persons above the rank of Chair, Department Head or Director, persons covered by the Memorandum of Agreement with the Ontario Public Service Employees Union in the support staff bargaining unit, and other persons excluded by the legislation and 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 twelve months duration in any twenty-four month period."

Appendix 1 simply sets out the salary schedules for "Professors and Counsellors and Librarians". The exclusions "by legislation" refer to the bargaining unit set out in Schedule 1 to the Colleges Collective Bargaining Act, which provides:

#### SCHEDULE 1

The academic staff bargaining unit includes the employees of all boards of governors of colleges of applied arts and technology who are employed as teachers, counsellors or librarians but does not include,

- (i) chairmen,
- (ii) department heads,
- (iii) directors,
- (iv) persons above the rank of chairman, department head or director,
- (v) other persons employed in a managerial or confidential capacity,
- (vi) teachers who teach for six hours or less per week,
- (vii) counsellors and librarians employed on a part-time basis,

- (viii) teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than twelve months in any twenty-four month period,
- (ix) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity, or
- (x) a person engaged and employed outside Ontario.

(The term "teachers", used originally in the statute, has come to be replaced by the parties in their collective agreement by the term "professors".)

Articles 3.01 and 3.03(1) provide:

3.01 The salary scales applicable to full-time employees shall be as set out in Appendix I attached hereto.

...

3.03 (1) The Salary scales as set out in Appendix I will apply to persons teaching more than twelve (12) hours on a regular basis. Persons teaching over six (6) and up to and including twelve (12) hours on a regular basis will be covered by paragraph (2) hereof and Appendix II.

Once again, the Union simply notes that the grievor has been both employed on a "regular" basis, of 30 weeks a year since 1983, and for more than 12 hours a week, at least since 1987. The Union submits that on the basis of those "full-time" hours, the grievor also has qualified for the acquisition of seniority stated under Articles 8.01(a)(i) and (c) which provide:

8.01 (a)(i) A full-time employee will be on probation until the completion of the probationary period. This shall be two (2) years' continuous employment except as described hereafter.

...

8.01 (c) On successful completion of the probationary period, a full-time employee shall then be appointed to regular status and be credited with seniority equal to the probationary period served.

Article 8.09 does also provide:

8.09 Extension and Continuing Education programs and courses which are not included in the regular assignment of full-time employees are excluded from the application of this Article for all purposes.

The Union argues, however, that the grievor in this case is the "full-time" employee in whose regular assignment these Continuing Education courses are included, and that the purpose of Article 8.09 is to prevent someone already a full-time teacher accruing more than full-time seniority as a result of teaching additional Continuing Education courses. The Union submits that Article 8.09 also would prevent full-time teachers in a lay-off situation from bumping a part-time or partial-load teacher in Continuing Education.

In response to the Union's argument, the College relies on the conduct and practice of the parties since prior to the time the Colleges Collective Bargaining Act was even passed to demonstrate that it was never the understanding of anyone that

persons hired solely for the Continuing Education program of the College were covered by the terms of the parties' collective agreement. When the Colleges in 1967 were found to be "crown agents", it appeared that the bargaining rights for their employees, as "public servants", would automatically fall to the Civil Service Association of Ontario, as it was then known. That right of the CSAO to bargain was challenged in Court, however, by a group of teachers representing the "Ontario Federation of Community College Faculty Association", and in an arrangement mediated by the Minister of Education, it was agreed that the question of bargaining rights for the academic bargaining unit would be decided by way of a representation vote, presided over by an "umpire" appointed by the government, Mr. Howard Brown. The bargaining unit was described in that arrangement as:

All academic employees of all Colleges of Applied Arts and Technology engaged as teachers (including teachers of Physical Education), counsellors and librarians, save and except Chairmen, Department Heads and Directors, those above the rank of Chairman, Department Head or Director, persons employed in the non-academic Bargaining Unit represented by the Civil Service Association of Ontario (Inc.), and teachers, counsellors and librarians employed on a part-time basis.

The Federation in fact failed to make it onto the ballot in accordance with the threshold percentage established by this arrangement, and the teachers in a "one-way" vote affirmed their desire to have the CSAO represent them. A first collective agreement was concluded in September 1972, running to 1974, and

describing the bargaining unit in the following additional terms (being in all material respects the present language):

**RECOGNITION**

1.01

The Association is recognized as the exclusive collective bargaining agency for all academic employees of the Colleges engaged as teachers (including teachers of Physical Education), counsellors and librarians, all as more particularly set out in Appendix 1 hereto, save and except Chairmen, Department Heads and Directors, persons above the rank of Chairman, Department Head or Director, persons covered by the Memorandum of Understanding with the Civil Service Association of Ontario (Inc.) in the non-academic bargaining unit and teachers, counsellors and librarians employed on a part-time or sessional basis.

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

NOTE B: "Sessional in this context shall mean an appointment of not more than twelve months duration in any twenty-four month period."

The next collective agreement ultimately came to be imposed by a board of arbitration chaired by Mr. Justice Estey, and which contained the same "Recognition" language as in the previous collective agreement. Then came passage of the Colleges Collective Bargaining Act, with the bargaining unit set out in Schedule I as shown above. In connection with that, Mr. Hamilton has filed excerpts from Hansard quoting the then-Minister of Colleges and Universities, the Hon. J. A. C. Auld, as follows:

**Hon. Mr. Auld:** Mr. Chairman, at the present time, as far as the college end is concerned, the difference between this bill and Bill 100 is that there is a collective agreement in force and we have designed this bill around the provisions of that agreement, including

those who are presently included, excluding those who are presently excluded, but making provision for application before the Labour Relations Board to whether, in fact, somebody who is presently called a chairman or a director or a foreman or whatever, is actually carrying out the management functions of that position ...

And further:

**Hon. Mr. Auld:** Mr. Chairman, first of all as far as the exclusions are concerned - particularly the part-time people - this is the basis of the present agreement and one which has worked for some time. I think the Hon. member realizes that in the community colleges, with the part-time and the evening courses and so on, the variations, the changes, are so great that there can be quite a turnover of part-time staff.

When the Act was finally passed, the parties of course continued their bargaining relationship under it, but in fact reverted to the "Recognition" language of their own previous collective agreements.

The main point of the College in setting out this bargaining and legislative history was to demonstrate that "Continuing Education" teachers at no time were considered part of this process of selecting, or negotiating through, a bargaining agent. Mr. Tom Storie, a partner in the law firm of Hicks, Morley, Hamilton, Stewart, Storie involved in the identification of "eligible" employees for the Colleges at the time of the vote, testified that to the best of his recollection the discussion was focussed around teachers on "full-time" contracts, which, as a practical matter, came to be a question of

those who were on benefits, and in particular in the Pension Plan. The correspondence passing back and forth in the efforts to ascertain the List of eligible employees appears consistent with that recollection. A letter from St. Clair College responding to "List" inquiries from the Colleges' Staff Relations Committee dated November 6, 1970, for example, notes:

1. ...

- (d) We indicated separately Retraining teachers on our Academic lists and there were no part-time or casual Academic, no hourly rated Academics listed, no daily rated Academics listed, nor any seasonal or temporary Academics listed.

A further challenge by the Federation to the list submitted by George Brown College was described as follows:

The persons on this list are all paid by the day and do not hold a full-time contract according to the criteria governing permanent employees of the colleges. Until their status is clearly defined through negotiation, the Federation considers them ineligible for the purpose of determining the agencies which shall have access to the ballot.

And in a further challenge to the St. Clair College list:

The position of the Manpower Retraining Personnel still remains unresolved. Notwithstanding the job titles attributed to the personnel on the list in question, it would appear that there is some difference of opinion whether or not these persons hold full-time contracts in the sense of permanent employees. We have been unable to determine whether these people do or do not contribute to the college pension plan or to the College hospitalization plan. Inasmuch as these two criteria might be considered valid for the purposes of determining the status of these employees, we challenge their inclusion in the bargaining unit for the purpose of determining eligibility for the ballot.

Mr. Storie's recollection is further borne out by the evidence of Douglas Light, recently-retired President of the College and a participant in the Colleges' system since it began. Mr. Light testified that persons in the category of the grievor definitely were not included in the bargaining unit at the time of the original vote. Mr. Light acknowledged, however, that at that point in time there was no specified limit of hours defining who was a "part-time" employee; a teacher was either on a "full-time contract", or considered part time.

With respect to the practice at George Brown College itself, there is no dispute on the evidence but that Continuing Education courses have never been paid at the salary scales for full-time teachers, or even at the hourly rates for partial-load teachers. When taught by regular faculty members of the Department, they are done so on a volunteer basis, at the Continuing Education hourly rate applicable to the "pure" Continuing Education teachers as well. With only two known exceptions, the Continuing Education hours have never been included in SWF's, whether taught by persons on the regular faculty or otherwise. Those two exceptions were treated by the College as exactly that, solely for the purpose of maintaining two long-time faculty members at a level of hours that would avoid their having to be laid off. It is the testimony of Amy Thornton, President of the Local at George Brown since May of 1989, and Chief Steward for 5 years before that, that it was not

until approximately the same time as the present case arose that it came to her knowledge that there were persons teaching solely in the Continuing Education program in excess of 12 hours a week. Ms. Thornton added that it was essentially the number of hours that she was concerned with, not where they were taught, and she noted that 'partial-load' members of the bargaining unit were not the subject of SWF's either. As will be discussed, there are lists of staff changes which go to the Union President under Article 8.15(b), and these since 1989 have been coming to Ms. Thornton. Ms. Thornton testified that it was always her understanding that these lists covered all of the persons engaged in the academic business of the College, i.e., all courses pertaining to career-orientation, and that the only exceptions were courses like Sailing that were offered under contract by outside sources. Ms. Thornton was not aware of any distinction between "funded" and "non-funded" courses, and specifically recalls asking about some of the teachers shown on the List for the CPR program, which she believes is a non-funded, non-credit program. Ms. Thornton also notes that a Mr. Fitzpatrick is shown teaching 4 hours in Continuing Education Photography, which the College now maintains is a non-credit course. And she further recalls a Mr. Rodack in the Plastics Department several years earlier having his Continuing Education course on Saturday being counted as part of his regular full-time hours. Ms. Thornton acknowledges, however, that until the grievor there has never

been any claim, to her knowledge, put forward by anyone in the Union that a person teaching more than 6 hours a week purely in Continuing Education was covered by the provisions of the collective agreement.

What brought all of this to the forefront, in fact, was a decision of a board of arbitration on a grievance at Canadore College (decision of H. D. Brown, issued February 20, 1990). At Canadore the administration in 1988 advised the Union that it considered it proper to employ full-time teachers to teach Continuing Education courses over and above their regular workload, so long as the teachers did so voluntarily. The College then proceeded to do that and the Union grieved, claiming that such an arrangement violated the express terms of the collective agreement pertaining to "workload", and could only be carried out through the medium of a "local agreement" with the Union. The terms of the collective agreement which the Union relied upon were Articles 4.01 and 4.01(2)(a) and (b), which provide:

4.01 (1) Each teacher shall have a workload that adjures to the provisions of this Article.

4.01 (2)(a) Total workload assigned and attributed by the College to a teacher shall not exceed forty-four (44) hours in any week for up to thirty-six (36) weeks in which there are teaching contact hours for teachers in post-secondary programs including nursing and for up to thirty-eight (38) weeks in which there are teaching contact hours in the case of teachers not in post-secondary programs. The balance of the academic year shall be reserved for complementary functions and professional development.

Workload factors to be considered are:

- (i) teaching contact hours
- (ii) attributed hours for preparation
- (iii) attributed hours for evaluation and feedback
- (iv) attributed hours for complementary functions.

4.01(2)(b) A "teaching contact hours" [sic] is a College scheduled teaching hour assigned to the teacher by the College.

The issue in the case was whether or not these extra teaching hours, having been taken on on a "volunteer" basis by the faculty member, should be considered to have been "assigned" by the College, within the meaning of Articles 4.01(2)(a) and (b). The arbitrator ruled that it should, observing at page 15 that:

... The assignment of work is not necessarily the same or limited to the compulsion of an individual by his Employer to teach a course.

And thus that:

.. an hour of teaching in Continuing Education falls within the definition of a teaching contact hour because after the arrangement has been made for the services of the teacher for that course, the teaching hour is assigned by the College to that teacher in Continuing Education. Those hours of teaching are not excluded in that definition ...

The board concluded that:

... there is no reason in our view, to conclude that the maximum work load provided by the parties can be ignored by a voluntary arrangement to teach with individual members of the bargaining unit who voluntarily enter into an individual contract of employment with the College.

And it is in that context, in terms of what the case was actually deciding, that the following comments appear at page 17 and 19 respectively:

... We find that the circumstances of this case brings the individual arrangement between the College and the faculty members to teach in Continuing Education within the terms of the Collective Agreement and therefore the Employer must apply the terms of Article 4.01 in that regard.

...

We find on the facts relating to the issue in this matter that Article 4.01 applies to the faculty members covered by the collective agreement who teach courses in the Continuing Education program in the evenings.

There was, as can be seen, no issue of employee "status" before the board in the case at Canadore College at all. The individuals in question already were members of the bargaining unit covered by the agreement, and everyone recognized that. The only issue was whether the restrictions on teaching hours that could be assigned to such members of the bargaining unit could be ignored in the case of Continuing Education hours, and the arbitrator ruled that they could not. At the time it was first released it did, understandably however, generate a good deal of discussion and confusion, and the administration at George Brown College, out of an abundance of caution, issued the directive noted at the outset, that its Deans and Chairs were to limit even those persons teaching solely Continuing Education

hours to a number which would maintain exclusion from the bargaining unit in any event.

Certainly on all of the evidence there is established before us at least a "latent" ambiguity as to who it is the parties have been referring to as academic "employees" covered by their successive collective agreements - specifically, with respect to the now-alleged inclusion of those persons hired, in the manner described above, solely to teach in the Continuing Education program of the College. In the oft-quoted General Concrete of Canada Ltd. (1976), 22 O.R. (2d) 65, leave to appeal granted but then quashed 340 O.R. (2d) 279n, for example, a board of arbitration, notwithstanding past history, concluded that owner-operators were necessarily covered by a collective agreement having an "all employee" scope clause. The Court noted, inter alia, at page 70:

... There was no disagreement that the truck drivers had never been included by either of the parties within the provisions of any relevant collective agreement for many years; that such persons had been considered apart and distinguishable from the other employees; that neither drew the question of these drivers to the attention of the other during the negotiations for the agreement.

And in the course of deciding to quash the award of the board of arbitration, commented in particular, at page 67:

... The question that was before the board for it to determine and to which it failed to direct itself was, what was the intent of the parties to the contract when it was drawn as to the meaning of the word "employees" and did the parties intend it to apply to drivers such as these? The board of arbitration had to determine

whether these truckers were included in the phrase "all employees in its Hamilton Division" and to do it had to ask itself what was the meaning ascribed to that phrase by the parties to the agreement.

Similarly, see Leitch Gold Mines Ltd. v. Texas Gulf Sulphur (1968), 3 D.L.R. (3d) 161 (Ont. C.A.). The Union can point to no example of an individual like the grievor employed solely in Continuing Education being treated as coming under the terms of the collective agreement in any respect. On the other hand, the evidence does not establish with any clarity the number of pure Continuing Education teachers who, like the grievor, were assigned to teach more than 6 hours a week on a regular or continuing basis. Similarly, the apparent test for eligibility at the time of the initial representation vote separated only "full-time contract" teachers, and all others. While that once again points in the direction of the exclusion of Continuing Education, it is not a test which focuses clearly on the distinction between "part-time" people teaching at or below the 6-hour mark, which developed later.

Where the evidence is not equivocal, however, is in respect of the lists of staff additions and deletions which the collective agreement dictates be provided to the Union under the informational requirements of Article 8.15(b). That Article currently reads:

During the last week of September, January and May the College shall notify the Local President of all personnel covered by the Agreement hired or terminated since the last notification, together with the classification, location and division or Department

concerned. At such times, the College shall also include notification of all hirings of personnel assigned to teach credit courses including, in particular, sessional appointments.

That is, however, a revised version. Until 1985, what the parties stated in that clause was:

(b) Effective October 31st and at least quarterly thereafter, the College shall notify the local branch president of all hirings of personnel assigned to perform work of the nature of that performed by the members of the bargaining unit, provided that the extent of a person's work is in excess of twenty hours in a month and except as to persons employed in extension and continuing education. The College shall supply the Union with an initial list of all personnel who performed such work to such an extent during October.

(emphasis added)

Ms. Thornton herself was of course not President back that far, but what that language shows is that the Union, until 1985, was not even interested in the comings and goings of teachers in Continuing Education. When they did become interested, the extent of that interest was specified to be with respect to "credit" courses only (of which, although nothing would appear in the end to turn on it, the grievor has failed to clearly demonstrate that he taught one). Consistent with that language change, those additional lists, at least in latter years, have in fact been designated on their face as "Funded", and the errors admitted to in that regard are not so widespread as to elevate the exception to a rule. But more importantly, that limited

extension of the scope of Article 8.15(b) alone is not sufficient to infer an intent to suddenly include at least "funded" Continuing Education program teachers in the bargaining unit, given that another clearly "excluded" group, "sessionals", were added to that informational list as well. In all other respects the practice and conduct of the parties with respect to "pure" Continuing Education teachers remained as it always had been, and that recognition of their exclusion is far more consistent, for example, with the language of Article 8.09, which once again states:

**8.09** Extension and Continuing Education programs and courses which are not included in the regular assignment of full-time employees are excluded from the application of this Article for all purposes.

than the alternative interpretations which Mr. Bloom has valiantly tried to put upon it.

That is not to say (as Article 8.09 itself notes) that all Continuing Education hours are therefore irrelevant for the purposes of the collective agreement, and the restrictions pertaining to those teachers otherwise covered by it. The Canadore College case amply demonstrates that they are not. Indeed, even before that, Mr. Brown in a case at Sheridan College (issued May 30, 1983), focused on the very words

"which are not included in the regular assignment of full-time employees"

in Article 8.09 to find that Continuing Education hours taught by an employee already in the bargaining unit counted towards completion of the employee's probationary period. In fact, the more interesting distinction adverted to in that decision, with respect to the case now before us, is found at page 19, as follows:

... In our opinion, Article 8.15(b) does not support the Employer's position in this matter, in that it deals with information requirements to be given by the Employer to the Union, of persons in two categories and exempts such information concerning excluded employees teaching in the Extension and Continuing Education Division, but not of those employees who are bargaining unit members who may be assigned work in Extension and Continuing Education Departments, which would include the grievor....)

More broadly, there is clearly a growing interest, as reflected in the amendment to Article 8.15(b) itself, on the part of the Local to monitor the allocation of any available credit hours, be they amongst Continuing Education or amongst sessional teachers, with a view to identifying, especially in times of restraint, a potential source of full-time workload hours (see the comments of the board in Fanshawe College, a decision released by this same chair, on June 18, 1992).

But on the issue before us, when one combines the history of the parties' dealings on this issue, together with that of the collective agreement language itself, the conclusion one is overwhelmingly driven to is that pure Continuing Education

