

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

the Union

- and -

SAULT COLLEGE

the College

RE: GRIEVANCE OF PHIL BRANNEN

Before:	M.G. Mitchnick	-	Chair
	Sherril Murray	-	Nominee for the Union
	David Cameletti	-	Nominee for the College

Appearances:

For the Union:

Mary Mackinnon	-	Counsel
Phil Brannen	-	Grievor
John Giguere	-	President, Local 613

For the College:

D.K. Gray	-	Counsel
R. Wright	-	Director, Human Resources

Hearing held in Sault Ste. Marie on June 18th, 2002.

INTERIM AWARD

The board has deliberated at length over the appropriate manner of dealing with this matter. The grievance is filed on behalf of Mr. Phil Brannen, formerly a professor at the College, concerning the availability to him of a local Early Leaving Assistance / Restructuring Plan that was in effect from March 1997 to March 2000. The grievance frankly flies in the face of the Settlement of an earlier grievance (filed May of 1997) that was entered into on January 28th, 1998, and that on its face appears to articulate the arrangement under which the grievor was expected to retire.

The College raises a number of objections to the arbitrability of the matter. The board will deal with those when and as it must. For present purposes, however, it is sufficient to note that the grievance alleges a violation of Article 3.02 of the Academic collective agreement. That article provides:

The Colleges and the Union agree that there will be no intimidation, discrimination, interference, restraint or coercion exercised or practiced by either of them or their representatives or members because of an employee's membership or non-membership in the Union or because of an employee's activity or lack of activity in the Union or because of an employee's filing or not filing a grievance including participation in the workload complaint system.

Union counsel has identified the nature of the evidence that the grievor seeks to adduce, to demonstrate a pattern of bad-faith conduct on the part of certain College representatives aimed at frustrating the grievor's entitlements and expectations, in response to his pursuit of the May 1997 grievance. While this normally would be the kind of thing dealt with by the Labour Relations Board, clearly Article 3.02 makes it arbitrable before this board as well, should the Union still wish to pursue it here.

The grievor will accordingly be allowed to tell his full story before us, in an effort

to make out the pattern of behaviour on the part of the College that he alleges. We do, however, note the acknowledgement by the grievor that there was nothing said by College representatives on the day that the Settlement of January 28th, 1998, was negotiated that is inconsistent with the terms of the settlement as they appear. At the end of the day, therefore, the grievor has to recognize that there may be difficult hurdles for him to overcome in terms of the remedy that the current grievance appears to seek.

The matter will be scheduled for continuation of hearing if a written request to do so is received from the Union within 35 calendar days of the date on this award. Failing such request, the grievance will be treated as abandoned and dismissed.

Dated at Toronto this 28th day of October, 2002.



Chair

"Sherril Murray"

Union Nominee

"David Cameletti"

College Nominee