

CAAT (A)

GRIEVANCE AWARD

Headnote 98A765

HEADNOTE

GSB
O P S E U **98A765**
OPSEU **Loc. '653**

OPSEU (Carbonneau) vs. Northern College of Applied Arts and Technology
Award dated February 13, 1999 (R.O. **MacDowell**)

Salary Grid. Formal Qualifications. Interpretation of Collective Agreement provision dealing with advancement on Salary Grid due to completion of a year of post-secondary education, but without having completed the diploma. Union position that Collective Agreement contemplates advancement on the Salary Grid for each completed year, without completing degree or diploma **program**, while College arguing the converse. Grievance dismissed. Unanimous decision. Panel found that although Collective Agreement is capable of more than one interpretation, the College interpretation is the more sensible one. Board found Award in *Niagara* College - Grievance *of Anne Wylie* (March 31, 1989, Devlin) persuasive **and** on point.

Andrew Lewis

IN THE MATTER OF AN ARBITRATION

BETWEEN

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
(**"the Union"**)

AND

NORTHERN COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(**"the College"**)

Grievance of Johanne **Carbonneau** (OPSEU # **98A765**)

BEFORE:

R.O. MacDowell	(Chair)
John McManus	(Union Nominee)
Patrick J. Gallagher	(College Nominee)

APPEARANCES:

For the Union: Andrew Lewis (Counsel)

For the College: Anne Burke (Counsel)

A hearing in this matter was held in Timmins, Ontario, on January **21, 1999**.

AWARD

I. What this case is about.

This is the grievance of Joanne **Carbonneau**, (“the **grievor**”) who claims that she **is** entitled to an additional “**increment**” or “step” on **the** salary grid, because she has now completed “one **year**” of a “**one** and a half year program” of studies [see below] that **will** eventually lead to a Master of Education degree. **The grievor** contends that under the terms of the collective agreement, she is entitled to receive that salary increment **NOW**, and that she need not **actually** finish the program or receive the degree (although she plans to do so). The **grievor** asserts that advancement on the grid is dependent only upon the number of “years” of additional post-secondary education that a professor completes • not whether **s/he** receives any formal accreditation • and that since she has now completed one “year” of her program, she is entitled to **an immediate salary adjustment**.

The College replies that no advancement on the salary grid can take place until the employee has actually completed the degree **program** in which **s/he** is enrolled and **has** received the resulting degree. The **number** of “steps” or “increments” may depend upon the nature or length of that educational program, but, according to the College, credit on the salary grid must await the granting of the resulting degree, diploma, or professional accreditation. Accordingly, the College says that the grievor is not currently entitled to any salary adjustment.

The parties **are** agreed that this Board of Arbitration is properly appointed under the terms of the **collective** agreement, and that we have jurisdiction to hear and determine the matters in dispute between them. The parties are **further** agreed that if we find that there is a breach of the collective agreement, we *may* remain seized **in** the event that the parties have any difficulty calculating the amount of compensation to **which** the grievor may be entitled. **Finally**, since this case involves a rather narrow issue of **interpretation**, the parties were content that we make our determination on the basis of some agreed upon facts, **together** with **certain** concessions that were made for the purpose of **crystalizing the interpretation** issue.

The background is not substantially in dispute. However, for ease of exposition, we will not reproduce the many pages of contract language which establish the “salary grids” or the related “Classification Plan” (see Article 14, found at pages 26-36 of the Agreement, and **the** Classification Plan found at pages 135-139). It will be **sufficient** to refer to the agreed **facts** and certain features of the **contractual** scheme upon which **the** parties’ arguments are based.

II • Background

The Union and the College are parties to what might be described as a “master agreement”, that is *negotiated centrally and* is binding on a number of community colleges across the Province. The payment system that gives rise to the current dispute **has** been in the master agreement for many years. So far as we are aware, the **structure** of the payment system has remained substantially unchanged since at least the early **1980's**, and has not been the subject of any recent consideration at the bargaining table.

The **grievor** is enrolled in a program of studies at Nipissing University, which (if **completed**) will lead to Master of Education degree. However, because the **grievor** is involved in that program on **a part-time basis**, there was initially some controversy about how to measure her progress. According to the Union, the M. **Ed.** at Nipissing, is considered to be a **"one and a half year" program**. But, of course, a "part-time" will take much longer than that, and may not actually qualify for her degree for a number of years. Moreover, there are apparently a number of different ways of **fulfilling** the educational requirements for the degree: 10 half courses plus a comprehensive examination; **8** half courses together **with** a **"major paper"**; and 6 halfcourses plus a **"thesis"**. Students have considerable flexibility, not only in respect of the **timing** and selection of their courses, but also in respect of how and when they complete the **overall** requirements for a **degree**.

In the circumstances, therefore, it is a little **difficult** to determine **what** constitutes "one full year of post-secondary education" - **hence** the parentheses in the opening paragraph of this decision. And that is one of the **difficulties** to which the College **refers**. Even if one accepts the Union's submission that the M. Ed. **degree** envisages a **"one and a half year"** program, when is **a part-time student** iii the **grievor 2/3** of the way through **that** program? What does a **"year"** mean in this context?

The Union's theory, linking **salary** increments to "years" of additional education, requires a case by case analysis of what constitutes a **"year"** - an **exercise** that is rather

complicated in **the case** of part-timers, but would 'be **significantly** simplified (although **perhaps** not entirely eliminated) by waiting until the individual **has** actually completed the **prescribed course** of studies. That is one of the attractions of the College's position. It reduces **uncertainty**, avoids problems of **characterization, and** limits the potential for unequal treatment depending upon the vagaries of one's timetable, course selection, **and** method of evaluation. For, to take the grievor's situation as an example: had she completed a **"year"** with 5 courses (which is what she had when the grievance was filed) or with 6 courses (which is what she had completed a few weeks later)?

In any event, the College is prepared to agree, that for the purposes of this arbitration, the grievor **has** the **equivalent** of "one **year**" of her **longer** program of study. So for present purposes, we need not consider this question of **"characterization"**. Nevertheless, to the extent that ease of administration is an aid to interpretation, the College's position is the preferable one.

It is **common** ground that the position advanced by the College at the hearing is also its established practice in dealing with such matters. It is agreed that, **historically**, this College has not made grid adjustments until the individual has actually received **his/her degree**. There was only one exception to that practice, which was treated as an "error", and subsequently corrected -without complaint from the individual concerned or the union. Accordingly, so far as we are aware, Ms. Charborneau is the first employee to grieve about the College's approach.

It is also common ground that what is at stake here is, at most, one grid "increment" or "step". The Union says that the **grievor** is entitled to this single-step salary adjustment upon completion of one "year" of additional education • which in this case, would amount to **2/3** of what is said to be an 18 month program. In the Union's submission, the **grievor** need not complete this 18 month **course** of studies. Nor would she be **any** better off financially if she did. On the union's view of things, she earns her additional **salary** increment by doing an additional year's training, and, from a **financial** point of view, it does not matter **whether** she goes any **further** or actually completes her degree.

On the Union's theory, therefore, someone who does **2/3** of a course of studies (amounting to "one year") and then "drops out". will be paid at the same rate as someone who completes the program and receives a degree.

The College says that this is an anomalous and an undesirable result (especially for an educational institution), that is entirely avoided by awaiting the completion of the program and the granting of the degree. **In** the College's submission, the **salary** scheme is intended to reward *those who have actually achieved additional accreditation*, not those who taken a number of courses towards towards that objective. The College maintains that, in an academic setting, the bargaining parties could never have intended equal treatment for those who are not similarly situated: those who have earned a degree and those who are only **2/3** of the way there.

III - Discussion and Decision

The Union **bases** its argument upon some of the language found at pages 135-139 of the collective agreement under the general heading "CLASSIFICATION PLAN FOR 'PROFESSORS AND COUNSELLORS AND LIBRARIANS'". The union says that the **terms** of the agreement give "points" for each **year** of post-secondary education **completed**, and those terms do not specifically require that an employee receive a degree. Thus, at page 136-137, under the subheading "Relevant Formal Qualifications" one **finds these words**:

Formal **qualifications** are those which constitute the norm in **institutions** of post-secondary education in the Province of Ontario. Only full years of post-secondary education at **successively** higher levels, **and leading to a diploma**, professional accreditation or **degree**, are recognized. For example, a **graduate** of a three-year **technology program** in a College would be given 1% points **for** each of the three years, regardless of the length of time actually spent by the individual in **obtaining** the **diploma. No credit is given** for a year of study in which there was **significant** duplication of other studies...

There follows a chart that mentions: a **CAAT** Diploma or Post Secondary Certificates which warrants 1 ½ points per year completed maximum of 4 **years**; a University degree, 1% points per **year** completed maximum of 6 years; a formal integrated work/study programs such as a C.A. or **C.G.A.** which warrants 1 ½ points **per year** (level) completed to a

maximum of 5 **years**; and so on. But again, there is no specific stipulation that anyone **complete** the specified "qualification"; and the formula clearly does contemplate "**points**" per year of the **program** completed. **In** the union's submission, it is the completion of "yew-s" and the attainment of points that counts • not **whether** anyone actually obtains the **degree** or diploma itself.

Now we might pause here to observe that this is **certainly** not the only, or even the most plausible reading of the words to which the union refers. On the contrary. What we are dealing with here, are "**formal** qualifications" in the sense of a "diploma, professional accreditation or **degree**" • the "formal" piece of paper or certificate that **one** obtains after additional years of study. In the abstract, the words "**leading to a diploma**" might conceivably mean "**leading towards, with a view to, but not necessarily obtaining a diploma**"- as the Union claims. But that is not the most obvious sense of those words, and they are immediately followed, **with** an example, for clarification, that envisages the situation of someone who **has** spent time "**obtaining a diploma**" • which is to say, someone who **has** taken the time to actually get that document.

So the Union's linguistic argument does not withstand close scrutiny, even on its own **terms**; and requires one to give credit for steps towards, but not the achievement of, what the **agreement labels "relevant formal qualifications"**.

In other words, if one gives content to the word "**formal**", what is "**relevant**" is the "**formal qualifications**" attained • the **degree** • not **the** "point score" or the individual "years of

study” necessary to get there. And that is **also** what is suggested **when** one goes back to **the** terms of the agreement establishing the salary grid itself (Article 14 at pages 26-36).

Article **14.01A** links the determination of **starting** salaries and progression with the “PLAN” and the **explanatory** material found at pages 134-148 of the agreement. However, it is instructive to look at the way in which the grid is structured, and what **is** required to achieve a position on the grid. Article 14.03 A **1(b)** begins with **these words**:

The **following** table indicates both **the** maximum **salary** level attainable by an employee based on that employee’s **relevant formal education levels** and **equivalencies** and the maximum starting step for that employee on the Salary Schedule.

The table following Article 14.01 A then has a heading for the maximum **step** attainable, and an adjacent listing of the required formal qualifications to achieve that step. Thus, someone with a 4 year University degree can, with **experience** and good performance, achieve the maximum step, but someone **with no** formal post-secondary **“diploma, certificate, or degree”** hits a ceiling at four steps below the maximum. **What** counts is **the level** of formal education achieved.

There is no recognition here of “partial degrees” or “years towards a diploma not actually obtained”. Nor **does** this language envisage **some** automatic *progression or* extra credit with every year of extra post-secondary education. It is a salary formula based upon **“formal qualifications”** not extra training which *might or might not* lead to **such formal** qualifications.

This is not to say that the Union's position is completely without linguistic support. But, quite **frankly**, it is easier to accept an arrangement in which extra training might not be immediately rewarded, than one **in** which *someone* who does not complete a degree or diploma will be in the same position as someone who does. And, in **a** College environment, it is hardly surprising that the focus is on levels or plateaus of additional education rather than courses, years or parts of programs. The College's position seems more consistent **with** the context and the *general* payment scheme reflected in the salary grid, and it is certainly much easier *to administer*.

The practice of the College is also supported by the only arbitration decision on point.

In Niagara College - Grievance of Anne Wylie (decision released March 3 1.1989, Devlin) the **grievor** had completed the courses necessary for her M.B.A., but had not yet received her degree. Nor had she received a salary adjustment, because it was the practice of the College to make such changes only when the degree was conferred. Ms Wylie challenged that practice, claiming that she had completed the **required** number of "years" of additional training, and that she was therefore entitled to financial recognition of her achievement. In her submission, it was not *necessary* to actually obtain the degree (which would not be conferred until a **formal** ceremony, some months later). And in support of that position, Ms. Wylie relied upon the same

collective agreement language that Union relies upon in the instant Case • although, of course, Ms. Wylie had actually **completed the** prescribed **program, and** was merely awaiting receipt of the **formal** document, while the **grievor** in this case still has quite a lot of work to do.

The employer **in Niagara College** took the same position as the College does **in** the instant case: that it was not required to make a **salary** adjustment until the **degree** was actually received. There, as here, the employer relied upon the structure of **the** salary grid, and the **fact** that the salary formula was based upon “relevant formal education levels” which are described **in** terms of recognized diplomas or degrees. There, as here, the employer argued that what mattered **was formal educational attainment as** evidenced by the receipt of a degree • not the completion of a program.

Arbitrator Devlin’s analysis of this issue is set out in a long passage to which we might usefully **refer**. After reviewing the practice of the College and the language of the collective **agreement**, she went on to say:

The determination of this issue is not without difficulty and an argument could be made that the language of the Classification Plans is ambiguous. However, even if we were to **reach** such conclusion, no extrinsic evidence was introduced to which the Board might have recourse as an aid to interpretation. Although the College has **evidently** given credit and made salary adjustments only when a degree has been conferred, there **was** nothing to indicate that the Union was aware of this practice. As a **result**, the practice of the College alone cannot be considered and the issue must be resolved on the basis of the language of the Classification Plans.

The statement contained in **the** Plans which was relied upon by the union does suggest that credit for the purpose of calculating starting **salary** of for **making** salary adjustments is to **be** given for **each** year of study and is not contingent upon a **degree** having been conferred. This statement, however, must be viewed in the context of the Classification Plans as a whole. These Plans provide for an assessment of appointment factors, one of which is **"relevant formal qualifications"**. Such qualifications **are** described as "those which constitute **the** norm in institutions of post secondary education in the **Province** of ontario". It is these **qualifications** which are to be assessed and for which **credit** is given on the basis of the number of years required to obtain **the** relevant diploma, degree, or professional accreditation. The Classification Plans further provide that where there is **a** duplication of studies, only the highest qualification is to be used in the computation. **Once** again, it is **the** qualification which is **the** foundation of **the** computation and not **merely** the additional **year** or years of **study**. **Further**, if one considers the example which follows the **statement** relied upon by the Union, it appears that the parties **were** seeking to **make** clear that only **full** years of study would be counted and [they] **were** not addressing **the** basis for entitlement to credit.

Finally, and in some respects significantly, the **Classification** Plans were designed to provide the means by which starting **salary** and **progression on the salary grid are to be determined**. **The salary grid** is based upon **formal** educational qualifications and it is in **these** terms that **starting** salaries, mid-points and salary maximums are specified. It would, in our view, be somewhat anomalous **for** the Classification Plans to provide for placement and progression on the grid on another basis; namely, completion of one or more years of post-secondary education without the necessity to obtain **the** **recognized** educational qualification. **On** the Union's interpretation, of **course**, there would be no need to **ever** complete the course of study and **obtain the** diploma, **degree**, or professional accreditation.

Given the Classification Plans **as a whole** and the **manner in which the salary grid** is structured, we **find that the College is correct, and that credit for the out-nose of calculating a Teaching Master's starting salary** and for the **purposes of advancement on the grid is dependent upon** the Teaching Master **having** obtained the **diploma**.

degree, or professional accreditation. In our view, therefore, completion of one or more years of study leading to a degree is not sufficient and it naturally follows that completion of the courses leading to a degree is also not sufficient. Credit is only given when the degree is conferred. (emphasis added)

This **decision** was **not judicially** reviewed. Nor is there any evidence that, in the rounds of bargaining since 1989, the union has made any **effort** to negotiate new **contract** language to reverse **the result**. On the contrary, **the current language is** exactly the same as it was ten **years** ago when the **Devlin** panel considered the issue.

Now, **strictly** speaking **this** arbitration panel is not **"bound"** by **the Devlin** Award. We are **free** (indeed we are probably obliged) to make our own **independent judgement** of the facts and the language under review. Nevertheless, we do not think **that we can** ignore the Devlin decision; moreover, as we read the collective **agreement**, Ms. **Devlin's analysis** is not only "plausible". it is also very **"persuasive"**. It is certainly not **"unreasonable"** or "obviously wrong", as counsel for **the** union claims. And, it is not without **significance** that **the** m-don **has** made no effort to challenge the award or change the contract language to avoid its result.

In summary **then**, the **interpretation** that **the** College urges **upon** us: is consistent with its established practice; is congruent with the language of the **collective** agreement read as a whole; "fits **better**" in an educational setting; avoids anomalies and **administrative difficulties**; and is supported by the only **arbitral** decision on point.

We are grateful for the thorough and **thoughtful** submissions of counsel for **the** Union. However, for all of the reasons outlined above, it is our opinion that the College's position is the correct (or at least the more probable) interpretation of the language in dispute.

The grievance is therefore dismissed.

Dated at the City of Toronto this

13th

day of February, 1999


R.O. Mac Dowell

I agree

"Patrick J. Gallagher"

I agree

"John Mc Manus"