

IN THE MATTER OF AN ARBITRATION

BETWEEN:

FANSHAWE COLLEGE

AND: ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

AND IN THE MATTER OF AN ARBITRATION WITH RESPECT TO
AN ABUSE OF THE GRIEVANCE PROCEDURE

O. B. SHIME Q.C. CHAIRPERSON

S. MURRAY UNION NOMINEE

M. RIDDELL COLLEGE NOMINEE

APPEARANCES:

R. ATKINSON COUNSEL, and others
for the Colleges

J. BREWIN; G. LEEB COUNSEL, and others
for the Union

Hearings were held on this matter
at London on January 6, 2006, March 21, 2007, October 15, 2007
November 5, 2007, November 12, 2007 and September 29, 2008

AWARD

This is a College grievance in which the College claims that the Union has abused the grievance arbitration procedures in the collective agreement and has acted unreasonably in the administration of the collective agreement by filing 572 Article 2 grievances over 6 academic terms and essentially alleging that every partial load position should be a full time position without any basis for making that claim. The Union has also filed 15 divisional grievances. The Union maintains that there has been a considerable decrease in full time staff and a corresponding increase in part time staff while student enrolment at the college has increased. The Union submits that the College has not provided it with sufficient information to enable the Union to pursue its Article 2 rights to have the College give preference to full time rather than part time positions and therefore filed the many grievances to obtain the necessary staffing information.

Background Introduction

Before turning to the grievances at hand, it is useful to provide some background against which this grievance may be assessed. Colleges, for the most part, are unlike the usual plant or office where all the employees are geographically located in one location or in limited but defined locations and are readily identifiable. Many of the Colleges have multiple locations. Also, the Colleges employ or contract with a variety of teachers, such as, full time, part time, partial load, and sessional teachers who teach for a variety of hours. For example, a part time teacher is defined as a person who teaches six hours per week or less. Some part-time teachers will drop in at the College to perform their various teaching duties, but will not have an office at the College. In all these circumstances, it is particularly difficult to determine or identify who is engaged or employed at the Colleges and for what period of time and in what position. That difficulty becomes even more

apparent when considering Article 2 of the collective agreement, which requires the College to give preference to full time positions over partial load and sessional positions. Most often in these cases, the Union attempts to demonstrate that a combination of positions should result in a full time position and, accordingly, it is necessary for the Union to have sufficient information about the various teaching positions in order to make a proper assessment for the purposes of Article 2.

To be fair, there are a number of provisions in the collective agreement requiring that the College provide the Union with information. For example, Article 7 provides for a Union/College Committee requiring the College to provide the local Union the rationale for sessional appointments and for the application of Article 2 staffing, which includes the assigning of work on a full time, sessional, partial load or part-time basis and the feasibility of assigning work on a full time basis. That provision can only be fulfilled by the College providing all relevant information concerning staffing. Also, Article 9 provides for an Employee/Employer Relations Committee which is to consider common problems including matters of a local College concern during the life of the agreement, which we interpret to include staffing problems. As well, that Committee is entitled to examine the adequacy of information supplied under Article 27.04 A (seniority lists for full time, probationary and partial load employees) and Article 27.12 (all personnel under the agreement, hired or terminated and personnel assigned to teach credit courses including sessional appointments).

Article 11.02A A1(a) requires the Colleges to give copies of the standard workload form (SWF) to teachers which includes all details of the teacher's total workload. If these SWFs were collected by the Union from their members, it would provide the Union with considerable

information. Article 28 provides for a College Employment Stability Committee (CESC) to examine employment stability and whose functions include receiving and analyzing data provided under the agreement, with the objective of providing a data base analyzing internal and external trends which impact employment stability such as areas of growth or decline. These provisions have the potential and are capable of providing additional information to the Union concerning the total work force and the impact of increased or declining enrolment on the staffing at the College. It is our view, the establishment of a proper and common data base would go a long way to providing the requisite information in order for both parties to reasonably administer their respective obligations under the collective agreement.

In addition, Article 8 provides for reduced teaching or work assignments for full time employees to assist employees and the local Union in the administration of the collective agreement. The Article provides for leaves of absence for two full time employees elected to full time positions with the union. Therefore, the Union should be capable of organizing its staff and elected officials to obtain copies of SWFs from the bargaining unit members and other information which would enable the local union to gain considerable insight into the staffing at the College.

Notwithstanding these provisions, it appears from the cases, that some Colleges do not provide sufficient information. However, fault, if any, does not always reside with the Colleges, because it also appears that some local Unions do not actively seek information, nor do they maintain adequate historical records concerning the information that has been provided. In our view, it is necessary for the reasonable administration of the collective agreement for the Colleges to provide

sufficient information about the full body of teaching and for the Union to seek and maintain proper records of the information that is provided. In that way, both parties will be able to reasonably assess whether the agreed upon preferences under Article 2 are being honoured.

In summary, it is our view that the collective agreement mandates that considerable information be provided to the local Union and also the means by which the local Union may gain access to the relevant staffing information. The Colleges are required to provide sufficient information to enable the Union to pursue its obligations, while the Union is required to collate and maintain information received from both the College and its members.

We now turn to the instant grievance which provides as follows:

“Fanshawe College

London, Ontario

December 21, 2004

The College grieves against OPSEU Local 110 and its officers, Paddy Musson, Gary Fordyce and Tom Geldard.

The College has received 124 identically worded grievances dated November 18, 2004. By their wording, the grievances fall into one of two types. The first type of grievance claims that a partial-load position occupied by a named individual should be designated as a full-time position and that the College has therefore violated Article 2.02 of the collective agreement.

The second type of grievance merely claims that the College “failed to give preference to the designation of full-time positions as regular teaching positions rather than non-full-time positions” in an academic division of the College.

The arbitral jurisprudence under Article 2.02 of the collective agreement is clear that the Union has the onus of proving the existence of a full-time regular position or positions.

In its responses to these grievances dated December 2004, the College requested that the Union provide particulars as to the facts supporting the alleged existence of a full-time position in each of these 124 cases. In its response and referral to Step 2 dated December 7, 2004, the Union has ignored the College's request for particulars and has instead sought information and documentation from the College.

The Union's failure to particularize its grievances makes it impossible for the College to respond to them and makes any Step 2 meeting a complete waste of time and College resources. This conduct has been repeated over the past six academic terms, such that the College finds itself in the position of having over 500 grievances to which it simply has no basis to respond.

As a result of the above conduct, Local 110 and its officers have engaged in an abuse of the grievance procedure under the collective agreement. Furthermore, such conduct constitutes a breach of the duty to administer the college agreement (in particular, the grievance procedure under Article 32) reasonably and in good faith.

As remedy, the College seeks:

1. A declaration that Local 110 and/or Paddy Musson, Gary Fordyce and Tom Geldard have violated the collective agreement.
2. An order that Local 110, Paddy Musson, Gary Fordyce and Tom Geldard cease and desist abusing the grievance procedure and breaching the collective agreement.
3. An order that Local 110, Paddy Musson, Gary Fordyce and Tom Geldard comply with the obligation to act reasonable and in good faith in the administration of the collective agreement.
4. An order that the Union provide written particulars of its grievance in each case as to how and why the partial load position or positions should be a full-time position.
5. An order that the grievances dated November 18, 2004 not proceed to arbitration until the Union has provided written particulars of each of the 124 grievances dated November 18, 2004 in satisfaction of the order under item 4 above.
6. Such other remedies as are deemed appropriate.

“Dr. Howard Rundle”
President

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The Union’s response to the grievance which is consistent with the evidence adduced by the Union is contained in the Step 2 reply which is as follows:

“TO: Joy Warkentin, Vice-President, Fanshawe College
FROM Ted Montgomery, OPSEU
DATE: February 16, 2005
RE: Step 2 Grievance meeting – Fanshawe College Grievance dated
December 21, 2004

Appearances:

For the Union:
Paddy Musson
Tom Geldard
Gary Fordyce

For the College:
Linda Ballantyne
Joy Warkentin
Sheila Wilson

On December 21, 2004, the College has grieved “against OPSEU Local 110 and its officers, Paddy Musson, Gary Fordyce and Tom Geldard”. The circumstance first giving rise to this grievance, as it set out in the statement of grievance, is the filing of grievances by OPSEU Local 110 on November 18, 2004. Although Article 32.11 of the Collective Agreement, September 1, 2003 to August 31, 2005 requires that a College grievance must be filed within 20 days of the circumstances giving rise to the grievance, the Union is not raising the patent violation of the time limits as an objection to the consideration of this grievance.

The College notes, in its grievance, that the Union filed 124 separate grievances dated November 18, 2004 and adds that over 500 separate grievances have been filed by OPSEU Local 110 over the last six academic terms. Nonetheless, the College alleges that the Union has failed to “particularize its grievances” that this in turn, “makes it impossible for the College to respond” and that this then makes “any Step 2 meeting a complete waste of time and College Resources.”

Linda Ballantyne speaking for the College specified that the Union has breached Articles 2.02 and 32 of the Collective Agreement.

Ms. Ballantyne referred in her presentation to the Award of Arbitrators Paula Knopf, Robert Allivan and Sherril Murray in the matter of OPSEU v. George Brown College, OPSEU file no. 01C218, December 17, 2003. Ms. Ballantyne quoted briefly from page 32 of that Award.

The full paragraph containing the quoted section reads:

“When a grievance is filed under Article 2, the Union must show a prima facie case demonstrating that a vacant position exists and/or that there is adequate work to justify the filling of a position. Once a prima facie case is established, the evidentiary onus shifts to the College to explain why a full-time appointment has not been made [See *George Brown (Shime)*, *supra*; and *Fanshawe (Samuels)*, *supra*]. Because of the way this Article works and the evidentiary burdens on the parties, Arbitration boards have ordered Colleges to produce lists of courses taught by part-time employees, course outlines and timetables (see *George Brown College (Devlin)*, at pp 6 and 7, *supra*) The Shime Board of Arbitration, in the other *George Brown College* case, *supra*, also ordered this College to produce lists of the courses being taught by retiring professors and existing documents which would indicate whether “those courses, or courses sufficient similar, or which [were] arguably relevant, [were] being taught by other who [were] either full-time or part-time which [included] partial loan and even sessional persons (see Award, page 6). These orders for production reflect the nature of the conclusion that the Union has an interest in understanding the nature of the “body of work” that it believes has been assigned in violation of Article 2.”

Ms. Ballantyne acknowledged that OPSEU Local 110 had requested from the College in respect of these 124 grievances, the timetables, course information sheets, course identification numbers, the specific operational requirements for the partial load positions being grieved, the resumes of the partial-load teachers specified in the grievances, and a justification for why more than 50% of the total assigned teaching load in some Divisions was being assigned to non-full time employees.

Ms. Ballantyne also asserted that the College was not suggesting that the Union should not represent its members.

Speaking for OPSEU Local 110, Paddy Musson replied that the Union believes it has a reasonable right to information regarding the application of the requirements set out in Article 2 of the Collective Agreement requiring that the College give preference in its hiring practices to the hiring of full-time rather than partial-load employees.

Ms. Musson added that OPSEU Local 110 had attempted to use the Union College Committee [Article 7] in the past to access necessary and requested information regarding

the College's hires, but now the College was no longer willing to provide any such information. Ms. Musson also noted that the College had been asked to provide information relating to the application of Article 2 at previous Step 1 or Sept 2 meetings but that there had been no positive response to those requests.

Mr. Gary Fordyce, also speaking for Local 110, noted that there had been a decline in full-time faculty at Fanshawe College from approximately 650- to 400, while, at the same time, student numbers had increased. Mr. Fordyce alleged that the College was increasing its use of partial-load and sessional employees, and, contrary to the obligations set out in Articles 2.02 and 2.03 was giving preference to the hiring of non-full-time employees based on fiscal considerations and objectives rather than the specified and limited "operational requirements", which are cited in Article 2 of the Collective Agreement.

Mr. Fordyce also noted that requests for information in respect of the application of Article 2 had been made by OPSEU Local 110 at Union College Committee meetings but that these were being denied and he had been told that the provision of information only led to grievances. Mr. Fordyce also stated that attempts to gain information through the Union steward structure had been "road-blocked" by the College.

Mr. Fordyce then presented details of the percentages of teaching hours being assigned to non-full-time employees in various Divisions of the College.

Union grievances are filed under Article 32 of the Collective Agreement which gives the Union Local President the right to file a grievance "*concerning the interpretation, application, administration or alleged contravention of the Agreement*". There is no allegation that the Union has breached any of the specific terms and conditions of Article 32.10. The allegation made by the College in its own grievance is simply that OPSEU Local 110 has grieved in a way that is unreasonable and/or not in good faith. This allegation is based on the number of grievances and an alleged lack of particulars in those grievances.

There is no restriction on the number of grievances that any party – an employee, a group of employees, the Union, or the College – may file.

Similarly, the only requirement to provide so-called particulars in a grievance is the statement in Article 32.10 which states that "*it is the intention of the parties that reasons supporting the grievance and for its referral to the succeeding Step be set out in writing in the grievance and on the document referring it to the next Step*". There are ample precedents established as to what meets this condition. A brief statement that the Collective Agreement has been violated or that the response at any Step is not satisfactory have always found to be sufficient.

Turning to the College grievance dated December 31, 2004, with respect to the allegation that OPSEU Local 110 and Ms. Musson, Mr. Geldard, and Mr. Fordyce have violated Article 2.02, the Union can find no language in that Article which the Union Local or any of its officers could breach. Article 2.02 places obligations only on the employer. To grieve that

the employer has violated those obligations (as OPSEU Local 110 had done) cannot be logically interpreted by any standard of reason to a violation of that Article of the Collective Agreement by the Union. Only a party with an obligation or responsibility under that Article can be found to breach that obligation or responsibility and clearly that Union has no such responsibility in the administration of Article 2.02. Accordingly, the allegation that OPSEU Local 110 or any of the three officers named in the College grievance has violated Article 2.02 is wholly unfounded and unsupportable.

The College also alleges that OPSEU Local 110 and Ms. Musson, Mr. Fordyce, and Mr. Geldard have violated Article 32. This allegation is based on the conclusion made by the College, and set out in its grievance, that the Local has not acted "reasonable and in good faith" in exercising its rights under that Article.

The Collective Agreement requires the College to respond to Union grievances filed under Article 32.10 and to individual or group grievances filed under Articles 32.03, 32.07 and 32.09. In the event that the College is not satisfied with either the form or the substantive claim of the grievance, the College has the authority to deny the grievance. Nothing in that denial however prevents the grieving party from referring the matter to arbitration by a third party as set out in Article 32. to the extent that the College is dissatisfied with the form or the content of the Union grievances filed on November 18, 2004, the College has the right and option to deny any or all of those grievances. The Union then has the right to pursue those grievances up to and including arbitration. If a board of arbitration determines that the Union had failed to meet its obligations in any or all of those grievances or has failed to provide necessary "particulars" which make it "impossible for the College to respond to them", (to use the term set out in the College grievance) then that board may make any determination that it deems appropriate including dismissing or upholding any or all of the grievances.

The Union can find no requirement in Article 32 to provide "particulars" acceptable to the College before the College meets its burden in respect of the application of Article 2.02 as described fully in the *George Brown* College decision of Arbitrator P. Knopf.

In any event, with regard to particulars, OPSEU Local 110 has provided the College with sufficient particulars for the College to respond with at least most of the information requested by Local 110 and identified by the Knopf Board in its unanimous decision. Ms. Ballantyne quoted from Arbitrator Knopf's Award the reference I which Knopf sets the bar for the Union. She writes: "*When a grievance is filed under Article 2, the Union must show a prima facie case demonstrating that a vacant position exists and/or that there is adequate work to justify the filing of a position*" [emphasis added]. There can be no question that the figures supplied by Local 110 to the College through Mr. Fordyce satisfy that second of the alternatives identified by Ms. Knopf.

Local 110 has identified the persons who are partial-load hires and for whom it seeks information. Local 110 has further identified the number of hours, Division by Division, which have been assigned to non-full-time employees. By detailing the amount of work

being assigned to non-full-time employees as contrasted with full-time employees, and the number of hires of non-time-time employees as contrasted with the number of hires of full-time employees, the Union has clearly established a prima facie case for the grievances claiming violations by the employer of Article 2.02 of the Collective Agreement.

Arbitrator Knopf in the George Brown College Award sets out the College's obligations succinctly at page 41:

Therefore, those doing the hiring must recognize and respect the full-time preference and be able to identify and communicate the operational requirements that were invoked to justify any non-full-time appointments. Recognizing that no all of these appointments will challenged by the Union, nevertheless, when and if the Union raises questions about the appointments, the College must be in a position to explain, at the Article 7.02 (vi) meetings the operational requirement and/or rationale that it invoked when deciding to hire a non-full-time person. To this end the Union is also entitled to request that the College provide a list of courses taught by non-full-time employees, their course outlines and the timetables of faculty who taught those courses".

The College asserts in its grievance an issue of the use of time and College resources. Arbitrator Knopf addresses the issue of the use of College resources to meet its burden: "... *"While we are sympathetic to the College's concerns about the expenses that could be incurred to generate the kinds of information the Union wants, those concerns are not relevant in a determination of the contractual rights and obligations in this Collective Agreement"* p. 37

It is difficult to accept that the College's assertion that it is "impossible" to respond to the grievances filed on November 18, 2004. As Arbitrator Knopf notes, the College has to be able to provide its rationale for each partial-loan appointment, and be able to provide as well, lists of the courses taught, timetables, and course outlines. If that is not currently possible, the College has a contractual duty to make it possible.

While Ms. Ballantyne contended that the College was not suggesting that the Union should be represent its members, this grievance and its proposed remedy can only be seen as an effort to thwart the officers of OPSEU Local 110 in the pursuance of their responsibilities to enforce compliance with the Collective Agreement.

At the outset of the Step 2 meeting, I set out that the Union would like to resolve the grievance and the issues between the parties. In that respect, I offer the following prescriptive comments.

If the College is genuinely interested in reducing the number of grievances filed by Local 110 regarding the application of Article 2.02 and the requirement to give preference to the designation of full-time positions rather than partial-load, then there is an obvious and reasonable solution that is in keeping with establishing and maintaining good labour relations.

The Union grieves when it receives the lists of hires as mandated under Article 27.12 of the Collective Agreement. Without the rationale to explain the operational requirements as set out in Article 2.02, and without the concomitant information identified by Arbitrator Knopf, Local 110, in order to exercise its responsibilities, has no option when there are clearly sufficient hours for a full-time position, except to grieve every hire which is sessional or partial-load.

Accordingly, the obvious and eminently sensible solution available to the employer, if, as noted, the employer has an sincere and forthright desire to foster positive labour relations, is to provide OPSEU Local 110 with the requested information regarding all partial-load (and perhaps sessional) hires when the 27.12 lists are generated. The Union College Committee, under Article 7.02(vi) provides the appropriate venue to not only share the information but to discuss the College's rationale in hiring each partial-load employee. That, in turn, would enable the Union to identify and to set aside those positions where it acknowledges the validity of a partial-load appointment. Local 110 officers identified some such appointments as replacement teachers for faculty on leave, for faculty with reduced teaching loads, for union release, etcetera. I am sure there would be others.

This approach would certainly reduce the number of grievances and allow the parties to respond fully to each other's concerns and positions. The college may choose this or a similar approach or surely will be faced with continuing arbitrations that will no doubt confirm the Knopf decision, which will require the College to provide the timetables, course assignments and course outlines that the Union is requesting, in any event.

For all of the above reasons the grievance is denied.

It is noteworthy that OPSEU negotiators have tabled language in several rounds of contract negotiations to add the stipulation to article 6 that the functions set out in that Article would be exercised in a "reasonable" manner and in "good faith". Management negotiators have consistently refused to agree to that addition claiming that such an inclusion would not assist the parties in the administration of the Collective Agreement but would lead to grievances. It is interesting that Fanshawe College bases its grievance against Local 110 and the named officers on the presumption that such a requirement exists in the administration of the Agreement. The third of six remedies required by the College is "*an order that Local 110, Paddy Musson, Gary Fordyce and Tom Geldard comply with the obligation to act reasonably and in good faith in the administration of the collective agreement*" [my emphasis]. The union certainly agrees that the Collective Agreement must be applied in good faith. Further, the Union is pleased, albeit surprised, to see that Fanshawe College now

takes the position that the Collective Agreement must be applied in a manner that is reasonable and furthermore that reasonableness, or a lack thereof, is a standard which can be grieved.

“Ted Montgomery”

Ted Montgomery, OPSEU

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Evidence

The College’s evidence indicated considerable time was required to prepare for the many grievances filed, and in the College’s opinion the grievance arbitration process was being used as a fishing expedition. The College’s evidence also indicates that the Union had not sufficiently availed itself of other provisions in the collective agreement, particularly with respect to partial load employees.

The Union’s evidence indicated that while there was an increase in the number of students, there was a decrease in the full time staff and an increase in the non-full-time staff. The Union’s evidence also indicated that there was a report alluding to the problem, but that Fanshawe College was dismissive of the report. The Union was of the opinion that its efforts to address staffing were not being met and therefore decided to actively use the grievance procedure to pursue the staffing issue. Pursuant to Article 2 of the collective agreement, it was the Union’s intent to use the grievance meetings “as constructively as possible to get sufficient information ...” Therefore, the Union filed “separate grievances as the better chance of getting the information [it] needed”. The Union simply obtained lists of partial load teachers and without more “plugged the individual names into the individual grievances”. The Union’s position was based on the generally declining pattern of full time positions coupled with the increase in enrolment and the increase in non-full-time

positions; individual names were never raised at the Union College Committee when information was sought. The Union also asserted that the College was not forthcoming with information. The Union did not have any specific knowledge with respect to ninety per cent of the individual grievances filed.

Argument

The Colleges submit that the Union is in breach of its duty to administer the collective agreement in good faith and the filing of 572 identical grievances without any factual basis was an abuse of the grievance procedure and was frivolous and arbitrary. The College maintains that general statements about a decline in faculty coupled with an increase in enrolment are of a generalized nature and without any specific relationship to the situation at Fanshawe College, and the only purpose in filing the grievances was to get information about the use of partial load employees. The College also argues that there is no underlying or factual basis demonstrating that the College was in violation of the collective agreement. The College claims that the intent of the grievances was to force the College to do all the informational work surrounding each partial load teacher when that information could properly be provided under Article 7 of the collective agreement. The College submits the union should first proceed to attempt to obtain information under Article 7 before filing a grievance. And finally the College argues that the Union did not put its mind to the underlying facts of the grievances filed and did not avail itself of the information provisions of the collective agreement and, accordingly, its actions in filing the multitude of grievances was outrageous and in bad faith. The College seeks a declaration that the Union is in breach of the collective agreement and a direction that the Union cease such conduct in the future and file grievances only when the Union is possessed of some factual basis

to support the grievances.

The Union argues that there is no evidence of bad faith and that the Union's concerns that there were breaches of Article 2 were well founded based on the decline in faculty coupled with an increase in enrolment. The Union claims its conduct was reasonable in the circumstances and that its right to file grievances should not be prematurely narrowed unless there is a gross breach of what is reasonable. The Union claims that it had a bona fide reason to be concerned and it was entitled to raise those concerns by filing grievances in the way that it did. The Union maintains one of the grievances in dispute did proceed and the individual arbitrator allowed the Union both to expand the grievance and proceed with the matter. Based on that decision, the Union submits that it was not unreasonable to proceed as it did. The Union maintains in the face of declining staff, and while it did have some information, there was a lot of missing information and, accordingly, it was appropriate for the Union seek the additional staffing information through the grievance procedure. The Union argues, based on the decided cases, that the College has a duty to explain its staffing rationale and once that is provided, the Union can make a reasoned decision. Further, the Union argues that the particulars of the grievance are not the obligation of the Union and that the College has an obligation to provide the details, relying on the award of H. D. Brown in *Fanshawe v. OPSEU* (R. Burlaw Grievance) dated the 17th day of August, 2004. Moreover, the Union submits because the College has all the information it should not resist providing it to the Union. And finally, the Union argues it is not in breach of its obligations under the collective agreement and there is no basis for the remedy requested.

The College replied that there is no context for why there was a decrease in faculty, and the

grievances do not claim that full time positions were lost, but rather that new positions were created, and the process used by the Union was an arbitrary use of the grievance procedure to obtain information. The College claims that prior to the filing of grievances the Union did not raise the staffing issue, nor did it request information. Also, the College submits that the Union ought to have proceeded to the Union/College Committee designated under Article 7 to have the College explain its staffing rationale and that by proceeding to file grievances the Union acted arbitrarily and abused the grievance procedure. The College now seeks a remedy to prevent such further abuses.

Analysis

The grievances, based on the Union's evidence, are intended to obtain staffing information and the Union is not aware of any actual breach of the collective agreement with respect to the individual grievances. The grievance/arbitration process entitles the parties to file grievances concerning the interpretation, application, administration or alleged contravention of the provisions of the agreement. The collective agreement does not permit the bringing of grievances for the sole purpose of obtaining information, or to be utilized as a fact finding process without more. Since, as the evidence indicates, the Union does not possess any concrete facts whatsoever to support a finding that there is a possible breach of the collective agreement in each of the individual cases, there is no basis to support individual grievances that the collective agreement has been improperly interpreted, applied, administered or contravened, which is a requirement of the grievance procedure. In short, the evidence falls short of supporting a cause of action or a breach of the collective agreement with respect to the grievances filed; nor is it an answer to the College's grievance that at some later stage in the proceedings the Union may obtain sufficient information

pursuant to a production order to enable the Union to pursue each individual case. There must be some information concerning a breach at the outset to warrant the filing of a grievance. It is not acceptable to file individual grievances and to require the College to spend the time, effort and expense to investigate each individual grievance without having some minimal information and a specific basis for so doing. Because of the complete absence of any specific information or basis for filing the grievances, we find that the Union's actions in proceeding as it did constitutes a misuse of the grievance arbitration process.

Further, we find that the carefully reasoned decision of Arbitrator P. Knopf in George Brown College and OPSEU, (Grievance Re: Article 7.02), December 17, 2004 to be extremely helpful in deciding the issue at hand. In that case, Arbitrator Knopf defined the issue in dispute as follows:

“The fundamental dispute between the parties is over the extent and nature of information that must be provided to the Union under Article 7.02 (vi) with respect to the use of non-full-time faculty. The Union views access to certain specific information as critical to its role of ensuring compliance with the staffing provisions of the Collective Agreement. The Union seeks data and information that it says is critical to its obligation to protect the “integrity of the bargaining unit”. The importance of this issue has been heightened in the last decade because the number of full-time positions at the College has dramatically declined. This has occurred for a variety of reasons including declines in funding from several courses.”

The evidence of the Union in that case, as in this case, indicated that the Union had previously filed individual grievances so as to “exercise the documentary disclosure rights under the arbitration process in order to gain adequate knowledge about whether staffing preferences have been respected”. Also, the Union's evidence requested sufficient information for it to be able to

independently analyze “all aspects of the work load being performed by non-full-time teachers”. The Union also claimed that it was unable to make informed representations under Article 7.02 (vi) without the requested data.

The College, in that case, indicated that it was “going beyond the requirements of the collective agreement to explain staffing decisions to the Union”, and outlined some of the difficulties in providing the information the Union was seeking. The essence of the College's position was that it provided extensive information, data and opportunities for discussion to the Union in many forms and forums, and that the College “goes far beyond the requirements of the collective agreement”. The College was also reluctant to gather data and supply it to the Union for non-full time faculty.

It is sufficient for our purposes to indicate that Arbitrator Knopf's carefully reasoned and thoughtful award outlines the nature and extent of the information to be supplied to the Union under Article 7, as well as the shortcomings of an order for production in the arbitration process. Arbitrator Knopf also stated that the *College's duty to explain non-full time appointments arises prior to litigation* under Article 7.02(vi), and that Article 7.02(ii) meetings can include discussions about “conditions causing misunderstandings or grievances” and that a “primary purpose for the discussions is the avoidance of unnecessary grievances”. Thus that sister local Union's single grievance, with substantially the same demonstrated purpose as the Union's evidence in this case indicates, was utilized to obtain further information from the College without causing the College the time and expense of preparing for multiple individual grievances.

In the George Brown case, the local Union filed one grievance in order to obtain further information and data about staffing in contrast to the present matter, whereas this local Union has filed five hundred and twenty-seven grievances to obtain similar information and data. In order to deal with all of these grievances, both the College and the Union are required to prepare and go through a multiple grievance and arbitration process when the same result is capable of being achieved by a single grievance. The preparation, including the time and expense in order to investigate and prepare for a multitude of individual grievances when a single grievance is able to achieve the same result is simply out of proportion to the result sought, and for the Union to put the College to the time and expense of investigating and preparing for these grievances, when it has no information whatsoever to support these grievances, goes beyond what is reasonable collective agreement administration. The Union is co-author of the collective agreement and has an obligation, as has the College, to ensure that the grievance arbitration process is reasonably administered. The filing of so many grievances to obtain the same or similar information that might be obtained by a single grievance, in our view, is an unreasonable use of the grievance arbitration process.

Further, as indicated, the collective agreement provides a number of avenues for the Union to obtain information. The College has an obligation pursuant to Article 2 to give preference to full-time positions rather than partial load or sessional teaching positions. Thus, it is required to provide information to the Union with respect to the total body or corpus of teaching which includes partial load and sessional teaching positions in order to both ensure that it is complying

with Article 2 and also to enable the Union to ensure compliance with that Article. Article 7 contemplates an exchange of staffing information and there is no evidence that the Union availed itself of that process prior to filing the multiple grievances, which is a more expensive and costly process. Having negotiated provisions where information may be exchanged in a less adversarial way, the parties have an obligation to utilize the negotiated processes before resorting to multiple and expensive adversarial proceedings as was done in this case. If there is a failure to obtain information under Article 7 and other related articles, the Union ought to proceed as did its sister local in the George Brown College case by filing a single grievance to obtain the necessary information under Article 7. The filing of multiple grievances to secure the same result with the attendant additional cost and in time and expense is an unreasonable use of the grievance procedure.

We do note that after these proceedings commenced, the Union filed a grievance alleging the College was in breach of Article 7.02 (vi) by failing to provide information at the Union/College Committee (UCC) meetings and that grievance was allowed. In our view that was the appropriate procedure to follow.

We now turn to the issue of remedy. First, since the various individuals named in the College's grievance were acting on behalf of the Union and are not parties to the collective agreement, the grievance as against them is dismissed.

Because, as the Union argued, one of the grievances was permitted by Arbitrator Brown to

proceed to arbitration, there is no basis for dismissing all the grievances since it appears the Union may be successful in pursuing some of the individual matters to arbitration. Moreover, if we were to dismiss the grievances and the Union were required to re-file those grievances a problem might arise with respect to time limits which could cause potentially meritorious grievances to be dismissed on a technical basis. Further, as even the Colleges acknowledge, there may be some potential merit in some of the grievances. The College, in argument, only seeks a declaration in this matter and also submits that there may be potential merit in some of the grievances.. Accordingly, we are not prepared to dismiss the grievances. After considering the evidence and argument and particularly since the Union eventually and appropriately filed a Union grievance under Article 7, we determine that the grievance is allowed and a declaration will issue that the Union's filing of individual grievances was an improper use of the grievance arbitration process.

Dated at Toronto this 24th day of March, 2009.



Owen B. Shime, Q.C.

"M. Riddell"

"S. Murray"
"Addendum"

Addendum

To be clear, I concur with the findings of the majority regarding the following:

The grievance against the named officials of the Union is dismissed.

The appropriate procedure to deal with the 124 grievances of November 2004 should have been by application of the Article 7 process; however we decline to dismiss those grievances.

The union filed an Article 7 grievance against the employer (which was upheld) subsequent to the refusal by the employer to follow the Knopf award which was issued prior to the filing of the instant grievance.

I disagree with certain references as to the interpretation of the collective agreement and review of the evidence. In particular, this Local regularly reviews SWF's and compares that information to the course loads of non-full time professors (when they can obtain the information) who are not subject to the entitlements of the work-load formula and therefore do not have SWF's.

Exhibits 3 and 4 (UCC notes/minutes) clearly show multiple references to "staffing issues" brought forward by the Local.

Although in argument the employer made specific references to the Union's obligation to avail itself of the Article 7 procedure it is disingenuous in light of the position taken by the employer RE: Fanshawe, P. Cooper Picher dated February 28, 2008, grievance dated March 2005.

Further, the evidence of the employer acknowledged they declined access to relevant information to the Union and contrary to the collective agreement; it was "protocol" not to engage in an Article 7 process once grieved. The employer is jointly responsible for agenda items at the UCC and should have placed the issue on the agenda instead of initiating this grievance.

I also note pursuant to the Knopf award; "the decision makers regarding hiring must be in a position to provide rationale". In this case, none of the decision makers who do the hiring actually gave evidence.

Given the circumstances, the Local had no other avenue in which to actively pursue the erosion of the bargaining unit other than the grievance procedure.

All of which is respectfully submitted,

Sherril Murray, Union nominee