

## **OPSEU and COLLEGE EMPLOYER COUNCIL**

**Paula Knopf - Arbitrator**

Decision: January 18, 2011

*Issue:* Union grievances filed during a period of imposed terms and conditions of work.

*Timeline:* The Council and OPSEU had a Collective Agreement that expired as of August 31, 2009. The parties met in negotiations between June and November 2009. Negotiations broke off on November 12, 2009 with no further dates planned. On November 18, 2009, The Council pursuant to section 15 (1) (b) of the CCBA imposed terms and conditions of work that suspended union policy grievances but allowed individual grievances. At the request of The Council, a last offer vote was held. The official count was finalized on February 24, 2010 with more than 50% of the ballots cast in favour of accepting the employer's offer.

On March 5, 2010, the Joint Scheduling Committee met to schedule individual and policy grievances. The Council advised it would not agree to schedule any union grievances for arbitration that were filed between November 17, 2009 and February 24, 2010.

*Submissions of the Union:* The Union stated that the bargaining unit voted on Management's Offer for Settlement dated January 27, 2010, which included the provision that the new Agreement would take effect November 18, 2009. No changes were made to any of the union grievance provisions. Therefore, the Union said the language requires acceptance of jurisdiction to hear union grievances filed from November 18, 2009, the effective date of the new Collective Agreement, onward.

*Submissions of the Employer:* The Employer stressed that the terms and conditions imposed November 18 2009 stated clearly "Union grievances are suspended until a new collective agreement is signed with OPSEU." The Employer also asserted that the current Collective Agreement should not be deemed to have been "finalized" until it was signed by both parties on July 7, 2010. The Employer pointed out that it "voluntarily" agreed to resume acceptance of Union grievances after the acceptance of their offer. Further, the Employer stressed that the rights under the new Collective Agreement are not enforceable during a period when no grievance rights existed.

*Decision:* It is not necessary for a bargain to be signed for its terms to be effective, so long as they are clear and discernable. "Duration" clauses in collective agreements provide a fixed date for the negotiation and renegotiation of successive agreements and they can ensure that the basic terms and conditions remain in place unless modified by the parties.

By the parties' agreement, they have a Collective Agreement that "came into effect" November 18, 2009. The new Collective Agreement that came into effect that day contained the same provision as the previous contract regarding Union grievances. There were no changes made to Article 32.09 which allows for the Union to file union grievances arising out the Collective Agreement. The grievances are arbitrable, notwithstanding any arguments relevant to the specific cases.