IN THE MATTER OF AN ARBITRATION

B E T W E E N :

LOYALIST COLLEGE

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
GRIEVANCE NO. 91A357- PATRICIA DOCKRILL

BOARD:

Martin Teplitsky, Q.C.
Arbitrator

APPEARANCES:

On behalf of the
Union: Gavin Leeb

On behalf of the
College: Douglas X. Gray

Hearing held the 1st day of February, 1993.

A W A R D

The Grievor alleges that the Employer unreasonably withheld a leave for Union business pursuant to Article 13.01. All that the Union seeks is a declaration that Article 13.01 applies both to the preparation for an arbitration and to attendance at a hearing. The Employer's position is that 13.01 does not apply to preparation time. Article 13.01 provides:

"13.01 That up to a maximum of five (5) persons per College be released from duty for sufficient time to engage in Arbitration Board Hearings or Provincial Union Committee Meetings for members thereof or Union conventions for elected delegates thereto (which may include seminars or conferences which will be considered by the College concerned on their individual merit(s), provided such release, which shall not be unreasonably withheld, does not in the opinion of the President, interfere with the efficient operation of the College."

With very little notice, the Grievor was advised that she had to prepare the Loyola College overtime grievances for submission by November 15, 1990. She immediately applied for a leave pursuant to Article 13.01. Through no fault of her own, she only applied 3 days before the leave she sought would begin. The Employer's position was that Article 13.01 did not apply. Nevertheless, the President sought to accommodate the request and agreed to part of the leave. Unfortunately, no agreement was reached to resolve the matter in its entirety. Hence the grievance.

I say at the outset the Grievor's request for a leave was reasonable. She had an enormous amount of work thrust upon her with an early date for its completion. Without a leave from her teaching duties, the necessary preparation must have been, if not impossible, at least virtually so.

The circumstances in which the Grievor found herself are not the norm. The Grievor was required to prepare all the "overtime grievances"--not a single grievance. Ordinarily, Grievances are scheduled many months in advance. There is a considerable time to prepare. A leave to prepare is not necessary.

In my opinion, Article 13.01, does not encompass preparation time. The parties did not contemplate the inclusion of preparation time in Article 13.01 because it was not necessary to do so. Arbitration hearings occur during teaching hours and a leave is, of course, necessary. The language of Article 13.01, literally construed, is more consistent with the Employer's interpretation than with the Union's.

The "overtime grievances" which the strike produced are an exceptional situation which may never again arise. In any event, the terms establishing such an arbitration in the future, should include provisions for the preparation of the grievances. Depending on the nature of the dispute resolution process, a matter which cannot now be determined, a variety of appropriate responses to the question of preparation can be developed. Article 13.01 is too blunt an instrument, depending as it does on Employer consent, to provide appropriate relief for a "special arbitration" such as the overtime grievances which followed the strike gave rise to in this case.

In the result, this grievance is dismissed.

DATED the 2nd day of February, 1993.

MARTIN TEPLITSKY, Q.C.

Arbitrator