

IN THE MATTER OF AN ARBITRATION
BETWEEN

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- and -

NORTHERN COLLEGE OF APPLIED ARTS & TECHNOLOGY

Grievance of Bruce Fauvelle. OPSEU File No.

Before:	M. G. Mitchnick	- Chairman
	Wally Majesky	- Union Nominee
	John T. Koski	- Employer Nominee

Appearances:

For the Union: Nick S. Coleman, Counsel

For the Employer: Ann E. Burke, Counsel

Hearing held in Timmins on February 12, 1992

A W A R D

The grievor in this matter, Bruce Fauvelle, grieves the failure of the College to adjust his salary by an annual increment in the second and third years of his employment. The grievor, in his fourth year by the time of the grievance, accordingly requests that his current salary be adjusted by two steps, and that he receive back-pay for the difference in salary for years 2, 3 and 4.

The grievor was hired in July of 1987 as a teaching master in the French program for the Technical Department of the College's Applied Arts and Business Faculty. The College had identified a vacancy which they hoped to fill by August 17th of that summer, and the grievor was interviewed by the Dean of the Faculty, Mr. Eberhart Baumert, with that in mind. The grievor suited the College's needs, and was evaluated for his initial placement on the salary grid under the Classification Plan which forms part of the parties' collective agreement. Application of the factors under that Plan placed the grievor at Step 1, carrying a salary in the neighbourhood of \$26,000, and Dean Baumert indicated to the grievor that the College's policy was to pay according to the contract rate. At the time the grievor was, however, earning around \$30,000 with Ontario Hydro, and he made it clear to Dean Baumert that he was not in a financial position to consider coming to the College for anything less. At that point the Dean had to make a decision what to do. The position was a French-speaking one, and the grievor was the only qualified applicant. Advertising for further candidates would not only cost "thousands of dollars", Dean Baumert testified, but it was also unlikely that another suitable candidate could be identified through that route by the time of the August 17th start-date. Dean Baumert accordingly proposed to the grievor that the College would pay him at two "bonus" steps higher than the Classification rate, or the Step 3 level. The Dean testified that when he came up with that offer, he would have had the salary figures in the collective agreement readily at hand. The classification Plan itself was not at that time appended to the collective agreement, but Dean Baumert testified that he did have some familiarity with the "Special Note to Raters" which forms part of the Plan, and which provides:

If a given individual's qualifications and experience are such that the College concerned considers that person to be particularly important to its program but the salary as established by the plan is inadequate, the College may grant up to three additional steps on appointment provided the resultant rate does not place the individual above the maximum starting rate for that person's level of formal education.

That Note, he testified however, he believed was intended only for "exceptional" circumstances where an individual's talent was just not commensurate with his rating, and it never occurred to him to apply it to a case like the grievor's.

The offer as envisioned by the College was carefully set out in a letter to the grievor dated July 24, 1987, providing as follows:

Dear Mr. Fauvelle:

I am pleased to offer you a position as teaching master in our Technical Department. This offer confirms our conversation of this morning.

As explained to you in detail the present salary grid of our union contract classifies you at Step 1 which does not meet your financial expectations.

The College, therefore, is willing to offer you a compensatory bonus equivalent to two step increases. This bonus will be maintained until your normal salary progression has reached Step 3. Specifically this bonus during 1987/88 will be 2 Steps and for 1988/89 it will be 1 Step. The present salaries are:

Step 1	\$26,009
Step 2	\$27,479
Step 3	\$28,934

These dollar figures refer to the 1986/87 contract which expires on Aug. 31, 1987. We expect a general salary increase for the new contract commensurate with the overall economic situation. The union so far has not specified their demand. My expectation is that the new value for Step 3 for 1987/88 will be about \$30,000.

In 1988/89 you would receive whatever Step 3 is that year, and similarly in 1989/90 and in 1990/91 you would start progressing on the grid.

We discussed briefly fringe benefits. They seem to be similar to what you have now. Our Personnel Department will advise you in detail.

I confirmed that your teaching assignment for 1987/88 will be discussed with Mr. Johnson.

If you accept this offer we need a statement from your physician that you are fit to perform the teaching duties.

I hope you will give this offer your favourable consideration. We would like you to assume your new duties if possible on Aug. 17, 1987. Yours very truly, (Signature) E. D. Baumert, Dean

The grievor did formally accept that offer, and its terms once again were confirmed by the President of the College in a letter dated the grievor's start date, August 17th, and which read as follows:

Dear Mr. Fauvelle:

RE: COMPETITION NUMBER 87-53

On behalf of the Board of Governors of Northern College of Applied Arts and Technology, I am pleased to offer you the position of Teaching Master in the Electrical/Electronics Program, Porcupine Campus. The following are the terms and conditions of the appointment:

- 1) The effective date of your appointment is 1987 0817. Your chairman/immediate supervisor will provide you with the details of your teaching assignment.
- 2) Your salary for the position is \$28,934; your maximum step is step #15 (\$46,481).
- 3) Your appointment is probationary for 2 years, and subject to satisfactory performance, will become a regular appointment.
- 4) The enclosed Memorandum of Agreement between the Ontario Council of Regents for the Colleges of Applied Arts and Technology and the Ontario Public Service Employees Union (OPSEU) details the terms and conditions of employment. The President of Local 654 is Mr. A. Hannikainen, Haileybury School of Mines Campus. A copy of a classification description for the position of Teaching Master is available in the college's Operation Procedures Manual: Personnel. Copies of the Manual are located in the campus library and in the Dean's office. On Porcupine Campus, a copy is also available through Personnel Services.
- 5) The college requires that you obtain a medical certificate from your family physician indicating that you are physically and psychologically able to assume the extensive responsibilities of this position. Should your OHIP not cover this cost, please submit the invoice to the college for payment. 6) We also require copies of your transcripts.
- 7) It is our Board of Governors' policy that the normal retirement age for all college employees is age 65.

If you are in agreement with the terms of employment outlined, please sign the copy of this letter and return it along with transcripts and medical certificate to Personnel Services, Central Office, Porcupine Campus within 10 days.

May I take this opportunity to welcome you to the faculty of the college and wish you every success in your new position. Yours sincerely, (Signature)

J. H. Drysdale
President

from there the grievor's employment, from a remuneration point of view, proceeded exactly in accordance with the arrangement that had been outlined to the grievor by Dean Baumert. The

grievor began at the salary level for Step 3 in his first year, 1987-88, and remained there throughout the next 2 years, 1988-89 and 1989-90. For the fourth year of his employment, 1990-91, he then progressed to Step 4 and was paid accordingly. In April of 1991, however, the new Dean, Don Dekker, mentioned to the grievor that his salary treatment in the previous years seemed "strange", and undertook to review the matter with Personnel. The grievor understood from the conversation that Dean Dekker was referring to his lack of progression on the salary scale for two of his first three years in the department. When no further word came from the College on the question, the grievor followed it up on his own with the Union, and on April 16, 1991, sent a memorandum to Dean Dekker setting out the present claim:

MEMO: Tuesday April 6, 1991

TO: Mr. Don Dekker
Dean of Applied Technology

From: Bruce Fauvelle
Professor, Electrical/Electronics
Porcupine

It has come to my attention that my past salary increments were not in accordance with the collective agreement.

Before commencing with the College I received a Letter of Offer dated July 24, 1987 from the then Dean of Applied Arts and Business, Mr. E. F. Baumart tsic]. This letter states that my salary would be based on a bonus step system.

According to the letter I was offered a salary of step 1 plus 12 bonus steps giving me an effective starting rate of step 3. My second year of employment would give me an increment of 1 step (base salary step 2) plus 1 bonus step giving me once again the equivalent of step 3. My third year would add 1 more increment (base salary step 3) and eliminate the bonus steps giving me the equivalent of step 3. All subsequent years would progress normally on the scale. Further to receiving the letter of July 24, 1987, I received a Letter of Offer dated August 17, 1987 from then President Drysdale on behalf of the Board of Governors. This letter states that my starting salary would be \$28,934 (step 3 salary for August 1987). There is no mention of the bonus system.

My salary over the past years has followed the bonus system outlined by former Dean Baumart.

After reviewing the collective agreement and the Letters of Offer, I believe, that normal progression should have occurred after my first year of employment.

I have included with this letter copies of the letters I received as well as a table showing the differences in salary based on normal progression through the scale.

Bruce Fauvelle Professor, Electrical/Electronics Article 11.02 of the collective agreement's "Grievance

Procedure" provides:

11.02 Complaints

It is the mutual desire of the parties hereto that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall discuss it with the employee's immediate Supervisor within twenty (20) days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate Supervisor an opportunity of adjusting the complaint....

And Article 11.05(a) provides:

If the grievor fails to act within the time limits set out at any Complaint or Grievance Step, the grievance will be considered abandoned Article 3, "Salaries", provides:

3.01 The salary scales applicable to full-time employees shall be as set out in Appendix 1 attached hereto.

3.02 Determination of starting salaries and progression within the salary scales shall be in accordance with the College's Classification Plans dated August 1975 and as set out in the "Guidelines for the Implementation of Salary Adjustments and the Classification Plans" and the application to certain present employees above the maximum scale shall continue as set out in the "Guidelines" attached hereto, which also sets out the terms of reference of the Joint Educational Qualification Sub-Committee.

The Salary Schedule (Appendix 1) for the grievor's first full year of employment under that collective agreement read:

APPENDIX 1
SALARY 8 SCHEDULE 8
(effective September 1, 1987)

(a) Teaching Masters and Counsellors

The salary maxima are established in terms of relevant formal education levels and equivalencies as listed below:

Minimum \$25,604
-Step 127,127
Step 228,654
Step 330,178

Step 431,704
Step 533,229
Step 634,754mid-point for Step 12
Step 736,280mid-point for Steps 13 & 14
Step 837,804mid-point-for Steps 15 & 16 - Maximum
starting salary for Step 12 qualifications
Step 939,329 Maximum starting salary for Step 13 qualifications
Step 1040,854 Maximum starting salary for Step 14 qualifications
Step 1142,379 Maximum starting salary for Step 15 qualifications
Step 1243,903Maximum salary - no formal post-secondary
diploma, certificate or degree - Maximum
starting salary for Step 16
qualifications
Step 1345,430Maximum salary - 1 year post-secondary
certificate
Step 1446,954Maximum salary - 2 year CAAT Diploma or
certified Journeyman
Step 1548,480Maximum salary - 3 year CAAT Diploma or
General Pass University Degree or
certified Journeyman holding equivalent
qualifications *
Step 1650,002Maximum salary - 4 year Canadian
University Degree or more; C.G.A.;
P.Eng.; C.A.; or C.M.A. (formerly R.I.A.)

NOTE: Formal educational qualifications not specified above will be subject to evaluation by the Joint Educational Qualifications Subcommittee.

Following the introduction of the Teacher Training Program described in the letter of understanding on page 91 of this agreement Step 16 qualifications will be changed to include this program.

Step 15 equivalent qualifications for a certified Journeyman or someone treated as such, shall mean the successful completion of five full year CAAT courses at the technologist level of which two are directly related to the individual's area of expertise, or the equivalent. The course of study leading to equivalent Step 15 qualification for certified Journeymen, or someone treated as such, shall be approved in advance by the College.

(b) Instructors

Minimum \$21,858
Step 1 23,386
Step 2 24,909
Step 3 26,434
Step 4 27,961
Step 5 29,486 mid-point of range

Step 6 31,010
Step 7 32,536 Maximum starting salary
Step 8 34,061
Step 9 35,587
Step 10 37,111

(c) Librarian 1

Minimum \$26,488
Step 1 28,012
Step 2 29,539
Step 3 31,066
Step 4 32,590
Step 5 34,112 mid-point of range
Maximum starting salary
Step 6 35,639
Step 7 37,164
Step 8 38,688
Step 9 40,212

Librarian 2

Minimum \$31,019
Step 1 32,542
Step 2 34,070
Step 3 35,591
Step 4 37,118
Step 5 38,644 mid-point of range
Maximum starting salary
Step 6 40,168
Step 7 41,692
Step 8 43,216
Step 9 44,739

NOTE: These rates are applicable pending the outcome of the arbitration as specified in the Letter of Understanding on page 87.

(d) Annual increments to the mid-point are based upon experience. at the rate of one step for each completed year on-the-job experience. Above the mid-point, but not beyond the maximum, one step will be granted where performance in the past year was satisfactory. For the purposes of this paragraph the following shall be considered as on-the-job experience: leave for union activities, paid leave of absence, secondment.

(emphasis added)

The format of Appendix 1 has not changed under the current collective agreement, except for the removal of the 'Minimum' and

'Step 1' salary levels. The Classification Plan which the parties agree forms part of the collective agreement, and which is now included at the back of the booklet agreement, reads in part:

1. Appointment Factors

COMPUTING INITIAL PLACEMENT

i) The minimum qualifications requirement is a count of 6 points based upon the appointment factors. Since this is the minimum requirement, a total of 6 points corresponds to the minimum rate. (This is not intended to preclude a college from hiring an individual whose qualifications and experience total less than 6 points. In such cases, however, the individual would be hired at the minimum of the scale.)

(ii) Computation of the initial salary is, therefore, $A + B - 6$. The product is rounded to the next higher number, e.g.

A = 4 points

B = 5 points

A + B = 9 points

$9 - 6 = 3 = 4$

The starting position is the corresponding step (Step 4) on the scale.

iii) No individual will have a starting salary of less than the minimum on the salary scale. Nor will an individual's maximum starting salary exceed the specified maximum starting salary on the scale.

2. Progression Factors
(Annual increments to the appropriate control point of the salary scale are based upon experience. Beyond that point, performance constitutes the basis of progression.)

Step Value

A) Experience - to control

Point 1 step per year

B) Performance - above

control point where

performance satisfactory 1 step per year

C) Further Formal Education where prior approval given by the college 1 step for each completed year at the post-secondary level - on the basis of the explanatory notes set out in Section B of the Appointment Factors on pages 111-112.

Note: No credit will be given where to do so would reduce total progression time to the appropriate maximum to less than 4 years special Note to Raters:

If a given individual's qualifications and experience are such that the College concerned considers that person to be particularly important to its program but the salary as established by the plan is inadequate, the College may grant up to three additional steps on appointment provided the resultant rate does not place the individual above the maximum starting rate for that person's level of formal education.

The College recognizes that the grievor's claim for a "correction" to his rate is a continuing one, and accordingly did not take the position with the Union that the grievance was inarbitrable. At the hearing, however, the College made a number of arguments, some of which it characterized as "jurisdictional". The College also conceded, on the basis of the jurisprudence, that it could not raise an argument of "estoppel" against an individual employee under the collective agreement, where the Union was not involved. However, the College argues that this was a "pre-employment" contract, and within the College's rights to make. The grievor, it notes, was clear as to what the arrangement was, and having taken the benefit of it for 3 years, cannot now seek to improve upon it. As a pre-employment contract, it is not enforceable through the collective agreement and arbitration, and if there was anything inconsistent with the collective agreement in the arrangement that was made, the only jurisdiction left for an arbitrator is to strike down the arrangement. Beyond all of that, the College argues that a board of arbitration constituted under the present agreement has no jurisdiction to entertain a cause of action which arose even before the preceding collective agreement, and that even if it does, any remedy as to back-pay is limited by the mandatory provisions of Articles 11.02 and 11.05 to the 20-day period preceding the grievance. As to the Union's protestation of "waiver" on the part of the College in remaining silent on these jurisdictional arguments until the hearing, the College submits that defences going to "substantive" issues of jurisdiction are not susceptible to waiver.

The board would begin by noting that if there was nothing more to this case than the making of an agreement outside the collective agreement that for two years paid the grievor more than he otherwise would have been entitled to, it would not be difficult to dispose of the additional claim now being put forward by the grievor subsequent to the expiry of that two-year period. What changes the case, however, is the existence in the Classification Plan of the final "Note to Raters", both of which it is acknowledged by the parties, pursuant to Article 3 of the collective agreement, are to be treated as part of the collective agreement itself. Article 3.02 in particular provides: 3.02 Determination of starting salaries and progression within the salary scales shall be in accordance with the College's Classification Plans dated November 28, 1989.

That statement binding the parties to the rating system established by the Classification Plan would appear to be meaningless if, as counsel for the College submits, the matter of starting salaries and progression were simply discretionary for the College, and we take the references to "minimum" and "maximum" in the Appendix to simply place limits on the results of the rating

system. And if there were any doubt that Article 3.02 and the Appendix were intended to have that restrictive meaning, we agree with counsel for the Union that the Special Note to Raters" dispels that doubt: there would be no point to the parties mutually spelling out the grounds upon which, and how, the College is permitted to deal with the problem of attracting a candidate whose salary comes up short on the agreed criteria of the Plan, if the College was simply free to pay an individual any higher rate it in its discretion deemed appropriate in any event.

Nor do we agree with the basic assertion of counsel for the College here that what the Union is seeking to do is "to impose on the events of July and August 1987 factual characterizations at odds with all of the evidence. Rather, we find, on the evidence of what happened here, that the language of the Note ought to have been recognized as applicable, once the College made the decision in its own mind to embark upon the course of action that it did. Whatever discretion or subjectivity goes into the application of the factors in the Classification Plan initially, in the end all parties agree that the candidate under review, the grievor, came out of the process as a Step 1 candidate - with the attendant salary that it is the purpose of the rating plan and Salary Scale to fix. Normally, we were told by Dean Baumert, the policy of the College is simply to pay at the scale. But the grievor wasn't in a position to come to the College for that. And it was the decision of the College to pay the grievor more. This may not have been the kind of "unexceptional" situation Dean Baumert normally thought about when the existence of the "Special Note" came to his mind, but it seems from the College's point of view to have been exceptional enough; that is, exceptional enough to pay the grievor more for his qualifications than the application of the rating scale actually produced. And the offer to the grievor, it should be noted from Dean Baumert's candid evidence, was by no means a gratuitous one: the grievor was the only candidate the College had been able to attract at that point with the necessary combination of technical and linguistic skills, and the College had to make its own decision whether to find a way to pay him above scale, or face delay in filling the position, together with "thousands of dollars" in advertising costs. In the final analysis, therefore, while the grievor, by accepting what was being offered, got the rate he wanted at the time, the College also got the candidate they wanted at the time.

The only issue for this board is whether the collective agreement dictated the result that flowed from that arrangement with the grievor to start him at a higher rate, and for the reasons set out, we find that it did. That is, we find that if the College was going to elect to treat the grievor, in order to hire him, with some latitude beyond that normally provided for by the agreed Classification Plan, it had to do so within the terms of the parties' Special Note. It lacks credibility to suggest that the parties would agree upon specific restrictions for the exercise of the College's discretion in "exceptional" cases, as Dean Baumert would suggest, but leave to the College an unfettered discretion in the case of what they are describing here as an "un-exceptional" one. Nor do we find it of any assistance to characterize the situation here as having to do with a "pre-employment" contractual arrangement, since what was being dealt with, the hiring rate, is a matter, as can be seen (particularly from the Note), that is covered expressly by the terms of this collective agreement. And McGavin Toastmaster (1975), 54 D.L.R. (3d) 1 (S.C.C.), makes it clear that the collective agreement governs the relationship, at least with respect to those matters expressly dealt with by it. More importantly from a remedial point of view, we find that the evidence, and the judgment made by the College itself in the circumstances of the grievor's case, brings this case within the parameters of the Special Note,

and that the Note accordingly governs once the College proceeded to pay the grievor above the Classification Plan rate as it did. The College cannot, in other words, exercise a discretion exactly of the manner contemplated by the terms of the "Special Note to Raters", but avoid the full application of the Note simply by saying that it in the College's view did not apply. Thus it follows from the decision of the College here to pay the grievor at the Step 3 level that he is also slotted there, and thereafter progresses (up to the "control point at the rate of a one-step increment per year, all of that in accordance with the collective agreement and the provisions of the Special Note. From that it follows that the grievor, as of the time that he lodged his grievance in April of 1991, was being paid at a rate two steps below what he should have been.

That takes us to the question of retroactivity, and the limitation which- the College argues with respect to damages. There is no question that the "arrangement" upon which the grievor's employment was purported to be worked out was put to him in full and careful detail. The grievor clearly understood, in other words, what the College was saying he would be entitled to, and specifically, how the College intended to treat his rate in the ensuing years, from the point of view of progression. It turns out, as we have determined, that the College, in ignoring the effect of the "Note to Raters", was wrong about that. But the grievor certainly knew and understood the College's position. If the grievor wanted to satisfy himself that that was the extent of his entitlement, it was open to him to check that out with the Union from that point on, just as he ultimately did in April of 1991. The only other fact or "circumstance" relevant to the determination of that question was the language of the collective agreement and the Classification Plan itself. In Ministry of Correctional Services v. OPSEU (1990), 74 O.R. (2d) 700 (Div. Ct.), the Court held that a grievance was not out of time until the employee involved had been advised by her Union that she had the basis of a valid grievance. In that case, however, the relevant language of the collective agreement read:

27.2.1 An employee who believes he has a complaint or a difference shall first discuss the complaint or difference with his supervisor within twenty (20) days of first becoming aware of the complaint or difference. That language stands in contrast to the collective agreement provision here, which reads:

11.02 Complaints

It is the mutual desire of the parties hereto that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall discuss it with the employee's immediate Supervisor within twenty (20) days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate Supervisor an opportunity of adjusting the complaint. The discussion shall be between the employee and the immediate Supervisor unless mutually agreed to have other persons in attendance. The immediate Supervisor's response to the complaint shall be given within seven (7) days after discussion with the employee.

In Fanshawe College (Dobos), an unreported decision of arbitrator Swan dated November 26, 1991, the grievor had, following the termination of his position as a full-time probationary teaching master, accepted a series of ungrieved "sessional, "partialload", and "part-time"

appointments, some time after which he sought to re-open and inquire into each and every one of them as to their correctness. At page 5 of his award arbitrator Swan began by observing:

It is common ground between the parties, and well known to anyone familiar with this collective agreement, that the time limits in Article 11 are mandatory, and that there is no statutory nor contractual jurisdiction in a board of arbitration appointed under this collective agreement to relieve against a breach of the time limits.

The award then notes at page 9:

... Certain steps were taken by the College in relation to the grievor's employment and status, those steps were taken with the grievor's full knowledge, and they were taken in a way which offered him an opportunity to inform himself as to the implications of the collective agreement, and to seek assistance from the Union. In those circumstances, the grievor allowed the mandatory time limits to elapse, and the result is that he is deemed to have abandoned any complaint or grievance which arises from those discrete events.

That case, as arbitrator Swan put it, involved a "discrete event only", being the termination of the grievor's full-time status, and Mr. Swan specifically distinguished that situation from the Fanshawe College (Hague) case, an unreported decision of arbitrator Brunner dated October 24, 1983, noting that the Haque case involved a series of appointments, the cumulative effect of which was said to achieve a certain result in relation to the status of the grievor". In the Hague case itself the Board wrote, commencing at page 8:

None of the Agreements, nor the Colleges' Collective Bargaining Act give to a Board of arbitration the power to extend the time for the taking of any steps in the grievance procedure and it is accordingly clear that no relief against non-compliance with the limitation period is available.

The evidence in this case is perfectly plain and the various Letters of Appointment to which we have referred eloquently speak to this, that the grievor was at all material times fully aware that he was not being treated as a full time Teaching Master in the Academic Staff bargaining unit. He could not have been under any illusions in this-respect. The circumstances giving rise to the complaint occurred or came or alternatively ought reasonably to have come to the attention of the grievor as early as January 15, 1980, when he was appointed a "sessional employee". The Letter of Appointment of that date must have made it clear to him as to the status that he was being accorded by the College and if in fact he was, as he now alleges, a full time Teaching Master in the Academic Staff bargaining unit by January 8, 1980, it was incumbent upon him to grieve within twenty days of January 15, 1980. His failure to do so at any time thereafter until May 18, 1982, despite subsequent Letters of Appointment designating his status to be either "partial load" or "sessional", now must be held to bar him from arbitrating the grievance. We have no doubt whatever that the time limits in each of the Collective Agreements that were in force between January 8, 1980 and the date of the grievance have expired and indeed ran out many months prior to May 18, 1982. Accordingly we hold that the grievance is inarbitrable.

However, for the reasons given in The Board of Governors of Algonquin College of Applied Arts and Technology and O.P.S.E.U. (Grievance of Gatién) (Brunner) released earlier this month, the grievance is clearly a "continuing" one. See also The Board of Governors of Sheridan College of Applied Arts and Technology and O.P.S.E.U. (Grievance of Ellis) May 30, 1983 (Brown) and the earlier decision in Re Algonquin College of Applied Arts and Technology and O.P.S.E.U. (grievance of Rudenko & Schnare), dated June 1, 1982 (Brent).

Accordingly, our jurisdiction to grant a declaration and the consequential relief that is sought must be limited to the period commencing twenty days immediately preceding the date that the complaint was first made to the grievor's immediate supervisor, which on the evidence appears to have occurred on May 19, 1982 and we so hold.

We see the present case as analogous in this respect to the Haque case, and, while making the declaration and 2-step adjustment aforesaid, find and direct that the grievor is entitled to such adjustment on a retroactive basis only for the period, pursuant to Article 11.02, twenty days prior to raising any complaint with the College over the manner of his slotting. The board will remain seized of this matter in the event the parties encounter any difficulty with respect to implementation.

Dated at Toronto this 18th day of September, 1992.

CHAIRMAN

"Wally Majesky"

-I CONCUR:

UNION NOMINEE

"John T. Koski" I DISSENT:

EMPLOYER NOMINEE