

IN THE MATTER OF AN ARBITRATION

BETWEEN: FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

AND: ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF GRIEVANCE OF G. FORDYCE

BOARD OF ARBITRATION: Kevin M. Burkett - Chairman  
Rene St. Onge - Employer Nominee  
Jon McManus - Union Nominee

APPEARANCES FOR THE EMPLOYER: Barry Brown - Counsel  
Sheila Wilson  
Lisa Goodfellow - Student-at-law

APPEARANCES FOR THE UNION: R. Ross Wells - Counsel  
Gary Fordyce - Grievor  
Paddy Russon - President, Local 110

A hearing of this matter was held in London, Ontario on Monday October 7, 1991.

## A W A R D

1. We have before us the grievance of Mr. Gary Fordyce which claims that the College is in breach of the collective agreement by reason of its refusal to regard the Ontario Teaching Certificate which he possesses as equivalent to the Confederation College In-Service Teacher Training Certificate. Mr. Fordyce is presently at step 15 of the salary schedule. The recognition of the additional qualification would entitle him to be paid at step 16 of the salary schedule. The College raised a preliminary objection with respect to the jurisdiction of this Board to hear and determine this matter. We have received written submissions from the parties in respect of the preliminary matter. This award deals with the challenge to our jurisdiction raised by the College.

2. The position taken by the College, simply put, is that because the equivalent qualifications that entitle an individual to step 16 as specified in Appendix 1, Salary Schedule, do not include the Ontario Teacher's Certificate and because the parties have given the Joint Educational Qualifications Subcommittee (JEQS) the exclusive jurisdiction to consider and rule on any additional formal qualifications the matter is within the exclusive jurisdiction of the JEQS. The College submits that because of its exclusive jurisdiction the refusal of the JEQS to recognize the grievor's additional qualification does not give rise to a difference between the parties that can form the subject matter of a grievance and if unresolved can be submitted to arbitration.

3. The relevant provisions of the collective agreement are set out below:

APPENDIX I  
SALARY SCHEDULES  
 (Effective September 1, 1989)

(a) Teaching Masters and Counsellors

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

- Step 15 53,702 Maximum salary - 3 year CAAT Diploma or General Pass University Degree or certified Journeyman\* holding equivalent qualifications\*\*
- Step 16 55,387 Maximum salary - 4 year Canadian University Degree or more; C.G.A.; P.Eng.; C.A.; or C.M.A. (formerly R.I.A.) In-Service Teacher Training Program Certificate

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

\* "Journeymen" to be replaced with appropriate term when Apprenticeship Act is amended.

\*\* 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 qualifications for certified Journeymen\*, or someone treated as such, shall be approved in advance by the College.

GUIDELINES

. . . .

4. Joint Educational Qualification Subcommittee: The parties agree to the establishment of a Joint Educational Qualification Subcommittee to consider and rule on further formal educational qualifications for the purpose of maximum salary level identification under the salary scale. Such Committee shall be composed of three (3) representatives of the Union and the Council of Regents respectively and shall decide the Committee's procedure. Any further qualification must be agreed to by the representatives of both the Council of Regents and the Union and shall be in writing. "
4. The parties agreed on the facts in this matter which were submitted in writing as follows:
- "1. The grievance of Gary Fordyce is attached to this statement at Tab A.
2. At the time of filing the grievance Gary Fordyce was at Step 15 of the salary schedule found in Appendix 1 on page 69 of the Collective Agreement.

3. In 1977 Gary Fordyce graduated from a one year program at the Faculty of Education of the University of Western Ontario with a Diploma in Education (Technological Studies).
4. The grievance alleges that a Diploma in Education (Technological Studies) is equivalent to the In-Service Teacher Training Program Certificate referred to at Step 15 of the salary schedule on page 69 of the Collective Agreement.

BACKGROUND FACTS CONCERNING JOINT  
EDUCATIONAL QUALIFICATIONS SUBCOMMITTEE (JEQS)

5. The JEQS is referred to at paragraph 4 of the Guidelines to Appendix 1 at page 70 of the Collective Agreement. The JEQS is composed of three representatives of the Union and three representatives of the Council of Regents.
6. The JEQS meets on a "as needed basis". Submissions in writing are made to the JEQS requesting that it evaluate formal educational qualifications not specified in Appendix 1.
7. Gary Fordyce has been a Union representative on the JEQS for about four years. During that time all decisions of the JEQS on matters of additional qualifications were made on a consensus basis, with all six Committee members coming to agreement.

FORDYCE SUBMISSION TO JEQS

8. Gary Fordyce is one of a number of bargaining unit members who have made written submission to JEQS asserting that a teaching certificate that a bargaining unit member holds is equivalent to the In-Service Teacher Training Program Certificate.
9. Gary Fordyce's evidence would be that at the JEQS meeting prior to the meeting on April 24, 1991 a dispute arose between the Union representatives and the Council of Regents representatives on the Committee as to whether there can be any equivalency to the In-Service Teacher Training Program Certificate. That meeting concluded with the Council of Regents members stating that they would consider the matter and get back to the Union representatives with their final response.
10. The JEQS met again on April 24, 1991 and, concerning that meeting, Gary Fordyce's evidence would be that the Council of Regents asserted the position that there can be no comparisons or equivalencies with the In-Service Teacher

Training Program Certificate. In response to that position the Union members of the JEQS committee put forward two motions which are attached at Tab B. If the JEQS had approved those motions there would still have had to be consideration on a case by case basis of the submissions of the individual bargaining unit members, such as Gary Fordyce. The motions failed to pass, with the JEQS divided three-three.

11. It would be Gary Fordyce's evidence that the Union members of the JEQS subsequently provided the Council of Regents representatives with 37 dates when the Union members would be available to meet in May, June and July, 1991. The Council of Regents representatives accepted two of those dates and then subsequently cancelled both meetings. The JEQS has not met since April 24, 1991.
12. JEQS has not passed on Gary Fordyce's submission, as the representatives of the Council of Regents take the position that there cannot be equivalency with the In-Service Teacher Training Program Certificate.
13. The JEQS manual attached at Tab C describes the history of JEQS and how it functions.
14. The In-Service Teacher Training Program Certificate manual is attached at Tab D.

October 17, 1991 "

5. The position of the College is that under this collective agreement there are two ways in which an individual gains entitlement to Step 16 on the salary schedule: firstly, by having the stated qualifications; or, secondly, having the JEQS rule that the qualifications relied upon are the equivalent of the stated qualifications. The College relies upon an award of Arbitrator Palmer in re Fanshawe College and C.S.A.O. (1976) in support of the position that the words in the preamble to the salary schedule ".... equivalencies as listed below" mean the equivalencies which are listed below and therefore these equivalencies are not examples but rather a complete list. The College also relies on an award of Arbitrator Teplitsky in re Mohawk College

and O.P.S.E.U. (Grievances of R. Jacobs and S. Bryant). It was found in that case that a failure of the JEQS to agree on equivalencies did not give rise to a difference between the parties that could be submitted to arbitration. The College relies on the Arbitrator's finding that because the parties did not provide for any appeal from a decision of the JEQS the Arbitration Board was powerless to intervene. The College asks us to adopt the reasoning and conclusions found in these awards and rule that we too are without jurisdiction to entertain what is in fact a complaint in respect of a decision of the JEQS not to recognize the grievor's qualifications as the equivalent of those specified for entitlement to Step 16.

6. The Union gives paragraph 4 of the Guidelines a different reading than the College. The Union reads paragraph 4 as establishing two separate and distinct mechanisms for determining equivalencies; the JEQS "to consider and rule on further formal educational qualifications" and (in the last sentence) representatives of both the Council of Regents and the Union to agree upon "any further qualification". The Union refers us to page 10 of Tab C of the exhibits where there is a 1975 memo recording the agreement of the parties to add as an acceptable educational qualification for Step 16 a B.Sc.N. The Union submits that the JEQS determines additional formal qualifications which are agreed to by what is referred to as a 'D' memo and others which are decided as equivalent on an ad hoc basis. It is submitted, therefore, that not only the language of Appendix 1 but also the history and practice of the JEQS demonstrates the intention of the parties to agree upon

equivalencies for any and all of the formal educational qualifications found in Appendix 1. The Union argues that although the Palmer award (supra) found that the listed educational qualifications constituted a complete list it does not stand for the proposition that the holding of a formal educational qualification which is equivalent to those listed does not result in the achievement of the same step on the salary schedule. The Union maintains that although one of the functions of the JEQS is to settle questions of equivalency on a "consensus basis" that is final and binding it was never intended to oust the jurisdiction of a Board of Arbitration should there be no consensus. In support of this position we are referred to the award of Arbitrator Brent in re Fanshawe College and OPSEU (David Morris grievance) May 29, 1990. Whereas Arbitrator Brent dismissed the grievance because the grievor in that case could not show that he had equivalent qualification the Union submits that in this case it will call evidence to prove that the grievor's qualifications are equivalent to those listed under Step 16 of the salary schedule. The Union points to the contrast between the JEQS mechanism, which does not provide for the final resolution of any dispute (apart from the grievance and arbitration provisions) and the stipulation in Article 4 in respect of the Workload Monitoring Group for the referral to a Workload Resolution Arbitrator (Article 4.02(5)(a) ) of any unresolved dispute. The Union argues that absent such a final dispute resolution mechanism in connection with the JEQS and having regard to the requirements of S. 46(2) of the Colleges' Collective Bargaining Act for the final and binding

resolution of all differences it must be found that the implied intention of the parties was to allow unresolved differences in respect of qualification equivalencies to be processed to arbitration as unresolved grievances.

7. In summary it is submitted that this Board has the necessary jurisdiction to hear this grievance on its merits. The Union maintains that the word "equivalencies" in the preamble of Appendix 1 refers to equivalencies to all of the formal qualifications at all salary steps, not a single equivalency at Step 15. Further, it is submitted that if a dispute remains between the parties after the matter has been forwarded to the JEQS then an Arbitration Board established under Article 11 of the collective agreement, as we have been, is the only and proper mechanism for resolving the dispute.

8. I start with paragraph 4 of the Guidelines reproduced at paragraph 3 herein. I note, firstly, that the paragraph appears under the caption "Joint Educational Qualification Subcommittee" and therefore it can reasonably be inferred that what follows pertains to the JEQS. It is stipulated that the JEQS "be composed of three (3) representatives of the Union and the Council of Regents respectively". The Union reads the last sentence of paragraph 4 as establishing a mechanism for deciding upon further qualifications distinct and apart from the JEQS. The sentence reads, "Any further qualification must be agreed to by the representatives of both the Council of Regents and the Union and shall be in writing". I am at a loss to understand how these words which are under the caption "Joint Educational Qualification Subcommittee"

and follow the stipulation that the Committee be composed of "three representatives of the Union and the Council of Regents respectively" refer to anything other than the operation of the JEQS. This conclusion is buttressed by the use of the definite article "the" in describing the representatives of both the Council of Regents and the Union who must agree on any further qualification. Clearly these are the three representatives of each side stipulated in the preceding sentence. Furthermore, the note following the salary schedule that stipulates that "Formal educational qualifications not specified above will be subject to evaluation by the Joint Educational Qualification Subcommittee" underscores the intention of the parties. These words do not admit the existence of another mechanism. The 1975 memo relied upon by the Union predated the establishment of the JEQS and, therefore, is of no assistance to the Union. All subsequent memos merely advise the Presidents of the various Colleges of the results of JEQS deliberations. Having regard to all of the foregoing I must reject the submissions of the Union on this point and find that the JEQS has the exclusive responsibility "to consider and rule upon further formal educational requirements for the purposes of maximum salary level identification".

9. Before proceeding further we turn to the Palmer award wherein, on a consideration of the same preamble as appears in the instant agreement, he concluded that "... the relevant formal educational levels and equivalencies set out in Appendix 1 are not examples but a complete list". Notwithstanding the fact that the word "equivalent" did not appear in the 1975 salary schedule

it did contain equivalency in fact at Step 14. Accordingly, there is no basis for concluding that the Palmer award was wrongly decided.

10. We now turn to the question of our jurisdiction in the face of the failure of the JEQS to agree that Mr. Fordyce possesses qualifications equivalent to those required to attain Step 16. The Union relies on the award of Arbitrator Brent (supra) wherein, in reference to the JEQS, she states:

"The role of the Joint Educational Qualifications Subcommittee in a dispute such as this is not clear. Certainly if that Subcommittee were to rule that any combination of 3 year university degree and a teaching certificate entitled someone to Step 16, then we believe that the parties would be bound by such a ruling. The group is obliged by its terms of reference "to consider and rule on further formal educational requirements". The use of the word "rule" surely implies that its determination would be binding on both parties. However, there is nothing in the references to that subcommittee to which we were referred that ousts the jurisdiction of a board of arbitration to interpret the collective agreement or to determine if it is being properly administered according to its terms. Therefore, if the Union can show that the College has breached the agreement or is improperly administering it by refusing to recognize the grievor's credentials as entitling him to Step 16, then that is a matter for us to decide. "

These words, on their face, support the position of the Union. Conversely, the award of Arbitrator Teplitsky (supra) which was released October 11, 1990, some five months after the Brent award, supports the position of the company. In that case it was claimed that the grievors were entitled to Step 16 in the salary schedule on the basis either that they had the requisite qualifications or the equivalent qualification. The JEQS refused to make a finding of equivalency and whereas the Union asserted that in the result an arbitral difference existed between the parties Arbitrator Teplitsky ruled as follows:

"I have approached resolution of this problem in the way Mr. Justice Morden described in Re Hydro, supra, and I have concluded that there is no "difference" between the parties as required by Section 46(1). The Agreement provides for equivalency to be determined by the Committee. The parties followed the path laid out. The employer co-operated in this process and indeed supported the position of the grievors. It is not the employer's fault that the Committee did not agree. Moreover, the specific language of the Collective Agreement is that "any further qualification must be agreed to by the representatives of both the Council of Regents and the Union and shall be in writing". There is no justiciable issue between the parties. The real complaint is with the Committee's decision. The parties did not provide any appeal from the decision of the Committee and we are, regrettably, powerless to intervene. "

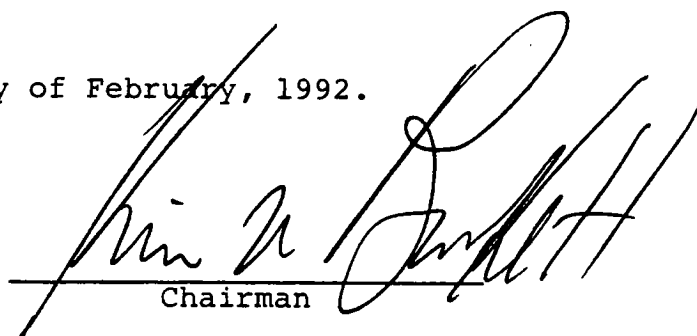
11. On a reading of Appendix 1, Salary Schedules, including the note and paragraph 4 of the Guidelines we are driven to adopt the reasoning and conclusions of Arbitrator Teplitsky. These parties have agreed that formal educational qualifications not specified, which Mr. Fordyce's qualification was not, will be subject to evaluation by the JEQS; and further that the purpose of the JEQS is "to consider and rule on further formal educational qualifications for the purpose of maximum salary level identification; and finally that "any further qualification must be agreed to by the representatives of both the Council of Regents and the Union and shall be in writing". The agreement is as clear and unequivocal as it could be that challenges with respect to equivalencies are to be referred to the JEQS and where the JEQS representatives of both the Council of Regents and the Union agree in writing that a further qualification is to be recognized it is recognized and, conversely, by implication, where there is no such agreement, a further qualification is not recognized. Arbitrator Brent appeared to accept this reality when she stated, in reference to the JEQS that "the use of the word 'rule' surely implies that its determination would be binding on both

parties". It is difficult to reconcile her acknowledgement of the binding nature of the JEQS determinations, on the one hand, with the statement, immediately following, that "if the Union can show that the College . . . is improperly administering (the agreement) by refusing to recognize the grievor's credentials as entitling him to Step 16 then that is a matter for us to decide". However, in fairness to Arbitrator Brent there had been no referral to the JEQS in that case and therefore the College did not make the same jurisdictional argument as the College made to us in this case or as was made to Arbitrator Teplitsky, but rather took the position that the Union ". . . was obliged to go to that body (JEQS) for a ruling first". Regardless, in light of the language of the collective agreement, the reasoning and conclusions of Arbitrator Teplitsky are compelling.

12. The Union relied on the provision for unresolved workload monitoring disputes to be submitted to a Workload Monitoring Arbitrator and asked us to imply from the absence of any specified dispute resolution mechanism in respect of the JEQS that it must have been intended that such unresolved complaints be referred to arbitrators under Article 11. This argument presupposes that if the Union is unhappy with the refusal of the JEQS to recognize a certain qualification as equivalent to a stated qualification the result is an arbitral difference between the parties. However, we have found on the language of this agreement for the reasons articulated, the result is not an arbitral difference. Similarly, the Union's reliance on the deemed arbitration provisions contained in the statute presupposes the existence of an arbitral difference and therefore must be rejected on the same basis.

13. The grievor's claim has been referred to the JEQS and under its terms of reference it has not recognized the qualification as equivalent to the stated Step 16 qualifications. Under the terms of this agreement, specifically Appendix 1 and paragraph 4 of the Guidelines, that is the end of the matter. There is no arbitral difference between the parties in respect of which we are empowered to adjudicate. Accordingly, we hereby find that we are without jurisdiction to hear and determine the matter that has been submitted to us and we hereby so declare.

DATED at Toronto the 13th day of February, 1992.

  
Chairman

I concur "Rene St. Onge"  
Employer Nominee

I dissent "Jon McManus"  
Union Nominee