

IN THE MATTER OF AN ARBITRATION

BETWEEN ST. CLAIR COLLEGE

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE GRIEVANCE OF A. FRENCH, #91C987  
LOCAL: 138 (A)

O.B. SHIME, Q.C. CHAIRPERSON

G. METCALFE NOMINEE FOR THE EMPLOYER

J. GRIMWOOD NOMINEE THE UNION

APPEARANCES

D.K. GRAY COUNSEL, and others for the Employer

I. ROLAND COUNSEL, and others for the Union

A hearing in this matter was held on June 9, 1992 at Toronto, Ontario.

## AWARD

There is very little dispute about the facts in this matter which may be summarized as follows:

1. The Union and the College began to discuss the full and final settlement of this grievance by telephone conversation between counsel for the Union, P. Chapman, and counsel for the College, S. McDermott, on January 3, 1992.

2. During the discussion on January 3, 1992, counsel for the Union asked whether the College would agree to allow Mr. French to resign "for personal reasons" if he withdrew the grievance. This request was based on the recognition that a resignation would not damage Mr. French's reputation or ability to find alternate employment, whereas an upholding of the dismissal by the Board of Arbitration could seriously damage Mr. French's reputation and job prospects in light of the allegations of sexual harassment. The Union was aware of the considerable evidence which the College would be calling at the hearing scheduled for Monday, January 6, 1991.

3. Both counsel agreed in this conversation that they would seek instructions from their clients in order to determine if this grievance could be settled by Mr. French's resigning "for personal reasons".

4. In a subsequent telephone message on January 3, 1992, counsel for the College advised Union counsel that the College would accept Mr. French's resignation provided Mr. French resigned prior to midnight on Saturday, January 4, 1992 (in order to avoid the expense of counsel for the College flying to Windsor on January 5, 1992). Counsel for the College and the Union agreed that there would be no other terms or conditions to the settlement.

5. Counsel for the Union agreed to advise Mr. French of the College's terms of settlement and to make every effort to get back to counsel for the College by the end of the day on January 4, 1992.

6. On the afternoon of Saturday, January 4, 1992 counsel for the Union advised counsel for the College

that Mr. French was leaning towards a resignation, but that he was still unsure about the offer of resignation and wanted more time to consider his options and to consult another lawyer in Windsor. Counsel for the College confirmed that he had until midnight on Saturday, January 4, 1992, before he would have to tender his resignation.

7. Counsel for the Union advised that she had contacted Chairman Shime's office in order to obtain his home telephone number as the case was almost settled and the hearing would have to be cancelled if settlement were reached.

8. At 11:45 p.m. on Saturday, January 4, 1992, counsel for the Union contacted counsel for the College by telephone in order to advise that Mr. French had elected to resign rather than proceed with the grievance and the grievance was therefore withdrawn.

9. During this telephone conversation, counsel for the Union asked if Mr. French could send a letter to the College detailing the reasons for this resignation. Counsel for the College advised that the College was only prepared to accept his resignation "for personal reasons" and that no other reason would be put on his record. It was agreed that Mr. French was free to send the College whatever letter he wanted, but that the College need not and may not accept the letter.

10. Both counsel agreed to make every effort on Sunday, January 5, 1992, to contact the chairman and members of the Board of Arbitration in order to advise them the matter had been settled and that no hearing would be necessary on Monday, January 6, 1992. After repeated efforts by both counsel and their nominees to locate Chairman Shime on January 5, 1992, the hearing was formally cancelled when Chairman Shime was contacted in Windsor and advised that the parties had settled and therefore did not require a hearing.

11. By letter to Union counsel dated January 22, 1992, counsel for the College confirmed the settlement in writing which is on the following page.

HICKS MORLEY HAMILTON  
STEWART STORIE  
BARRISTERS & SOLICITORS

- 3 -

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January 22, 1992

BY FACSIMILE & MAIL

Ms. Pamela Chapman  
RYDER, WHITAKER, WRIGHT & CHAPMAN  
Barristers and Solicitors  
30 St. Patrick Street  
suite 600  
Toronto, Ontario  
M5T 3A3

Dear Ms. Chapman:

Re: O.P.S.E.U. (French) and  
St. Clair College

Pursuant to our discussions on January 3 and 4, 1992, this is to confirm that the above-referenced matter has been settled on the basis that Mr. French has elected to resign and the College has accepted his resignation effective January 4, 1992. On the basis of this agreement between the parties and Mr. French, the grievance was withdrawn and the hearing for this matter was cancelled.

Yours very truly,



Susan J. McDermott

SJM:sm

cc. Lynne Watts

12. By letter dated March 19, 1992, counsel for the Union advised counsel for the College for the first time that the Union was now taking the position that this matter had not been settled. This was the first notice the College received that the Union was denying the settlement of the grievance. Accordingly, the parties agreed to proceed before me on June 9, 1992, with the preliminary objection by the College that the grievance was no longer arbitrable.

Based on these facts and despite the vigorous and able argument of Mr. Roland counsel for the Union, I determine that the parties had reached an agreement that Mr. French would resign and that the grievance was accordingly withdrawn. The matter is now settled. As a general rule, contending parties are entitled to rely on each other's word in order to effect a settlement. Certainly in collective bargaining where there is a continuing relationship, verbal communications based on trust are extremely important and when counsel for the Union on January 4, 1992 advised counsel for the College that the grievor had elected to resign and that the grievance was withdrawn there was a binding settlement between the parties. That settlement was subsequently confirmed by counsel for the College in her letter to counsel for the Union dated January 22, 1992.

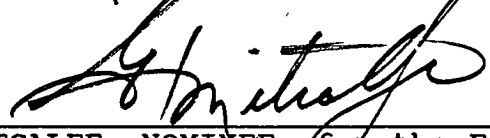
Mr. Roland argued that even if I was to determine that the parties had settled the matter I should permit the grievance to proceed on the merits. However, it is my view to let the matter now proceed would undermine the whole process of dealing with grievances. All collective agreements contain a grievance

procedure which is a forum for resolving differences between the parties. The resolution of disputes between parties by negotiation short of formal arbitration is one of the cornerstones of the grievance arbitration process. Good faith bargaining between the parties about grievances is to be encouraged and not discouraged. That bargaining process which begins in the grievance procedure continues right to arbitration and even after the arbitration hearing convenes. Many grievances are resolved by the parties even after some days of an arbitration hearing. To allow a party to resile from an agreement once reached would create uncertainty in the process because a party would never know when a matter had been resolved and accordingly the settlement of grievances would be discouraged. Accordingly, I am not prepared to permit the Union or the grievor to resile from the agreement reached. The matter has been settled and the proceedings are therefore terminated.

Dated at Toronto this 13 day of July, 1992.

  
 OWEN B. SHIME, C.C. Chairperson

I. CONCUR

  
 G. METCALFE, NOMINEE, for the Employer

J. Grimwood  
 J. GRIMWOOD, NOMINEE, for the Union