

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Fanshawe College
(College)

and

Ontario Public Service Employees Union
(Union)
(Academic /Grievor : David Gee)
(OPSEU #: 98C094 & 98C095)

BEFORE:

Helen Finley	Chair
Robert Gallivan	College Nominee
Mike Sullivan	Union Nominee

APPEARANCES:

For the College:	
Robert Atkinson	Counsel
Gail Rozell	Manager, Human Resources
Rick Hulley	Human Resources Consultant
For the Union:	
Maureen Doyle	Counsel
Gary Fordyce	President Local 110
David Gee	Grievor

A hearing in the above matter was held in London, Ontario
on
November 18, 1998 and June 29, 1999

DECISION

David Gee, the Grievor, has been a full-time professor of psychology and philosophy in the General Studies Division of Fanshawe College since 1972. In 1996 he applied for a professional development leave to pursue reading and research in philosophy and psychology, as well as computer research and study. His leave application was granted in April of that year and the terms of the leave were accepted by Mr. Gee at the end of May. The leave was for the period September 1, 1996 to August 31, 1997. The terms of the leave were outlined in the following memorandum from the president of the College, dated April 11, 1999:

I am pleased to inform you that your application for professional development leave during the period 1996 09 01 to 1997 08 31 is approved. The granting of this leave is to enable you to carry out the activities detailed in your application of 1996 02 29.

In accordance with Article 20 of the Academic Agreement you will be entitled to receive the maximum of seventy percent of your normal salary throughout the period of the leave. This payment will be reduced if the aggregate of the College's payment and compensation or payments from other sources during the period exceeds the amount of your normal salary. Accordingly, on your return to the College in September, 1997 you will be required to submit to me a statement concerning your gross income during the leave.

Your attention is also drawn to the requirements of Sections **w.5, 2.6, and 2.7** of College Policy **1-B-7**. A copy of this policy is attached. [It was not submitted in evidence.]

Should there be any supporting documentation outstanding in relation to your planned activities during the leave period, approval of the leave is conditional upon the College's receipt of the material prior to the leave commencement date.

In the meantime in order to facilitate your leave, it would be appreciated if you would:

- (a) **discuss with your chairperson, the method and frequency of reporting during your leave**, and [No evidence was presented respecting this.]
- (b) arrange an appointment with Human Resources in order to confirm the personal details of the leave,
- (c) signify your acceptance of the foregoing conditions by signing the attached copy and returning same to Human Resources, Room B1056.

Please accept my best wishes for an enjoyable, productive and rewarding experience **during your time away from the College**.

On April 28, 1997, Mr. Gee attended at the College and spent approximately ten minutes discussing his courses for the fall semester and the SWF with Mr. Boyd. According to Mr. Gee, nothing took place during the meeting that, in his opinion, could not have been dealt with by telephone. The following courses for the fall semester were confirmed at the meeting:

Philosophy 102

Introductory philosophy
Previously taught by Mr. Gee (26 years)
3 hours teaching contact
2 sections
Credited as a new course due to a change in the edition of the text.
Factors: 1.10 (new) and .35 (second section)

Philosophy 103

Philosophical Issues
Previously taught by Mr. Gee (26 years)
3 hours teaching contact
2 sections
Factors: .60 (previously taught) and .35 (second section)

Psychology 109

Theories of personality
Not previously taught by Mr. Gee
3 hours teaching contact
1 section
Credited as a new course as not previously taught by Mr. Gee.
Factors: 1.10 (new)

In summary, Mr. Gee's SWF showed him with the following weekly distribution of 40.5 workload hours for the 15 week semester immediately following his return from his professional development leave:

-	Assigned teaching contact hours	15.0
-	Preparation	10.6
-	Evaluation and Feedback	9.1
-	Complementary hours (administration)	5.0
-	Complementary hours (assigned meetings)	.8

The maximum number of hours weekly under the Collective Agreement is 44. The total number of hours allowed for preparation of his particular courses during the 15 week period was 159. There is an allowable maximum of 18 weeks teaching during a term, and Mr. Gee had 15 weeks of teaching during the 1997 fall term and one non-teaching week at the end of that term which is a designated “exam week” during which he was assigned invigilation duties on four of those days. On the SWF, this last week is included in the attributed evaluation factor.

In order to be prepared for the first day of teaching in September, Mr. Gee had to undertake the following:

- review and update his outline and lectures for Philosophy 102 due to the change of edition in the text
- review and update his outline and lectures for Philosophy 103
- acquaint himself with the Theories of Personality; order and review texts for content and readability and ultimately select and order the text for Psychology 109; consult with faculty, prepare student course outline and arrange for its copying, and prepare initial lectures for Psychology 109.

Mr. Gee estimates that he spent a total of 3 weeks preparing Philosophy 102 and 103, and a further 3 weeks preparing Psychology 109, that is, a total of 6 weeks.

Terry Boyd, Chair of the General Studies Division since 1993, and Mr. Gee’s supervisor, testified that it was his preference and practice, although not a requirement, to meet face to face with each individual faculty member to discuss and finalize the SWF. This practice, which allows him to make changes to the SWF “on the spot” had included, in the past, those members of faculty who were on professional development leave. Mr. Boyd testified that only exceptional circumstances such as the faculty member “being in Europe” would cause him to alter this practice. He acknowledged that a professor is expected to commence teaching his/her assigned course on the first scheduled day in the term, that course outlines must be submitted for typing two weeks prior to the start of the term schedule and that orders for texts must be submitted to the bookstore 6 weeks in advance. He also agreed that it was technologically possible to communicate with a faculty member respecting his/her SWF by means other than a face to face meeting.

In the case of Mr. Gee, Mr. Boyd testified that he was making a significant change to Mr. Gee's assignment and that some discussion had taken place around this prior to the commencement of Mr. Gee's professional development leave. Mr. Boyd explained that he "wanted to talk to him", given the concerns he had in previous conversations respecting changes to Mr. Gee's SWF, and his expectation of resistance on the part of Mr. Gee. It was, he testified, in his judgement, his prerogative as a manager to direct Mr. Gee to come in to the College to discuss his SWF during his leave. He was aware of Mr. Gee's request to discuss it by telephone, regular mail, or e-mail, and that the reason for this request was that Mr. Gee objected to being called in during his Professional Development Leave.

Mr. Boyd testified that Mr. Gee did not complain to him about this particular work assignment, said that he had signed a copy of his SWF, and that in the absence of a response within a three-day period of receipt of the SWF, the College deems the SWF to be acceptable to the faculty member pursuant to the Collective Agreement (Article 11.02 A 4).

Mr. Boyd stated further, that it was not the practice of the College to pay expenses for faculty members to attend at the College for meetings. Mr. Boyd testified that during their meeting on April 28, 1997, he made a change to the prepared SWF after Mr. Gee pointed out that it was necessary to move to a new edition of the text. He recalled that Mr. Gee told him that he had the appropriate background to teach the Theories of Personality, but that he was, nonetheless, unhappy with his assignment of Psychology 109. However, he, Mr. Boyd, had indicated to Mr. Gee, that he was "the logical person to do the course".

Mr. Boyd was asked during his examination in chief if he had assign[ed] any work to Mr. Gee during his paid leave from September 1, 1996 to August 31, 1997 and he replied that he had not; and, whether he had left to Mr. Gee's discretion how and when he would prepare [his courses] and what texts he would use, and he replied that he had. He answered in the affirmative when asked whether it was his expectation that Mr. Gee would show up in September ready to teach his courses.

Three articles of the Collective Agreement have relevance here:

- Article 6: Management Functions
- Article 11: Workload
- Article 20: Professional Development Leave.

The green Collective Agreement which was effective from September 1, 1991 to August 31, 1994 was in effect at the time this situation arose and Mr. Gee filed his grievances. Its successor was not signed until November 12, 1998.

Article 6
MANAGEMENT FUNCTIONS

6.01 It is the exclusive function of the Colleges to:

- (I) maintain order, discipline and efficiency;
- (ii) hire, discharge, transfer, classify, assign, appoint, promote, demote, lay off, recall and suspend or otherwise discipline employees subject to the right to lodge a grievance in the manner and to the extent provided in this Agreement;
- (iii) manage the College and, without restricting the generality of the foregoing, the right to plan, direct and control operations, facilities, programs, courses, systems and procedures, direct its personnel, determine complement, organization, methods and the number, location and classification of personnel required from time to time, the number and location of campuses and facilities, services to be performed, the scheduling of assignments and work, the extension, limitation, curtailment or cessation of operations and all other rights and responsibilities not specifically modified elsewhere in this Agreement.

Article 11
WORKLOAD

11.01 A Each teacher shall have a workload that adheres to the provisions of this Article.

11.01 B 1 Total workload assigned and attributed by the College to a teacher shall not exceed 44 hours in any week for up to 36 weeks in which there are teaching contact hours for teachers in post-secondary programs and for up to 38 weeks in which there are teaching contact hours in the case of teachers not in post-secondary programs.

The balance of the academic year shall be reserved for complementary functions and professional development.

Workload factors to be considered are:

- (i) teaching contact hours

- (ii) attributed hours for preparation
- (iii) attributed hours for evaluation and feedback
- (iv) attributed hours for complementary functions

11.01 D 1 Weekly hours for preparation shall be attributed to the teacher in accordance with the following formula:

TYPE OF COURSE	ATTRIBUTED HOURS FOR PREPARATION
New	1:1.10
Established A	1:0.85
Established B	1:0.60
Repeat A	1:0.45
Repeat B	1:0.35
Special A	as indicated below
Special B	as indicated below

11.01 D 2 No more than four different course preparations or six different sections shall be assigned to a teacher in a given week except by voluntary agreement which shall not be unreasonable withheld.

11.02 A 1 (a) Prior to the establishment of a total workload for any teacher the supervisor shall discuss the proposed workload with the teacher and complete the SWF, attached as Appendix 1, to be provided by the College. **The supervisor shall give a copy to the teacher not later than six weeks prior to the beginning of the period covered by the timetable excluding holidays and vacations.** It is recognized that if the SWF is subsequently revised by the College, it will not be done without prior consultation with the teacher. [Emphasis added]

11.02 D 2 No more than four different course preparations or six different sections shall be assigned to a teacher in a given week except by voluntary agreement which shall not be unreasonably withheld.

11.02 B 1 There shall be a College WMG at each College.
[Workload Monitoring Group]

11.02 B 2 Each WMG will be composed of eight members, with four to be appointed by the College and four appointed by the Union Local unless the College and the Union Local otherwise agree. ...

11.02 C 1 The functions of the WMG shall include:

- (i) ...
- (ii) ...
- (iii) ...

- (iv) reviewing individual workload assignments where requested by the teacher or the Union Local and, where possible, resolving the disputes;
- (v) ...

11.02 C 2

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...
- (vi) availability of time for the teacher's professional development;
- (vii) previously assigned schedules;
- (viii) lead time for preparation of new and/or changed schedules
- (ix) ...
- (x) ...
- (xi) ...
- (xii) ...

11.01 G 1

Where preparation, evaluation, feedback to students and complementary functions can be appropriately performed outside the College, scheduling shall be at the discretion of the teacher, subject to the requirement to meet appropriate deadlines established the College. [Emphasis added]

Article 20

PROFESSIONAL DEVELOPMENT LEAVE

20.01 The College recognizes that it is in the interests of employees, students and the College that employees are given the opportunity by the College to pursue College-approved professional development activities outside the College through further academic or technical studies or in industry where such activities will enhance the ability of the employee **upon return to the College to fulfill professional responsibilities.**

20.02 To that end, each College will grant a minimum of two percent of full-time members of the academic bargaining unit of the College concerned who have been members of the bargaining unit for a period of not less than six years, and an additional one percent of full-time members of the academic bargaining unit of the College concerned who have been members of the bargaining unit for a period of not less than 15 years, to be absent on professional leave at any one time in accordance with the following conditions:

- (i) the purpose of the leave is for College-approved academic, technical, industrial or other pursuits where such activities will enhance the ability of the teacher, counsellor, or librarian upon return to the College;
- (ii) ...
- (iii) the leave will normally be for a period of from one to 12 months;
- (iv) the employee, upon termination of the professional development leave, will return to the College granting the leave for a period of at least one year, failing which the employee shall repay the

- College all salaries and fringe benefits received by the employee while on professional development leave;
- (v) the salary paid to the employee will be based on the following scale: 55% of the employee's normal salary increasing by 5% per year after six years of employment with the College concerned to a maximum of 70% of the employee's normal salary after nine years. It is understood that the College's payment is subject to reduction if the aggregate of the College's payment and compensation or payments from other sources during the period exceeds the amount of the employee's normal salary.
 - (vi) ...
 - (xiv) ...

[Emphasis added]

Mr. Gee filed two grievances. The first, dated October 27, 1997 reads as follows:

I grieve that the College, in assigning me PSHY [*sic*] 109, PHIL 102 & PHIL 103 to prepare while on sabbatical has violated article 20 et passim of the Collective Agreement.

By way of remedy I request full pay for the three weeks of work directly related to PSHY [*sic*] 109 and three weeks of work directly related to PHIL 102 & PHIL 103 over and above the 70% sabbatical remuneration rate.

The second, dated May 12, 1997 reads thus:

I grieve that the College has required me to attend a SWF meeting at 2:30 P.M. on Monday, April 28, 1997 in E2035 despite my approved absence from the College while I am on sabbatical and despite my request to participate by telephone and E mail/regular mail. Michelle Squire confirmed this direction in the morning of April 28, 1997.

By way of remedy I request:

- 1) full pay for April 28, 1997, equalling \$72.53 difference
- 2) travel expenses of 64 km @ .30/km equalling \$19.20
- 3) Parking expenses of \$2.

Argument

The Union

Maureen Doyle, for the Union, stated that it was the Union's position that there had been a violation of the Collective Agreement; that in April, 1997, Mr. Gee was on an approved paid leave, and was receiving 70% of his regular salary to pursue approved, self-directed activities outside the College; and that, in spite of this, the College directed him to attend the meeting at the College in person and at that time assigned him work.

Ms. Doyle referred to Article 20.01 as the context in which the approved leave was granted:

The College recognizes that it is in the interests of employees students and the College that employees are given the opportunity by the College to pursue College-approved professional development activities outside the College through further academic or technical studies or in industry where such activities will enhance the ability of the employee upon return to the College to fulfill professional responsibilities.

As well, she cited Article 20.02 and 20.02 (v), *supra*, and submitted that the partial salary (70%) was for members of the bargaining unit who met certain time qualifications "to be absent on professional development leave" outside the College provided certain listed conditions are met. The payment of 70% of regular salary is for the approved absence. It is not, she maintained, a leave during which the College decrees what is to be done as the professional development or what is to be done during the course of the professional development leave. This is underscored by Article 20.02 (viii):

The College may on its own initiative propose plans of professional development leave to employees; however no employee shall be under obligation to accept such a proposal;

And, she submitted, this "hands-off" position towards professional development leave continues throughout the leave. It would make no sense for such a policy to apply prior to a leave but not during it. If the College were permitted to assign work during professional development leave, the potential for abuse is enormous, Ms. Doyle argued. The College could pay an employee at 55% (the minimum of the leave salary range) and then assign as much work as it wanted. In the instant case, the College gave Mr. Gee the assignment of preparing courses for the fall semester, and in one instance, the preparation of a new course. For the College to suggest that assigning a SWF is not assigning work is to ignore the facts. If you make an assignment of courses, you are making an assignment of work, in this case the course preparation which Mr. Gee carried out.

This is borne out, she argued in Article 11.02 A 1 (a):

Prior to the establishment of a total workload for any teacher the supervisor shall discuss the proposed workload with the teacher and complete the SWF, attached as Appendix 1, to be provided by the College. **The supervisor shall give a copy to the teacher not later than six weeks prior to the beginning of the period covered by the timetable excluding holidays and vacations.** It is recognized that if the SWF is subsequently revised by the College, it will not be done without prior consultation with the teacher. [Emphasis added]

This fact, Ms. Doyle argued, is recognized by the agreed-to requirement that SWFs, the assignment of courses for the up-coming term, be delivered to a teacher 6 weeks ahead, *excluding holidays and vacations*, a recognition that even though preparatory work is to be done it is not expected that a teacher will be faced with the situation of having to spend holiday or vacation time to accomplish it.

It is not, in Ms. Doyle's view, reasonable to suggest that a face-to-face meeting can be expected to be any more fruitful than communication by telephone or e-mail. In the case of Mr. Gee, there was no evidence produced by the College, Ms. Doyle submitted, from which one could conclude that a face-to-face meeting was necessary, or that the fact the meeting was face-to-face would have made any difference to the outcome.

For the above reasons, the Union, Ms. Doyle submitted, maintains its position that there was a violation of the Collective Agreement when the College required Mr. Gee's attendance at the College during his professional development leave, and when it assigned him work during that leave.

The College

Robert Atkinson, for the College, submitted that Mr. Gee's grievance is a "transparent attempt to get around the workload provisions and to get paid twice for the fall 1997 assignment. He

submitted that the workings of a community college differ from those in an office or industrial context where employees have “specific duties”. A community college, in which professors

the tracking of actual hours of work. In recognition of this, the parties have come up with an elaborate system of work assignments set out in Article 11 of the Collective Agreement. The

maximum *assigned and attributed*

assigned, and all others (preparation, evaluation and feedback, complementary hours) attributed.

(Article 11.01 B 1,). The purpose of the whole of Article 11.01 D, *supra*

submitted, is the setting out of a reasonable way for the parties to arrive at the other factors which the parties have determined need to be taken into account in the calculation of a teacher’s

Once Mr. Boyd comes up with a course to be taught, he then, in the context of the SWF form, has to apply of these factors and carry out the calculations to come up with a workload for the individual teacher that falls within the workload provisions set out in Article 11.00. Mr. Boyd

within the constraints (44 hours weekly) set out in the Collective Agreement.

Mr. Atkinson pointed out that Article 11.00 also encompasses a separate grievance procedure for

did not chose to follow that procedure which he would have had to instigate at the time of the receipt of his SWF in April 1997. Mr. Atkinson offered the opinion that Mr. Gee failed to grieve

submitted, that Mr. Gee waited until October 1997 and grieved under Article 20.

The Board should also take into account Article 11.01 G 1, which states that “preparation” can be appropriately performed outside the College, and gives the teacher, the discretion to

attribution rules on preparation time which, in effect, mean that the College does not concern

itself with the actual amount of preparation time which a teacher takes and when he/she chooses to undertake course preparation. Some teachers or some courses will require a lot of preparation time, others a little, and the parties have determined that the way to deal with that is by way of a formula of attributed hours rather than actual hours. Mr. Gee, submitted Mr. Atkinson, was credited with 159 hours of course preparation time for which he was paid 100% salary, and is trying to say that he should get paid more because he had to do his course preparation in May, June, or July. That is clearly, according to Mr. Atkinson, not what the Collective Agreement contemplates.

According to Mr. Atkinson, Mr. Gee is due back in September 1997, his SWF has to be given at least six weeks in advance not counting holidays and vacation time. If the SWF were not given at the time Mr. Boyd gave it, Mr. Gee could not teach. It does not say in the Collective Agreement that the College cannot give the SWF during professional development leave; the College is not only entitled to give the SWF then, it is required to do so, and that cannot be a breach of the Collective Agreement. Mr. Gee was not assigned work to be done in the summer period.

It is the College's position that the phrases "professional development activities outside the College" (20.01) and "absent on professional development leave" (20.02) in Article 20, *supra*, do not mean that the individual whom the College is paying to be on that professional development leave is somehow free from any contact with or direction of the College. Mr. Atkinson gives the example of a teacher who goes on professional leave having left some work incomplete and states that surely the College would be entitled to contact that individual and ask him or her to bring the work to the College. While on professional development leave, Mr. Gee is still an employee and responsible to the College under Article 11 which is mandated to discuss his SWF. Mr. Gee's position, Mr. Atkinson submitted, is that he knew he would have to have contact respecting his SWF, concedes that he can be interrupted (by telephone, mail or e-mail) but draws the line at being directed to come in for a face-to-face meeting.

Mr. Atkinson submitted that under Article 6, *supra*, the College is entitled to have Mr. Gee come

into the College during his leave. Article 6 (iii) gives the College, he submitted, the “exclusive function” to “manage the College” and the “right” to carry out the specified functions and “all other rights and responsibilities not specifically modified elsewhere in this Agreement.” Unless there is a specific provision in the Collective Agreement, management can exercise its rights and there is no duty to exercise those rights in a particular way, and the exercise of those rights is not reviewable, nonetheless, he submitted, Mr. Boyd exercised those rights in good faith and reasonably in the circumstances.

Mr. Atkinson concluded that the College had not breached the Collective Agreement, and asked that the grievances be dismissed.

The College referred the Board to the following cases:

Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association et al*, (1981) 124 D.L.R., OCA
*Leave to appeal to the Supreme Court of Canada dismissed (1981)

Re Georgian College of Applied Arts and Technology and Ontario Public Service Employees’ Union, (1983) 10 L.A.C. (3d) 359 (Brown)

Re Stelco Inc. And United Steelworkers of America, Local 1005 et al, (1994) 17 O.R. (3d) 218

Union Reply

In reply, Ms. Doyle reiterated that this was not a grievance filed under Article 11.02, but rather, a grievance respecting a breach of the bargain made to permit Mr. Gee to do professional activities in return for 70% of his salary. Nor is it, she submitted, a grievance respecting management rights. It is a grievance about whether or not the deal made between Mr. Gee and the College has

been lived up to or not.

Mr. Gee is not seeking to get paid “double” or “twice” according to Ms. Doyle, he is seeking to get paid for the work he had bargained to do. Mr. Gee, Ms. Doyle submitted, was assigned his SWF some 4 months in advance of the commencement of his teaching duties in the fall, or approximately six weeks if one does not include vacation time. It is ignoring the facts to say that the College did not assign work to Mr. Gee when it said, at the same time it expected him to be in a position to teach on the first teaching day in September. Ms. Doyle argued, that there was no evidence from the Employer, to explain why the assignment could not have been made during the school year prior to the commencement of Mr. Gee’s professional development leave, when, according to the Employer’s evidence, there was an indication that there was going to be a change to his teaching program.

Mr. Gee’s position is not that he is on leave and therefore the College “cannot touch [him]”. It is rather, that he was order to attend a meeting at the College and was not remunerated for that. He was at that time being remunerated for his approved professional development leave according to Article 20, and it is Article 20 which has been breached and not for attending a meeting called by the College.

Ms. Doyle asked that the Board find in favour of the Grievor.

DECISION

The Union has asked the Board to find that the Chair of the General Studies Division was in contravention of Article 20, (the article under which the Grievor, was granted his approved professional development leave) when he required Mr. Gee to attend at the College to discuss and finalize his SWF for his post-leave semester and when he assigned him a new course which required preparation during his leave. Mr. Gee has requested remuneration for work undertaken

- psychology and philosophy courses which he has been teaching for 26 years, (one of which was using a new edition text);
his salary at 100% instead of 70% for a further three weeks of preparation for the review and selection, outline and lecture preparation.
- 100% of his salary instead of 70% for April 28, 1997 the day on which he came in to the College a return distance of 64 kilometres, for a 10 to 15 minute meeting,

While Mr. Gee did not testify as to the actual number of hours he spent on course preparation during this time, the time he testified to was not challenged by the College, and the Board accepts

courses which are new to a teacher, require substantial amounts of preparation time. The Board is also prepared to find that the assignment of the new course resulted in Mr. Gee having to spend

recently. Further, the point in time at which he received the actual assignment meant that, unless he chose to prepare his courses prior to receiving his SWF, he had to prepare the course during

Board notes that in the letter sent to Mr. Gee outlining his professional development leave arrangements and to which he signified his acceptance, Mr. Gee was asked “to discuss with [his] chairperson, the method and frequency of reporting during [his] leave”, which would indicate that

might not be a time devoid of contact with the College, in spite of the reference at the end of the letter to Mr. Gee’s “time away from the College”.

professional development leave under Article 20 is restricted to the terms of his or her approved leave plan, cannot, in the opinion of this Board, be considered simply within the narrow focus of *supra*. The overall context is that of an educational institution (college, university,

elementary and secondary school) offering instruction on a fixed annual schedule. It is fundamental, that a teacher scheduled to teach during a semester, expects and is expected to be ready to teach his or her teaching assignment when the semester begins and throughout that semester. Furthermore, teachers in these systems are professionals and are given the responsibility for and discretion to plan and execute their course preparation to meet this expectation. In the case of the Colleges, the Collective Agreement addresses this:

11.01 G 1 **Where preparation, evaluation, feedback to students and complementary functions can be appropriately performed outside the College, scheduling shall be at the discretion of the teacher, subject to the requirement to meet appropriate deadlines established the College. [Emphasis added]**

Further, the college system recognizes this professional status with its concomitant responsibilities and discretions by paying full-time faculty members an annual salary as opposed to an hourly wage.

The issue must also be looked at in conjunction with other articles of the Collective Agreement, in particular, Article 11, *supra*, which addresses workload. While Article 11 sets out the formulae, parameters and procedures respecting workload, and does so in considerable detail, it does not deal with assignments by the College which have the effect of creating work during professional development leave, over and above the leave project approved by the College. Nor is this subject addressed in the professional development leave article (Article 20).

The Union submitted that the notion of professional development leave as well as phrases from Article 20, such as “outside the College”, “absent on professional leave”, and “upon return to the College” are indicative of an intention to preclude the College from giving assignments during professional development leave. The Board is not, however, persuaded by this submission, since none of these phrases actually addresses the issue of restricting the College’s right to require the teacher to attend at the College, or of restricting its right to assign work in preparation for a teacher’s scheduled post-leave teaching. The Board notes that there is nothing in the Collective Agreement which excludes a faculty member who has been on leave from his or her obligation to

be ready to teach during the semester following that leave.

Under the Collective Agreement, the parties have developed a system in which the workload of according to the detailed formula for each of these categories. The workload formula that has been agreed to in Article 11, recognizes the hours devoted to course preparation as one of the contact hours and runs contemporaneously with the courses which are to be taught during the particular semester. The parties must have arrived at this system with the knowledge that course and refreshing one's familiarity with the course close to the teaching time. These facets may involve both pre-course and contemporaneous course preparation. There is no provision for time the teaching-contact-hour related formula. Mr. Gee did receive appropriate credit for preparation of his courses during the time he was teaching them, in the form of 159 attributed hours and spent during his leave.

While Article 11.02 A 1 (a), , states that "The supervisor shall give a copy [of the SWF] to the teacher not later than six weeks prior to the beginning of the period covered by the timetable teacher is to undertake the preparations in order to be ready to commence and carry on his/her teaching contact hours. The article guarantees a certain period of notice to the teacher who will being that a teacher should not have to use vacation or holiday time for course preparation. Nonetheless, the teacher is free to prepare his/her course either during holiday or vacation time.

This wording of Article 11 does not prevent the assignment of post-leave workload to a teacher

going on leave, prior to the commencement of that leave. However, the practice, which is to provide teachers with their teaching assignments in relation to the up-coming semester, is of long standing and flows from the wording of Article 11.02 A 1 (a). Had Mr. Gee wanted his assignment in advance of his leave, that is, out of step with others and with the established practice, it was his responsibility to request that. He had been subject to the workload assignment practice for many years and knew at the time of accepting his leave that he would be teaching 15 months hence and that he would receive his assignment in approximately 11 months. There was no evidence that he approached Mr. Boyd with a view to doing so. While he could have reduced the impact on his leave and carried out renewal preparation on the courses he had previously taught prior to commencing his leave, he chose not to do so. His choice is not unreasonable since in order to be as current as possible and to undertake the “refreshing” aspect of preparation it makes sense to choose a time closer to the semester during which the course is to be taught.

Article 11, also sets out a special mechanism for teachers to grieve matters arising from the application of Articles 11.01 and 11.02. Article 11.02 B 1 establishes the College Workload Monitoring Group; Article 11.02 B 2, its composition. The WMG is charged, among other responsibilities under Article 11.02 1, with reviewing individual workload assignments where requested by the teacher or the Union Local and may take into consideration in doing so under 11.02 C 2 availability of time for the teacher’s professional development, previously assigned schedules, lead time for preparation of new/or changed schedules and the timetabling of workload, as well as other factors. It is a requirement that the teacher must file his request for review with the WMG within 3 days of receiving his or her SWF (11.02 A 4). Mr. Gee chose not to take his grievance to the Workload Monitoring Group. This choice resulted in the College, in accordance with this same article, considering Mr. Gee “to be in agreement with the total workload”.

The Union argued that the College breached the bargain it made with Mr. Gee in granting him an
