

**IN THE MATTER OF FANSHAWE COLLEGE AT LONDON, ONTARIO
AND IN THE MATTER OF A COMPLAINT BY DAVID GEE**

Dates of Hearing: April 25, June 06, June 30, 1995

Workload Resolution Arbitrator: Janet V. Collins, Barrister & Solicitor

David Gee, a faculty member of Fanshawe College has presented 4 issues for resolution. The issues are:

1. Should the College round off the value of the attributed hours for Evaluation and Feedback on the Standard Workload Form (SWF) hereinafter referred to as a SWF to less than 4 decimal places.
2. What is the correct date in the academic year for fixing the number of students enrolled in a course for the purposes of the SWF.
3. Does the workload monitoring group motion of January, 1991 concerning class size in Philosophy 102 have general relevance to other Philosophy classes.
4. Should additional credit be given for additional work required by the compression of the teaching term from 15 weeks to 14 weeks.

The complainant, David Gee was represented by Gary Fordyce and Tom Gelgard of OPSEU, Local 110. The College was represented by Terry Boyd, Ingrid Hobbs and Gayle White-Mallory.

ISSUE 1: Should the College round off the value of the attributed hours for Evaluation and Feedback on the SWF to less than 4 decimal places?

DECISION

The attributed hours for feedback and evaluation should be expressed to 4 decimal places in a manner consistent with the Collective Agreement.

REASONS

The Collective Agreement provides for a calculation of the evaluation/feedback by the formula: Factor x Class Size x Teaching Contact Hours. Article 11.01E1 expresses the formula as the ratio of assigned teaching contact hours to attributed hours for evaluation/feedback. The Article expresses the ratio for different types of evaluation, namely Essay/Project EP, Routine/Assisted RA and In Process, IP. Although Article 11.01 does not specify how the evaluation factors were derived, it is significant that in the case of In Process Evaluation the factor is expressed to 4 decimal places; in the other 2 places it is expressed to

3 decimal places.

Professor Gee submitted as evidence, the SWF for the fall and winter terms of 1994/1995. The hours attributed for evaluation and feedback had been rounded off to 2 decimal places. Calculation of the attributed hours using the formula provided by the Collective Agreement for the course Philosophy 102, for example, showed that the number of hours was 2.295. These had been rounded up in the SWF to 2.3 hours. It was argued by Professor Gee that if the numbers of attributed hours are rounded up or down, the effect could be to overestimate or underestimate the overall workload. If the hours are rounded down, the effect would be to underreport the workload assigned to a teacher and this could lead unfairly to additional work being assigned so as to generate the maximum allowable 44 hours per week. Professor Gee submitted that the SWF should accurately reflect the total workload, as required by Article 11.02. This can be done only if the workload factors specified in the Collective Agreement are calculated so as to not under report time spent, which is the equivalent to work done.

The position of the College is that the total workload should be assessed on a global basis. Any under reporting of hours through rounding off in 1 course should be evaluated in light of the total workload, based on hours attributed in all other courses. Where the total workload has been underestimated, Article 11.01G2 would provide a remedy for "atypical circumstances".

The College conceded that in calculating the attributed hours ordinary arithmetical principles were applied to round up or down to the next significant figure. It was submitted by the College that on the facts of this case, as revealed by the SWF for the fall and winter terms of 1994/1995, there has been no under reporting of total workload hours. The hours were rounded up, not down and therefor Professor Gee had no grounds for complaint.

The issue presented by Professor Gee for decision is whether or not any rounding off of numbers is appropriate. The parties to the Collective Agreement have indicated by the complexity of the calculations required in order to determine total workload, their intention as to the degree of precision that is acceptable. Article 11.01E1 points in the direction of 4 decimal places. The Collective Agreement does not explicitly specify the number of decimal places to which any calculation should be carried. By expressing the factor in Article 11.01E1 to 4 decimal places, it is apparent that the parties have agreed that this is appropriate.

I conclude that rounding up or down of attributed hours from the 4th decimal place, without the consent of the individual concerned is inappropriate.

ISSUE 2: What is the correct date in the academic year for fixing the number of students enrolled in a course for the purposes of generating the SWF?

DECISION

In preparing the SWF, the number of students in a course should be determined as the number registered in the course on the last day for withdrawal of registration without academic penalty.

REASONS

This issue arises because of the potential effect of attrition on class size during the teaching term. A faculty member has the right, conferred by Article 11.01E3 to request that the SWF be revised following the last day for withdraw of registration by students in a course. Revision of the SWF is mandatory after the enrollment audit date and not later than the end of the course.

As made clear by the provisions of Articles 11.01 and 11.02 (I.P. 11.01E1 and 11.02C2), class size is a factor in computing the workload of a teacher. If the number of students in a class is underestimated on the SWF, the actual total workload could exceed the maximum 44 hours per week stipulated by Article 11.01B1 of the Collective Agreement. Conversely, if the estimated number of students exceeds the actual number, the teacher's total workload could be artificially inflated.

At issue in this dispute is the current calendar date to which Article 11.01E3 refers. The question is, to what date does the phrase "last day for withdrawal of registration by student (s)" refer. The parties have proposed 2 conflicting dates. Professor Gee proposes that for the fall term of 1994, September 19 is the correct date; the College favours October 3.

I was referred by Professor Gee to paragraph 3.5 of College Policy 2-C-5 concerning withdrawal and paragraph 5 of Policy 2-E-1 concerning student fees (Exhibits 4a and 4b). It was argued by Professor Gee that if he is not entitled to a revision of the SWF by the earlier date, he would not receive due credit for work done in evaluating students who were enrolled in the course on the September date but who later withdrew.

The policy on withdrawal permits the student to withdraw without a record by the final date for adding and dropping courses. Withdrawal after that date results in a final grade being recorded. According to Policy 2-E-1 no fees are refunded if a student withdraws after the 10th day of the semester. The essence of Professor Gee's position is that the last day for withdrawal of registration must mean the last day on which a student would be entitled to receive a refund.

The College relied on Exhibit 5, consisting of pages from the College's Arts and Science Calendar (Dates to Remember) DR and a corresponding page from the Student Calendar. Both documents list October 3, 1994 as the last day to withdraw without academic penalty. Until October 3 a student who withdraws would receive a statement of academic achievement which records "W" in the course. After October 3 the record would show "F" to the relevant course.

Article 11.03E3 requires the College to determine the number of students in a course, based on "the College's planning estimates". Evidence presented by the College was that the planning estimate is an enrollment target, the target date for the 1994 - 1995 academic year being October 3. The estimate is the number of students for which the College will be funded for the particular course as of the enrollment audit date. For the 1994 - 1995 academic year, the enrollment audit date was November 1. For the purposes of this dispute the numbers at October 3 and November 1 do not differ significantly.

In the view of the College, the class size on the SWF must be the best estimate of the number of students who will actually be in the class on the enrollment audit date. In estimating class size the College must take into account attrition as well as changes during the add/drop period. Admittedly, the number on the SWF cannot be an accurate number prior to the audit date - it is an estimate. The College's position is that there is no unfairness to Professor Gee arising from uncredited evaluation/feedback work as no evaluation is required before October 3.

I was referred to Exhibit 7 which shows the numbers in the classes taught by Professor Gee in the fall term of 1994. The document is a summary of the planning estimates, the numbers shown on the SWF, the number enrolled as of September 2, the end of the second week; September 20, the end of the 4th week and December 20. It was pointed out for example that the class size in Philosophy 102 at December 20 was lower than the number shown on the SWF (27 versus 30). For the period during the teaching term when the class size was below that shown on the SWF, Professor Gee obviously received a benefit of the attributed evaluation and feedback time for a larger class. Over the life of the course, some balance must have been effected by the lower numbers at the end of the term, as compared with the higher numbers on the first day of class. Similarly, the net effect of the lower class size in one course would affect the total workload from all classes. It is predictable that this kind of tradeoff and balancing must occur over the term, given the fact that students are allowed to add or withdraw from classes after the term commences.

I am persuaded that the term "last date for withdrawal of registration" in Article 11.01E3 must mean the last date by which a student's record may show that the student has withdrawn from the course. Any earlier date would render meaningless the right to withdraw without academic penalty, at any time between September and October 3.

The Collective Agreement provides a remedy to the teacher for inaccurate estimates through the right to request a review after the last date for withdrawal of registration. It would be as unreasonable to expect the teacher to accept a workload based on a fixed and gross underestimate of class size as to expect the College to generate a fixed class size on the SWF which grossly overestimates the total workload of a teacher. The Collective Agreement provides the necessary flexibility to revise the class size in light of the best information available, namely, the number of students remaining in the class after the last date for withdrawal without academic penalty.

Article 11.01E3 does not require that the SWF record the number of students initially enrolled in a course. Neither does the Collective Agreement stipulate that the class size of the SWF should reflect any number other than the **College's planning estimates**. The College has the responsibility to plan and part of that plan is to estimate the number of students for which funding can be obtained and instruction provided. The use of the numbers as of the enrollment audit date on the SWF recognizes the responsibility of the instructor for evaluation and feedback on a time table to which formal recognition has been given.

I conclude that the appropriate date in the case of Professor Gee is October 3, 1994.

ISSUE 3: To what courses is the Workload Monitoring Group motion of October 16, 1991 applicable?

DECISION

The Workload Monitoring Group motion of October 16, 1991 applies to the class size for Philosophy 102/202 as taught by Professor Gee in any year. The motion has no application to any other classes.

REASONS

The history of this problem goes back to the 1991/1992 academic year. Professor Gee submitted in his complaint that in his earlier discussion of the question, the Workload Monitoring Group was asked to consider and rule on the maximum class size for all philosophy classes. I was referred to Exhibit 8B, a copy of a memorandum to Professor Gee among others reporting the motion of the WMG of October 16, 1991. The motion proposed and carried was:

"That for future SWF assignments that Phil 102/202 have a maximum class size of 30 and any increases to this maximum be discussed and mutually agreed to by the teacher and the supervisor."

The complaint is that the Workload Monitoring Group motion referred to Philosophy 102/202 but should have been worded so as to make clear that it dealt with all Philosophy classes. The basis of Professor Gee's position is that the nature of the subject matter (philosophy) requires that the class size be limited so as to facilitate his teaching method, namely a Socratic method. Moreover, he stated that the personal characteristics of the students enrolled in his Philosophy classes makes it desirable to limit the class size so as to encourage student participation and discussion.

It was argued by the College that the motion was applicable to the 1991 academic year only, as the complaint dealt with a 1991 SWF. This motion was limited to a specific individual workload assignment and was therefore time-limited. The College relied upon Article

individual complaints. The College submitted that the complaint procedure in the Collective Agreement sets out a scheme which builds from the level of the individual's supervisor through the WMG to the WRA. This process indicates that matters taken to the WMG are specific to individual workload assignments.

The issue to be resolved is the application of the WMG motion beyond the 1991 - 1992 academic year. Article 11.02D5 makes the decision of the WMG binding on the College C, the union local UL and the teacher involved. By contrast with the WRA, the Collective Agreement does not explicitly specify the period for which the WMG decision is applicable. Article 11.02F6 limits the application of WMG awards to the teacher involved, and to a 12-month period from the date of the beginning of the workload assignment.

In my view the difference in the wording of Article 11.02D5 and 11.02F6 is significant. The term "individual workload assignment" in Article 11.02 must refer to the specific assignment on the SWF which gave rise to the complaint. Since the WMG motion refers to "future SWF assignments", it must be taken to apply not only to the specific course identified, namely Philosophy 102/202, but also to the individual teacher whose complaint was being addressed. The motion speaks of "future SWF assignments" (emphasis added); it is reasonable to infer that the WMG did not intend to limit application to a single future SWF.

Nothing in Article 11.02 limits the effect of the WMG decision to the current academic year. While it is given jurisdiction to resolve disputes arising from individual workload assignments, nothing limits the binding effect of its decision to any particular future period. Although a specific workload assignment must be recorded on a SWF, the WMG motion looks ahead to the preparation of future SWF's.

I conclude that the wording of the motion, on its face, combined with the effect of Article 11.02D5 permits the WMG motion to apply not only to the immediate future in the academic year concerned but to the specified course Philosophy 102/202, and to the teacher involved namely Professor Gee, for an indefinite period.

ISSUE 4: Should credit be given for additional work created by the compression of the teaching term from 15 weeks to 14 weeks?

DECISION

The reduction in the duration of the teaching period from 15 weeks to 14 weeks in the academic year 1991/1992 was a one-time event and does not justify additional credit for preparation time.

REASONS

In 1991 the teaching term was reduced by one week for 15 weeks to 14 weeks. Professor

In 1991 the teaching term was reduced by one week for 15 weeks to 14 weeks. Professor Gee complained that this necessitated additional preparation work to revise each course. He points to Exhibit 6B which shows on a day-by-day basis the content to be covered in one course, Philosophy 102 as an example. This detailed course outline is required by the College, and he says, he should receive credit for the extra work required to revise it. Further, Prof. Gee said, he is required to teach everything on the outline.

It was submitted on behalf of the College that adjustments to course delivery occur in the normal course of any semester, and that the adjustment in the length of the semester imposed no significant additional burden. Moreover, a course such as Philosophy 102 is more concerned with teaching process than content as admitted by Professor Gee. In the view of the College, the preparation necessary to adjust for the change in semester length is no different from that ordinarily required by a faculty member. In any event, any additional work would amount to no more than a 7% change in the workload, a minimal increase.

In response to the latter submission, Professor Gee argued that the 7% increase in his workload was an admission by the College that this was in fact an increase. He submitted that in using the 7% figure of the duration of the term his workload would have increased by 12 hours of preparation time. Further, he submitted that in the normal course preparation of class material does not require revision. Any revision of the course material necessitated by the contraction in the semester is additional to his normal workload.

I am not persuaded by the latter submission. The process of effective teaching properly involves an ongoing assessment and adjustment of content and delivery in order to engage, and it is hoped, ultimately educate the students. The time attributed for preparation must surely account for any such adjustment. It was not suggested that the adjustment required the injection of significant amounts of new material. Were this the case, Article 11.01D1 of the Collective Agreement allows for additional credit, which would have been shown on the SWF.

In the complaint before me, the evidence is that preparation time was attributed on the basis of an established course. I was not directed to any provision in the Collective Agreement for additional preparation time for established courses. Nor was it suggested that Professor Gee's courses had been improperly characterized on the SWF. For these reasons I find no grounds for the claim for additional credit for preparation time, occasioned by the reduction in the teaching time from 15 weeks to 14 weeks.

DATED at London, Ontario this 23rd day of August, 1995.

