

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO COUNCIL OF REGENTS FOR THE COLLEGES OF APPLIED
ARTS AND TECHNOLOGY IN THE FORM OF FANSHAWE COLLEGE
(hereinafter called the "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(hereinafter called the "Union")

GRIEVANCE OF FRANK GREEN
(hereinafter called the "Grievor")

BOARD OF ARBITRATION:

Richard H. McLaren
Jon McManus, Union Nominee
Andrew Shields, College Nominee

COUNSEL FOR THE COLLEGE

Brenda Bowlby

COUNSEL FOR THE UNION

Peter Lukasiewicz

A HEARING IN RELATION TO THIS MATTER WAS HELD AT LONDON, ONTARIO, ON
SEPTEMBER 5, 1991.

A W A R D

Mr. Frank Green has been employed by the College for the past twenty years. For the first thirteen years he worked as a Professor. In the last seven years he has worked as a Counsellor and has done some part-time teaching. In June of 1989 he was appointed a Mature Student Counsellor (MSC) within the College counselling department. This new position was to be generic in nature in that it would provide counsellors for mature students whether they were full-time or continuing education students. He took on the task of developing the position with vigor and interest. He developed a job description subsequently adopted by his manager Mr. R. Pelletier, the Manager of Student Services at that time. (Exhibits 12 and 15) The duties as described in Exhibit 15 constitute a handout prepared by Mr. Green for use by the students. It demonstrates that a good deal of the work Mr. Green performs is facilitating, although there is some direct service provided in the form of counselling or referring individuals to appropriate other persons or agencies.

Mr. Green testified that too much involvement with continuing education students combined with the MSC duties would create a situation where his workload would be unmanageable. The problem appears to have arisen from the fact that Mr. Pelletier

said that he would not have to take care of continuing education students as well as doing mature student counselling. He alleges that he was advised that the only duties he would have with respect to continuing education students would be that of a liaison with other students within the College and the direct services involved. He testified that before the position of Mature Student Counsellor was created he had 28 hours per week of continuing education student counselling. He contrasts that with his expectation of liaison work with the continuing education programme, consisting of one to two hours per week, once he assumed his duties as an MSC.

Mr. Green advised Mr. Pelletier that the continuing education students were seeking counselling and advice from him, and that he was given more files than he could handle. This situation was communicated to Mr. Pelletier by memo dated February 29, 1990. (Exhibit 1) It was Mr. Green's understanding that there would be another counsellor assigned to handle continuing education students and that he would not have any responsibility in that regard. When matters were not resolved in accordance with this understanding he filed a workload complaint. (Exhibit 3) As a consequence, meetings were held on March 15 and 16 in connection with that complaint. Mr. Pelletier testifies that his conclusion was that Mr. Green was not overworked and an investigation of the phone calls indicated that there was not an increasing volume of continuing education work being done by Mr. Green.

On March 16, 1990 the College distributed through the London Free Press its Spring 1990 Continuing Education brochure. (Exhibit 5) This may have increased volume of community education student inquiries to Mr. Green. Mr. Pelletier's response to Mr.

Green's complaint was formalized in a memo to him on March 19, 1990 filed as Exhibit 6.

Following receipt of that memo a grievance was filed. Exhibit 7 reads as follows:

I grieve that the College violated the Collective Agreement, and in particular Article 4, by making me responsible for counselling Continuing Education students in addition to my annual assignment as Mature Student Counsellor in 1989-1990.

The Counsel for the Union advised the Board that the passage of time and subsequent events had overtaken the remedial requests as stated in the grievance filed by Mr. Green. The remedy being sought at arbitration is for 24 hours of overtime pay for additional work performed during the two week period extending from March 16, 1990 to March 30, 1990. In this department there are flexible hours of work which permits employees to work additional hours beyond the standard work week of 35 hours. The accumulated overtime may then be taken in lieu time off. Mr. Pelletier testified that the Grievor had utilized the procedure necessary to engage in this process on previous occasions but he had not done so with respect to the matter under consideration in this award. Mr. Green testifies that as a result of the advertisement in the London Free Press on March 16, 1990, he received a large number of phone calls related to continuing education. This went on for a two week period following the advertisement. He testified that he did the continuing education inquiry work during office hours and his regular work was done outside of office hours. This required evening work. In total, the alleged extra work hours amounts to 24 hours overtime. It is on this basis that the remedial request for the grievance is made.

It was submitted on behalf of the Union that the Grievor was required to engage in substantial amount of direct counselling to continuing education students which added to his work load. Because of the involvement of Mr. Green in the development of the MSC position, and his discussions and memos, the College knew that the advertisement would generate additional duties. The employees that do counselling work are entitled to overtime for additional hours spent counselling outside of regular hours. It is submitted that the appropriate way to determine the compensation owing would be to use the closest equivalent which would be the overtime provision for teaching positions found in Article 4.01 11 (d).

It was submitted on behalf of the College that there was no breach of the collective agreement. The remedy of overtime by use of the formula in Article 4.01 11 (d) amounts to amending the collective agreement to make the provision available to counsellors as though they were included in the teaching staff. It was submitted that there was no evidence given which could establish when the particular additional duties had been performed. Even if there was such evidence, the overtime was clearly unauthorized and, therefore, the overtime claim was not eligible to be paid for under the terms of the agreement.

The relevant provisions of the collective agreement read as follows:

Article 4
WORKLOAD

4.01 (11) (d) Compensation for work in excess of the maxima set out above shall be paid by the College to the teacher on the basis of:

- (i) 1/180 or 1/190 respectively of the teacher's annual salary for each contact day in excess of the 180 or 190 contact day annual maximum;
- (ii) 0.1% of the teacher's annual salary for each teaching contact hour in excess of the 648 or 760 teaching contact hour annual maximum.

Such compensation shall be for the greatest amount and shall not be pyramided under this clause or under 4.01 (10).

4.04 (1) The assigned hours of work for Librarians and Counsellors shall be thirty-five (35) hours per week.

CLASSIFICATION DEFINITIONS FOR POSITIONS IN THE ACADEMIC BARGAINING UNIT

(To be used in conjunction with the Job
Classification Plans for positions in the
Academic Bargaining Unit.)

CLASS DEFINITION

COUNSELLOR

A Counsellor is responsible for assisting students and potential students to function effectively as learners and as individuals by

helping them understand, prevent or overcome personal, social or educational problems that may hinder learning or their ability to cope with everyday living. The Counsellor's duties include:

- a) Developing and maintaining appropriate counselling programs.
- b) Interviewing individuals, by appointment, to explore personal or social difficulties or vocational/educational decision making, including:
 - referring students as appropriate to proper professional help;
 - facilitating discussion/dialogue between students, faculty and administration;
 - participating in pre-admission interviewing and testing as required.
- c) Group counselling as a non-instructional activity.
- d) Testing and evaluation of individuals to assist them in their personal, educational/vocational development.
- e) Assisting administration, faculty and staff, in a consultative role in identifying student problems, dealing with student problems, and relationship problems among students.
- f) Providing educational/vocational information to students or directing them to available sources.
- g) Participating in the orientation of new students to the college.
- h) Teaching as assigned.

In addition, the Counsellor may, from time to time, be called upon to contribute to other areas ancillary to the Counsellor's role, such as student recruitment and selection, student employment, liaison with community service programs and agencies, professional development and control of supplies and equipment.

An MSC is a generic position. It involves counselling day time students, potential full-time students, or evening students who are part-time and therefore considered to be continuing education students. Therefore, the position contemplates contact with continuing education students. The eligibility for receiving services of the MSC is captured in the use of the word mature. The position description of MSC, as drawn up by the Grievor and adopted by the Manager, contemplated that there would be some counselling of the continuing education students. However, such counselling was only to involve referring them on to someone else rather than engaging in that work personally. The various correspondence between the two individuals filed as exhibits make it clear that Mr. Green conceived that there was a problem involving continuing education and that the College manager did not have the same perception. However, the College manager always remained open and willing to engage in discussions as is indicated by the correspondence. The College manager did pursue further discussions with the Grievor. The Grievor did not take up that invitation. The matter then proceeded to the grievance procedure and indeed this arbitration.

The collective agreement in Article 4.04 (1) provides that the assigned hours for Librarians and Counsellors is to be thirty-five (35) hours per week. There are no provisions in the collective agreement for overtime for counsellors. There are for other positions. In this case the parties have established that the working day begins at 8:30 and ends at 4:30 with a one hour lunch break, although there is some flexibility as to the commencement and termination of the work day. There is also the departmental policy of allowing for the accumulation of hours in excess of 35 hours per week to be taken as lieu time. However, this process can only be engaged in if the employee submits

a written request to do so and it is authorized by the College. That was not done in this case. Therefore, the Grievor was not entitled to hours in excess of the assigned 35 hours per week. Nowhere in the collective agreement is there any provision for overtime for this position or any formula for the calculation of overtime. It is for that reason that the Union Counsel suggested that the formula for a teaching professor be adapted for calculating the remedy in this particular proceeding.

What has occurred from the perspective of the Board of Arbitration is that the Grievor has taken on work which arose as a result of the actions of the College. However, in doing so the Grievor is not to assume that this constitutes overtime authorization and subsequently claim the extra hours worked as overtime. There is no provision in the collective agreement which extends that prerogative to the Grievor to work overtime; and, there was no request by the College to engage in overtime work. Therefore, the claim of the Grievor is essentially one for work which was performed although not authorized as overtime. In that event there is no claim for a breach of the collective agreement. Therefore, the work which was performed beyond the regular hours ought not to have been performed by the Grievor. The Grievor ought to have either sought authorization for the extra hours worked or used the established procedure for lieu time. While the workload may have changed as a result of the London Free Press advertisement, that does not, in and of itself, entitle him to compensation for hours worked in excess of 35 hours. The Grievor's claim in this lengthy grievance procedure is based on his erroneous perception that there was an entitlement to overtime as a result of his decision to undertake additional duties beyond regular working hours. There is simply no such entitlement.

For all the foregoing reasons, it is found that there has been no breach of any provision of the collective agreement by the College. It is ordered that the grievance be dismissed.

DATED AT LONDON, ONTARIO THIS 30th DAY OF SEPTEMBER, 1991.




Richard H. McLaren
Chairman

I concur/~~dissent~~
~~XXXXXX~~

Signed "Jon McManus"
Jon McManus, Union Nominee

I concur/~~dissent~~



Andrew Shields, College Nominee