

IN THE MATTER OF AN ARBITRATION

BETWEEN

THE ONTARIO PUBLIC EMPLOYEES UNION - LOCAL 657 ("THE UNION")

AND

CANADORE COLLEGE OF APPLIED ARTS & TECHNOLOGY ("THE COLLEGE")

Concerning the "Group Grievance" filed on March 16, 1996.

BEFORE :

R.O. MacDowell	(Chair)
John McManus	(Union nominee)
Barry Matheson	(College nominee)

APPEARANCES:

For the Union :

- Richard Blair (Counsel)**
- Mary Toye**
- Gerald Laronde**
- Peggy Morrison**
- Dean Barner**

For the College :

- Douglas Gray (Counsel)**
- M. Tait**
- B. Sutherland**

A hearing in this matter was held in North Bay, Ontario, on April 29, 1998.

AWARD

I - WHAT THIS CASE IS ABOUT

This is a "Group Grievance" that was filed on March 16, 1996. The grievance bears the signatures of 12 individuals, and reads this way :

"STATEMENT OF GRIEVANCE: That the College, in its implementation of the Canadore Early Leaving Assistance Plan, (January 9, 1996) discriminated against, resulting in inequitable treatment of the undersigned employees"

The grievors seek the following remedy :

" that the CELA Plan be extended for these employees for a reasonable period of time"

The union's position is that the administration of the Early Leaving Assistance Plan was seriously flawed, with the result that the grievors did not have a fair opportunity to make application. In the union's submission the only way to rectify that problem is to give the grievors an additional opportunity to take advantage of the "early leaving" options that were available under the 1996 plan.

The College replies that the matters complained of cannot be properly addressed as a "Group grievance", because they do not arise from "one specific incident" (see Article 32.09 of the agreement) and the named individuals were not "affected" in a homogeneous way. In the College's submission, this is not really a "Group Grievance" at all. Rather, it is a bundle of

individual complaints, that turn on individual circumstances - much like the kinds of complaints that arise in the shadow of a general layoff. (See generally Article 27 of the Agreement). The College asserts that the grievance raises discrete allegations of "misrepresentation" and "discrimination", and discrete concerns about the application of the early leaving plan to individual employees. In the College's submission, allegations of that kind can only be pursued as individual grievances; and, on that basis alone, this "Group grievance" is not "arbitrable" and must be dismissed.

More fundamentally, though, the College contends that issues raised in the grievance cannot be arbitrated at all, because the Early Leaving Assistance Plan is not part of the collective agreement nor regulated by the agreement. The College says that on that ground as well, this grievance is not arbitrable and must be dismissed.

The College asserts that the ELAP was neither the subject of collective bargaining with the union, nor was it required by any provision of the collective agreement. In fact, the agreement says nothing about early leaving assistance at all. Nor is there any conflict between the options offered under the plan and the provisions of the collective agreement. The College argues, therefore, that there is no contractual foundation for the employees' complaint.

The College points out that the ELAP was introduced by Canadore (but not other Colleges) unilaterally and ex gratia, in order to meet local problems and give its own employees some options that they would not have under the terms of their collective agreement. There was

no contractual obligation to make these options available, nor does the agreement prohibit the College from doing so. They do not fall under the terms of the agreement at all.

The College denies that there was any "discrimination" in the administration of the early leaving assistance program. It is acknowledged that employees may not have had much time to consider their options, and, in a period of uncertainty, some individuals may have been confused, some may have had imperfect information, and, in hindsight, some may now wish that they had made other choices. And no doubt there was lots of speculation and "scuttlebutt" about the impact of layoffs in early 1996. But the College denies that it discriminated against or misled anyone; and, in any event, employee complaints about the program do not, and cannot, arise from *"the interpretation, application, administration or alleged contravention"* of the collective agreement (see the definition of "grievance" in Article 32.12 C below). Since the plan is neither part of the collective agreement nor inconsistent the terms of the collective agreement, there is no "contractual hook" for the present grievance. It is simply not arbitrable.

In summary, the College contends that these employee allegations cannot be dealt with as a "Group grievance" and, in any event, what the grievors are complaining about, is not "arbitrable". The College says that, on both grounds, the grievance should be dismissed.

* * *

The parties have agreed to confine their submissions to these two "preliminary objections. However, before looking at the background in a little more detail, it might be useful to record certain provisions of the collective agreement :

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.

6.02 The Colleges agree that these functions will be exercised in a manner consistent with the provisions of this Agreement.

Group Grievance

32.09 In the event that more than one employee is directly affected by one specific incident and such employees would be entitled to grieve, a group grievance shall be presented in writing by the Union signed by such employees to the Director of Personnel or as designated by the College within 20 days following the occurrence or origination of the circumstances giving rise to the grievance commencing at Step One of Article 32, Grievance Procedure. Two grievors of the group shall be entitled to be present at meetings in Step One or Two unless otherwise mutually agreed.

32.12 C "Grievance" means a complaint in writing arising from the interpretation application, administration, or alleged contravention of this Agreement.

32.04 D The arbitration Board shall not be authorized to alter, modify, or amend any part of the terms of the Agreement, nor to make any decision inconsistent therewith; nor to deal with any matter that is not a proper matter for grievance under this Agreement.

II - SOME BACKGROUND

In late 1995, the College faced significant budget cuts, which required it to undertake some internal reorganization and consider the possibility of layoffs. The prospect of layoffs, in turn, triggered a number of the "job security" provisions of the collective agreement. For example, under Article 27 of the agreement, the Employment Stability Committee was constituted to consider ways to avoid layoffs and preserve work opportunities. The ESC is a joint union/management group, with a consultative role, and the power to make recommendations about strategies to enhance employment stability.

By early 1996, however, layoffs were still quite clearly "in the cards"; but, at that point, it was uncertain how many layoffs there would have to be, or who would receive layoff notices. Nor was it possible to predict who would ultimately be laid off, because the collective agreement allows senior employees to avoid layoff by "bumping" into positions for which they are qualified. The receipt of a layoff notice does not necessarily mean job loss; so that until the layoffs actually crystalized and the bumping options were sorted out, no one could know for sure whether s/he would be displaced. Junior employees with few transferrable skills were the most at risk, however, there was a possibility that even senior employees could be affected, depending upon which programs were cut and how the bumping process unfolded. It was a period of

considerable uncertainty, as the College sought to cope with the financial pressures, and employees wondered what the impact would be.

On January 9, 1998 Richard Beauchamp, the Director of Human Resources, issued the following memo to all full time employees :

I am pleased to inform you that the Board of Governors has approved the introduction of an Early Retirement Assistance Plan for 1996. The attached plan is designed to provide a variety of incentives to encourage the consideration of either early retirement or the pursuit of personal objectives. At the same time, it is also designed to improve the ability of the college to create opportunities for restructuring and to meet fiscal responsibilities.

Any employee who is a full-time employee of the college, has more than one year of service with the college in a full-time complement position, and is less than age 64 may apply. The Early Leaving Assistance Plan is being introduced to lessen the need for any potential layoffs as the College restructures to meet the challenges of the future. For this reason, only those applications that eliminate the need for layoff will be considered. In addition, applications will be considered based on the budget available for the Plan and on college priorities and objectives.

If you have any questions regarding the specifics of the plan, or how it would impact on your own situation, please contact me at extension 5333 or Irene Anderson at extension 5229.

Thank you for giving serious consideration to this opportunity.

The details of the Early Leaving Assistance Plan need not be set out here. It suffices to say that the plan is described in a 10 page document that outlines various "options", including: a simple cash termination allowance; a termination allowance that could be spread over 5 years and made congruent with regular or early retirement; an unpaid leave of absence; and a partially

paid leave of absence. All of these options are described as "*incentives to encourage the consideration of either early retirement or the pursuit of other career or personal objectives*", however, it is clear that their purpose was to save the College money and reduce the need for layoffs.

The plan document includes several pages of explanation (with numerical examples at different salary levels), a page describing "PROCEDURES FOR ACCESS" (setting out the way in which applications should be made), and several pages of "QUESTIONS AND ANSWERS" (touching, *inter alia* on income tax, unemployment insurance, life insurance, and RRSP considerations). Employees were invited to submit applications, on an individual basis, in accordance with the procedure prescribed. However, there was a January 30, 1996 deadline for the "termination allowance" options; so that employees who were interested in these cash payments, only had about 3 weeks to make application.

As will be seen, the Plan was offered to "All full-time employees" - not just to teachers (etc.) covered by the Academic Collective Agreement under which the present "Group grievance" was brought. In other words, the early leaving assistance options were not only outside the terms of the Academic collective agreement, but they were also being offered to support staff who are covered by a different collective agreement. That is one of the reasons why the College says that the plan has to be seen as an "extrinsic" and "ex gratia" benefit, not governed by any collective agreement.

The January 9th memo invites employees to consider the plan and contact the Human Resources Department for further information. However, at that point, the Human Resources Department was unable to be very specific about the impending layoffs - which is to say, who/what/ how many would be cut, and when. The College did not know these details and, as a practical matter, could not know the extent of the layoffs until the union-management Employment Stability Committee had made its recommendations and management had reviewed the situation - including the success or otherwise of the early leaving incentives. Thus, in a further memo dated January 12, 1996, Mr. Beauchamp advised employees as follows:

I have been advised by a number of employees as to when specific details would be forthcoming regarding any programs or services that may be affected by the recently announced budget cuts. Under the terms of the two collective agreements covering College employees, there are restrictions on what information can be released and when it can be released.

Both agreements require the College to discuss its plans with the appropriate Employment Stability Committee. These discussions, which are now occurring between the Union and the College, are completely confidential and must remain so for a specific period of time. It is only after the time frames required in each collective agreement have expired that notices of layoff can be given to individuals.

For this reason, employees directly affected by the College downsizing exercise cannot be notified until the first week of February. We have released as much information as the collective agreements permit at this point in time.

It is recognized that the next few weeks will be a time of uncertainty. We realize how stressful this can be, but in the end the outcome will be much better as the Employment Stability Committees are working very hard to minimize the number of layoffs that will be required. We are also confident that the recently distributed Early Leaving Assistance Plan will help us considerably in the effort to reduce the number of layoffs. If you have any questions or need further clarification please call. (Emphasis added).

The January 9th memo and the follow-up memo of January 12th, both stress the same themes: that there is a "downsizing exercise" underway, that there will probably be layoffs, that the number of layoffs will not be finalized until early February 1996, and that, in the meantime, the College is offering departure incentives which might reduce the need for such layoffs. The timing of the plan - with a "buyout deadline" of January 30, 1996 - is obviously designed to encourage as many voluntary departures as possible, BEFORE finalizing the number of layoffs that might be required. The more individuals who responded by January 30th, the fewer employees would face displacement in early February. On the other hand, as is also obvious, the attractiveness of the early departure options might depend upon whether an individual faced the risk of layoff or thought that s/he was "safe".

There were no "general meetings" to discuss the early leaving program with employees as a group. In accordance with the memos of January 9, 1996 and January 12, 1996, discussions were to be pursued on an individual basis. In each case, the employee applications were to be reviewed in accordance with the terms of the plan. In this regard, it is useful to record item D of

the "PROCEDURES FOR ACCESS" to the plan, which reads this way :

The Executive Director, Human Resources, will chair a meeting of the Executive Team to review applications. Applications will be considered based upon the budget available for the Early Leaving Assistance Plan and on Current College priorities and objectives. The granting of Early Leaving Assistance is at the sole discretion of the College. (Emphasis in the original).

It is clear that under the terms of the plan, an application for an early leaving incentive payment did not guarantee acceptance of this employee request. On the contrary, that remained within the "sole discretion of the College" based upon budgetary and operational considerations. The only thing that the plan itself stipulates, is that an employee should discuss the matter with the Human Resources Department and that any application will be considered as a matter of "discretion", in accordance with the "budget available" and the College's own "priorities and objectives". Accordingly, what the individual grievors may have lost (by not applying), is not the cash payments mentioned above, but rather the opportunity to have their individual requests considered in light of the criteria spelled out in the plan. It is a "loss of opportunity" which might or might not have resulted in a cash payment to one or more of the grievors.

III - THE KIND OF EVIDENCE THAT THE UNION PROPOSES TO LEAD

In order to clarify the parties' positions on the two "preliminary objections" mentioned above, counsel for the Union outlined for the Board the kind of evidence that he proposed to lead in support of this "Group grievance". It is also helpful to look at Exhibit 6, which records the Union's response to the Colleges request for "particulars". The particulars in Exhibit 6 do not purport to be complete; however, they do give a general indication of the kind of testimony that

the Board would have to consider if this case were heard on its merits. And that, in turn, illuminates whether this is or is not the kind of case that can be dealt with as a "Group grievance".

Essentially, the union claims that in the two or three weeks preceding the issuing of layoff notices (i.e. in the weeks preceding February 9, 1996), employees received inaccurate or inadequate information about the likelihood of their own layoff, with the result that they did not apply for the "cash buyout" options available under the plan. The Union says that employees had questions about how the plan might apply to them, and needed more time to consider the situation. In counsel's submission, the evidence breaks down into three broad categories:

- (1) some individuals heard from their supervisors - incorrectly as it turned out - that they were "safe", and therefore did not make application under the plan;
- (2) some individuals thought that they might be the target of layoffs but had no specific information about their situation, and because they did not think that the plan applied to them, they did not apply;
- (3) some individuals had no information either way and in the absence of such information chose not to apply.

Counsel says that, not only was some information inaccurate, but, more troubling, some individuals had accurate information about their situation while others did not. Those who knew that they faced layoff or were seriously at risk, had an unfair advantage over those who didn't (although of course anyone could have made application). Counsel submits that there were (or must have been) "leaks" from the Employment Stability Committee - a body whose deliberations

are supposed to be confidential (see Article 28.05 (iv) of the Agreement); but in any event, counsel suggests that some employees were in a better position than others to assess the desirability of applying for the plan. Counsel submits that if the grievors had known that they were likely to receive layoff notices, they would have made an application for early leaving assistance.

Exhibit 6, dated May 14, 1996, indicates the kind of evidence that the Board would hear if the matter proceeds on its merits. As we have already mentioned, these instances do not comprise the totality of the union's allegations; however, these particulars were provided within a couple of months of the filing of the grievance, so they give some "flavour" of the kinds of concerns that employees had, and the kind of evidence that the Board would be asked to receive :

1. Tony told Pauline Levac ... that he would propose two faculty positions become technologist positions, 5 days later, he told Pauline ...that his proposal had been accepted. Pauline knew that this meant her job was gone but didn't apply for ELAP because thought (sic) it meant someone else's layoff. Then Tony told Pauline that the layoff would be based on merit not seniority.
2. Nancy Graham told Gerald Laronde ... that she went to Tony and asked if her job was OK and was told yes.
3. Gerald Laronde asked Tony and was told he didn't have to worry, then was called in a week later and was told he should consider his options.
4. Tony at a nursing faculty meeting, was asked if 6 people had the same hiring date and if any of these people were to be laid off how would that decision be made and who would make it. He said that how would make the recommendation....and it would be based on several factors such as: best skills for redeveloping the program for another delivery, an understanding of a University degree program for articulation purposes, education, past contribution to the College, what does the organization need.....

5. Paul Kelly called Linda Piper into his officae and told her that she was OK, then called her back in a week and told (sic) she should consider the options of the ELAP..
6. John Philp had a meeting of the Drafting program faculty and staff at which budget numbers were presented and it was clear from these numbers that cuts were going to be made. Rob Ferron being the junior person asked John Philp "could a person who would be targeted as a layoff be considered for an option, John Phip [said] "yes".
7. Richard...on January 23,1996 when Linda was enquiring about the ELAP told Linda Giroux (after he looked at a list) that she had nothing to worry about so she was shocked when she received a layoff notice.
8. Diane Scott was told by Nancy Graham that she was told by way of the Dean's office (Shiela) that 2 should look at applying for "the plan".
9. Tony on February 7, 1996 on direction from Fred Knight called Many Ann Jones out of a meeting and asked her to put in a request for Professional Development leave to prevent her from being laid off when other faculty/counselors with more seniority were not asked to do the same by Fred.....

The Union says that in conversations like these, supervisors conveyed incomplete or inaccurate information, which prompted employees to forego applying for the "cash buyout options" which they might well have received if they had made application. (We say "might" because of the caveat mentioned earlier). In the union's submission, the only way to redress this default is to give the employees the opportunity to access these options now.

We should note for completeness that a number of the individuals who signed the Group Grievance also filed individual grievances complaining about their layoff. Those grievances were either settled or abandoned, so we must presume that there is no outstanding dispute concerning the application of the layoff provisions (which, be it noted, includes the confidential consultative

role for the ESC and union officials). Nor, it would seem, did any of the grievors seek clarification of their position from the Human Resources Department, in the manner invited by the January 9th and January 12th memos. The Union's position, as we understand it, is that employees did not approach the Human Resources Department or make application, because in discussions like those listed above, that occurred in the shadow of the impending layoffs, the grievors were given to understand that they would not be affected. (As we understand it, there is no allegation against Mr. Beauchamp whose department issued the two memos and administered the plan itself).

We should also note that the College's objections to the Group Grievance were raised with the Union, in writing, on June 12, 1996 - that is, about 3 months after the Group Grievance was filed. So the objections outlined at the hearing can come as no surprise. However, so far as we are aware, none of the grievors sought to file his/her own individual grievance, as some of them did in respect of the layoff itself. At that point at least, they were content to proceed in the format that they had chosen - despite the College's objection to the form of the grievance, and despite the College's assertion that their complaint disclosed no breach of the collective agreement.

Finally, it does not seem to be disputed that, whatever the grievors' individual complaints and whatever the source of their confidence that the layoff would not affect them, January 1996 was a time of considerable uncertainty, when no one could really be sure how many layoffs there might be or who might be affected. For not only were the layoff decisions not

going to be finalized until after January 30, 1996 (the deadline for the cash payment options in the plan), but it is clear that the number and distribution of layoffs had to await the processing of applications under the plan itself. That is one of the reasons why the January 12 memo warns employees that the College is not in a position to advise individuals about how the layoffs will unfold. And, whatever was said by supervisors at the departmental level, the "official" advice from the College was that specific layoff information would not be available until February, and that individuals would have to make their decisions before concrete layoff announcements were made.

IV- CAN THE ISSUES RAISED IN THIS CASE BE DEALT WITH AS A "GROUP GRIEVANCE" ?

The Colleges Collective Bargaining Act requires that every collective agreement contain an arbitration provision for the resolution of disputes "*arising from the interpretation, application, administration or alleged violation of the agreement including any question as to whether a matter is arbitrable*". However, the statute does not prescribe any particular form of "grievance procedure". Nor does the statute regulate the way in which complaints are funneled to arbitration. Those matters are left for the parties to address in the course of bargaining - just as the parties are free to spell out what will or will not be "arbitrable".

Nevertheless, although the statute itself has few prescriptions with respect to the grievance procedure, the parties' collective agreement contains quite detailed provisions about particular types of grievances as well as when and how they may be filed; moreover when these provisions are read as a whole, it is apparent that the primary vehicle for complaint is intended to

be the individual grievance. "Group grievances" and "Union grievances" are mentioned in the agreement, but they are residual mechanisms that can only be used when the problem in question fits the contractual language defining that kind of complaint. Indeed, in the case of "Union grievances", the agreement specifically provides that this alternative is not to be used to bypass the individual grievance process.

No one argues that limiting (or streaming) grievances in this way is "unlawful" or inconsistent with the scheme of the legislation. Nor does anyone suggest that the concept of a "Group grievance" limits an individual employee's right to complain about whatever s/he believes to be a breach of the collective agreement. The agreement does not take away an individual's right to grieve. However, what the agreement does do, is restrict "Group grievances" to the kind of situation described in the contract language; namely, where "more than one employee is directly affected by one specific incident".

It follows, we think, that if the problem under review does not fit within the parameters identified in Article 32.09, it cannot be pursued as a Group grievance. If it were otherwise, the opening words of Article 32.09 (i.e. the description of what a "Group grievance" is) would be robbed of all meaning. To put the matter another way: in order for a matter to be dealt with by way of a "Group grievance", it must actually BE a "Group grievance" within the meaning of the collective agreement.

We agree with counsel for the Union that a Board of Arbitration should not take an

unduly technical view of the problem before it. Not only does that approach make no “labour relations sense”, but there is judicial authority supporting a more flexible view. Thus, in Re Blouin Drywall and United Brotherhood of Carpenters and Joiners of America, Local 2486 (1976) 8 O.R. 2d 103 the Ontario Court of Appeal commented “...these cases should not be won or lost on the technicality of form, but rather on the merits and as provided in the contract and so the dispute may be finally and fairly resolved with simplicity and dispatch ..”, and further “....the Board [of arbitration] is bound by the grievance before it, but the grievance should be liberally construed so that the real complaint is dealt with and the appropriate remedy provided to give effect to the agreement provisions....”. Similarly, in Re Communications Union Canada and Bell Canada 77 CLLC parag 14108 at page 276, the Divisional Court observed “Nothing can be more calculated to exacerbate relations between employers and employees than to be told that their differences, plainly designed to be finally settled by arbitration as the statute requires, cannot be examined because of a defect in form”. Nor should a Board of Arbitration lightly embrace an interpretation that could result in a multiplicity of overlapping legal proceedings - at considerable cost to the parties and the public.

That said, a Board of Arbitration is also obliged to give content and effect to the language of the parties' collective agreement, for to do otherwise would fall afoul of Article 32.04 D:

32.04 D The arbitration Board shall not be authorized to alter, modify, or amend any part of the terms of the Agreement, nor to make any decision inconsistent therewith; *nor to deal with any matter that is not a proper matter for grievance under this Agreement.*

We do not think that we can simply ignore what the agreement says, or deal with something as a Group grievance that is not a proper matter for a that kind of grievance. This is not a case like George Brown College - "De Simone Grievance" (decision released December 29, 1995, Burkett) where the employer had, by its conduct, waived any basis for objecting to the way in which the grievance was processed. There is no "waiver" in the instant case.

So what does a "Group grievance" require ?

Article 32.09 stipulates two requirements for a "Group grievance". First, "more than one employee" must be directly affected by one specific incident". Second, the individual employees making up the group must be entitled to grieve individually - which is to say, that each of the employee-members of the group has to have the basis for a "grievance" as defined in Article 32.12 C ("a complaint in writing arising from the interpretation, application, administration or alleged contravention of [the] agreement"). Both requirements must be met before a problem can be dealt with a "Group grievance".

The requirement that the individual members of the group must be able to grieve, is connected to the general question of "arbitrability" - the employer's primary objection in this case. The notion is a simple one: if the individual grievors cannot complain individually because their grievance would not be arbitrable, then they cannot file a Group grievance either (or more accurately, they can file a Group grievance but it, too, would not be arbitrable). However, equally

troublesome on the facts of this case, is the requirement that the members of the group must be "directly affected" by "one specific incident". Is that the situation here?

The Union says that each of the grievors was "affected" by the introduction and administration of the early leaving assistance plan, and that they share the same complaint that what was said or done in respect of the plan discouraged them from making application. They were all disadvantaged by the way that the plan was introduced and by various discussions that took place in the shadow of the layoff. In the Union's view, the whole process was flawed.

However, the Union does not complain about the introduction of the plan, per se, nor is there any suggestion that the ex gratia benefits offered by the College were prohibited by the collective agreement. So while the introduction of the plan might be considered a "specific incident", it is not one about which the employees are grieving; and what they are complaining about is not a specific incident but rather a number of conversations with various supervisors in which (it is said) there may have been some misrepresentation, or an inadequate explanation or, alternatively, quite accurate information of a kind that was not made available to all employees. Accordingly, even if there was some "leak" from the ESC (there were no particulars of *specific* allegations about that), it was the communication or diffusion of this information - in whole or in part, accurately or inaccurately, broadly or selectively - to individuals which prompted their individual decisions to make application under the plan, or not. (We leave aside for now whether the College can be held singularly responsible for the functioning of a joint union/management consultative committee).

Now, each of these local conversations with particular individuals might be considered a "specific incident" that may have influenced that individual to his/her detriment (in the "lost opportunity sense" mentioned above). Had that conversation not occurred, or had more information been conveyed, the employee might have made application under the plan, and s/he might have been offered one of the cash options available (if the application also met the College's needs and priorities and if the College had the budget). Or so the Union says. However, it cannot be said that the group of employees is "affected by one specific incident". The word "incident", modified by the words "one" "specific", simply cannot be stretched to include the kind of pattern of events relied upon here. There was not one incident, but many; and the group was not directly affected by any single event, let alone affected in the same way.

In our view, the Group grievance before us does not fall within the parameters of Article 32.09. The grievors are not, as a group, directly affected by one specific incident, nor are the individual members of the group similarly situated or even entitled to the same remedy. That would depend upon their individual circumstances and what may or may not have been said to them.

No doubt all of the employees were "affected" by the early leaving assistance plan, in the sense that it was made available to all employees. However, that is no different from a layoff (or indeed, budget cuts) which may have wide ramifications for a number of employees. But that does not mean that every problem flowing from a layoff can be dealt with as a "Group grievance", on the theory that, had been no layoff, there would have been no problem affecting

individual employees. Under this collective agreement, those ramifications have to be worked out through individual grievances unless the circumstances fall within the opening words of Article 32.09. And in our view, this Group grievance does not.

ARBITRABILITY - IN GENERAL

In view of the conclusion that we have reached with respect to the form of the grievance, it is unnecessary to comment on the employer's other argument or consider whether the employee complaints that surfaced in this case would be (or might have been) arbitrable as individual grievances. Nor is it necessary to consider the cases in which it was held that employees cannot grieve about matters that are not spelled out in the collective agreement. That kind of determination is best made in the context of particular facts, and obiter comments by this panel would serve no useful purpose.

What can be said - and all that needs to be said for present purposes - is that this particular grievance is not arbitrable, because it does not meet the requirement for a "Group grievance" spelled out in the collective agreement. It is unnecessary to deal with the employer's second and more substantive objection or the authorities relied on to support that position.

For the foregoing reasons, this Group grievance is dismissed.

Such dismissal is, of course, without prejudice to any rights which the employee

members of the group may have as individuals; and likewise without prejudice to any rights which individuals may have under any statute or in any other forum. We decide only that, for the reasons outlined above, this particular "Group grievance" is not arbitrable.

DATED AT TORONTO, THIS 13th DAY OF AUGUST, 1998


R. O. MacDowell

I dissent

"John McManus"

I concur in the result
(See below *)

"Barry Matheson"

*Addendum of Board Member Matheson :

I have concurred in the Award of the Chair, and agree with those reasons for dismissing this Group grievance. However, I would have found in addition (as was also argued by the College) that the underlying subject matter of the grievance is not "arbitrable", because there is no provision of the collective agreement governing the early leaving plan.

"Barry Matheson"