

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

THE ONTARIO COUNCIL OF REGENTS FOR THE
COLLEGES OF APPLIED ARTS & TECHNOLOGY
(NORTHERN COLLEGE)

Employer

- AND -

THE ONTARIO PUBLIC SERVICE EMPLOYEES
(FOR ACADEMIC EMPLOYEES) UNION,
LOCAL 653

Union

AND IN THE MATTER OF A GRIEVANCE OF
MR. AARNE HANNIKAINEN

Grievor

BEFORE:

Prof. C. Gordon Simmons, Chairperson
Mr. David Cameletti, Employer Nominee
Mr. John McManus, Union Nominee

APPEARANCES FOR THE EMPLOYER:

Mr. Guy Giorno, Counsel
Mr. Ray Guindon, Executive Dean of Programs

APPEARANCES FOR THE UNION:

Mr. Nick Coleman, Counsel
Mr. Arne Hannikainen, Grievor (first 20 minutes of the hearing)
Mr. John Camp, Chief Steward (first 20 minutes of the hearing)

A hearing into this matter was held in Toronto, Ontario on September 29, 1992.

The grievance dated September 12, 1991 is fairly detailed and reads as follows:

GRIEVANCE STEP I

DURING THE PAST ACADEMIC YEAR, I HAD REQUESTED THAT THE HUMAN RESOURCES DEPARTMENT REVIEW MY TEACHING CERTIFICATES AS I BELIEVED THAT THEY WERE COMPARABLE TO THE CONFEDERATION COLLEGE IN-SERVICE TEACHER TRAINING PROGRAM, AND WOULD THUS CORRECTLY PLACE ME IN STEP 16. THE COLLEGE REFUSED TO DO SO AND TOLD ME TO REFER THE MATTER TO THE JOINT EDUCATIONAL QUALIFICATIONS SUBCOMMITTEE. THIS I DID. HOWEVER, I RECEIVED NOTICE FROM THE COLLEGE THAT THEY REQUIRED VERIFICATION THAT I WAS ENROLLED IN MODULE TWO OF THE CONFEDERATION COLLEGE PROGRAM, OR THAT MY SALARY WOULD BE REDUCED. AS JEQS HAD NOT MET, AND TO AVOID LOSING ENTITLED SALARY I ENROLLED IN MODULE TWO.

JEQS HAS NOT HEARD MY CASE, AND IT IS MY UNDERSTANDING THAT THE MANAGEMENT SIDE REFUSES TO MEET TO RESOLVE THE CASES BEFORE IT.

AS I UNDERSTAND, I AM ENTITLED TO DISPUTE RESOLUTION UNDER THE COLLEGES COLLECTIVE BARGAINING ACT, AND THEREFORE WISH TO PURSUE RESOLUTION UNDER THE GRIEVANCE PROCEDURES (ARTICLE 11).

I GRIEVE THAT THE COLLEGE IS IN VIOLATION OF ARTICLE 3, AND APPENDIX 1-SALARY SCHEDULES, BUT NOT EXCLUDING OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT OR COLLEGE POLICY WHICH MAY HAVE BEEN VIOLATED.

AS RESOLUTION OF THE GRIEVANCE, I WOULD ACCEPT, ALTHOUGH NOT EXCLUDING OTHER SETTLEMENT OFFERS;

1) THAT THE COLLEGE PROPERLY RECOGNIZE MY TEACHING CERTIFICATES AS BEING COMPARABLE TO THE IN-SERVICE TEACHER TRAINING PROGRAM AND PLACE ME IN THE STEP 16 SALARY MAXIMA SCHEDULE.

2) THAT THE COLLEGE REIMBURSE ME FOR THE TUITION FEES THAT I HAVE PAID TO CONFEDERATION COLLEGE, INTEREST ADDED.

3) THAT IF THE COLLEGE HAS TREATED ME DIFFERENTLY WITH RESPECT TO THE ATTAINMENT OF SALARY MAXIMUMS BASED UPON HOLDING TEACHING CERTIFICATION OR OTHER CRITERIA THAT I BE PAID ALL MONIES OWING ME FROM THE TIME I MAY HAVE BECOME DISADVANTAGED BY SUCH UNEQUAL TREATMENT. THIS RETROACTIVE PAYMENT IS TO INCLUDE PAYMENT OF INTEREST THAT COULD HAVE BEEN EARNED ON THE MONIES OWING ME.

IN SCHEDULING THE STEP 1 MEETING, I REQUEST THAT THE MEETING BE HELD IN HAILEYBURY, AND CONSIDERATION BE GIVEN TO THE AVAILABILITY OF BOTH MYSELF AND JOHN CAMP, CHIEF STEWARD LOCAL 653.

AS YOU ARE AWARE, MY DUTIES ON THE NEGOTIATING TEAM REQUIRE THAT I BE IN TORONTO MOST WEEKS ON A SCHEDULED BASIS. TO FACILITATE ARRANGEMENT OF A DATE FOR THE MEETING WOULD YOU KINDLY CALL ME AT THE DELTA CHELSEA 416 595 1975, OR AT MY HOME 705 672 5611.

On November 26, 1991 the grievor filed a complaint against the Employer before the Ontario Labour Relations Board (O.L.R.B.) claiming, *inter alia*, a violation of a Memorandum of Settlement dated November 28, 1985 wherein the grievor would have first opportunity to supervise any extra-curricular athletic activities at the Haileybury campus on a voluntary basis. The Employer denied any violation of the Memorandum of Settlement and the matter was scheduled to be heard on June 3, 1992 before the O.L.R.B. The complainant, Mr. Hannikainen, and his representative sought an adjournment of the June 3 hearing which was opposed by the Employer. However, at the June 3 hearing an adjournment was granted with the parties being required to provide additional hearing dates on or before June 15, 1992 when they would next be available to attend a continued hearing in this matter. On June 12, 1992 the Employer informed the O.L.R.B. that September 11, 29, 30; and October 6 and 8 were available for the parties to continue with this matter. (One must assume the Employer and the Union had agreed on such dates because the Employer's correspondence with the Board

indicated such dates were available for both parties.) Accordingly, by letter dated June 16 from the Registrar of the O.L.R.B., the parties were informed that September 11, 29, and 30 were the dates on which the matter would continue commencing at 9:30 a.m. on those dates.

Meanwhile, Mr. Hannikainen's instant grievance was proceeding along its path to arbitration. On February 13, 1992 the Employer tentatively confirmed with the Union that both parties were available to attend a hearing on June 15, 1992. On February 24, 1992 the grievor advised that June 15, 1992 was not suitable for him to attend the grievance arbitration hearing. In May the Union and the Employer agreed to reschedule the grievance hearing for September 29, 1992 and on May 21 the Employer advised its witnesses that the arbitration would be held on that date.

As stated earlier, the parties appeared before the O.L.R.B. on June 3, 1992 (file number 2866-91-U) whereupon the parties agreed to advise the Registrar of future dates on which they would be available. On June 12 the O.L.R.B. was advised of the dates when the parties would be available for continuation of that hearing and on June 16 the O.L.R.B. confirmed three dates including September 29 for the hearing. In addition to notifying the parties of the September 29 hearing, the O.L.R.B. also listed the grievor as an addressee who was sent a copy of that notice. It will be seen later in this decision that such notice to the grievor becomes important to the determination of the instant grievance.

The Chair of the instant Arbitration Board, in late 1991, had given a number of dates to the parties when he would be available to attend arbitration hearings involving the parties in 1992. September 29 was one such date. On June 23, 1992 the Chair was requested to chair the Arbitration Board in the instant matter and was advised that the date of September 29, 1992 had been selected by the parties when this matter was scheduled to be heard. On June 24 the chair confirmed that the arbitration hearing would be held on September 29, 1992.

Nothing further transpired until September 9, 1992 when Counsel for the Union wrote to the Director of Human Resources for the Employer to request an adjournment

of the arbitration hearing scheduled for September 29. Mr. Coleman's letter, Counsel for the Union, reads as follows:

**Re: OPSEU, Local 653 (Hannikainen) and Northern
College of Applied Arts & Technology
OPSEU File No. 91E294
Date of Hearing: September 29, 1992**

We act for the Union and Mr. Hannikainen in this matter.

I am writing to request an adjournment of the hearing scheduled for September 29, 1992. Mr. Hannikainen is required to attend at the Ontario Labour Relations Board on that date and will not be available for the hearing of his grievance. In the circumstances, I propose that the arbitration hearing be adjourned on consent, to be rescheduled at a mutually available time.

Please advise me of the College's position with respect to adjournment at your earliest convenience.

Mr. Giorno, Counsel for the Employer, responded by letter via facsimile dated September 14 to Mr. Coleman wherein he states:

**Re: Northern College at O.P.S.E.U. Local 653
(Hannikainen Step 16 Grievance)
O.P.S.E.U. File No. 91E924**

We are solicitors for the College, and have been asked to respond to your September 9, 1992, letter addressed to Mr. Westerman. You should be advised that the current Executive Director of Human Resources is Peter MacLean, not Mr. Westerman.

The College has asked me to inform you that, unfortunately, it cannot accede to your request for an adjournment. Witnesses, some from outside Timmins, and counsel have arranged their schedules to accommodate the scheduled arbitration date, and have been holding it for some time. An adjournment not only would inconvenience a number of people, but also trigger additional costs for both the College and O.P.S.E.U.

I look forward to seeing you on September 29.

Counsel for the parties held a telephone conversation on the morning of September 17, 1992 wherein Counsel for the Employer reaffirmed the Employer's position that it would not agree to an adjournment and concluded, via facsimile communication shortly after the telephone conversation, with the following three paragraphs:

It is clear that both the College and the Union knew about, and had agreed to, the scheduling of *both* the grievance arbitration hearing and the O.L.R.B. proceeding for September 29, 1992. The College has always been prepared to go ahead with both proceedings. Apparently the union was prepared to proceed with both hearings, too, until it changed its position at the eleventh hour.

O.P.S.E.U. Local 653 must appreciate that labour relations proceedings are serious, expensive undertakings which the College views as extremely important. They cannot be commenced and then adjourned from date to date without regard for the consequences. In June, July, August and early September, *both* parties were prepared to proceed with *both* scheduled hearings on September 29, 1992. The College is not now prepared to consent to an adjournment.

If the union is not prepared to proceed with the arbitration hearing on September 29, 1992, the College will ask that the grievance be dismissed. If O.P.S.E.U. Local 653 does not intend to proceed on that date, it might wish to consider withdrawing the grievance in order to avoid the unnecessary expense of travelling to Timmins.

To finally round out the written correspondence in this matter, Counsel for the Union contacted the Chair by letter via facsimile on September 22 setting out the Union's position with respect to having Mr. Hannikainen attend the O.L.R.B. hearing and informing the Chair that the grievor would be unable to attend the hearing scheduled for September 29 in Timmins. Mr. Coleman's letter reads:

**Re: OPSEU, Local 653 (Hannikainen) and Northern
College -- OPSEU File No. 91E294
Date of Hearing: September 29, 1992**

We have been retained by the Union to represent Mr. Hannikainen in this matter.

I am writing to advise you that the Union is seeking an adjournment of the hearing scheduled for September 29, 1992 in Timmins. Unfortunately, Mr. Hannikainen is also scheduled to appear as a witness and the Union advisor in a proceeding between the Union and the College at the Ontario Labour Relations Board (OLRB No. 2866-91-U) on September 29, 1992. In the circumstances, we are seeking an adjournment of the grievance hearing to a date mutually convenient to the parties and the members of the board of arbitration.

The background to the scheduling problems for Mr. Hannikainen are as follows. The proposed hearing date of September 29, 1992 with respect to Mr. Hannikainen's grievance was agreed to by the Union and the College in or about May, 1992. The proceeding at the Labour Relations Board commenced on June 3, 1992 and the parties agreed to provide available dates for the continuation of that proceeding. Counsel for the Union in that matter advised the Board about available dates, including September 29, 1992 without consulting with Mr. Hannikainen. On or about June 16, 1992 the Board confirmed continuation dates of September 11, 29 and 30, 1992.

Mr. Hannikainen is required to attend the Board proceedings as a witness and as the Union advisor to counsel. Mr. Hannikainen is required to give evidence on September 29 and 30, 1992 and a summons has been issued to compel his attendance. A copy of the summons is enclosed for your information.

The notice of hearing with respect to Mr. Hannikainen's grievance was issued on or about June 24, 1992 and received by the Union on or about June 29, 1992. At that time, the continuation dates, including September 29, 1992 had already been confirmed by the Labour Relations Board. The file was referred to this firm in late August, 1992.

We advised the College by letter dated September 9, 1992 that we would be seeking an adjournment of the hearing

scheduled for September 29, 1992 because Mr. Hannikainen was required to attend at the Ontario Labour Relations Board. Counsel to the College, Mr. Guy Giorno, responded by letter dated September 14, 1992 refusing to consent to the adjournment. Following a telephone conversation between counsel, Mr. Giorno confirmed by correspondence dated September 17, 1992 that the College would not consent to adjourning the hearing of Mr. Hannikainen's grievance.

If necessary, we will pursue the request for an adjournment at the commencement of the hearing in Timmins on September 29, 1992. We intend to rely on the decisions in Shoppers Meat Markets Ltd. (1984), 16 L.A.C. (3d) 184 and Levy's Bread (1976), 13 L.A.C. (2d) 243 in support of our request for the adjournment. We will also take the position that there should be no order of costs against the Union with respect to the adjournment in view of the circumstances giving rise to the request and our early notice to the College of the request. See, Shoppers Meat Markets Ltd., pp. 187 - 189. However, if we are required to attend to argue for the adjournment in Timmins, we will take the position that the College should pay costs for refusing to consent to the Union's reasonable request.

I look forward to Mr. Giorno's response to these submissions to determine if the question of adjournment can be resolved prior to September 29, 1992.

It will be seen in the third main paragraph of Mr. Coleman's letter that a summons was issued by the O.L.R.B. to ensure Mr. Hannikainen's attendance at the O.L.R.B. hearings scheduled for September 29 and 30. A copy of the Summons to Witness was attached to the facsimile sent to the Chair and is dated September 17, 1992.

Fortunately, the three Board members scheduled for the September 29 hearing in the instant matter were also in attendance at another arbitration hearing in Sudbury on September 22. Mr. Coleman's letter and copy of the Summons were faxed to the Chair in Sudbury who, upon learning of this development, contacted Messrs. Coleman and Giorno to gain their acceptance that the hearing in this matter be convened in Toronto rather than in Timmins. Naturally, the grievor was expected to be in Toronto on September 29 and both counsels are located in Toronto. Further, without the consent of

both parties agreeing to an adjournment, this Board had no alternative but to convene a hearing to hear submissions concerning the request for adjournment as well as submissions why no adjournment should be granted. The Employer consented to relocation to Toronto from Timmins because of the unusual circumstances surrounding this hearing but pointed out that in doing so it was to be understood that it was without prejudice to its position that all Local 653 grievances should be heard where the college is located. The Union likewise consented to have the hearing in Toronto. It was further agreed that the hearing in Toronto would convene at 9 a.m. in order for the parties to make submissions concerning the request for adjournment prior to the time scheduled for commencement of the O.L.R.B. hearing. It will be noted on the face of the cover of this decision that the grievor and Mr. Camp, Chief Steward, were in attendance for approximately twenty minutes when they had to leave the hearing to attend the proceedings at the O.L.R.B.

The Union submitted at the September 29 hearing that it seeks to have the matter adjourned until a convenient mutually acceptable time is available for all parties. The grievor is scheduled to be an advisor at the O.L.R.B. hearing and is required to appear as a witness both on September 29 and 30. Counsel for the Union submitted that the grievor is entitled to a fair hearing and if he is not granted such hearing he is denied his rights to present his case. Further, there is no prejudice to the Employer because it is not a dismissal situation. Further, the Union gave the Employer advance notice and any expenses incurred by the Employer could have been avoided by consent to an adjournment.

The Employer submitted that it vigorously opposes any adjournment in this case. Furthermore, counsel argues there is prejudice to the Employer because the grievance seeks salary and interest payments and the longer this matter is delayed the greater the financial exposure becomes to the Employer. Further, the grievor claims that he enrolled in a program under protest and he seeks reimbursement for the cost of that program. That is to say, the grievor seeks reimbursement plus interest and retroactive pay which are all cost items to the Employer.

At the conclusion of the hearing the Board ruled that it would reserve on rendering its decision. The issue is whether or not this Board ought to grant an adjournment to the proceedings to await a mutually acceptable hearing date. As can be seen from the comments and correspondence that has been reproduced above, the Employer takes the position that the Board ought not adjourn the matter but to dismiss the grievance; whereas, the Union takes the position that to deny the adjournment and dismiss the grievance would be a denial of the grievor's rights to a hearing into his grievance.

Counsel referred the Board to a number of prior decisions. They are:

Re Schere - G.C. Ltd. and Canadian Food and Allied Workers' Union, Local 175 (1976), 11 L.A.C. (2d) 379 (O'Shea).

Re Levy's Bread and Bakery & Confectionary Workers' International Union, Local 181 (1976), 13 L.A.C. (2d) 243 (Weatherill).

Re Canada Post Corporation and Letter Carriers Union of Canada (1987), 32 L.A.C. (3d) 86 (P.C. Picher).

Re Flamboro Downs Holdings Ltd. and Teamsters Local 879 (1979), 24 O.R. (2d) 400 (Ont. Div. Ct.), Robins J.

Re Cambrian College and Ontario Public Service Employees Union (May 25, 1989), unreported arbitration award of D.H. Kates.

Re Shoppers Meat Markets Ltd. (Metro Provisions) and United Food and Commercial Workers International Union, Local 633 (1984), 16 L.A.C. (3d) 184 (Solomatenko).

Re Hawker Siddeley Canada Inc., Orenda Division and International Association of Machinists, Lodge 1922 (1989), 7 L.A.C. (4th) 172 (Gorsky).

Re Northern College and Ontario Public Service Employees Union (August 31, 1987), unreported arbitration award of K.M. Burkett (Hannikainen grievance).

Re Northern College and Ontario Public Service Employees Union (January 17, 1991), unreported arbitration award of M.G. Mitchnick (Hannikainen grievance).

Re Northern College and Ontario Public Service Employees Union (June 6, 1991), unreported arbitration award of K.M. Burkett (Hannikainen grievance).

Re Northern College and Ontario Public Service Employees Union (June 26, 1991), unreported arbitration award of M. Teplitzky (Hannikainen grievance).

Re Northern College and Ontario Public Service Employees Union (August 27, 1991), unreported arbitration award of M. Teplitzky (Hannikainen grievance).

Re Northern College and Ontario Public Service Employees Union (March 11, 1992), unreported arbitration award of M. Teplitzky (no grievor's name in award but Counsel informed the Board that it is a grievance of Mr. Hannikainen).

Re Northern College and Ontario Public Service Employees Union (April 7, 1992), unreported arbitration award of M. Teplitzky (Hannikainen grievance).

The Employer alleges that the grievor is trying to be the master of these proceedings. He knew by mid-June when the O.L.R.B. sent out its notices, including a copy of the notice to him, that the hearing for that body was September 29 and he likewise knew that this arbitration hearing was to proceed on that same day. However, nothing was done until September 9 when Counsel for the Union wrote the Employer seeking an adjournment. The Employer points out that there had been no request for an adjournment before the O.L.R.B. but that instead the only request for an adjournment came before this Board of Arbitration. Accordingly, the Employer maintains that the grievor planned to orchestrate these proceedings together with that of the O.L.R.B. to his convenience. Counsel referred us to an earlier decision where Arbitrator Teplitzky commented on this point in his unreported decision dated April 7, 1992 wherein he stated:

Mr. Hannikainen's view is that he is the master of the procedure which is to be utilized in any grievance in which he is a party. For him this means an oral hearing in Timmins or in Toronto. He holds this view regardless of the nature of the issues in dispute and regardless of the cost.

He continued to write:

In the past I have attended along with the other members of the Board and counsel in Timmins to adjudicate grievances involving Mr. Hannikainen. In my experience these grievances rarely raise any issue of controverted fact. An oral hearing is essential whenever the facts are in dispute. Credibility can only be determined after an opportunity to cross-examine and re-examine witnesses is afforded the parties.

Where no issue of controverted fact exists, an oral hearing is not essential. Arguments of law can be made in writing or by telephone conference. Much business of the courts today is conducted without the requirement of counsel and the parties attending before the Court.

Arbitrator Teplitsky was of the view that he along with the rest of the Board and counsel ought not be compelled to travel to Timmins unless there were controverted facts in issue. To that extent, he sought to have counsel receive instructions with respect to the facts surrounding the matter. However, the grievor failed to advise his counsel and therefore the arbitrator was unable to determine whether there were controverted facts in issue. As a consequence, the arbitrator adjourned the hearing *sine die* and directed the grievor to advise his counsel within fifteen days failing which the Board would consider whether or not the grievance was to be dismissed.

The Employer referred the Board to several other arbitration cases involving the grievor for the purpose of demonstrating that the grievor is very familiar with and knowledgeable of the grievance arbitration process. Arbitrator Teplitsky was again chairing an arbitration board involving the grievor, decision dated 27 August 1991, wherein the parties consented to proceeding by way of a telephone conference call. The

facts in that case were the Employer had posted a seniority list which was defaced by an unknown person or persons by writing beside the grievor's name a comment that the Board decided not to repeat. When the grievor learned of this occurrence he promptly advised the Employer and the defaced list was removed and inserted in a file. Subsequently, a professor returning from a leave asked for a copy of the seniority list and through some inadvertence of an office person a copy of the defaced list was given out which came to the attention of the grievor. The grievor claimed that he was being harassed, intimidated, embarrassed, or otherwise being compelled to undergo discomfort because of this. As a consequence, to avoid further problems, the Employer retains originals in a secure file and only posts a copy. If the copy is defaced it is discarded and new copies are made from the originals. While the office person was found to be negligent there was not any lack of *bona fides* in the Employer and the Board concluded that a declaration of a contractual breach of the Collective Agreement was not warranted and the grievance was dismissed.

In yet another arbitration in which Mr. Teplitsky acted as chairman, dated 26th June 1991, the Board gave oral reasons at the hearing and dismissed the grievance. It would appear that the matter in dispute involved a missing nameplate. Apparently, a Dr. Toor was unable to obtain an office nameplate whereupon the Dean asked the grievor if he had the nameplate whereupon the grievor denied having same. Later, in the main reception area Dr. Toor was asking about his nameplate whereupon once again the grievor overheard the Dean say that he thought the grievor had his nameplate. Because this time the statement was made in front of others the grievor concluded that the Dean deliberately intended that the grievor was somehow involved in mischief which the grievor alleged intended to denigrate and harass him and therefore he filed his grievance against the Dean. As stated above, the grievance was dismissed by oral reasons at the hearing.

In another grievance involving the grievor chaired by Mr. Burkett dated June 6, 1991, the grievor filed a grievance claiming that the Employer had made a deduction of

\$102.82 from his salary cheque. The Board in that case dismissed the grievance based on application of the *De Minimus Rule*.

In yet another arbitration chaired by Mr. Mitchnick, dated January 17, 1991, the grievor claimed loss of income when the Employer switched from paying salaries twice monthly to bi-weekly. The grievor alleged that this change resulted in the grievor's annual salary being reduced by \$803.88. The grievor received the money but there was a delay of eight days in receiving that \$803.88 which formed the basis of the grievance. The Mitchnick Board dismissed the grievance claiming that such a delay was within a reasonable period.

There is yet another arbitration involving the grievor, again Arbitrator Burkett chairing the hearing which is dated December 31, 1987. The Board confirmed its oral ruling dismissing the grievance by giving written reasons in an eight-page award.

We agree with Counsel for the Employer that Mr. Hannikainen has experience in filing grievances and proceeding to arbitration. As stated earlier, some arbitrators have commented with respect to the grievor attempting to be master of the grievance/arbitration process. That, however, with respect, does not lessen in any way the grievor's right to have his grievances arbitrated before a board of arbitration. However, the submissions of the Employer to the effect that the grievor has a definite plan with respect to controlling the arbitration process assumes much force. If indeed, the grievor has set out on some plan or design to control the arbitration process, at the expense of the parties and others involved, one must take these circumstances into consideration.

Requests for adjournments have gone both ways. In the *Levy's Bread* case (*supra*) the Employer sought an adjournment when its counsel, through inadvertence, committed himself to attendance before the provincial court on a matter which had been marked preemptory. The Board in that case granted the adjournment over the vigorous objection of the Union. The Board went on in that case to note that there was no suggestion that an adjournment would prejudice the parties because the matter to be

resolved was one of interpretation. While the Union was seeking general damages as well as interest, those matters, according to the Board, could be dealt with when the matter was heard on its merits. Similarly, in the *Shoppers Meat Market* case (*supra*) the hearing was scheduled for Wednesday, September 12, 1984 at which the Union attended and was prepared to proceed. However, the son of the president of the company appeared who was not an employee of the company to inform the Board that his father had been hospitalized on Saturday and was in intensive care on the day of the hearing. In considering whether or not to grant an adjournment the Board canvassed the issue of natural justice which is always an important issue in these proceedings. The Board in *Shoppers* stated at p. 186:

The crucial question is whether or not, in accordance with basic principles of natural justice, each party has been granted the full opportunity to present its case and participate in a hearing. The importance of that principle has been highlighted in a recent unreported decision of the Divisional Court of Ontario, *Re Her Majesty the Queen in right of Ontario and Ontario Public Service Employees' Union et al. (Ministry of Correctional Services and Taffinder)* (April 13, 1984). In that case, counsel for the employer had inadvertently made an error as to the date of the hearing. The Grievance Settlement Board's refusal to grant an adjournment therein was overturned by the Divisional Court which, although acknowledging that the board was master of its own procedure, expressed concern 'with the general principle that an opportunity to be heard must be given to the party to any proceeding' and this principle was incorporated in the *Crown Employees Collective Bargaining Act*, R.S.O. 1980, c. 108. The import of that principle for the case now before me is not in any manner lessened by the fact that it is not expressly incorporated into either the collective agreement or the *Labour Relations Act*.

In the result the hearing was adjourned to a later date.

As stated earlier, there have been situations where adjournments have not been granted. In *Canada Post* (*supra*) the issue before the Board involved a discharge grievance. The hearing was to continue on June 18, 1987 but the Employer, by way of

telegram, informed the Board that all of its counsel and potential witnesses were involved in dealing with strike activity that was then under way. Therefore, the Employer informed the arbitrator that it would be unable to attend. In citing the Divisional Court in *Flamboro Downs Holding* case (*supra*) it was noted that the court had upheld the Ontario Labour Relations Board decision to refuse to grant an adjournment of a scheduled hearing to a date convenient to the newly-retained counsel for the Employer. As a consequence, there was no adjournment and the arbitrator went on to order the reinstatement of the grievor with full compensation.

In the *Flamboro Downs Holdings* case (*supra*) the application for judicial review was a claim of refusal or denial of natural justice when the Board refused to grant an adjournment. Mr. Justice Robins speaking for the court stated at pages 404 and 405 as follows:

Clearly, an administrative tribunal such as the Labour Relations Board is entitled to determine its own practices and procedures. Whether in a given case an adjournment should or should not be granted is a matter to be determined by the Board charged as it is with the responsibility of administering a comprehensive statute regulating labour relations. In the administration of that statute the Board is required to make many determinations of both fact and of law and to exercise its discretion in a variety of situations. In the case of a request for adjournment, it is manifestly in the best position to decide whether, having regard to the nature of the substantive application before it, the adjournment should be granted or whether the interests of the employer, the employees or the union who, as the case may be, oppose the adjournment should prevail over the party seeking it. As a matter of jurisdiction, it is for the Board to decide whether it should adjourn proceedings before it and in what circumstances.

This is not to say that there cannot be situations in which a refusal to grant an adjournment might amount to a denial of natural justice. There are circumstances in which that might be so: see, for example, *R. v. Ontario Labour Relations Board, Ex p. Nick Masney Hotels Ltd.*, [1970] 3 O.R. 461, 13 D.L.R. (3d) 289 (C.A.); *Re Gill Lumber Chipman* (1973) *Ltd. and United Brotherhood of Carpenters & Joiners of America*,

Local Union 2142 (1973), 42 D.L.R. (3d) 271, 7 N.B.R. (2d) 41. It is necessary to examine the facts of each case to determine if the tribunal acted, as it must, in a fair and reasonable way. It must, of course, comply with the provisions of the *Statutory Powers Procedure Act, 1971 (Ont.)*, c. 47, and afford the parties the opportunity to be present and be represented, if they wish, by counsel. But a party who has adequate notice of the hearing does not have a right to an adjournment and is not entitled to insist on one for his convenience or the convenience of his representative. It is for the Board to determine whether to adjourn on the basis of the obvious desirability of speedy and expeditious proceedings in labour relations matters, the background of the particular case, the issues involved, the reason for the request and other like factors.

We are all agreed that it cannot be said in the circumstances of this case that the Board conducted itself in any arbitrary fashion or denied natural justice. The Board, as its decision makes plain, considered the submissions for adjournment and decided, for reasons already referred to, not to accede to the request. ...

In light of all of the foregoing, the Board is torn between two competing interests. The Employer urges the Board not to grant the adjournment whereas the opposite view is taken by the Union. Given all of the circumstances surrounding this issue, there are certain factors which jump out for consideration by this Board. We acknowledge that the grievor is well versed in labour relations matters and in the processing of grievances. He has filed a number of grievances within the past couple of years, some of which, according to the tenor of the arbitration decisions, are of questionable merit. Further, the grievor was informed in June that the instant proceedings were to take place on September 29, 1992. However, he elected, for whatever reason, to forego notifying the Union of this conflict until shortly before Union Counsel wrote to the Employer on September 9 requesting an adjournment. Exchanges between counsel were quite vigorous until September 17, 1992 when the Employer absolutely refused to any adjournment taking place. Furthermore, as Employer Counsel pointed out, it had been the intention of the parties to proceed with both matters on the same day. While it

is true that Union Counsel who appeared at the hearing received the file late in August, we do not doubt the veracity of the Employer's Counsel in this regard.

What is perhaps most complexing is that following the conversation between both counsel on the morning of September 17, 1992 there was a summons issued by the O.L.R.B. for the attendance by the grievor at the O.L.R.B. hearing scheduled for September 29 and 30, 1992. This is somewhat complexing because it will be remembered that the O.L.R.B. hearing also took place on September 11, 1992 but there was no summons issued concerning the grievor's attendance on that date. Having regard to this matter in and of itself, the Employer's assertion that the grievor wants to be master of this Board's proceedings takes on considerable force. It becomes extremely suspicious when the grievor is summonsed to the O.L.R.B. hearing for the 29th and 30th on the same day that the Employer had flatly refused to adjourn this arbitration hearing and this is especially so when the grievor's experience in these matters is weighed.

Added to this complexity regarding the issuance of the summons by the O.L.R.B. we are reminded of Mr. Justice Robins comments in *Flamboro (supra)* wherein he states that a party or his representative is not entitled to adjournment for his convenience or the convenience of his representative. If the grievor had acted more expeditiously in requesting the adjournment, as indeed he had regarding the June 15th hearing date, other considerations would apply. However, given all of the circumstances surrounding this matter we are driven to the inescapable conclusion that the grievor sought to be master of this proceeding for his convenience. When it appeared that his efforts to have this proceeding adjourned on September 29 were not succeeding, a summons to attend the O.L.R.B. hearing was conveniently issued to compel his attendance there. However, as stated earlier, no such summons was issued to require his attendance at the O.L.R.B. hearing on September 11. The only reasonable conclusion that one can arrive at is that the grievor orchestrated the issuance of the summons to attend the O.L.R.B. hearing on September 29th (and 30th) in order to circumvent having to attend the instant hearing on the 29th. We must conclude therefore that the grievor sought an adjournment of the instant proceeding for his convenience.

Furthermore, we were informed that an earlier hearing in the instant situation had been agreed to by the parties when this dispute could have been heard. The Board was informed that the Union and the Employer had confirmed by way of memorandum from the Employer dated February 13, 1992 that the parties were available to attend an arbitration hearing on June 15. However, on February 24 the grievor sent a fax to the President and Chief Steward of the Union stating that June 15 was not suitable to attend a hearing in this matter. No reasons were given in the fax why June 15 was not suitable nor were reasons given at the hearing on September 29.

After carefully considering the submissions of the parties the Board concludes that the Employer's position that the grievance not be adjourned ought to be accepted. We are convinced that the grievor knew exactly what he was doing when he sought an adjournment of this hearing for September 29, 1992. It was simply not convenient for him to attend. When it became apparent that his request for adjournment was not going to succeed a summons for his attendance before the O.L.R.B. was issued. Further, the grievor's experience in processing grievances was not denied. His communication to the Union President and Chief Steward on February 24th that June 15th was not suitable to attend a hearing confirms that he was fully apprised of unfolding events relating to the progress of his grievance. Further, we were provided with a copy of the notice of the September 11, 29, and 30 O.L.R.B. hearings issued by the Registrar, Ms. T.A. Inniss in June, 1992 which copied the grievor as one of the persons to whom the notice was addressed. Both the instant hearing and the O.L.R.B. hearing for September 29 were established in June, 1992 yet a request for adjournment of the instant hearing only came with Mr. Coleman's letter dated September 9. We repeat, the grievor decided it would not be convenient to attend the instant hearing on September 29 and pursued a course to effect that end. In these circumstances this Board adopts the Employer's position that an adjournment ought not be granted.

Having denied the request for adjournment the Board has not been unmindful of the rights that belong to any party for a reasonable and fair hearing. Indeed, such rights

have been foremost in our minds. However, we must conclude that in the circumstances of this case such rights must be assessed in light of all the circumstances.

The adjournment request is denied and the grievance is dismissed.

Dated at Kingston, Ontario, this 20th day of May, 1993.

[--- Unable To Translate Box ---]

C. Gordon Simmons
Chairperson

I concur/~~dissent~~—

"David Cameletti"
[--- Unable To Translate Box ---]

David Cameletti
Employer Nominee

I ~~concur~~/dissent

SEE ATTACHED
[--- Unable To Translate Box ---]

John McManus
Union Nominee