

IN THE MATTER OF AN ARBITRATION

Local 613

BETWEEN

CAAT (A)

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- and -

SAULT COLLEGE

Grievances of:

D. Heggart	-	OPSEU #91D969
J. Theil	-	OPSEU #91D970, 91D972
S. Verma	-	OPSEU #92B373

Before:

M. G. Mitchnick	-	Chairman
Michael Lyons	-	Union Nominee
Jerry Courtney	-	Employer Nominee

Appearances:

For the Union:

- John J. Monger, Counsel
- John Theil
- Douglas Heggart
- Subhash Verma

For the Employer:

- D. W. Brady, Counsel
- Bob Cook, V.P., Academic
- W. H. Robbins, Dean, School of Sciences and Natural Resources

Hearings held in Sault Ste. Marie on April 8 and December 10, 1992.

A W A R D

This matter involves the individual grievances of 3 Professors in the College's Engineering and Science Department, and revolves around the application and interpretation of Article 4 of the parties' collective agreement. The initial grievances of Professors Verma, Heggart and Theil dated January 3, 1991 state:

STATEMENT OF GRIEVANCE

The College has violated the Collective Agreement by assigning work during the non teaching period contrary to Article 4.08.

SETTLEMENT DESIRED

That the College comply with the Collective Agreement.

Professor Theil also filed a grievance dated September 27, 1991 with respect to the subsequent year, which read:

STATEMENT OF GRIEVANCE

Failure by Management to comply with Article 4.08 of the Collective Agreement.

SETTLEMENT DESIRED

Compliance by Management with Article 4.08 of the Collective Agreement.

The College year runs from September 1 to August 31, and can be said to be made up of:

	36	"Teaching" weeks
	7	"Non-teaching" weeks
and	<u>9</u>	Vacation weeks
	52	

Article 4.08 deals with the "non-teaching" portion, and reads:

4.08 In keeping with the professional responsibility of the teacher, non-teaching periods are used for activities initiated by the teacher and by the College as part of the parties' mutual commitment to professionalism, the quality of education and professional development.

Such activities will be undertaken by mutual consent and agreement will not be unreasonably withheld.

Such activities will neither be recorded nor scheduled except as in accordance with Article 4.01(7)(a).

When the concept of Standard Workload forms ("SWF"'s) was introduced into the collective agreement in 1986, there may have been some confusion over its application, and in that initial year the Dean of this Department, Dean Robbins, required the professors to submit an outline of their planned activities for the non-teaching period, from which Dean Robbins prepared a SWF. That has never been a requirement since, nor has any SWF for the non-teaching portion of any professor's year been produced. Nonetheless, Professor Theil, the only witness in the case, has continued to prepare and submit a plan of his activities for this period each year (which in his case is the Fall Semester), and he notes that the Dean has never told him not to. Professor Theil acknowledges, however, that at least as of the fall of 1990, he was the only one of the professors to submit such an activity outline, and that he is free to deviate from it or re-allocate the time as he sees fit. Professor Theil also

acknowledges that not all of the professors attend meetings called during this period, and no attempt is made by the College to follow that up. The list of planned activities filed by Professor Theil for the 1990 Fall semester provided:

1990 - Fall Non Teaching - Schedule of Activities

Period	Sept. 1 - Dec. 31, 1990		
Working Days	86-7 statutory	=	79
Less:	Lieu Time 1 day)		
	Vacation 43 days)		<u>44</u>
Net Available Working Days			<u>35</u> 35

Work/Time Allocation - Days

Routine Office incl. meetings		5	
Visits to book publishers, bookstores university and college libraries		2	
Co-op duties		3	
P.D. (19 available) use		10	
D.E. (as assigned)		<u>5</u>	<u>25</u>
Days available for C.D.			10

Curriculum Development

CIV-110	2		
CIV-215	3		
PPE-344	4 (start rev. of modules)		
WTR-328	1		<u>10</u>
BALANCE			<u>0</u>

Total working hours for Academic Year	1584
Deduct Hours from Non-Teaching Semester	<u>245</u>
Hours Available for Remainder of Year	<u>1339</u>

Weeks: - 1991 W	=	17
1991 S	=	<u>18</u>

Total	<u>35</u>
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Hours per Work Week 1339/35 38½

Note: Hours in excess of 38½ for teaching
semesters to be counted as O.T.

1991-W SWF

C.D.	WTR 324	2	
	WTR 201	5	(start lab revisions)
	WTR 329	<u>3</u>	

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Added Jan. 21/91

Increase CM - Departmental or Div.
From 0.75 to 1.0

Just what was the status of these Non-teaching period hours appears to have become the subject of broader debate that fall (of 1991), and a number of the Professors asked for some clarification at a meeting with the Dean in September. Details of that discussion are rather sketchy, but in the course of it it is clear that the Professors asked the Dean what his own view of a reasonable work week was in this non-teaching period, and the Dean indicated that 35 hours seemed an appropriate figure. This in fact is the number of hours specified in the collective agreement for non-teaching staff like Counsellors and Librarians, and the Professors took no quarrel with it (there previously had been a dispute over whether 40 or 44 was an appropriate number). Professor Theil testified that he took it that what the Dean was saying in the discussion was that all professors had to put in at least 35 hours a week, because the Dean at the same time had made

it clear that he expected the professors would do whatever was necessary to ensure that they were up to date and able to do the best teaching job possible; and in that sense, in Professor Theil's words, to "justify" the time so spent in that period. And all of that, Professor Theil testified, to his mind made whatever duties he ultimately came to allocate to that period assigned duties, and therefore properly attributable to a SWF. It might be added that Professor Theil in his testimony also pointed to two specific tasks that were assigned to him on the initiative of the College during his non-Teaching period, being the completion of course development for a new course being taught in the Faculty, and redoing course outlines previously submitted with respect to 4 courses of his own.

Following that meeting with Dean Robbins in December of 1990, the Professors set out their position to the Dean as follows:

Further to our memoranda dated September 19, and November 26, 1990, and our discussion on December 5th, we are providing the following specific comments in anticipation of your written reply.

As discussed on December 5th, the current practice relative to the hours of work during each academic year fails to recognize and give credit for complementary functions carried out by staff during the non-teaching periods. This is contrary to Article 4.08, which states in part that; "Non-teaching periods are used for activities initiated by the teacher and by the College as part of the parties' mutual commitment to professionalism, the quality of education and professional development".

The regular/normal working hours that may be assigned per year is defined as 36 weeks x 44 hours per week = 1584 hours under Article 4.01(2)(a). Based on the current practice, however, each faculty member is

required to work a minimum of 1793 hours each academic year without credit and compensation for the additional 209 hours (1793-1584). The total hours of 1793 is calculated as follows:

Teaching Semesters/Contact Weeks		
= 32 wks x 44 hrs/wk	=	1408 hours
Teaching Semesters/Non-Contact		
= 4 wks x 35 hrs/wk	=	140 hours
Non-Teaching Semester = 7 wks x 35 hrs/wk	=	<u>245 hours</u>
		<u>1793 hours</u>

Pursuant, therefore, to the discussion on December 5th, we wish to confirm our request for a written response to our concern with respect to the excess non-credited hours. Your response should be available within seven (7) days in accordance with Article 11.02.

No satisfactory reply resulted, and the first three of the instant grievances were filed in January of 1991.

Professor Theil testified that the following September he looked at Article 4.08 again and decided to submit a further plan of his activities, this time specifically with the phrase "mutual agreement" in mind, and accordingly accompanied his outline, similar to the previous one, with a memorandum which read:

Attached please find my proposed Schedule of Activities for the 1991-Fall semester (non-teaching). The Schedule is being submitted in accordance with Article 4.08, toward mutual consent and agreement.

The Dean replied in writing to that submission as follows:

This will confirm that we met on Sept. 25, 1991 to discuss your complaint that article 4.08 of the collective agreement has been violated.

You explained to me how you felt the total annual workload was being exceeded if the Union limit were applicable (copy attached).

The annual workload consists of assigned teaching and unassigned complementary functions as per the attached. The latter was submitted by you to me on Sept. 6, 1991 and I believe that it is mutually agreed that these are appropriate functions for the period in which you have no formal teaching assignments. I also believe, that it is agreed that this work is being undertaken by you according to the terms of Article 4.08 in that it is not assigned, not scheduled and not formally recorded.

I therefore believe that article 4.08 has not been violated.

With regard to the inclusion of all or part of this work on the winter 1992 SWF, I do not agree that this work was assigned nor that by your doing the work, any part of the collective agreement limiting total annual workload has been violated. There is, in my opinion, therefore no reason for any part of this work to be indicated on the winter 1992 SWF nor any other SWF.

Professor Theil responded with the fourth grievance the next day.

The Union submits that there are essentially three questions that the instant grievances place before the board for answer:

1. Can the College unilaterally assign complementary functions during the non-teaching period?
2. Can the College unilaterally determine the number of hours to be spent on complementary functions during the non-teaching period?
3. Do these hours, whether "assigned" or "agreed", go on the SWF's, and thus form part of the "maximum workload" hours of 1584 in a year?

As can be seen, the focus in these questions and the grievances is Article 4.08. It is not possible to deal with these questions, however, without detailing the other provisions in the collective agreement dealing with workload and attributable hours:

**Article 4
WORKLOAD**

4.01 (1) Each teacher shall have a workload that adheres to the provisions of this Article.

4.01 (2)(a) Total workload assigned and attributed by the College to a teacher shall not exceed forty-four (44) hours in any week for up to thirty-six (36) weeks in which there are teaching contact hours for teachers in post-secondary programs and for up to thirty-eight (38) weeks in which there are teaching contact hours in the case of teachers not in post-secondary programs.

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

Workload factors to be considered are:

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

4.01 (2)(b) A "teaching contact hour" is a College scheduled teaching hour assigned to the teacher by the College.

4.01 (3) Each teaching contact hour shall be assigned as a fifty (50) minute block plus a break of up to ten (10) minutes.

The voluntary extension of the teaching contract hour beyond fifty (50) minutes by the teacher and any student(s) by not taking breaks or by re-arranging breaks or by the teacher staying after the period to consult with any student(s) shall not constitute an additional teaching contact hour.

4.01 (4)(a) Weekly hours for preparation shall be attributed to the teacher in accordance with the following formula:

TYPE OF COURSE	RATIO OF ASSIGNED TEACHING CONTACT HOURS TO ATTRIBUTED HOURS FOR PREPARATION
New	1 : 1.10
Established A	1 : 0.85

Established B	1 : 0.60
Repeat A	1 : 0.45
Repeat B	1 : 0.35
Special A	as indicated below
Special B	as indicated below

4.01 (4)(b) No more than four (4) different course preparations or six (6) different sections shall be assigned to a teacher in a given week except by voluntary agreement which shall not be unreasonably withheld.

4.01 (4)(c) For purposes of the formula:

(i) "New" refers to the first section of a course which the teacher is

.teaching for the first time. (This definition does not apply to a new full-time teacher who has previously taught the course as a partial-load, sessional or part-time employee, nor to courses designated as "Special" as defined below); or

.teaching for the first time since a major revision of the course or curriculum has been approved by the College.

(ii) "Established A" refers to the first section of a course which the teacher has previously taught but not within the previous three (3) academic years.

(iii) "Established B" refers to the first section of a course which the teacher has taught within the previous three (3) academic years.

(iv) Where a non-language course is to be taught in more than one language the first section taught in a second language shall be regarded as "New" or "Established".

(v) "Repeat A" refers to another section which the teacher is teaching concurrently with the same course for which hours of preparation have been attributed under "New" or "Established", but to students in a different program or year of study.

(vi) "Repeat B" refers to another section which the teacher is teaching concurrently with the same course for which hours of preparation have been attributed under "New" or "Established" or "Repeat" to students in the same program and year of study.

(vii) "Special A" refers to sections of courses in which students may enter on a continuous intake basis or

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courses which have been organized into individualized self-learning packages.

The first section of a "Special A" course which the teacher has not taught before or which the teacher has not taught within the previous three (3) academic years attracts the numerical value in "Established A" (1:0.85).

The first section of a "Special A" course which the teacher has taught within the previous three (3) academic years, attracts the numerical value in "Established B" (1:0.60).

Repeat sections of a "Special A" course attract the numerical value in "Repeat A" (1:0.45).

(viii) "Special B" refers to preparation for sections of a course in which the objectives describe the students' application of knowledge in actual work settings.

The first section of a "Special B" course which the teacher has not taught before or which the teacher has not taught within the previous three (3) academic years attracts the numerical value in "Established A" (1:0.85).

The first section of a "Special B" course which the teacher has taught within the previous three (3) academic years, attracts the numerical value in "Established B" (1:0.60)

Repeat sections of a "Special B" course attract the numerical value in "Repeat B" (1:0.35).

Additional time necessary to arrange and prepare for student placement in such learning situations shall be attributed on an hour for hour basis and recorded on the Standard Workload Form (SWF), as referred to Article 4.02 below.

(ix) Hours for curriculum review or course development assigned to a teacher on an ongoing basis, in lieu of teaching or in a non-teaching period, shall be attributed on an hour for hour basis and recorded on the SWF.

4.01 (5)(a) Weekly hours for evaluation and feedback in a course shall be attributed to a teacher in accordance with the following formula:

**RATIO OF ASSIGNED TEACHING CONTACT HOURS TO
ATTRIBUTED HOURS FOR EVALUATION AND FEEDBACK**

Essay or Project	Routine or Assisted	In-Process
1:0.030 per student	1:0.015 per student	1:0.0092 per student

4.01 (5)(b) For purposes of the formula:

(i) "Essay or project evaluation and feedback" is grading:

- .essays
- .essays type assignments or tests
- .projects; or
- .student performance based on behavioral assessments compiled by the teacher outside teaching contact hours.

(ii) "Routine or assisted evaluation and feedback" is grading by the teacher outside teaching contact hours of short answer tests or other evaluative tools where mechanical marking assistance or marking assistants are provided.

(iii) "In-process evaluation and feedback" is evaluation performed within the teaching contact hour.

(iv) Where a course requires more than one type of evaluation and feedback, the teacher and the supervisor shall agree upon a proportionate attribution of hours. If such agreement cannot be reached the College shall apply evaluation factors in the same proportion as the weight attached to each type of evaluation in the final grade for the course.

4.01 (5)(c) The number of students in a course or section shall be determined initially by the College's planning estimates and recorded on the Standard Workload Form (SWF) as provided for in Article 4.02.

The number of students in a course or section shall be reviewed after the enrolment audit dates and not later than the completion of the course or section or, at the request of the teacher, following the last day for withdrawal of registration by the student(s), and revised where appropriate.

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The number of students in a continuous intake program, course or section shall be reviewed every three (3) months at the request of either the College or the teacher and determined as the weighted average of the number of students formally registered over the duration of the program, course or section. The weighted average shall be calculated by summing the number of formally registered students in each week of the program, course or section and then dividing the sum by the number of weeks in the duration of the program, course or section.

4.01 (6) Complementary functions appropriate to the professional role of the teacher may be assigned to a teacher by the College. Hours for such functions shall be attributed on an hour for hour basis.

An allowance of a minimum of five (5) hours of the forty-four (44) hour maximum weekly total workload shall be attributed as follows:

- 3 hours for routine out-of-class assistance to individual students
- 2 hours for normal administrative tasks.

4.01 (7)(a) Where preparation, evaluation, feedback to students and complementary functions can be appropriately performed outside the College, scheduling shall be at the discretion of the teacher, subject to the requirement to meet appropriate deadlines established by the College.

4.01 (7)(b) Where there are atypical circumstances affecting the workload of a teacher or group of teachers which are not adequately reflected in this Article 4, additional hours shall be attributed, following discussion between each teacher individually and the supervisor, on an hour for hour basis.

4.01 (8)(a) The College shall allow each teacher at least ten (10) working days of professional development in each academic year.

4.01 (8)(b) Unless otherwise agreed between the teacher and the supervisor, the allowance of ten (10) days shall include one period of at least five (5) consecutive working days for professional development.

4.01 (8)(c) The arrangements for such professional development shall be made following discussion between the supervisor and the teacher subject to agreement between the supervisor and the teacher, and such agreement shall not be unreasonably withheld.

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4.01 (9) Teaching contact hours for a teacher in post-secondary programs shall not exceed eighteen (18) in any week. Teaching contact hours for a teacher not in post-secondary programs shall not exceed twenty (20) in any week.

4.01 (10)(a) Notwithstanding the above, overtime worked by a teacher shall not exceed one (1) teaching contact hour in any one week or three (3) total workload hours in any one week and shall be voluntary.

4.01 (10)(b) Such teaching contact hour agreed to in excess of the respective weekly teaching contact hour maximum shall be compensated at the rate of 0.1% of annual salary. Such workload hours agreed to in excess of the forty-four (44) hour weekly workload maximum shall be compensated at the rate of 0.1% of annual salary. Such overtime payments shall be for the greater amounts but shall not be pyramided.

4.01 (10)(c) All such voluntary overtime agreements, which shall not be unreasonably withheld, shall be set out in writing on the SWF for that period by the College and filed with the teacher and the Union Local within ten (10) days.

4.01 (10)(d) Probationary teachers shall not be assigned teaching contact hours or total workload hours in excess of the maxima under any circumstances.

4.01 (11)(a) Contact days (being days in which one or more teaching contact hours are assigned) shall not exceed one hundred and eighty (180) contact days per academic year for a teacher in post-secondary programs or one hundred and ninety (190) contact days per academic year for a teacher not in post-secondary programs.

4.01 (11)(b) Weekly contact hours assigned to a teacher by the College may be scheduled into fewer than five (5) contact days and such compressed schedule shall be deemed to be five (5) contact days.

4.01 (11)(c) Teaching contact hours shall not exceed six hundred and forty-eight (648) teaching contact hours per academic year for a teacher in post-secondary programs or seven hundred and sixty (760) teaching contact hours per academic year for a teacher not in post-secondary programs.

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

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- of 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).

4.01 (12)(a) The contact day shall not exceed eight (8) hours from the beginning of the first assigned hour to the end of the last assigned hour.

4.01 (12)(b) Every effort shall be made to ensure that work will not be assigned to begin less than twelve (12) hours after the end of the previous day's work assignment.

4.01 (12)(c) A teacher shall not normally be assigned work on calendar Saturdays or Sundays. Where a teacher is assigned to work on a Saturday or Sunday, the teacher shall be credited with one and one-half (1 1/2) times the credit hours normally give for hours so assigned and attributed.

4.01 (12)(d) A teacher may agree in writing to waive the premium credits provided for in Article 4.01 (12)(c) above for a specified period of time.

4.01 (13) Where a Union Local and a College agree in writing on terms governing workload assignments at the College, such agreements shall be binding on the College, the Union Local and the teachers and timetables shall be established in accordance with such local agreements.

4.02 (1)(a)(i) Prior to the establishment of a total workload for any teacher the supervisor shall discuss the proposed workload with the teacher and complete the Standard Workload Form (SWF), attached as Appendix VIII, to be provided by the College. The supervisor shall give a copy to the teacher not later than six (6) weeks prior to the beginning of the period covered by the timetable excluding holidays and vacations. It is recognized that if the SWF is subsequently revised by the College, it will not be done without prior consultation with the teacher.

4.02 (1)(a)(ii) The College may, where a change in circumstances requires it, amend assignments provided to a teacher after the original assignment, subject to the teacher's right to refer any matter to the College Workload Monitoring Group (Group) referred to in Article 4.02(2) (a) and if necessary, the Workload Resolution Arbitrator (WRA)

referred to in Article 4.02(5)(a) and appointed under Article 4.02(6)(a).

4.02 (1)(b) The SWF shall include all details of the total workload including teaching contact hours, accumulated contact days, accumulated teaching contact hours, number of sections, type and number of preparations, type of evaluation/feedback required by the curriculum, class size, attributed hours, contact days, language of instruction and complementary functions.

. . .

4.03 The academic year shall be ten (10) months in duration ...

The College also adds Article 7, Management Rights, which provides:

**Article 7
MANAGEMENT FUNCTIONS**

- 7.01** It is the exclusive function of the Colleges to:
- (a) maintain order, discipline, and efficiency;
 - (b) 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;
 - (c) to 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.

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

The College further draws the Board's attention to page 115 of the collective agreement which describes the duties of a "Professor" as follows:

PROFESSOR

Under the direction of the senior academic officer of the College or designate, a Professor is responsible for providing academic leadership and for developing an effective learning environment for students. This includes:

- a) The design/revision/updating of courses, including:
 - consulting with program and course directors and other faculty members, advisory committees, accrediting agencies, potential employers and students;
 - defining course objectives and evaluating and validating these objectives;
 - specifying or approving learning approaches, necessary resources, etc.;
 - developing individualized instruction and multi-media presentations where applicable;
 - selecting or approving textbooks and learning materials.

- b) The teaching of assigned courses, including:
 - ensuring student awareness of course objectives, approach and evaluation techniques;
 - carrying out regularly scheduled instruction;
 - tutoring and academic counselling of students;
 - providing a learning environment which makes effective use of available resources, work experience and field trips;
 - evaluating student progress/achievement and assuming responsibility for the overall assessment of the student's work within assigned courses.

- c) The provision of academic leadership, including:
 - providing guidance to Instructors relative to the Instructors' teaching assignments;
 - participating in the work of curriculum and other consultative committees as requested.

In addition, the Professor may, from time to time, be called upon to contribute to other areas ancillary to the role of Professor, such as student recruitment and selection, time-tabling, facility design, professional development, student employment, and control of supplies and equipment.

Having thus set out the evidence and relevant provisions of the collective agreement, it is important to note in some detail the actual positions adopted by the parties at the conclusion of the proceedings before us.

The Union began by noting that, on the basis of the Loyalist College (Dockrill) case, an unreported decision of arbitrator Jane Devlin dated May 7, 1991, the College can make assignments to teachers during the non-teaching period, using Article 4.01(6) of the collective agreement, but they have to attribute it (i.e., account for it on a SWF). In the present case, the Union goes on, there were two examples involving Mr. Theil: the course development he was asked to do with respect to the new Distance Education course; and the revisions he was instructed to do with respect to his previously-submitted course outlines. On the second question posed by the Union at the outset, the Union submits that on the evidence of Mr. Theil, the board should find that Dean Robbins did in fact specify a minimum number of hours to be worked during the non-teaching period, and that such a requirement imposes a burden which the College, under Article 4.08, is not entitled to, and which, in the absence of "mutual agreement", circumvents the flexibility inherent in that

Article. Moving on to its question number three, the Union submits that that mandated number of "work" hours, which Mr. Theil filled with a variety of complementary functions, as set out in his timetables each year, thus become "assigned" hours within the meaning of Article 4.01(6), and must be SWF'd, as determined by the Loyalist College case. As an "alternative" argument, the Union submitted that Article 4 sets out a maximum number of hours, being 36 weeks times 44 hours, or 1584 hours, for the year, and that Article 4.02(1)(a)(i) and (1)(b) require that "all details" of the "total workload" be set out in a SWF, and that that includes all "complementary functions" for the academic year, including those performed during the "non-teaching" period.

For the College, Mr. Brady begins by noting from the job description set out in the collective agreement exactly what it is that teachers are paid for, and notes that there are certain inherent professional responsibilities which arise from that. Mr. Brady adds as well that the "academic year" for which the teachers are being paid their annual salary is expressly stated in Article 4.03 of the collective agreement to be "ten months in duration". Mr. Brady notes that Article 4 then deals with the workload of these teaching professionals, and attempts to set limits. Article 4.01(2)(a) in particular breaks those ten months into a teaching and a non-teaching portion, with 36 weeks at 44 hours being set as the limit on workload assignment for the

"teaching" period, and the "balance of the academic year" (the "non-teaching" period), being allotted to complementary functions and professional development. Thus, submits the College, it is apparent that the 1584 hours is intended to apply to the work performed only in the teaching period, and not as Mr. Theil and the Union would have it, to the entire year. Article 4.01(4)(c)(ix) ties into 4.01(4)(c)(i), in the sense of referring to College-approved course assignments, and Article 4.01(6) describes the kind of expectations of the teacher's professional role contemplated as well in Article 4.08 -- the difference being attributed versus non-attributed "professional" time. The College argues that the Loyalist case is distinguishable on its facts, in that the responsibility to attend meetings there was assigned, but that in any event the case is wrong, in that it incorrectly fails to recognize that all of Article 4.01, and 4.01(6) in particular, applies only to the "teaching" portion of the year. What the board should have found (although, we note, it does not appear to have been the College's argument there) is that the power to "assign" in the non-teaching period stems from the College's broad rights to manage, and not from the terms of Article 4.06.

The College, further, takes the position that, contrary to the suggestion made by Mr. Theil as a result of submitting his timetable every year, and in keeping his log, the professors in fact are not accountable for their non-teaching

period at all, other than, as the Dean noted when asked, to use this paid time constructively, to do whatever it was the professors felt was required to prepare themselves properly for teaching their courses. If the professors wanted a "guideline", the 35 hours suggested seemed like a reasonable one, but so would 40, or 30 hours be, as the professors saw fit. It is not, in other words, the position of the College that there is a specified minimum number of work hours a week for these professionals during the "non-teaching" period, but rather that the whole system operates on the "honour" system, driven only by the teachers' own sense of professional responsibility. Finally, the College concedes that the two specific examples cited by the Union were in fact assigned to Mr. Theil, as he claims, and that as a result they must be credited on a SWF; however, the College adds that those two items have already been dealt with by a workload arbitrator, and Mr. Theil given the credit as a result. Beyond that, submits the College, however commendable it might be, Mr. Theil cannot by voluntarily preparing and providing the Dean with a timetable for his proposed activities in the non-teaching period, thereby write the clear language of Article 4.08, that none of these non-teaching-time complementary functions be either recorded or scheduled, entirely out of the collective agreement, as Mr. Theil submitted in his evidence it ought to be.

In making its own assessment of the issues before us, it would appear to be necessary for the board to begin with the decision referred to by the parties with respect to Loyalist College. In that case the board noted that the issue placed before it, as stated by the parties, was whether the College could require a teacher to consent to attend a scheduled curriculum review meeting in any non-teaching period pursuant to Article 4.08 of the collective agreement. In that connection, Article 4.01(4)(c)(ix) once again provides:

Hours for curriculum review or course development assigned to a teacher on an ongoing basis, in lieu of teaching or in a non-teaching period, shall be attributed on an hour for hour basis and recorded on the SWF.

However, the board found that in the case in question the teacher was only being asked to attend the occasional curriculum meeting, and thus that the assignment was not being done on an "ongoing basis". Therefore, the board concluded, that particular sub-article had no application. Since the parties were dealing only with the non-teaching portion of the year, that might have left the matter to be determined solely within the provisions of Article 4.08 itself, as certainly the College at least had argued (see page 14 of the award), and as the framing of the question seemed to anticipate. That is, as the College argued it, given the need to attend the occasional meeting of the curriculum committee as part of the professional responsibility of the

teacher, could the teacher's resistance to this be said to be a case of "unreasonably withholding" consent? The board, however, considered that "curriculum review" could only be dealt with as an "assigned" complementary function, but at the same time interpreted Article 4.01(6) as giving the College the express right to assign such complementary functions at any time. But that also meant, by the terms of Article 4.01(6) itself, that all of those hours had to be SWF'd, and thus, as the board noted, dealt with as a matter of overall workload.

The Loyalist College case was one of first impression, and it would appear from the "Addendum" that all members of the board were satisfied with the result. Having regard to the issues and arguments put to us here, however, we would prefer to approach the matter a little differently. Article 4.01(2)(a) does, as the College submits, appear to make a clear distinction between the period of "teaching contact", comprised of a maximum of 36 weeks at 44 hours a week, and "the balance of the academic year", which, with the "vacation" period already excluded by the ten-month provision, means the "non-teaching" portion of the academic year. The collective agreement leaves no doubt that that non-teaching portion of the year, during which the teachers are paid, and are not on vacation, contemplates the continuation of various kinds of "complementary functions" relating to teaching, absent the interruptions for classroom teaching itself. We say the collective agreement leaves no doubt because Article 4.01(2)(a) expressly states that, i.e.:

...

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

...

The difference, however, is that, firstly, the hours are not "attributable". That would be clearer if the sentence relating to "the balance of the academic year" were placed at the end of Article 4.01(2)(a), rather than interrupting it. However, it is made clear enough by the express words of Article 4.08, in dealing with this "non-teaching" period of the year specifically, that "such activities shall neither be recorded or nor scheduled" (except with respect to the mutual scheduling obligation of Article 4.01(7), the so-called "unchaining" article dealing with off-campus activity). That notation, it seems to us, is meant to maintain consistency with the overall purport of the Article, and that is that this non-teaching time, at the same time that it is non-attributable, is also non-"schedulable" simply at the discretion of the College. Rather, how this "non-teaching" time is to be used by the individual professor to carry out the complementary functions and professional development necessary to his or her course assignments and professional responsibility is a matter within his or her discretion. And this latitude granted the professors in their "non-teaching" period would seem to be a balance with the 44-hour number accepted by the parties as the typical, non-overtime work-week expected from the professors

during the teaching, or attributable, part of the year. It is also why, recognizing the exigencies that may arise for the College with respect to a professor's input or assistance during the non-teaching portion of the academic year, while consent from the professor in such instances is in fact required, such consent, it has been agreed, will not be "unreasonably" withheld. This of course is in contrast to the express provisions of Article 4.01(6), which we agree with the College applies to the teaching portion of the year only, and which stipulates that complementary functions may be unilaterally assigned by the College (and then SWF'd), and of Article 4.01(4)(c)(ix), which creates a recognized exception for traditional matters, curriculum review and course development, with respect to both of which the College is given back the unilateral right, even in the non-teaching portion of the year, to assign and schedule on an "ongoing basis". And once again, where the College does choose to exercise that right, those hours become SWF'able. The situation that was before the board in Loyalist College, we should note for clarity, was not that, but rather involved only the College's request that the teacher attend "occasional" meetings on curriculum review. Thus, as the College argued, it was not a matter of the College having to "SWF" those hours, but rather was the more fundamental one, which the College would have to demonstrate, of whether any lack of consent to accept that more limited assignment on the part of the teacher would be said to be an "unreasonable" one.

Bringing all of that back to the case and issues raised before us, the College has made it clear that it does not adopt the position that it has the right to specify a minimum number of hours of "work" per week during the non-teaching period. Nor do we find that to have been the effect of the remarks attributed in the testimony to Dean Robbins. The Dean only made the comment that he did in response to the faculty members having pressed him for a number, and we take his response to have been no more than a "guideline", as solicited, in the context of his comment in general that what was expected during this paid period away from the classroom was that the teacher would do whatever he or she felt was necessary to properly prepare for the teaching period. That in our view is not the kind of "assignment" to the professors that would run afoul of Article 4.08. The only exceptions by way of specific examples before us here were the two cited in argument by the Union -- but the College asserts, and it does not appear to be denied, that both of those examples have now been redressed for Mr. Theil through the medium of a workplace arbitrator. In light of that, it appears that there is nothing more for this board to direct.

On the actual facts before us, therefore, we conclude that there has been no "assignment" during the non-teaching portions of the grievors' academic years for which an appropriate remedy has not been sought and obtained elsewhere, and the grievances are dismissed.

Dated at Toronto this 30th day of *April*, 1993.

H. B. McLaughlin

CHAIRMAN

I CONCUR/~~DISSENT~~:

" M. Lyons "

UNION NOMINEE

I CONCUR/~~DISSENT~~:

" J. Courtney "

EMPLOYER NOMINEE