

**IN THE MATTER OF AN ARBITRATION**

*Local 110  
CAAT (A)*

**BETWEEN**

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
("the Union")**

**- and -**

**FANSHAWE COLLEGE  
("the College")**

**Re: GRIEVANCE OF THERESA HYLAND  
(OPSEU #97D058 - Academic)**

**BOARD OF  
ARBITRATION:**

Michel G. Picher - Chairperson  
Ron Hubert - Employer Nominee  
John McManus - Union Nominee

**APPEARING FOR  
THE EMPLOYER:**

Robert J. Atkinson - Employer Counsel  
Gail Rozell - Manager Human Resources

**APPEARING FOR  
THE UNION:**

Ed Holmes - Union Counsel  
Gary Fordyce - Chief Steward, Local 110  
Tom Geldard - 1st Vice-President Loc. 110  
Theresa A. Hyland - Grievor

**A hearing in this matter was held in London on May 5, 1997.**

## AWARD

This is the arbitration of a grievance against layoff. The grievor, Ms. Theresa Hyland, alleges that the College wrongfully deprived her of access to a position which was awarded to a junior employee, Ms. Denise Blay. The position, which involves the duties and responsibilities of Co-ordinator and Professor, Basic Business Program, at the Woodstock campus of the College, requires the incumbent to teach computer courses. The Union alleges that the grievor has sufficient skill and ability to perform the computer-teaching responsibilities, while the College maintains that she does not, and by reason of that shortcoming does not have the requisite skill and ability to fill the position.

The facts pertinent to the grievance are not in substantial dispute. The grievor commenced her employment with the College in November of 1988, eventually gaining a seniority date of June, 1989. The incumbent, Ms. Blay, has seniority dating from October of 1989. Both employees received notice on April 1, 1996 of their effective layoff, scheduled for July 30, 1996. They were among a group of some 55 academic staff so affected. Each was entitled to placement in any vacant position for which they might be qualified, on the basis of seniority, pursuant to article 27.06(i) of the collective agreement which reads as follows:

An employee will be re-assigned within the College to a vacant full-time position in lieu of being laid off if the employee has the

competence, skill and experience to perform the requirements of a vacant position.

The issue is whether the grievor has sufficient competence, skill and experience to perform the requirements of the vacant position which was established at the Woodstock campus of the College. The evidence before the Board discloses that the satellite campus at Woodstock offers two post-secondary programs, in addition to a non-post-secondary academic upgrading program. The first post-secondary program consists of a two-year diploma course in Environmental Engineering Technician (Waste Management). The second, commencing in 1995-96, is a one-year Basic Business Program, essentially a preparation year for a two-year business diploma program, with courses in subjects such as accounting, finance, marketing and insurance. The Board is advised that in the spring of 1996 the three programs at the Woodstock campus involved some 100 to 125 students.

In the spring of 1996 it was decided to establish a full-time position at the Woodstock campus. The person in the position would act as Co-ordinator for the Basic Business Program and would teach courses in English and Communications, as well as computer courses in the three programs offered by the College. The evidence establishes that following the layoff notices of April 1, 1996 the newly-appointed principal of the Woodstock campus, Ms. Sherri Knott, conducted telephone interviews of the employees being laid off, on the basis of their descending order of seniority. If an employee was judged to have the basic

qualifications for the job, on the basis of the telephone conversation, an interview was scheduled. Based on her telephone conversation with the grievor, Ms. Knott formed the opinion that, based on her lack of computer knowledge and experience, she did not have the basic qualifications for the vacant position. There is no dispute that Ms. Hyland has the necessary competence and experience to teach the English and Communications courses. The grievance essentially resolves itself into the question of whether the grievor does in fact possess the basic qualifications and skills necessary to teach computers in the programs in question. It is common ground that the vacant position requires the professor to teach computer applications courses in the both the Engineering Technician (Waste Management) Program and the Basic Business Program. For example, the Waste Management Course, CMTR 290, is described as follows in the student course information document:

This course is designed to develop an understanding of the use of spreadsheet software for business and record keeping. There will be a section of the course which incorporates both word processing and spreadsheets.

The evidence of Ms. Knott establishes that the course involves some 45 teaching hours and requires a thorough knowledge and understanding of, as well as some working experience with, spreadsheet applications and database software, including Excel 5.0 and Access. She further indicated in her evidence that the incumbent in the position must also have a thorough knowledge and ability to teach other software packages applicable to both the Waste

Management and Business courses, including spreadsheet programs such as Lotus and Excel. She also related that the Business Data Processing course, which involves some 60 teaching hours, would require the professor to have a substantial understanding of basic computer operating platforms, such as Windows and DOS.

Ms. Knott testified that during the course of her telephone conversation with the grievor, she learned that Ms. Hyland had no previous knowledge or working experience in database and spreadsheet software packages such as Lotus, Excel and Access. According to Ms. Knott, the grievor indicated that in fact she had never heard of Access and Excel before. She also learned that the grievor had no experience in teaching any computer courses, apart from having taught some word processing as part of English and Communications courses.

Ms. Hyland holds an Honours B.A. degree in Social Sciences. She also obtained a certificate in the teaching of English as a Foreign Language from the Royal Society of Arts Examinations Board and a master's degree in Education from the Ontario Institute of Education. Her earliest teaching experience was in Japan and Singapore, where she taught English as a Second Language, as well as middle school and "O" Level and "A" Level courses following the British system. Her teaching at Fanshawe College has largely been in the area of language and communication courses, as well as a development course in Prior Learning Assessment.

Under cross-examination, Ms. Hyland conceded that her experience with computer programs other than WordPerfect is extremely limited. She admitted that she has never worked with Lotus and that her only experience with spreadsheet applications is a workshop taken in Singapore some ten years ago. She further indicated that following the filling of the job vacancy, and after the grievance was filed, she did take one-day workshops in Access, Excel and DOS 3.1, in July and August of 1996. It appears that she took those workshops following a second telephone conversation with Ms. Knott, which she estimated to have been in mid-May. The grievor concedes that Ms. Knott gave her no guarantee that taking those courses would change the merits of her candidacy for the vacancy at the Woodstock campus.

Ms. Knott's evidence establishes that the courses for which the Coordinator would be responsible do involve extensive teaching of computer applications. She notes that CMTR 190 includes the teaching of WordPerfect and Windows; CMTR 290 involves teaching spreadsheet applications, including Excel, and CMTR 390 is devoted to the teaching of Access and PowerPoint. In addition, she related that the business course CMPT 151 is entirely comprised of teaching data processing through Lotus. The evidence of Ms. Knott is that the College required a person fully capable of undertaking the teaching of these courses from the time of assignment, and that the grievor was simply not qualified to do the work.

Ms. Hyland testified that as part of her Social Sciences degree she studied statistics. She feels that her background in statistics gives her a fundamental grasp of the systems which underlie computer platforms and computer software applications such as Lotus, Access and Excel, although she concedes that she had never heard of the latter two programs prior to her telephone conversation with Ms. Knott. She further related that she taught WordPerfect 5.1 as part of a number of courses, including English 286, 237 and 137 as well as Communications 101. According to her testimony the work in question involved one hour out of three, on a weekly basis, spent in the computer room. She further related that as part of her Honours B.A. program in Social Sciences, she was involved in programming a mainframe computer.

Her formal training in computer applications includes a 30-hour course in WordPerfect 5.1, taken in 1991, as well as a one-day course in Windows 3.0, in 1993. Included in her experience is a six-hour course in DOS which she describes as a one-day refresher.

While the grievor's experience with database preparation is admittedly limited, she relates that she did, as part of her involvement with the administration of the Academic Challenge System in the College, prepare a database for that process. She states that she prepared the Challenge database using WordPerfect.

A second dimension of the position was the Co-ordinator's function. This, she explained, required a person who had experience co-ordinating part-time faculty and dealing with student concerns. A significant responsibility of the Co-ordinator would involve maintaining ongoing communications with the main campus, to ensure that the requirements of the Basic Business Program, the responsibility of which resides with the main campus, were at all times being met.

As Ms. Knott describes the Co-ordinator's position, it involves three dimensions: the ability to teach a variety of computer applications, teaching post-secondary English and performing the Co-ordinator's function. She concluded that Ms. Hyland had neither the computer skills and experience necessary for the job, nor the experience and knowledge necessary to undertake the Co-ordinator's role. By contrast, she noted that Ms. Blay had extensive experience as a co-ordinator, having been responsible for some 1500 students and 13 professors in the areas of English and Psychology courses for some three years in the School of Technology. She further notes that Ms. Blay's practical experience includes extensive use of Lotus and Excel programs to maintain records and course assignments, as well as Word and WordPerfect. While neither the grievor nor the incumbent had previously taught spreadsheet computer applications such as Lotus, Ms. Blay had extensive experience in the use of both Lotus and Excel in a practical setting.

Counsel for the College submits that the approach to be taken in the instant case, having regard to the application of article 27.06(i), is reflected in the following passage of an award of the board of arbitration chaired by Arbitrator H.D. Brown in **Niagara College and OPSEU**, dated October 31, 1989. At pp.9-10 of the award the following comment appears:

The grievor must establish that he met the conditions of the Article of the agreement under which he claims entitlement at that time so that it must be found if his grievance is to succeed that he was fully capable of stepping into the shoes of the incumbent as it were in order to fulfill that position and therefore to displace the incumbent on the basis of his greater seniority. The principle has not, in our opinion, changed from its application under the previous wording of Article 8.05 which was confirmed in an award **Re Conestoga College and OPSEU** (Samuels - December 1986) in which at page 2 the Board stated:

"under Article 8.05 the grievor only has a right to displace a less senior employee if he can walk right in and do his job. This has been confirmed in all the cases involving this provision - Conestoga College (grievance of Bailey, unreported decision of Brent, September 6, 1983); Conestoga College (grievance of Keating, unreported decision of Shime, January 16, 1985); and St. Lawrence College (grievance of Brown, unreported decision of Shime, September 11, 1986.)"

Counsel submits that the grievor fails to meet the test described in the above passage, stressing that the burden of proof remains upon the Union in this grievance. He maintains that the grievor simply does not have the background or skills necessary to responsibly undertake the teaching of spreadsheet applications and spreadsheet software in the various courses for

which she would be responsible. Stressing, for example, that the course description for CMTR 290 requires the student to create and design spreadsheets, as well as to use word processing software to blend the spreadsheets into a document or report, counsel argues that Ms. Hyland lacks the background to undertake such teaching.

Counsel stresses that the grievor's experience is not sufficient to bring her within the requirements for teaching the courses at the Woodstock campus. He challenges her suggestion that her involvement in statistics courses as an undergraduate and graduate student many years ago are sufficient to qualify her for teaching spreadsheet computer courses. Noting that her teaching experience in computers was limited to word processing software in the context of English or Communications courses, he argues that she is plainly lacking in the requisite practical experience, quite apart from her dearth of theoretical knowledge or training.

Alternatively, counsel submits that the grievor's experience as a Co-ordinator is also insufficient for the requirements of the Co-ordinator's job. He argues that Ms. Hyland's experience as a four-week substitute for the Co-ordinator of the PLA Program does not represent sufficient relevant experience for the purposes of the qualifications in question. By contrast, he submits that Ms. Blay brings extensive experience in co-ordinating, having been a Course Master and Co-ordinator for three years in the School of Technology at the

London campus. Additionally, although Ms. Blay has not previously taught computer courses, she is well-versed in spreadsheet programs, having made extensive use of database and spreadsheet software programs, including Lotus and Excel, in her professional experience.

Counsel for the Union takes a different view. He stresses the fact that neither Ms. Blay nor the grievor had any prior experience in teaching database computer programs and spreadsheet applications. He argues that the College gave insufficient weight to the fact that the grievor took a five-day course in Lotus while living in Singapore, a fact which he concedes did not emerge in the first telephone conversation between the grievor and Ms. Knott. He also notes that Ms. Blay could not claim extensive knowledge of Access and appears to have enrolled in a course in that software application subsequent to her appointment to the vacancy. He notes the grievor's evidence that she followed the same course.

Counsel also disputes the characterization of the grievor's co-ordinating experience made by counsel for the College. He notes that in addition to having been an acting Co-ordinator in the summer of 1995, over a seven-week period, the grievor also acted as Assistant Co-ordinator in the PLA program during the fall semester of 1995. He argues that the grievor has demonstrated that she had both sufficient background in spreadsheets, having taken a course in Lotus, and adequate experience as a Co-ordinator. He argues that she should have been

viewed as sufficiently skilled to be appointed to the vacancy, on the basis of her greater seniority.

We turn to consider the merits of this grievance. Firstly, it should be stressed that there is no issue before us of the quality of the grievor's prior work experience, and her ability as a teacher of English, based on her prior work in both English and Communications courses. Secondly, we are reluctant to give extensive weight to the argument made at the hearing by the College with respect to the lack of co-ordinating experience as revealed in Ms. Hyland's background. There was little, if any, discussion of the co-ordinating dimension, or of the grievor's co-ordinating experience, during the course of her initial telephone conversation with Ms. Knott. Ms. Knott, whom we take to be a fair and candid witness, made it clear that her decision not to pursue the grievor to the point of an interview was based substantially on the fact that Ms. Hyland had little or no background in spreadsheet applications, professing to have never previously heard of Excel or Access.

It appears to the Board to be beyond discussion that the College is responsible for assigning competent persons to teach the courses which it holds out to students and the public as part of its curriculum. We are prepared to accept that in a technical field such as computers, there may be some difficulty in the uninitiated assessing the relative technical qualifications of individuals. In the instant case, however, we do not have great difficulty in understanding the

reluctance of the College to assign to Ms. Hyland the responsibility of teaching many students computer programs which she herself had never studied or worked in. We appreciate that the grievor's experience in the theoretical underpinnings of statistics may have some bearing on her ability to eventually grasp and work with certain database and spreadsheet programs in computers. In fairness, however, neither the collective agreement nor common sense would suggest that, in an area of technical expertise, the College is or should be compelled to assign a teaching vacancy on the basis of a candidate's potential to learn the systems and materials which he or she is immediately charged with teaching. We have substantial difficulty concluding that it was improper or out of keeping with the prerogatives of the College under the terms of the collective agreement to require that the person deemed qualified to teach courses in Lotus, Excel, Access and PowerPoint have at minimum a practical working knowledge of those programs, or at least of a majority of them.

The grievor had no background in any of those programs at the time the College was required to make its decision to fill the vacancy at the Woodstock campus. By contrast, Ms. Blay had extensive day-to-day experience in the use of Lotus and Excel, having used spreadsheet applications extensively in her previous work. When all of the evidence is considered, we are compelled to the conclusion that the College acted in good faith and correctly in requiring a degree of experience and actual working knowledge of database and spreadsheet applications as a qualification for the position. Nor do we place

extensive weight on the fact that the incumbent, Ms. Blay, had not previously taught computer courses. In the community college setting, it is not uncommon to draw upon persons from the field, with extensive practical experience and limited, if any, teaching experience, to handle courses with a substantial technical or practical content. On the whole, and without commenting on the separate issue of the grievor's co-ordinating experience, we are satisfied that the College acted reasonably and within the ambit of the collective agreement in coming to the decision, made initially by Ms. Knott at the time of her first telephone conversation with the grievor, that Ms. Hyland did not have the necessary qualifications for the position at the time the vacancy was filled.

For the foregoing reasons the grievance must be dismissed.

Dated at Toronto this 29th day of September, 1997



Michel G. Picher, Chairperson

"Ron Hubert"  
Employer Nominee

Dissent Attached  
John McManus, Union Nominee

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
(THERESA HYLAND)

-and-

FANSHAW COLLEGE

DISSENT

I have had the opportunity to read and consider the majority decision of my colleagues and regret that I must respectfully dissent.

I agree with my colleagues wherein they find that little weight should be applied to the College's argument that the Grievor lacked co-ordinating experience. As my colleagues point out there was no discussion with the Grievor regarding the co-ordinating dimension of the position prior to the arbitration. As such the Grievor should not be denied the opportunity to fill the position on this ground.

In addition, I agree with my colleagues that prior experience in teaching the computer courses at the heart of this matter is not necessary so long as a Grievor has experience generally in the area in question. Where I disagree with my colleagues is in their finding that this Grievor did not have such general experience.

It is my opinion that the Grievor's previously acquired practical skills in:

1. the "theoretical underpinnings of statistics" acquired in her undergraduate and graduate degree programs;
2. teaching word processing in a variety of courses;
3. using Wordperfect; and,
4. Lotus attained in an extensive workshop in Singapore

all combine to provide her with the minimum competence, skill and experience necessary in order to teach the courses at issue.

For the foregoing reasons I would have allowed the grievance.

John McManus.  
John McManus, Union Nominee