

**JOLIFFE VS FANSHAWE, WRA**

**IN THE MATTER OF FANSHAWE COLLEGE AT LONDON, ONTARIO  
AND IN THE MATTER OF A COMPLAINT BY RICHARD JOLLIFFE**

**Date of Hearing: June 06,1995**

**Workload Resolution Arbitrator: Janet V. Collins, Barrister & Solicitor**

**THE ISSUE**

The principal issue to be resolved is whether or not the work done by Richard Jolliffe on the Health and Safety Committee during the non-teaching period from May 1 to June 5 should be recorded on the SWF for the period from June 5 to June 29, 1994.

**DECISION**

Work performed on the Health and Safety Committee during the non-teaching period falls within the category of work performed as a professional responsibility, undertaken by mutual consent. As such, there is no requirement in the Collective Agreement that it be recorded on a SWF.

**IN THE MATTER OF FANSHAWE COLLEGE AT LONDON, ONTARIO  
AND IN THIS MATTER OF A COMPLAINT BY RICHARD JOLLIFFE**

**Date of Hearing: June 06, 1995**

**Workload Resolution Arbitrator: Janet Collins, Barrister & Solicitor**

This is a complaint by Richard Jolliffe. The principal issue to be resolved is whether or not the work done by Richard Jolliffe on the Health and Safety Committee during the non-teaching period from May 1 to June 5 should be recorded on the SWF for the period from June 5 to June 29, 1994.

The matter was presented for resolution by Mr. Jolliffe, represented by Gary Fordyce and Tom Gelgard of OPSEU, Local 110. The College was represented by Ingrid Hobbs and Gayle White-Mallory.

**THE FACTS**

The parties agreed upon the following facts:

Richard Jolliffe is a member of the College faculty. He is the faculty representative on the Health and Safety Committee of the College. The Committee is mandated by the provisions of the Occupation and Safety Act of Ontario. The College is required as employer to ensure the existence and operation of the Health and Safety Committee. The act specifies the composition and duties of the Committee and in particular requires that the Committee should include workers as well as managers. There are 3 workers and 3 employer representatives on the Committee. Mr. Jolliffe was the faculty representative on the Health and Safety Committee for the academic year September 1, 1993 to June 30, 1994. This period included the teaching periods from September, 1993 to April 30, 1994 and June 5 to June 1994, and a non-teaching period from May 1 to June 4, 1994.

Mr. Jolliffe was required to perform his duties as a member of the committee throughout the academic year. His complaint is that during the non-teaching period, his work on the committee was not attributed to him as part of his normal workload assignment. It was therefore not recorded on the last standard workload form (SWF) for the year. Had his work during the nonteaching term been recorded on the SWF for the period June 5 - June 29, this would have had implication for his total workload assignment for the year.

**PRELIMINARY OBJECTION**

Preliminary objection to the jurisdiction of the Workload Resolution Arbitrator (WRA) was raised by the College. It was argued by the College that a WRA has no jurisdiction under the Collective Agreement to adjudicate the complaint concerning work done during a non-teaching period. The basis of this objection was said to be that the assignment of work during the nonteaching period is governed by Article 11.08 of the Collective Agreement. Disputes arising under Article 11.08 are subject, by Article 11.02A 6(b) to the grievance procedures under the Collective Agreement.

It was submitted on behalf of Mr. Jolliffe that Article 11.08 deals with work related to professionalism, the quality of education and professional development, and that these are to be agreed upon mutually by the teacher and the College. Mr. Jolliffe's position was that he acquired his responsibilities on the Health and Safety Committee by assignment rather than by mutual agreement. His participation on the committee therefore did not fall within any of the categories of work described in Article 11.08. From his perspective Article 11.08 has no relevance to the complaint and all matters should be resolved by reference to Articles 11.01 and 11.02 from which the jurisdiction of the WRA arises.

A ruling on the preliminary objection was reserved until the parties had fully addressed the complaint. The relationship between the Collective Agreement and the Occupation Health and Safety Act being relevant to the resolution of the complaint, it was not possible to address the substance of the preliminary objection without construing the provisions of Articles 11.01, 11.02 and 11.08 as well as the relevant sections of the Occupational Health and Safety Act.

## **RULING ON THE PRELIMINARY OBJECTION**

I have concluded that the WRA does have jurisdiction under the Collective Agreement to deal with the disputes concerning work in the non-teaching period. The appointment, responsibilities and conduct of the WRA are provided for by Articles 11.02E - F of the Collective Agreement.

Article 11.02E1 allows a teacher to refer a complaint concerning a workload assignment to Workload Monitoring Group (WVG). Complaints arising may be taken to the WVG if, following receipt of SWF, the individual and the supervisor are unable to agree as to the proposed workload recorded on the SWF. Matters not resolved by the WVG may be referred to the WRA.

Matters to be referred for resolution are detailed in Articles 11.01 and 11.02 of the Collective Agreement. It is to resolve disagreements as to the details on this SWF and the implications for the individual teacher that recourse may be had to the WRA. Article 11.02F9 assigns final jurisdiction to the WVG and the WRA to resolve disputes arising under Articles 11.01 and

11.02. Naturally, or logically, if the complaint is - that the SWF omits credit for work to be done, the issue is one of **workload**, a matter clearly within the jurisdiction of the WRA.

The work of the Health and Safety Committee during the teaching period of the academic year can hardly be considered to be a matter solely within the ambit of Article 11.08, which on its face applies to work done in the non-teaching periods. It is clear that the activities of a teacher on the Health and Safety Committee during both teaching and non-teaching periods must fall within the provisions of Article 11.01 and therefore involves the jurisdiction of the WRA. It would make little sense for the Collective Agreement to provide for the resolution of disputes concerning non-teaching functions which are recorded on the SWF, only so long as they occur in the teaching period, but to exclude the very same functions when they occur in the non-teaching periods. The Collective Agreement recognizes non-teaching functions as complementary functions and provides for these to be recorded as part of a standard workload. It must be assumed that the Collective Agreement recognizes that activity as a non-teaching function regardless of the period of the academic year during which it is performed. Nothing in the Collective Agreement restricts the jurisdiction of the WRA to matters recorded on a SWF or to matters performed during the teaching period. Accordingly, I conclude that the WRA has the jurisdiction to address the complaint.

## **THE MAIN COMPLAINT**

### **Decision**

Work performed on the Health and Safety Committee during the non-teaching period falls within the category of work performed as a professional responsibility, undertaken by mutual consent. As such, there is no requirement in the Collective Agreement that it be recorded on a SWF.

## **REASONS**

The essence of Mr. Jolliffe's position is that in order for him to receive full credit for his committee work the SWF for the period June 5 to June 29, 1994 should show 9.9 hours of complementary functions attributed on a weekly

basis. The SWF for the period in issue gives credit for 8 hours weekly, thus an additional 1.9 hours weekly would need to be attributed.

The position of the College is that work done by Mr. Jolliffe on the Health and Safety Committee must be regarded as a combination of assigned work undertaken during teaching periods, for which credit is given on SWF, and professional responsibility undertaken by mutual consent during the non-teaching periods. There is no requirement that such work should be recorded on SWF. As the union's representative on the Health and Safety Committee, the College believes that Mr. Jolliffe has agreed to serve during both teaching and non-teaching periods. Credit for the committee work during the teaching period is attributed at 8 hours per week for complementary functions as shown by Exhibit 1, the SWF for the period June 5 - 29, 1994. Committee work performed during the non-teaching period was required as part of his professional responsibility as provided for by Article 11.08. Accordingly, such activity would not be recorded on the SWF.

The essence of the dispute is the distinction between work assigned by the College which must be recorded on the SWF, and work performed by mutual agreement.

The obligation to participate in the Health and Safety Committee arises from the Occupational Health and Safety Act, not directly from the Collective Agreement. It is common ground between the parties that Mr. Jolliffe's work on the Health and Safety Committee is a complementary function. The Collective Agreement does not define the term "complementary function". Article 11.01B1 includes among the workload factors to be considered in assigning work, hours attributed for complementary functions. Article 11.01 stipulates that a minimum of 5 hours of the maximum weekly workload shall be attributed for routine out-of-class assistance to individual students and for normal administrative tasks. These activities are included within the concept of complementary functions but Article 11.01F is not exhaustive. The Article clearly distinguishes between hours attributed for the functions specified therein, and hours to be credited, on an hour for hour basis, for assigned complementary functions, appropriate to the professional role of the teacher. The issue here is whether or not participation on the Health and Safety Committee is a complementary function for which hours must be attributed as an assigned responsibility.

As indicated earlier, Article 11.01 does not exhaustively define complementary functions. Reading Articles 11.01B and 11.01F together it is evident that the Collective Agreement contemplates complementary functions undertaken during the teaching period as well as during the non-teaching period.

Subsection 35 of Section 9 of the Occupational Health and Safety Act is of some assistance. This deems committee members to be at work while performing their duties on the committee, and as such to be entitled to be paid for time attending and preparing for committee meetings and performing the committee duties set out in the Act. The College is required to treat the time spent as ordinary work time and to pay for it as such.

The facts as presented in this case indicate that Mr. Jolliffe was allowed relief from assigned teaching duties during the teaching period and he was credited with 8 hours of attributed complementary functions. There was no evidence that he was denied payment for work done on the committee during the non-teaching period. The evidence of the College indicates that Mr. Jolliffe received credit for the work on the committee in the non-teaching period in keeping with his professional responsibilities. While it is arguable that the existence of the committee and hence its responsibilities arose from an impetus outside the Collective Agreement, the parties were equally bound by the statutory obligation to participate in the work of the committee. There was no evidence that Mr. Jolliffe was denied a normal salary for work done during the non-teaching period. His committee work during this period was deemed by the Occupational Health and Safety Act to be part of his normal workload. The Collective Agreement recognizes complementary functions during the non-teaching period as part of the normal workload.

Mr. Jolliffe was relieved of teaching responsibilities for 1 day each week during the teaching period and he has also been credited with 8 attributed hours of complementary functions. By providing release time as well as attributed hours on the SWF it seems to me the College has recognized and credited the work done by Mr. Jolliffe in the

committee in the fulfilment of his statutory obligations. It is worth noting that while Article 24.02 of the Collective Agreement deals with Health and Safety concerns, the Collective Agreement is silent as to the manner in which worker participation and procedures required under the Occupational Health and Safety Act should be credited.

In order to be entitled under the Collective Agreement to additional attributed hours, work on Health and Safety Committee would have to be characterized as a complementary function falling within one of the following provisions of the Collective Agreement:

- (a) Article 11.01 F, that is complementary functions appropriate to the professional role of the teacher assigned to the teacher by the College;
- (b) Article 11.02 G2, atypical circumstances affecting the workload of a teacher or group of teachers which are not adequately reflected in Article 11; and
- (c) Article 11.01 D3(ix), hours for curriculum review for course development assigned to a teacher on an ongoing basis, in lieu of teaching or in a non-teaching period.....

In each case such work would have to be attributed on an hour-for-hour basis.

The position of the College that work on the Committee should during the teaching periods should be credited on the SWF whereas committee work during the non-teaching periods is part of the professional responsibility of Mr. Jolliffe is a reasonable interpretation of the Agreement. The obligation of the parties to participate in committee mandated by statute implies mutual consent of the parties to comply with their statutory obligations. There is no requirement for Additional credit on the last SWF of the year.

DATED at London, Ontario this 23rd day of August, 1995.