

IN THE MATTER OF AN ARBITRATION

BETWEEN FANSHAWE COLLEGE

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

IN THE MATTER OF THE GRIEVANCE OF Y. J. LOVELOCK

MR. O.B. SHIME, Q.C.	CHAIRMAN
MR. E. BRADY	COLLEGE NOMINEE
MR. J. HERBERT	UNION NOMINEE

APPEARANCES

MS. B. BOWLBY	COUNSEL, and others for the College
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MR. D. BLOOM	COUNSEL, and others for the Union
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Hearings were held in this matter at Toronto on Wednesday, November 25, 1985 and Monday, November 10, 1986.

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In this matter, the grievor, Y.J. Lovelock claims that her workload was inequitable. The grievor teaches English as a Second Language (E.S.L.) at Fanshawe College. In 1983/4 she was a full-time teaching master and taught in the fall, winter and summer. She complained about the summer schedule and when the committee, constituted under Section 4.02 of the Collective Agreement, was unable to agree about her assignment, this matter was referred to arbitration.

The student population for the E.S.L. program is comprised of many different language groups with varying academic backgrounds, aptitudes and ethnic-cultural persuasions. The grievor testified that she responded to her students on a number of different levels and that since there was no textbook she developed her own teaching materials, bearing in mind the differences in each class.

The grievor also testified that she prepared material for each lesson and that she spent about three to three and one-half hours designing and typing this material. As part of her teaching materials, the grievor uses visual aids; she testified that on average the selecting and collecting of the material, including transportation, takes approximately three to four hours per week.

The grievor maintains that, notwithstanding that the College has a counselling service, she, too, counsels students. She stated

that as an E.S.L. teacher she is the interface between the students and the new society and is, in effect, the interpreter of the new reality to them, and thus she serves as a special counsellor to her students. She claims that she assists them because they don't trust some of the authority figures or the government bureaucrats with whom they come in contact. The grievor testified that she spent four hours per week counselling students and another hour or one-half hour in the week assisting them in filling out forms. She admitted that these counselling duties were not assigned to her by the College and also that she was not directed by the College to perform these counselling services.

The grievor's evidence was confirmed in a number of respects by N. Elson who is an E.S.L. teacher at York University. He particularly confirmed the need to counsel students.

Mr. Monte Black, the Chairman of preparatory students who was responsible for the E.S.L. program testified that the duties of the E.S.L. teachers did not include counselling and that there were other resources available to help these students.

Based on these facts, the union argued that the grievor's assignment was inequitable and contrary to Section 4 of the Collective Agreement. Counsel for the union suggests that

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this Board should be particularly concerned about the exercise of professional judgment by teachers and that our inquiry should focus on whether the grievor performed her work in a reasonable manner.

The College submitted that counselling duties were not assigned to the grievor and that gratuitous or volunteer services performed by her do not impose any obligation for payment upon the College. The College further submits that counselling services are available to immigrants and that it has not assigned these duties to the grievor.

The relevant provision of the Collective Agreement is Section 4.02 (a) which provides as follows:

4.02 (a) Recognizing the unique characteristics of each College, the diversity of programmes and instructional techniques and the consequent range and variety of individual assignments, the parties agreed that within three (3) weeks following the publishing of instructional assignments in September, a College Instructional Assignment Committee of six (6) persons (three (3) persons to be appointed by each party and to include the College President or Senior Administrative Academic Officer) shall meet to;

- (i) consider the application of Section 4.01 to the instructional assignments across the College;
- (ii) resolve apparent inequitable instructional assignments;

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4.02 (a) cont'd.

(iii) consider a claim by an individual that his instructional assignment is inequitable.

The Committee shall in its consideration have regard to such variables affecting assignments as;

- (a) nature and number of subjects to be taught;
- (b) level of teaching and business experience of the faculty and availability of technical and other resource assistance;
- (c) necessary academic preparation and student contact;
- (d) examination marking and assessing responsibilities;
- (e) size of class;
- (f) instructional mode(s);
- (g) assignments ancillary to instructional activities;
- (h) previously assigned schedules;
- (i) other assignments;
- (j) necessary excessive travel time between assignments.

It is agreed that this is not a grievance concerning a violation of Section 4.01 and that the grievor's claim is solely under Section 4.02.

At the outset, it is important to note that the grievor appears to be an extremely dedicated and capable teacher with an obviously sincere interest in her students. However, her dedication, capabilities and sincerity are not the issue in this case nor

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are they dispositive of the issue at hand. This is not a case where the grievor's assignment is to be compared with others, rather the narrow issue is whether the assignment per se, or in and of itself, is inequitable, and in our view, that issue may be simply answered.

The scheme of Section 4 is to provide a procedure to relieve teachers from improper work assignments by the College. Since the right to assign rests with the College, the procedure is designed to allow a decision by the College to be scrutinized by an independent third party. The procedure, thus, is intended to curb any abuse of the assignment right vested in the College. But the scheme presumes that the College will assign the work. In this case, the College has not assigned the counselling work to the grievor. She cannot unilaterally assign the work to herself and then seek compensation for it. The grievor was aware that there were other counselling services available for her students yet she chose to arrogate to herself the role of counselling students. The counselling service that she provided was completely gratuitous; she was on a frolic of her own. Regardless of the value of her work or its particular merit, in these circumstances, the grievor cannot complain that the College's assignment was improper. Simply put, the College has the right to assign work and it cannot have individual teachers unilaterally assume duties and responsibilities that are not assigned and which

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they know are beyond the scope of the work assigned.

Nor are we prepared to find that the counselling was "ancillary" as contemplated by Section 4.02 (a), (g). It is also interesting to note that with respect to counselling, Mr. Elson, an experienced E.S.L. teacher called by the union to give expert testimony, stated that "if there was a counsellor it would take the load off the teacher". The inference from that statement is that counselling services need not be provided by the teacher but should be provided in the College - which the College has done.

There is also some conflict in the union's evidence with respect to the preparation of teaching materials. The grievor claims, in effect, that each class is unique and accordingly she is required to prepare for each class as if she were starting from scratch. However, Mr. Elson suggested that an experienced teacher who has developed a base would be able to use and adapt materials. More specifically, he testified that an experienced teacher "wouldn't start from scratch".

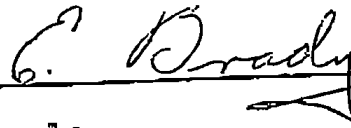
Moreover, in these cases where there is no complaint about relative equality, there should either be some standard to measure the alleged inequality, or, at the very least, some very special or exceptional circumstances. There was no standard of measurement referred to nor are the circumstances, in this case, exceptional.

In the result, after weighing the evidence, it is our view that the assignment to the grievor was not inequitable or contrary to Section 4 of the Collective Agreement. The grievance is dismissed.

DATED AT TORONTO THIS 30 DAY OF APRIL 1987.



Owen B. Shime, Q.C.
Chairman



E. Brady
Nominee for the College

" J. Herbert" (Dissent to follow)

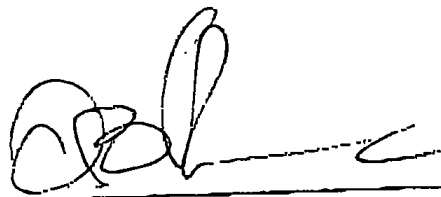
J. Herbert
Nominee for the Union

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DATED AT TORONTO THIS

DAY OF

1987.



Owen B. Shime, Q.C.
Chairman

E. Brady
Nominee for the College

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Nominee for the Union