

88C730
REVISED (A)

IN THE MATTER OF AN ARBITRATION

BETWEEN: NIAGARA COLLEGE OF APPLIED ARTS
AND TECHNOLOGY
(The College)

AND: ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(The Union)

AND IN THE MATTER OF THE GRIEVANCES OF K.W. MARTIN
(OPSEU NUMBER 88C730)

BOARD OF ARBITRATION: H.D. BROWN, CHAIRMAN
R.J. GALLIVAN, COLLEGE NOMINEE
WAYNE ROBERTS, UNION NOMINEE

APPEARANCES FOR THE COLLEGE: NANCY A. EBER, COUNSEL
GLENN R. PEVERE, DIR. OF PERSONNEL

APPEARANCES FOR THE UNION: BRAM HERLICH, COUNSEL
BARRY SHARPE, VICE-PRESIDENT,
LOCAL 242
N. KOMAR, STEWART
K.W. MARTIN, GRIEVOR

HEARINGS IN THIS MATTER WERE HELD AT WELLAND ON APRIL 11TH
AND MAY 15TH, 1989.

AWARD

While several grievances were filed with the Board at the first hearing, it was agreed by the parties that they would proceed only with the grievance, dated August 25th, 1988, (38C730) by which Mr. Martin claimed that he had been improperly laid off. The parties agreed that the Board had jurisdiction to deal with that grievance.

In accordance with Article 8.08 (A) of the Collective Agreement in effect between the parties, the grievor named three employees which he claimed entitlement to displace. He proceeded with that claim against James A. Eden. The incumbent was given notice and attended the hearings and was given an opportunity to participate in these proceedings on his own behalf.

The issue in the grievance before the Board and dealt with at the hearings is whether the grievor is entitled to exercise the terms of Article 8.05 (b) of the Collective Agreement which is as follows:

When the College decides to lay off or reduce the number of full-time employees who have completed the probationary period or transfer involuntarily full-time employees who have completed the probationary period to another

position from that previously held as a result of such lay-off or reduction of employees, the following placement and displacement provisions shall apply to full-time employees so affected. Where an employee has the competence, skill and experience to fulfill the requirements of the full-time position concerned, seniority shall apply consistent with the following:

(a) an employee will be reassigned 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;

(b) failing placement under paragraph (a) above, such employee shall be reassigned to displace another full-time employee in the same classification provided that:

(i) the displacing employee has the competence, skill, and experience to fulfill the requirements of the position concerned;

(ii) the employee being displaced has lesser seniority within the College.

It is agreed that the grievor has greater seniority than the incumbent, therefore, the issue is on the terms of Article 8.05 whether the grievor was qualified "to fulfill the requirements of a full-time position" held by the incumbent. Both the grievor and the incumbent are Teaching Masters at the College and taught in the Engineering Division of the College. The grievor was advised by letter, dated July 25th, 1988 of his lay-off, effective October 24th, 1988, at which date the grievor claims entitlement to displace Mr. Eden and requests a declaration to that effect and compensation from that date.

The Employer's position is that the grievor must have the ability to teach the full position of Mr. Eden as at the date of lay-off and as he did not have that ability, the grievor was properly laid off under the terms of Article 8.05 which, the parties agreed, applied in the circumstances of this case. The Employer's position is that the grievor must show that as of the date of the lay-off that he had the ability to teach the courses required of Mr. Eden both in the Fall and Winter term which would be for the full academic year and that the grievor was unable to satisfy that requirement. The Union took issue with that submission and its position the grievor had only to establish his ability to teach the courses at the time of the lay-off and not in the future for the full academic year.

Subsequent to the hearing, Ms. Eber sent to the Board an arbitration award between St. Clair College and UPSEU, dated May 15th, 1989 (Carter), which dealt with the definition of "position" referred to in Article 8.05. By letter, dated July 4th, Mr. Herlich made two submissions to the Board, firstly, that it should not receive or consider the Carter decision and, secondly, as to the conclusion which should be reached by the Board from that decision should it be considered.

Dealing firstly with Mr. Herlich's objection to the Board's use of the Carter award, the Board notes that it was

issued on the same day as the last day of hearing of the instant case and was therefore not available to Counsel to deal with at the hearing. The Board further notes that the Carter award is directly on point of an issue raised in these proceedings and deals with the interpretation of the same Collective Agreement and the same clause at issue in the present matter. In view of the immediacy of the release of that decision following the hearings in this matter, it is our opinion that, in fairness to this Board, as well as to the parties, Counsel was obliged to bring such an award to the Board's attention, as well as to the opposite party which Ms. Eber did, as the decision is substantially relevant to the issue with which this Board must consider in determining this grievance.

Both Counsel were given an opportunity to make written submissions to the Board as to the Carter award and there is no prejudice to anyone by the submission of this case to the Board. While we agree that post-hearing submissions of additional cases to those referred at the hearing when arguments were completed by the parties, should not normally be considered unless specifically directed by the Board, the circumstances of this case indicate a valid exception to that general practice. The Board therefore has received and has considered the Carter award and submissions of Counsel in that regard in its determination of the issues in the present

case.

The onus lies with the grievor to establish his entitlement pursuant to Article 8.05 (a) to displace Mr. Eden as he claimed at the time of the lay-off to determine that that entitlement is a question of the facts relating to the grievor's ability to teach the required courses as well as the Board's interpretation of the Collective Agreement in dealing with the evidence accepted by it. Most of the evidence of the grievor is clear and uncontradicted but some more particularly identified below was contradicted and placed in doubt by the evidence of Mr. Rowbottom who is Chairman of the Manufacturing, Mechanical and Construction Division of the College. It must first be determined in dealing with the evidence of the grievor's skill and experience to fill the position claimed which is that of Mr. Eden, is what courses are to be used for that determination and at what point of time is the "position" to be considered.

By Article 8.05 it is clear that the time for such consideration is "when the College decides to lay-off" which means the effective date of the lay-off of the grievor in this case which was October 24th, 1988. As of that date, under the terms of Article 8.05 (b) the laid-off employee has the entitlement to displace a less senior employee subject to

the conditions set out in that Article to fill the requirements of the position. It must be a full time position which is that which is covered by Article 1.01 of the Agreement and both the grievor and the incumbent are full time Teaching Masters covered by that definition.

The question then is what meaning is to be given to "position" for the purposes of the application of Article 8.05 (b). As the time for determination of the grievor's skill is as of the date of lay-off, it is the position held by the employee who the grievor seeks to displace which is at issue. His position at that time is made up of a number of courses of teaching for which he is responsible and for which he has been assigned by the College as indicated in the SWF's. Courses of instruction which he may be subsequently required to teach are not then part of the position, although it is expected that as a full time Teaching Master, he will be required to teach for the full academic year. Nonetheless, his position for the purposes of the lay-off provisions is, we find, that which covers his teaching assignments as of the date of lay-off. The Carter award dealt with the interpretation of Article 8.05 as a preliminary matter in that dispute and dealt with the definition to be given to the word "position". At page 6 of that award the Board stated:

"In the Board's view, what one must do in this kind of case is to determine the core pattern of duties and

responsibilities performed by an incumbent teacher during the course of her employment. It is this core pattern of duties that forms the content of the position against which the competence, skill and experience of the displacing employee must be measured. If it can be established that a displacing employee is capable of performing the core pattern of duties and responsibilities being performed by an incumbent with less seniority, then under the terms of Article 8.05 the incumbent would be displaced.

In determining this core pattern of duties and responsibilities, however, it is not sufficient to take a snap shot of the duties and responsibilities of the incumbent at just one point of time. Not only may some of the duties change from semester to semester, but some may also be peripheral to the central core of duties. Rather what we must do is to examine the actual work assignments given to an incumbent over an extended period of time to identify the basic pattern of duties and responsibilities performed by that incumbent. It is this core pattern of duties that makes up the position and provides an objective standard against which to measure the competence, skill and experience of the displacing employee."

The College's submission in that case was that Article 3.05 had created a threshold competition clause and "while a displacing employee did not have to show competence, skill and experience relatively equal to that of the incumbent, it was still necessary to establish that she could satisfactorily perform the work of the incumbent" and in that regard it was possible "to determine the content of the position based upon past experience" That reference and the conclusion reached by the Board in that

matter is significant in that it indicates that what is to be determined is the job content of the incumbent as at the date of lay-off together with the consideration of what had been the past requirements in that position.

The Carter award did not define the position in terms of future teaching assignments which would not be set by the College at that time for the entire academic year. If that was to be the criteria, it would be possible to defeat the seniority rights of the laid-off employee by structuring future courses in a manner which would effectively prevent that employee from exercising the displacement rights under Article 3.05 (b). As this clause has been changed by the parties from a relative equality competition clause contained in past Collective Agreements, to a sufficient ability requirement by which the laid-off employee must meet the conditions set out in the Article, in order to give effect to the seniority factor. The application of seniority is of significant importance to employees who are subject to lay-offs and which must be given effect under the terms of the agreement. We conclude that this Article requires the grievor to have the requisite competence, skill and experience to fill the position as at the time of lay-off. The "position" at that time is that which the incumbent fills with his responsibilities for teaching assignments at that time. That is the position of Mr. Eden

who has been named by the grievor as the individual he seeks to displace under Article 8.05 (b). We find that the grievor has the obligation to establish that as at the date of lay-off, he meets the requirements of Article 8.05 (b) to fulfill the position of Mr. Eden within that definition.

Having regard to the Board's finding set out above as to the definition of "position" to be applied for the purposes of the application of Article 8.05 (b), the evidence relating to Mr. Eden's teaching assignments as at October 24th, 1988, which is within the Fall semester must be considered with regard to the grievor's evidence of his skill and experience to teach those courses required by the College of Mr. Eden. 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. That 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 Rennie, unreported decision of Brown, October 23, 1985); 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."

The grievor testified that he became employed by the College as a Teaching Master in August 1984 and taught in the manufacturing - mechanical - engineering division of the College of production engineering subjects to students who were manufacturing engineering technologists and industrial engineering technicians and production management to first and second year Canadian business students. The grievor is a Professional Engineer in Ontario and holds qualifications as a B.Sc. Production Engineering (U.K.), is an Associate of the College of Advanced Technology, Birmingham, England, where he holds the designation of Chartered Engineer, has a diploma of Industrial Administration and is a qualified tool and die maker. His positions prior to his employment at the College in Canada included a Tooling & Methods Engineering Manager, Stratford; an Owner/Operator of a Manufacturing Company, Martin-Hall Ltd. in Stratford which supplied A.O. Smith of U.S.A. with type 1.2M BThU Heat Exchanger Units; was a partner & Production Manager of Flexible Dynamics Ltd. and Manufacturer of flexible metal expansion

joints at Stratford. He taught part-time at Conestoga College in their machine shop and apprenticeship programs between 1975 - 80. He was also a Sessional Teacher at Fanshawe College in 1980 for Engineering Drafting, Manufacturing Processes, Related Engineering for Hotel Management. From 1980 - 84 he was a full-time Teaching Master at Lambton College in Sarnia where he taught Machine Shop Practice, Metrology and Inspection Techniques, Manufacturing Processes, Materials Science, Strength of Materials, Basic CNC & Robotics, Industrial Engineering and Man Management, Plant Layout and Workstudy. The grievor filed with the Board a list of courses which he had taught at the College since his employment from the Fall of 1984 and, in addition, those courses which he taught at Lambton and Conestoga Colleges, the relevant parts of which we refer to below in the assessment of the grievor's ability to fill the requirements of the position referred to above. Having regard to that finding, the courses which Mr. Eden taught in the Fall of 1988 are relevant. The Exhibit filed indicated that Mr. Eden taught MECH 423, Plastics Technology; MECH 431, Material Technology 11; MECH 520, Design and Experiments I; MECH 530, Welding Technology.

The grievor considered the evidence given with respect to each of these courses in the foregoing order. MECH 423 is described in the Course Information (Exhibit 11)

as follows:

"This course provides an introduction to the technology of polymers. Topics include the production, classifications, application and operations involving polymers."

The grievor's evidence is that he had not taught this course before as it had not been in existence prior to the Fall semester in 1988. It was taken out of the context of Manufacturing Processes Courses where he taught metallic and non-metallic materials including plastic and dealt with the process, machines and theory. The course content was taken from an engineering technologist text which included ceramics and standard books for manufacturing processes used at the College. He said these parts of this course included courses which he taught at the College which would overlap with MECH 423 and specifically referred to Prod. 211, MECH 215, MECH 319, Prod. 210 and 334, Prod. 220 at Niagara. At Lambton he referred to MECH 250 and at Fanshawe MECH 105 which was manufacturing processes and Conestoga MTO 101B Industrial Engineering. He said the subject matter in these courses overlap the description of MECH 423 so that as of October 1988 he had the competence and skill and experience to teach this course. He said he has taught courses similar to this, but not the exact topics as set out in the Course Information.

Mr. Rowbottom is the Chairman of the Manufacturing -

Mechanical Construction Division of the College and had been the Co-ordinator of the Mechanical Division at Lambton College during the time when the grievor taught at that College. He holds a B.SCI. in Mechanical Engineering and a Masters in Applied Science and Chemical Engineering. At Snel Canada he was employed as a Design Engineer responsible for the non-destructive testing (hereinafter referred to as NDT) area. At Lambton 85% of his duties related to teaching, the balance to his duties as a Co-ordinator of four programs. In his current job he is responsible to manage the staffing of the department and to allocate teaching duties, budgets and maintenance of equipment and supplies, curriculum and supervision of staff and does not teach. It is his evidence that MECH 423 basically concerns the testing of rubber and plastic materials involved in making rubber and plastic products, as well as the structure of various rubber and plastics. A course in organic chemistry for polymer - chemistry or related industrial experience along with experience in testing of these materials is necessary to teach the course. In his opinion, the grievor could not teach that course because of the requirements in either of those backgrounds and at most could teach the Introductory portion in the first week only. He said this course arose as a result of job placements in the Industrial Engineering Program and to better prepare those students to work in that field. The area is under constant evolution and had been given in small components in other courses, but it

became an entirely new area of study in the programs offered at the College.

Materials Technology II (MECH 431) is described in the Course Information (Exhibit 10) as follows:

"Students are introduced to Non-Destructive testing procedures which they use to perform failure analysis on steel parts and tools. Formal analysis reports are written by the students on several failed parts.

They will also be introduced to Aluminum and its alloys, Stainless Steels with emphasis on their heat treatments, physical properties, and uses.

A general introduction to plastics, their composition, physical properties and uses will also be studied."

The grievor testified that the course had been taught for three years prior to his lay-off and that he had not taught the course. His evidence is that he has taught the subject matter of the course in other subjects, Mechanics of Materials (MECH 337) in the Fall of 1986 and covered NDT in that area. He also referred to MECH 319 Material Science in the Fall of 1985 which covered introduction to Aluminum and Alloys and the general introduction to Plastics. He used the same text which would be used in 431. In the summer 1985 he taught Manufacturing Processes (PROD 123) to welding technicians which included the testing and failure of modes and welding. In the Fall of 1984 he taught

Machine Design Practical (MECH 325) to Mechanical Engineering Technicians covering areas of pressure vessels and the boiler code. He said at Lambton he taught Strength of Materials (MECH 410 L) and MECH 480 including NDT and involved several types of material testing. He also testified as to his practical experience relating to that course in NDT in his Manufacturing Company. The grievor said that as of October 1988 he had the competence, skill and experience to teach that course.

Mr. Rowbottom's evidence is that the grievor had the skill and experience to teach about 40% of that course and would have difficulty with the polymer portion and NDT and failure analysis. NDT is an examination of the material for flaws and defects involving a number of different methods including magnetic particle inspection, ultrasonic and radiographic. To teach this course would involve related industrial experience and a course taught by the Canadian Non-Destructive Testing Institution in Hamilton along with industrial experience leading to certification at different levels. Failure analysis deals with metallurgical type failures which requires experience in the field in order to teach it. It is his evidence that there is no overlap with MECH 337. PROD 123 had some overlap in plastics and welding. There was no NDT in MECH 325 modes of failure

analysis. There was no NDT content in MECH 4 1011 at Lambton or any overlap with material technology 11.

Mr. Rowbottom testified that the grievor did not teach NDT theory at Lambton in MECHS 480 and 480L. He taught those courses while they existed and until the winter semester of 1985. He said he was the only person at Lambton to teach NDT and it was not possible that the grievor had taught that subject. The grievor had taught courses on the Strength of Materials but none of them dealt with NDT and failure analysis. He does not hold a certificate in NDT, but had worked in the field and was responsible for qualified individuals who worked under his supervision. He said the courses the grievor had taught at the College did not overlap with NDT and Failure Analysis. He acknowledged that the grievor does hold an NDT certificate.

Design of Experiments (MECH 520) is described in the Course Information (Exhibit 12) as follows:

"This course provides the principles of the statistical design of experiments, including such topics as randomization, replication and blocking. Basic statistical techniques, including the analysis of variance as applied to experimental data are also covered, as well as the use of orthogonal arrays and linear graphs."

The grievor said that before October this course had been taught once at the College. He had not taught this course,

but had taught courses which overlapped with it. He referred to courses taught at Lambton in Industrial Engineering TECH 585 and 685 which relate to the use of statistics and management tools in the design of experiments. He has an academic background in the use of statistics. His practical experience was in the areas of pre-production experiments using some form of design. He agreed that he had not taught at Lambton three of the topics under the heading "Comparison of Treatments" in the Course Information document but said the material is from a text book and was one of the Management tools referred to in the Industrial Engineering course which he did teach, but he would not have taught the same content matter. Those courses were designed for a Quality Program and he was teaching a general overview course. He also agreed that he had not taught at Lambton the topic "Introduction to Factorial Experiments" set out in the Course Information. Some reference would have been made in those courses but without saying the text. He was vague as to the extent of reference but did not think it would be at greater depth at Niagara. His evidence is that as of October 1983 he had the competence, skill and experience to teach this course.

Mr. Rowbottom testified that MECH 520 relates to a method whereby dominant factors can be determined in the outcome of a process used to do experimental work in agricultural, medical and manufacturing fields. It was

first taught at the College in the Fall of 1987 by Mr. Eden to students in Industrial Engineering who had reported their experience from their practical periods in that course to that class, but were not teaching the course as was suggested here. He said there was no overlap in that course and TECH 585 and 635 at Lambton. Design of Experiments is not a regular part of statistics. He said the grievor could teach only a part of this course and for the remainder he would need either course work or related industrial experience which is difficult unless working with someone who has had the skill.

Welding Technology (MECH 530) is described in the Course Information (Exhibit 13) as follows:

"Welding technology introduces the student to some of the theory and basic concepts or the following welding processes:

- a) Shielded Metal ARC (SMAW)
- b) FLUX Cored ARC (FACW)
- c) Gas Metal ARC (GMAW)
- d) Gas Tungsten ARC (GTAW)
- e) Submerged ARC (SAW)

Although no practical welding is performed by the student, there will be approximately four demonstration labs performed by the instructor."

The grievor testified that this course had been taught prior to October 1988 by Mr. Eden who was Co-ordinator of the welding program and while he had not taught that

specific course, he had taught the subject matter in Manufacturing Processes II (PROD 211) in the winter of 1987. That course relates to ARC and FLUX techniques, Tungsten and Submerged welding. He said about 20% of that course dealt with welding. In addition, a small portion was dealt with in Mech 532 which included the welding of joints. He has dealt with methods of joining plate and procedures of testing with pressure vessels and taught those techniques four times including a course at Conestoga College where he taught the blueprints and theory of welding techniques. In practical experience he has demonstrated welding procedures and obtained Ministry of Labour certificates and had trained other employees in his Company in welding in Manpower courses. He held welding tickets in braising for end fittings or heat exchangers. He was registered at Conestoga College as a Trainer on the welding process and general shop technology. He said he was qualified to demonstrate all five procedures in the Course Description as he has done all of them including Underwater welding in the Navy and has held tickets for all five procedures. He said he had the competence, skill and experience to teach the welding course in October 1988.

Mr. Rowbottom testified that while 530 is mainly a theory course, due to the short time of practical demonstration component by the instructor who demonstrates the five different types of welding and said that it

generally takes several months to be skilled in a process. He agreed that the grievor did teach PROD 211 but said there was no overlap between those two courses as there is no practical welding demonstration required. There had been a previous welding technology course but this was the first time this course was offered in a two hour per week format and was a different course than the former WELD 230 as to the practical component.

The submission of the Union is that the grievor's academic and practical experience in teaching the exact courses or those related to them in course content supports his claim that he was able to fill the position as at the time of lay-off. It was submitted that the conflicts in the evidence between the grievor and Mr. Rowbottom should be resolved in favour of the grievor whose recollection of the courses which he had taught should be preferred and, as well, noted that a large number of areas dealt with by the grievor were uncontradicted. MECH 319 overlapped with MECH 431 and 423 and involved the same text. In the Fall semester 1986 the grievor taught MECH 337 and some area covered in LABS and NDT and MECH 325. In its submission the overlaps in these courses are sufficient to establish the grievor's ability to teach the courses of Mr. Eden's position in October 1988. It was submitted the grievor had practical experience in the demonstration of the welding processes and had taught

welding as a supply and part-time teacher at Conestoga and was involved in welding in his practical experience.

MECH 423 was a new program but the grievor had used the same text in another course he taught and there was overlap with MECH 250, prod 211 and MECH 215. The grievor had taught some aspects of plastics at Fanshawe College. It was submitted that there were no obstacles to conclude that the grievor could teach this program.

It was submitted that the grievor had covered Statistics while teaching at Lambton in Industrial Engineering and had practical experience in the design of experiments. It was submitted that unlike previous arbitration awards which dealt with the relative ability clauses found in the previous Collective Agreements, the test is now that of sufficient ability for the purposes of Article 3.05 (b) and in its submission the grievor had met that threshold test and was qualified at the time of lay-off to teach the courses which were then being taught by Mr. Eden and should have been allowed to displace Mr. Eden at that time.

It is the submission for the College that the issue is whether the grievor had the competence, skill and experience to fill Mr. Eden's position which in its

submission dealt with the full academic year. The College relied on the evidence of Mr. Rowbottom which in several areas contradicted the assertions of the grievor's previous experience in teaching in design and experiments and NDT. In its submission the overlaps which occurred in some courses were not sufficient to cover the requirements of the courses taught by Mr. Eden at that time. The grievor, in its submission, did not establish that his skills in his involvement in other courses were transferrable to teach Eden's position and therefore did not meet the onus on him to establish his entitlement under Article 8.05 (b). Reference in that regard was made to Re Conestoga College and OPSEU (Sname, January 1985) at page 2 where the Board stated:

"In the final analysis, while we feel that some of Mr. Keatings skills are transportable, it would only be a guess on our part as to whether he could perform the full range of duties required of a counsellor."

Reference was also made to Re Conestoga College and OPSEU (Brown - October 1985) where it was found that:

"The College is not required under the Collective Agreement to allow a displacement by a senior employee unless that employee has the immediate confidence and qualifications within the meaning of Article 8.05 to carry out the course objectives . . .

The grievor did not establish in his evidence that he could suitably perform all of the teaching functions required of Mr. Chilton in the Industrial Maintenance Mechanical program. The college is entitled to rely

on its Teaching Masters to cover all or the functions in a particular course required of that teacher and in circumstances of the continuous intake of students and a rotation with other Teaching Masters both in the theoretical and practical application of the various subject. It is clear to the Board that the grievor could not meet those demands within the meaning of Article 8.05."

For the purposes of this award, the Board has condensed the evidence of the two main witnesses called in these proceedings dealing with the requirements of the position which we have defined above as at the date of the lay-off of the grievor, but we have considered all of the evidence given by the witnesses which necessarily requires a determination of their credibility in some of their evidence in these proceedings in order for the Board to determine the issue under Article 3.05 (b) relied on by the grievor. It is difficult indeed to make such a determination in testimony given by two intelligent, qualified and well meaning participants in the instructional or activities of the College. In the total context of the issue however, the Board is obliged in consideration of all of the evidence to assess the appropriate weight of the evidence as to its determination of whether the grievor met the onus on him to establish that as at the date of lay-off he met the conditions of Article 8.05 (b) to fulfill the requirements of the position of Mr. Eden who he sought to displace following his lay-off. In making

this decision the Board must consider the probabilities in the statements of the witnesses in relation to the issue and determine the contradictions which arose in parts of the testimony accordingly. On that basis we have preferred parts of the evidence of each witness to the other but have not rejected the balance of their testimony as we find that neither of them was attempting to mislead the Board but rather had formed definite opinions in some areas in dispute based on their recollections. We have taken these factors into account in our determinations in this case.

There are a number of areas which are uncontradicted insofar as the grievor's qualifications in each of the courses required in that position in the 1988 Fall semester. There are also, as indicated above, direct contradictions as between Rowbottom and the grievor in significant areas of two courses covering NDT and Plastics. We also note the grievor's fair acknowledgement that Rowbottom ought to know the courses which he had taught as he was the Co-ordinator at Lambton and his supervisor both there and at Niagara.

The Board finds on the evidence that the grievor met the test of establishing his qualifications to teach the Welding Technology and Materials Technology II courses. While there was some indication of conflict as to the

grievor's teaching experience as to welding, Mr. Rowbottom acknowledged that while the information was not given to him at the interview with the grievor he accepted the grievor's assertion of his ability and past experience with regard to welding processes which corresponded to those in the Course Information. The evidence indicates to us that the grievor had been both academically and empirically qualified to teach each of the parts referred to in Weld 530 Course Information document set out above. The grievor had performed all the welding procedures and established that he could demonstrate the required techniques.

The Board is also satisfied that the grievor demonstrated his qualifications with regard to Non-Destructive Testing. There is direct conflict in the evidence in this regard, however, on balance, we have resolved that conflict in favour of the grievor. The evidence was that the grievor held a certificate in NDT which is a basis at least for instruction in that area. We must conclude on the basis of the grievor's testimony concerning his involvement with NDT and tests of materials that on the balance of probabilities he had taught the context of this course at Lambton. Apart from that however, there were other areas of overlap with this course in MECH 119, 337 and 325. The same text was required in 431 as in other courses in which the grievor had been involved

and, particularly, with reference to the tests required in the topics for MECH 319 which the grievor taught in the fall semester of 1985. We are satisfied that the grievor established his qualifications to teach MECH 431 to the extent required by the College in October 1988.

The evidence indicates that MECH 423 was a new course in the program which the grievor acknowledged he had not taught before. The overlaps from other courses which he had taught with Plastics indicated in MECH 319 one week of the use of plastics in design engineering. Mr. Rowbottom's evidence is that the requirement for this course is concentrated and specialized whereby a background in organic or polymer chemistry or its equivalent is required by the College. The background of the grievor to teach anything other than introductory type technology is not before the Board. The grievor claimed that he taught this subject in other courses at Lambton and Fanshawe but the Board was not provided with course outlines for comparison purposes with the requirement of MECH 423 at Niagara in order to make the appropriate assessment in that regard. The grievor uses the same text in MECH 319, however, it must be concluded on the evidence that the grievor's teaching experience in Plastics with regard to the Course Description, is limited to the extent that the Board could not be

satisfied that he could teach that course to the requirements of the College as of the date of his lay-off. The grievor's academic background is in mechanical and production engineering and his practical business and teaching experience is in the metallurgical field not chemicals or plastics. The grievor has taught introduction to polymer technology and the use of plastics relating to the use of machines for processing plastics, but as the course basically concerns the testing of rubber and plastic materials concerned with making rubber and plastic products and structure of various rubber and plastics it requires a course in organic chemistry or polymer chemistry or related industrial experience as a background to teach that course. We accept the evidence of Mr. Rowbottom in this regard that the grievor's depth of experience in these areas, both at a practical and academic level, would not, be sufficient to meet the College requirements of teaching in this course as of October 1988. We find on the evidence that the grievor did not establish that he had the required background or training or experience to teach MECH 423.

MECH 520 is a course which exclusively involves the use of Statistics. The grievor's teaching experience in this area is limited to the use of statistics within an Industrial Engineering course. The grievor indicated that he had

only limited use in the application of statistics in his industrial experience. His academic training in statistics related back to a course in University in 1962 and has never taught the subject. Mr. Rowbottom's evidence, which we accept in this area, is that this course was first taught at the College in the Fall of 1937 by Mr. Eden who was responsible for the course. He acknowledged that Mr. Martin could teach the course for possibly the first week requirements which is a "review concept of probability and statistical mathematics" but said that the grievor could not teach the balance without course work or related industrial experience which he did not have. We accept Mr. Rowbottom's evidence that there was no overlap in the context of the requirement of this course in total with the courses taught by the grievor at Lambton referred to as TECH 585 and 685. While the grievor maintained that the subject had been previously taught as part of another course, we accept the evidence of Mr. Rowbottom that this is a new course which was designed to respond to new development in the practical application of statistics. Mr. Rowbottom is responsible for the course which was taught by Mr. Eden and the grievor has never taught it, we have preferred the evidence of Mr. Rowbottom on this issue.

Having regard to the foregoing conclusions reached by the Board and the evidence before us, it is clear that

while the grievor is found to have been able as at October 1988 to teach part of the teaching assignments of Mr. Eden at that time which amount to one-half of the course requirements of the position the grievor has not established his qualifications to teach two of the four courses required in the Fall semester of 1988 which was then being taught by Mr. Eden, the individual whom the grievor sought to displace. It is not sufficient in the application of the conditions of Article 8.05 (b) to deal with potential skills. The Board must be satisfied on an objective basis that the position claimed could be fulfilled by the grievor to teach the course contents required by the College. To infer abilities from subjective statements of competence in areas or courses where there was practical unfamiliarity would be mere speculation by the Board which is not sufficient to discharge the grievor's responsibility in the application of this article. The employee seeking to displace another employee in a lay-off must establish that he has the competence, skill and experience to perform the requirements of the position at that time. The Board concludes that the grievor did not satisfy this onus.

In the circumstances the Board finds that it is unnecessary to make a determination as to whether the grievor could have taught the two additional

courses taught by Mr. Eden in the winter term of 1988. As the grievor did not establish that he had met the requirements of Article 8.05 (b) at the time of his lay-off, in order to exercise his seniority to displace Mr. Eden, his grievance cannot succeed.

Having regard to all of the evidence and the submissions of the parties and for the foregoing reasons, the Board finds that the Union did not establish that the employer was in violation of the Collective Agreement in the lay-off of the grievor in October 1988 as alleged in the grievance. Accordingly, it is the Board's award that the grievance is dismissed.

DATED AT OAKVILLE, THIS 31st DAY OF OCTOBER, 1989.

Howard D. Brown
HOWARD D. BROWN, CHAIRMAN

R.J. Gullivan
R.J. GALLIVAN, COLLEGE NOMINEE

Wayne Roberts
WAYNE ROBERTS, UNION NOMINEE