

91D252^{91M}
Local 653
CAAT(A)

IN THE MATTER OF AN ARBITRATION

BETWEEN NORTHERN COLLEGE

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE GRIEVANCE OF R. MASON, FILE #91D252

O.B. SHIME, Q.C. CHAIRPERSON

D. CAMELETTI NOMINEE for the Employer

J. McMANUS NOMINEE for the Union

APPEARANCES

G.W. GIORNO COUNSEL, and others
for the Employer

P.A. CHAPMAN COUNSEL, and others
for the Union

Hearings in this matter were held on November 12, 1991 and May 20, 1992 at Timmins, Ontario.

06-18-92

AWARD

In this matter the Union grieves, claiming that the College is improperly classifying employees. There are extensive particulars given in the grievance and some agreement between the parties as to what appears to be in issue. It is also apparent from the submissions and the evidence that this grievance concerns continuing education programs and whether persons employed in continuing education and other programs, such as special programs, have certain rights under the collective agreement and whether full time employees may have rights with respect to those programs.

At the outset the College submitted that this matter was not properly the subject of a Union grievance and relied on Article 11.10 of the collective agreement which provides as follows:

11.10 Union Grievance

The Union or Union Local shall have the right to file a grievance based on a difference directly with the College arising out of the Agreement concerning the interpretation, application, administration or alleged contravention of the Agreement. Such grievance shall not include any matter upon which an employee would be personally entitled to grieve and the regular grievance procedure for personal or group grievance shall not be by-passed except where the Union establishes that the employee has not grieved an unreasonable standard that is patently in violation of this Agreement and that adversely affects the rights of persons in the bargaining unit.

Such grievance shall be submitted in writing by the Union Grievance Officer at Head Office or a Local President to the Director of Personnel or as designated by the College, within twenty (20) days following the expiration of the twenty days from the occurrence or origination of the circumstances giving rise to the grievance commencing at Step No. 1 of the Grievance Procedure set out above.

While the first sentence of Article 11.10 permits the filing of a Union grievance, the exception in the grievance procedure contains a number of obstacles to a Union grievance, such that the exception almost swallows the right to file a union grievance. In support of the preliminary objection, counsel for the College has filed a number of cases.

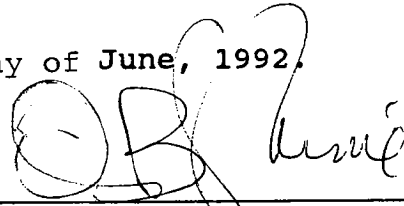
Notwithstanding the able argument of both counsel, it is apparent that this matter is properly the subject of a Union grievance. It is a matter that really involves the scope of the bargaining unit and whether certain work such as continuing education is work that falls properly within the bargaining unit so that rights accrue to employees performing that work and also whether employees who are agreed to be in the bargaining unit also have rights with respect to that work such as displacement rights in the event of lay off. The Union's concern and interest is manifest in the remedy requested where the Union claims Union dues from the College for employees whose status may be affected by an award in their favour.

In our view, after duly considering the evidence and argument, the nature of the claim is such that it would not infringe the exception to Union grievances as contemplated by the second sentence of Article 11.10. An individual employee would not have the right under Articles 11.01 to 11.05 to grieve about the matters

that we have outlined and are the subject matter of this grievance, particularly those matters that deal with the scope of the bargaining unit and nature of the work or courses that are or are not covered by the collective agreement, and whether the College is required to deduct Union dues for all persons teaching those courses.

In the result the preliminary objection is denied and this matter will be scheduled for the continuation of a hearing on the merits on a date to be determined after due consultation with the parties.

Dated at Toronto this 18th day of June, 1992.



O.B. SHIME, CHAIRPERSON



D. CAMELETTI, NOMINEE for the Employer

"J. McManus"

J. McMANUS, NOMINEE for the Union