

CAAT (A) 94B 983 94
Local 417

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS AND
TECHNOLOGY IN THE FORM OF ST. LAWRENCE COLLEGE
(hereinafter called the "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(FOR ACADEMIC EMPLOYEES)
(hereinafter called the "Union")

GRIEVANCE OF M. McCABE
(hereinafter called the "Grievor")

BOARD OF ARBITRATION:

Richard H. McLaren, C.Arb.

Brian Switzman, Union Nominee

R.J. Gallivan, College Nominee

COUNSEL FOR THE COLLEGE:

Christopher G. Riggs, Q.C.

COUNSEL FOR THE UNION:

David Jewitt

HEARINGS IN RELATION TO THIS MATTER WERE HELD AT KINGSTON, ONTARIO, ON NOVEMBER 14, 1994, APRIL 27, APRIL 28, SEPTEMBER 21, OCTOBER 25, 1995, MARCH 5, 1996. Interim written Ruling September 20, 1995, WRITTEN ARGUMENTS COMPLETED ON MAY 1, 1996. EXECUTIVE SESSIONS BY CONFERENCE TELEPHONE CALL ON JANUARY 26, 1997 AND ON JANUARY 30, 1997.

A W A R D

Professor Mary McCabe commenced her employment with the College as a part-time professor in 1988. She became full-time in March, 1990. The grievances concern her layoff in the spring of 1994. In one grievance she alleges that she was improperly laid off and has the right to displace less senior employees doing full-time, partial load, sessional or part-time work (Exhibit 3). The other grievance asserts that the CESC Process by which the Grievor was laid off "was flawed" (Exhibit 5).

The lay-off process is prescribed by Article 27, which reads in part:

Article 27 JOB SECURITY

...

27.05 (iii) If requested by a member of the CESC within three calendar days following the meeting under 27.05 (ii), the CESC shall meet within seven calendar days of receipt of such request for the purpose of discussing the planned staff reduction, the circumstances giving rise to the reduction, the basis for the selection of the employees affected and the availability of alternative assignments. It being understood that the College reserves the right to determine the number and composition of full-time, partial-load and part-time or sessional teaching positions subject to such operational requirements as the quality of the programs, their economic viability, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students and the community. The CESC may require that further meetings be held.

...

27.06 When the College decides to lay off or to 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 fulfil the requirements of the full-time position concerned, seniority shall apply consistent with the following:

- (i) 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.
- (ii) Failing placement under 27.06(i), such employees shall be reassigned to displace another full-time employee in the same classification provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College.
- (iii) Failing placement under 27.06(ii), such employee shall be re-assigned to displace a full-time employee in another classification upon acceptance of the identical employment conditions as the classification concerned provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College.
- (iv) Failing placement under paragraph 27.06(iii), such employee shall be reassigned to displace two partial-load employees provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned;
 - (b) each of the partial-load employees being displaced has lesser months of service with the College as determined in Article 26, Partial-Load Employees, than such displacing employee's months of seniority; and

- (c) it is understood that the College retains the right to assign additional work to the employee, where warranted, subject to the limits prescribed by Article 11, Workload.

- (v) (a) Failing placement under 27.06(iv) or where the employee has waived in writing the right in 27.06(iv), such employee shall be reassigned to displace one partial-load employee and one or more part-time employees whose assigned courses are as described in 27.06(v)(b), provided that:
 - (i) The displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned; and
 - (ii) each of the employees being displaced has lesser months of service with the College (as determined in Article 26, Partial-Load Employees, or Appendix IX, as appropriate) than such displacing employee's months of seniority; and
 - (iii) it is understood that the College retains the right to assign additional work to the employee where required so that the work assignment so created constitutes a full-load assignment in accordance with the limits prescribed by Article 11, Workload.

- (v) (b) The courses taught by the part-time employees displaced must be:
 - (i) the same as, or
 - (ii) essentially the same as, or
 - (iii) pre-requisite courses to those taught by the partial-load employee concerned.

- (v) (c) Such employee shall have the layoff notice extended until completion of the assignment

so created and shall maintain current salary and benefits for the duration of that assignment.

- (v) (d) Upon completion of the assignment so created, or as mutually agreed between the College and the employee, such employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (v) (e) Failing placement under 27.06 (v)(d), such employee shall be laid off without further notice upon completion of the partial-load assignment.
- (vi) (a) Failing placement under 27.06(v) or where the employee has waived in writing the right in 27.06 (v), such employee shall be reassigned to displace one partial-load employee and engage in approved retraining activities such that the employee retains current salary and benefits for the duration of the partial-load assignment provided that:
 - (i) the displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned; and
 - (ii) the partial-load employee being displaced has lesser months of service with the College (as determined in Article 26, Partial-Load Employees) than such displacing employee's months of seniority.
- (vi) (b) Such employee shall have the layoff notice extended until completion of the partial-load employee's assignment and shall maintain current salary and benefits for the duration of the partial-load assignment.
- (vi) (c) Upon completion of the partial-load assignment, or as mutually agreed between the College and the employee, such

employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.

- (vi) (d) Failing placement under 27.06(vi)(c), such employee shall be laid off without further notice upon completion of the partial-load assignment.
- (vii) (a) Failing placement under 27.06(vi)(a), or where the employee has waived in writing the right in 27.06 (vi)(a), such employee shall be reassigned to displace a sessional employee (who has more than 90 days remaining on the sessional employee's term appointment) provided that the displacing employee has the competence, skill and experience to fulfil the requirements of the position concerned.
- (vii) (b) Such employee shall have the layoff notice period extended until completion of the sessional employee's assignment and shall maintain current salary and benefits for the duration of the sessional assignment.
- (vii) (c) Upon completion of the sessional assignment or as mutually agreed between the College and the employee, such employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (vii) (d) Failing placement under 27.06(vii)(c), such employee shall be laid off without further notice.
- (viii) (a) Failing placement under 27.06(vii)(a), or where the employee has waived in writing the right in 27.06(vii), such employee shall be reassigned to displace a part-time employee upon acceptance of the identical employment conditions as the part-time employee concerned provided that:
 - (i) the displacing employee has the competence, skill and experience to

fulfil the requirements of the position concerned; and

- (ii) the part-time employee being displaced has lesser months of service with the College as determined in Appendix IX than such displacing employee's months of seniority.

- (viii) (b) Such a reassigned person shall be deemed to be laid off and eligible for recall in accordance with 27.09 B and 27.09 C, 27.03 E and the rights under 27.09 A.
- (viii) (c) Failing placement under 27.06 (viii)(a), such employee shall be laid off with written notice of not less than 90 calendar days. Such employees shall be granted release from all or part of the normally assigned duties, for this period of notice, for the purpose of engaging in retraining activities, where such release is not possible, the notice period shall be extended by up to 90 days to permit retraining and the employee shall maintain current salary and benefits for the duration of the notice period.
- (viii) (d) At the termination of the period referred to in 27.06 (viii)(c), such employee shall be reassigned to a vacant full-time position, if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (viii) (e) Failing placement under 27.06(viii)(d), such employee shall be laid off without further notice.

...

27.08 B If the grievance is processed through Step 2, the written referral to arbitration in 32.03 shall specify, from the positions originally designated in 27.08 A, two full-time positions, or positions occupied by two or more partial-load or part-time employees (the sum of whose duties will form one full-time position), who shall thereafter be the subject matter of the grievance and arbitration. The grievor shall be entitled to arbitrate the grievance thereafter under only one of (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of 27.06.

...

27.16 Extension and Continuing Education programs and courses which are not included in the regular assignment of full-time employees are excluded from the application of this Article for all purposes.

...

28.02 B Each CESC will be composed of four members, with two to be appointed by the College and two by the Union Local. The term of office of each member shall be one year, which may be renewable, commencing on September 1 of each year. Alternative arrangements may be made at the local level upon agreement of the Union Local and the College.

...

32.03 Failing settlement of a complaint, it shall be taken up as a grievance (if it falls within the definition under 32.12 C) in the following manner and sequence provided it is presented within seven days of the immediate supervisor's reply to the complaint. It is the intention of the parties that reasons supporting the grievance and for its referral to a succeeding Step to be set out in the grievance and on the document referring it to the next Step. Similarly, the College's written decisions at each step shall contain reasons supporting the decision.

...

(1) CESC Process - Flawed Grievance {Exhibit #5}

At the time these grievances, arose the particular local parties had not had much experience with the use of the lay-off procedure of the Collective Agreement. Pursuant to Article 27.08 A the employee is required to

"...state in the grievance the positions occupied by full-time and non-full-time employees whom the employee claims entitlement to displace..."

This was not done because the College had not provided the necessary information to do so. Indeed, it was only provided after May 16, 1994 following the settlement of a Union policy grievance on the matter. {See Exhibit # 7}

The structure of the process continues in Article 27.08 B on the presumption that 27.08 A has already been complied with. This Article contemplates that if the grievance process has been unsuccessful in resolving the dispute then the written referral to arbitration shall specify:

"...from the positions originally designated in 27.08 A, two full-time positions, or positions occupied by two or more partial-load or part-time employees (the sum of whose duties will form one full-time position), who shall thereafter be the subject matter of the grievance and arbitration..."

The parties proceeded to craft their own process, not using the literal one contained in the Collective Agreement because they had not followed the 27.08 A process. None of the original grievances identified positions. They were identified at the Step 2 stage. Exhibit #7 then proceeded to identify courses.

To obtain the right of displacement there are two requirements: first, that the Grievor possess the necessary competency, skill and experience to teach the identified courses; and second, that the designated courses be taught by individuals with less seniority. Those designated courses then become the subject-matter of the grievance and arbitration.

The Grievor was never formally advised that her "name was at the table". Indeed, she believed that she had a workload for the Autumn of 1994. Despite her belief that she had made it through the CESC procedure unscathed, she provided an Academic Fact Sheet (Exhibit 11) in accordance with the CESC procedure. In that document she outlined various alternatives and other courses which she could teach in the event that it might become necessary to do so. The document indicates that she considered herself qualified and able to teach English

as a Second Language. Her action in filing this information indicates that while she was hoping that it would not occur, she was aware that there was a possibility of lay-off. Mr. Finucan had communicated that possibility to her because of her position on the seniority list. Consequently, the Grievor had some apprehension that there might not be work available for her. Upon learning the day before Good Friday that she was to be laid off, she was understandably upset. This is the background to her grievance that the process is flawed.

The CESC process is a joint College/Union process with recommendations being made to the President. The very nature of this process as set out in the Collective Bargaining Agreement is for the purpose of trying to ensure that there is adequate input and that all of the different possibilities can be considered. The process is also designed to obviate the necessity to have proceedings such as the present one, which long after the fact examine the ripple effects and ramifications of lay-off.

There is no evidence in this proceeding establishing that the CESC did not have the relevant information before it; nor, that it did not discharge its obligations in a satisfactory manner. The assurance that the process is satisfactory is obtained by the presence of the Union in equal numbers to the members of the College on the committee that runs the process. The process is confidential, of necessity, in order to minimize the anxiety and other conduct which might arise in the course of a more public discussion of the alternatives. The end result of the process is the recommendations going to the College President and the Union Local President. It is the integrity of the process and its bipartisan nature that is the assurance that everyone in the bargaining unit who might be affected is dealt with in a fair fashion. If the CESC is not operating in a satisfactory manner then those on the committee would have a duty to ensure it

operated as stipulated in the bargaining unit or take other action such as resignation in order to stop the process from proceeding in a flawed manner.

It is not for Boards of Arbitration to attempt to open up the door and look into the process in the absence of significant evidence of wrongdoing and testimony before the Board to that effect. The Grievor was no doubt shocked and dismayed by the end results of the process and through her own self-denial believed that she might well be employed in the Autumn of 1994. Nevertheless, there is no evidence to establish the allegation in the grievance that the process was flawed and, therefore, she ought not to have some remedy because of it.

It is submitted on behalf of the Grievor that the work of the CESC committee was flawed by the inferences that can be made from the recommendations of the committee. One of those recommendations was that an employee named Rosalind Robertson displace the Grievor. The inference urged upon us is that because the Grievor's name was never "at the table", alternative teaching placements for the Grievor herself were never considered. It is submitted on behalf of the Grievor that there were other employees that could have been bumped (Exhibit # 19) thereby sparing the Grievor. The thrust of these submissions is to seek indirectly to have this Board look into the internal work and application of the committee. This is not something that a Board of Arbitration should do. The original names placed before the committee are those directly and immediately affected by the cutbacks proposed by the College. The detailed review of the options and alternatives lies at the core of the work of the CESC Committee. They do not, as is argued, usurp individual rights to bump. The clear operation of the agreement is that after the CESC deliberations, the provisions of Article 27.06 take effect. It is at that time that there is a right to bump controlled by that Article. The issues as to the Grievor's status and that

of Ms. Robertson and other employees was the focus and responsibility of the CESC Committee. If the Grievor emerges out of that process with a lay-off notice then she has a right to launch a grievance under the agreement as she did to displace other employees. The Board should not look into the work of the Committee merely because by inference from some of the evidence the Committee might have decided things in a different fashion than the recommendations it did make. Therefore, the Board concludes that the CESC process was not flawed and that grievance must be dismissed. It is so ordered.

(2) Improper Layoff - Grievance {Exhibit #3}

(a) Ability to Teach the "Composite" Courses

During the course of these proceedings the Grievor and the Union designated two separate or composite positions occupied by less senior employees, which, in accordance with Article 27.08 B have become the "subject matter of the grievance in arbitration". A full-time position was designated in the English as a Second Language course taught by Allison Motluck in Hungary pursuant to an international joint venture between the College and an institution in Hungary. The second "composite course" designated by the Grievor is at the Cornwall campus. It is comprised of French 201-601, Conversational French, Catherine Christea - 5 hours, French 101-601, Conversational French - Omerine Laurin - 5 hours, together with ENO10-207 Applied Communications Theory GAS - Marg McDonald -2 to 3 hours. The composite course totals 12 hours of teaching per week unless the course also taught by Ms. MacDonald described on Exhibit 8A as "Trades English" is included in which case the load totals 13 hours of teaching

per week. It was agreed between Counsel that the Grievor had the ability to teach the EN010 courses and the Conversational French courses.

The contorted history of how the Union arrived at the foregoing two positions will not be reviewed herein. Suffice it to say that this Board was required to make several rulings, engage in several conference telephone calls with counsel, issue a written interim ruling dated September 20, 1995, followed by further rulings at subsequent hearing days. The process of selecting positions raises some issues as to the interpretation of Article 27.08B.

That Article requires the written referral to arbitration to specify "two full-time positions **or** positions occupied by two or more partial-load or part-time employees (the sum of whose duties will form one full-time position)". It is these positions which are then to form the subject matter of the grievance and arbitration. Counsel for the Union specified one full-time position during the course of the arbitration proceeding, that being the ESL position in Hungary (analysis to follow), as well as a "composite position" consisting of a series of courses. This approach raises two issues as to the interpretation of Article 27.08B. Can both a single full-time position **and** another "composite" position be specified under the alternate language? If so can the position under the alternate language be a series of courses making up a composite position? If the answer to that question is in the affirmative then a further issue in relation to Article 27.16 may arise.

The entitlement to carry on with the arbitration process is limited by Article 27.08B to one of the specific provisions found in clauses (i) through (viii) of Article 27.06. The language of the Article being stated as two-full time positions and "positions occupied by two

or more..." contemplates two in either category. The issue raised by this grievance is whether 27.08B allows for the Grievor to include both a full-time and a "composite" designate. The structure of the language would appear to permit an alternative of one full-time and one composite position as is claimed in this proceeding. The language permits at least one position being specified which is a composite of positions occupied by two or more partial-load or part-time employees". The inference from the language deployed would be that there could be two such positions specified. Therefore, there would be nothing seemingly wrong, given the language of the Article with including both a full time position and a position which was in effect a composite as described in 27.08B. The qualifier on a composite position being that "the sum of the duties will form one full-time position". Therefore, the board concludes that the Grievor could designate one full-time and one composite position. However, the limitation on that method of compiling the two positions is the reference to Article 27.06 found at the end of 27.08B.

The arbitration entitlement of the two positions can **only** be made out under **one** clause of 27.06. The courses designated in the composite-position are not a vacant position as referred to in Article 27.06(i) but are under either clause (iv) or (v). The other named position is a full-time vacant position within Article 27.06(i). The Collective Agreement is explicit in stating that the grievor is entitled to arbitrate "the grievance thereafter **under only one of...**". The two positions, the full-time and the composite must be arbitrated under a single provision of the lay-off procedure in Article 27.06.

There is also the difficulty of whether the "composite position" selected "forms one full-time position". Article 27.08B states that "the sum of whose duties will form one full-

time position". A full load is between 13 and 18 hours. In this case the composite only totals 12 hours as proved in this proceeding. The additional hour to reach 13 would have to include the "Trades English" course about which no evidence was adduced. When this flaw is combined with the fact that the Grievor seeks to arbitrate under more than one clause of Article 27.06 results in this Board not having to assess the composite position as being one which is the subject of the arbitration. The effect of that decision is treat this case as being one related solely to the full time position of Article 27.06(i) for a full-time vacant position.

Thus, the Grievor can be successful in this grievance if she is able to establish the ability to teach the course and its eligibility under the Bargaining Agreement for the **full-time** position in Hungary.

(b) Ability to Teach the ESL Position in Hungary

In order to fill a vacant position the Grievor must have the competence, skill and experience to perform the requirements of the position. It has been held that to be so considered, it is not necessary that a person has actually taught a particular course such as the ESL course. See an unreported decision between Niagara College & Ontario Public Service Employees Union, a decision by a Board of Arbitration chaired by Arbitrator Devlin dated November 20, 1989 at p. 10 & 11:

...an employee is not confined to demonstrating his skill, competence and experience by establishing that he previously taught the particular course in issue. Instead, an employee may demonstrate that he has sufficient knowledge of the subject matter to be able to fulfil the requirements for the position.

Therefore, it is possible for an employee such as the Grievor to demonstrate that they have sufficient knowledge of the subject-matter to teach the ESL course. However, in teaching languages, knowledge of the subject matter is not the only substitute for having taught the courses. There is a distinction to be drawn in this case from that of the Re Niagara College, supra, case. Experience which is directly related to the type of student taking the course is also a requirement particularly when one has no direct teaching experience with the course. The College never considered her for this position and makes its submissions that she is not qualified as required by the job description set out in Exhibit 14(b). Her only direct experience with teaching such courses was early in her career while she was at Teacher's College. She must establish that she has knowledge of the subject matter and experience with the type of student who takes an ESL course offered by the College.

It is undisputed that the Grievor does not have the qualifications set out in the job posting in that it is required that the candidate have "a University Degree and Post-graduate Study in English as Second Language". The issue in the view of one Board of Arbitration in an unreported decision between Seneca College of Applied Arts and Technology and Ontario Public Service Employees Union, a decision by a Board of Arbitration chaired by Arbitrator Devlin and dated June 7, 1991, was:

...we do not rule out the possibility that a sufficient background in literature could be demonstrated by some equivalent experience...

For an ESL course like the one involved in Hungary, not only is sufficient background required to say that it substitutes for qualifications, but also experience with the type of student involved. The issue becomes whether the Grievor has sufficient background and experience so as to permit her to be treated in a similar fashion to those who have formal qualifications and experience.

The Collective agreement requires that the person have the "competence, skill and experience to perform the requirements of a vacant position"; and the job posting requires that the person has a qualification of a university degree and post-grad studies and experience in ESL.

Degrees in ESL have only recently been made part of university curricula as the expert witness, Jill Doherty's testimony indicates. Many teachers of ESL do not have such qualifications. Indeed, none of the professors at the College teaching ESL in Ontario or in Hungary possess the formal degree or certification which is now available. The Grievor could meet the qualification requirement in the job posting if she can show sufficient background to do the teaching in both subject matter and pedagogical experience with the type of student involved in such courses.

It is her evidence that the necessary background and experience to be considered as equivalent to the formal qualifications comes from three sources. First, her private tutoring work; second, from teaching individual or groups of students enrolled in her introductory or upgrading English classes; and third, from her teaching experience during her training as an elementary school teacher. Furthermore, she submits that her experience in teaching French as a Second language to children in grades 4 to 13 and adults in the evening is related experience.

Ms. Doherty was qualified as an expert witness. She is currently working as the Secondary Coordinator, English as a Second Language Reception Centre for the Carleton Board of Education in Ottawa. She holds an ESL Specialists Certificate from the University of Ottawa and a Master of Education in Second Language teaching. She testifies that the Grievor's past

experience in teaching French as a Second language and her elementary school experience was relevant and transferable knowledge concerning her current ability to teach ESL.

Ms. McCabe taught high school French as a Second Language from September, 1969 to June, 1972 and elementary teaching from September of 1972 to June of 1975. This is part of the experience which the expert witness indicated was relevant and transferable. The Board notes that experience was more than twenty years prior to the issues under consideration in this award. It is relevant experience but severely dated. That experience is then not updated until her teaching with the College through night school and elementary teaching with some high school supply teaching.

On her own initiative and much to her credit she undertook to assist students of the EN010 course in their English development. These students came from a variety of countries and cultural backgrounds, and some of them were being taught at a post-secondary level. She also had some personal experience with a particular individual in her home town during this period of working for the College.

Ms. Doherty was asked her expert opinion, both in chief and on cross-examination, as to Ms. McCabe's ability to do the job in Hungary. She had reviewed all of her experience and discussed her teaching methodology with her. The College had not considered the Grievor for the ESL position in Hungary and she had not applied for the job posting because at that time she was employed full-time by the College and her name was not at the table in the CESC process. Ms. Doherty advised that her Board required that people had taken at least Part 1 of the ESL program at the University of Ottawa before being employed. It was her opinion

that the Grievor knew about the "main ideas in ESL Part 1" and she had no doubt that she could complete Part 1. She expressed the view that she was sure the Grievor could teach the students. Although she did add towards the end of her examination in chief the qualification that one would have to look at the candidate's overall experience and background as well as the requirements of the job in Hungary of which she knew nothing. In cross-examination she emphasised the importance of formal education in ensuring that the necessary competence and skill in ESL was present. This was also stated in chief but not to the same extent. She expressed the view that Ms. McCabe could teach the course in Hungary but was cautious to add the condition that she had completed Part 1 of the University program.

Based upon the expert evidence the Board finds that the Grievor could be considered as having some competence, skill and experience to teach ESL. The expert's opinion was hedged and more cautious on teaching the course in Hungary given that its content and type of students was unknown to her. The Board concludes that the expert's opinion would only be unqualified if the Grievor possessed the aforementioned ESL Part 1. In its absence, the expert appeared reluctant to confirm that the Grievor possessed the necessary competence and skill to teach ESL. That leaves the Board to consider on its own terms the Collective Agreement requirement of experience. In this regard there is little recent experience and much of the more recent experience is more in the nature of informal than with a structured course and class environment. While the conclusion by this Board is a close one, and one in which every sympathy towards the Grievor is present, it must conclude on a balance of probabilities that while the matter is a close call the Grievor had an insufficient level of competence, skill and experience for this Board to conclude that she could teach the ESL course in Hungary.

What must clearly tip the balance against the Grievor on this part of her case is the job posting requirement of "An academic leader...". While this is not part of the Collective Agreement's requirement of competence, skill and experience in ESL it is part of that same test for the job in Hungary which she claims. In other words this also is part of the required competence, skill and experience of the person sought. The Grievor impresses the members of this Board as being a very sincere and dedicated teacher who goes to extraordinary lengths to do everything to help her students and to be a good teacher who is highly thought of by student and staff alike. In reaching our conclusion that she is not an academic leader, we want it to be absolutely clear to her that we regard her as very competent teacher in her role with the College. What we have to decide is a different matter of competence in work she had not done for the College and for a job which requires leadership as well as teaching competence and skill. It is on these grounds that we conclude that she does not possess sufficient competence, skill and experience to do the ESL course in Hungary. Given this conclusion the Board does not have to determine if the work in Hungary is excluded form the scope of the Collective agreement by virtue of Schedule 1(x) to the *Colleges Collective Bargaining Act*, R.S.O. 1990, c. C.15.

For all the foregoing reasons, the grievances filed by Ms. McCabe alleging both a flawed CESC process and an improper layoff cannot be granted. It is so ordered.

