

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

NIAGARA COLLEGE

(THE EMPLOYER)

A N D :

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(THE UNION)

AND IN THE MATTER OF C. McKAY (OPSEU FILE NO. 95A779)

BOARD OF ARBITRATION:

HOWARD D. BROWN, CHAIR
HUGH JOHN COOK, EMPLOYER NOMINEE
MICHAEL SULLIVAN, UNION NOMINEE

APPEARANCES FOR THE EMPLOYER:

C.G. RIGGS, COUNSEL
J.F. GARNER
BARRY SHARPE

APPEARANCES FOR THE UNION:

LESTER YEARWOOD, GRIEVANCE OFFICER
CRAIG McKAY, GRIEVOR

A HEARING IN THIS MATTER WAS HELD AT ST. CATHARINES ON
DECEMBER 5, 1996

AWARD

The grievance is dated March 30, 1995 and was filed in accordance with the terms of the collective agreement in effect between the parties by the Grievor, a full-time Professor in the English Department of the College. It is alleged that the College violated Article 32.03 of the collective agreement by arranging a meeting at Step 1 of the grievance procedure relating to Grievance 2-95 also filed by the Grievor, in that only one representative of the College attended and as the immediate supervisor attended at the Complaint Stage. The Grievor complained that this resulted in a loss of time and cost to the Union representative in traveling to Welland from St. Catharines to attend the meeting which could not proceed.

There was an exchange of correspondence between the Grievor and Mr. Garner, Director, Human Resources for the College on May 12th and June 5, 1995, the first being an offer to settle Grievance 3-95 to which a response was made indicating that the administrative structure of the College does not reflect the language in Step 1 of Article 32.03 which refers to the attendance of the Dean at a Step 1 meeting but the College does not have that level of management. The first management representative was Mr. Sharpe, the Director of Foundation Studies who attended by himself. The College undertook to “begin discussions at the Union/College Committee level to reach a mutual understanding acceptable to both parties” with regard to that structure and the requirement in the collective agreement. Nonetheless, the grievance was not withdrawn or settled and was presented to the Board at the hearing.

At that time, in addition to the above-mentioned correspondence, letters were written by Mr. Riggs on behalf of his client to the Union November 22nd, responded to by

Mr. McKay on November 28th to which Mr. Riggs replied on November 29th with a view to settle the grievance. The College set out the conditions on which it would resolve the matter which was to pay \$12.76 to the Union representative, Bev Langley, to reconvene a further Step 1 meeting if necessary and to undertake to begin discussions at the Union/College Committee level concerning Article 32.03 as it pertained to the absence of Deans at the College. This was followed by the Grievor's letter in which he indicated his offer to settle the grievance for token compensation of \$12.76 for expenses, a letter from the College stating that a misapplication of the grievance procedure would not be intentionally inacted by the College in the future and as well, stated "my concern is that the College continues to refuse to assure me that it will not intentionally misapply the grievance procedure in the future".

Mr. Riggs then advised the Grievor by letter that:

"We can confirm the proposed settlement as set out in the letter to Mr. Yearwood dated November 22, 1996.

In addition, we can confirm to you that it is not, and will not in the future, be the College's intention to intentionally misapply the grievance procedure."

The foregoing however, did not result in the settlement of the grievance as by letter dated November 29, 1996 from the Grievor to Mr. Riggs, he offered to settle the grievance on the basis of a payment of \$128.00 to Bev Langley which was part of the original grievance and that the College agree to a 12-month sabbatical to allow him time to study Spanish beginning January 1, 1999. That was the issue under discussion at Step 1 of the grievance meeting which gave rise to the present grievance. This proposal was not acceptable to the College and the matter was dealt with at the arbitration hearing.

Having reviewed the facts which are not in dispute as more particularly referred to above, the only issue for this Board to determine are the term for the resolution of the grievance. The contents of the correspondence up to Mr. Riggs' letter dated November 29th indicate what the resolution of the grievance was and should have been applied without further action necessary. The Grievor's proposal in his letter dated November 29, 1996 are not reflective of the issue arising in Grievance 3-95 which is the grievance referred to this Board for determination and do not have relevance to the remedy sought by the Grievor in this grievance.

We find that the submission of the College to discuss the terms of Article 32.03 as it applies within the management structure of the College which does not have the office of Dean in place as do other Colleges, is a reasonable method to satisfy the future application of the collective agreement in the grievance procedure and which will accommodate different circumstances in the various Colleges. The terms of the collective agreement do not deal with a difference in structure in various Colleges in this respect and should therefore be dealt with by the Union/College Committee. That response together with the assertion that the College would not intentionally misapply the grievance procedure meets the Grievor's concern raised in the grievance. That was the only issue outstanding in the proposed settlement of the grievance which we find was satisfied by Mr. Riggs' letter dated November 29, 1996. The result was by that letter in fact, a settlement was indeed reached. There was then no necessity at that point to convene the Board as there was no further issue to be determined to satisfy the grievance and therefore, no basis for the Grievor to continue with his complaint thereby incurring unnecessary further expense to the parties.

It is the Board's award that having regard to the offers of settlement by the Employer and the Grievor which clearly outlines the appropriate remedy to be applied to this grievance, the grievance is allowed and the following terms shall apply:

- (1) The Employer shall pay to Bev Langley the amount of \$12.76.

- (2) Because the College's administrative structure is not reflective of the language defined in Step 1 of Article 32.03, the College will undertake to begin discussions at the Union/College Committee level to reach a mutual understanding acceptable to both parties.

- (3) It is not and will not in the future be the College's intention to intentionally misapply the grievance procedure.

- (4) The College is prepared to reconvene a further Step 1 meeting at the request of the Grievor.

DATED AT OAKVILLE THIS DAY OF JANUARY, 1997.

Howard D. Brown, Chair

Hugh John Cook, Employer Nominee

Michael Sullivan, Union Nominee