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Local 110
CAAT(A)

IN THE MATTER OF AN ARBITRATION

BETWEEN:

FANSHAWE COLLEGE
(the "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

GRIEVANCE OF JOHN MCLELLAN REGARDING
CALCULATION OF STARTING SALARY

BOARD OF
ARBITRATION:

- Pamela Cooper Picher - Chair
- David Guptill - College Nominee
- Jane Grimwood - Union Nominee

APPEARING FOR
THE COLLEGE:

- Paul Jarvis - Counsel
- Ingrid Hobbs
- Doug Busche

APPEARING FOR
THE UNION:

- Paul Lukasiewicz - Counsel
- John McLellan - Grievor

Hearings in this matter were held in London on January 31 & October 29, 1991; and
October 19, 1992.

AWARD

Through this arbitration the Union asserts that Mr. John McLellan, the grievor, was improperly slotted on the salary scale at the commencement of his employment and requests full compensation retroactive to his date of hire.

Mr. McLellan was hired as a full time teaching master at Fanshawe College in the fall of 1984. The Classification Plan between the parties which forms part of the collective agreement establishes the principles through which newly hired faculty members are placed on the salary grid. In alleged conformity with the Classification Plan, the College placed Mr. McLellan at step 10 of the salary grid when he was hired. The College maintains that Mr. McLellan was actually qualified for step 8 on the grid. It asserts that in order to attract him to accept the appointment, it decided to exercise its discretion and grant him two additional steps on the grid, thus placing him at step 10.

The Union asserts, on the other hand, that the College was obliged under the Classification Plan to start Mr. McLellan at step 12 on the grid. The Union alleges that the College acted in breach of the Classification Plan by failing to give Mr. McLellan credit for his 3 year B.A. degree from Carleton University and by failing to credit him with 4.5 years of occupational or work experience during the 5 years leading up to the point at which he obtained his R.I.A. certification, the Registered Industrial Accounting certificate. Although Mr. McLellan was originally denied points for his Masters of Business Administration, the

College, at step two of the grievance procedure, gave him additional credit for his M.B.A. degree.

A. COLLECTIVE AGREEMENT:

Article 3.02 stipulates that the determination of starting salaries shall be in accordance with the College's Classification Plans:

3.02 Determination of starting salaries and progression within the salary scales shall be in accordance with the College's Classification Plans ...

APPENDIX 1 establishes the following **SALARY SCHEDULES** for **TEACHING MASTERS AND COUNSELLORS:**

The salary maxima are established in terms of relevant formal education levels and equivalencies as listed below:

Minimum	\$25,604	
Step 1	27,604	
...		
Step 10	40,854	Maximum starting salary for Step 14 qualifications
...		
Step 12	43,903	Maximum salary - no formal post-secondary diploma, certificate or degree - <u>Maximum starting salary for Step 16 qualifications</u>
...		

Step 14	46,954	Maximum salary - 2 year CAAT Diploma or certified Journeyman
...		
Step 16	50,002	<u>Maximum salary</u> - 4 year Canadian University Degree or more; C.G.A.; P.Eng.; C.A.; or <u>C.M.A. (formerly R.I.A.)</u>

NOTE: Formal educational qualifications not specified above will be subject to evaluation by the Joint Educational Qualifications Subcommittee....

THE CLASSIFICATION PLAN FOR PROFESSORS AND COUNSELLORS AND LIBRARIANS, which is part of the collective agreement, establishes the appointment factors which determine where a professor like Mr. McLellan will fall on the salary grid. It provides, in part, as follows:

FACTORS

1. **Appointment Factors**

A) **Experience: Relevant Teaching/Relevant Occupational**

Relevant occupational experience generally means full years of experience in a field of work related to the material to be taught or the job to be done, or to some allied aspect of it. In determining the number of years to be counted, the College hiring must avoid the extremes of counting either "years of time passed" or "years of entirely non-repetitive experience" and must make a fair assessment of an applicant's experience.

For example, an applicant who had spent some years as a sales clerk before qualifying as an engineer should not expect that sales experience to count as relevant experience if the person is being hired to teach engineering.

Part-time experience should be totalled only if it forms part of a regular program of development such as a co-operative educational program.

Double counting must be avoided. For example, if an applicant worked as a graduate assistant while pursuing an advanced degree, the person shall not be given full credit for both experience and educational time.

Similarly, relevant teaching experience means full years of teaching experience at a level compatible with the level required of the applicant. **Again, double counting must be avoided for teaching experience as, for example, a graduate assistant while pursuing advanced qualifications.**

The values to be given for experience are:

- **First 5 years: 1 point per year**
- **Next 9 years: 2/3 point per year**
- Next 12 years: 1/2 point per year

B) Relevant Formal Qualifications

Formal qualifications are those which constitute the norm in institutions of post-secondary education in the Province of Ontario. Only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree, are recognized. For example, a graduate of a three-year technology program in a College would be given 1 1/2 points for each of the three years, **regardless of the length of time actually spent by the individual in obtaining the diploma.**

No credit is to be given for a year of study in which there was significant duplication of other studies. **Therefore only the highest qualification will be used in computation unless the subject areas are from different disciplines and all relevant to the appointment.**

- CAAT Diploma or Post Secondary Certificate - per year (level) completed: (maximum of 4 years) 1 1/2 points
- University Degree - per year (level) completed: (maximum of 6 years) 1 1/2 points
- **Formal integrated work/study program such as P.Eng., C.A., C.G.A., C.M.A., (formerly R.I.A.), Certified Journeyman - per year (level) completed: (maximum of 5 years)** 1 1/2 points

(Note that years included herein are not also to be included under Factor A)

...

COMPUTING INITIAL PLACEMENT

i) The minimum qualifications requirement is a count of 8 points based upon the appointment factors. Since this is the minimum requirement, a total of 8 points corresponds to the minimum rate....

ii) Computation of the initial salary is, therefore, $A + B - 8$. The product is rounded to the next higher number, e.g.

$$A = 5 \text{ points}$$

$$B = 4 \frac{1}{2} \text{ points}$$

$$\overline{A + B = 9 \frac{1}{2} \text{ points}}$$

$$9 \frac{1}{2} - 8 = 1 \frac{1}{2} = 2$$

The starting position is the corresponding step (Step 2) on the scale.

...

B. FACTS:

1. As set out in Appendix 1, the maximum salary for Mr. McLellan is Step 16 because he holds the requisite qualification of R.I.A. certification (now C.M.A.). As further set out in Appendix 1, the maximum starting salary for a person who holds Step 16 qualifications is Step 12. The actual Step at which an individual who holds Step 16 qualifications is able to start, however, depends on the application of the appointment factors of experience and

formal qualifications as set out in the Classification Plan. As noted, it is the position of the Union that Mr. McLellan was entitled to start at Step 12 instead of Step 10.

2. From September of 1969 to May of 1972, Mr. McLellan was enrolled in the B.A. program at Carleton University. He majored in English Literature (6 courses) and minored in sociology (4 courses). Mr. McLellan asserts that his B.A. degree is relevant to his teaching at Fanshawe because when he teaches management accounting and analyzes business problems, he brings all his education and experience to that task, including his B.A. He stated that by doing a B.A. in English he was exposed to university courses which gave him knowledge in a whole range of subject matters and enhanced his ability to communicate. Mr. McLellan did not detail any courses he took en route to obtaining his B.A. other than his English and sociology courses.

3. From June of 1972 to August of 1976, Mr. McLellan worked full time for the federal government in the Auditor Services Bureau.

4. From January of 1974 to September of 1976, Mr. McLellan was enrolled in the R.I.A. program. As noted, during most all of this period, he was also working full time for the federal government. The R.I.A. certification involves two years of related work experience. Mr. McLellan stated that any two of his years of work between 1972 and 1976 could have counted as the R.I.A. work component.

5. From the summer of 1977 to the summer or fall of 1979, Mr. McLellan worked part time with the federal Department of Agriculture (weekends and nights).

6. From September of 1976 to April of 1978, Mr. McLellan was enrolled in the M.B.A. (Masters of Business Administration) at the University of Western Ontario. The Board of Arbitration cannot conclude on the evidence that having a B.A. degree was the basis upon which Mr. McLellan was admitted into the M.B.A. program. A Bachelor of Arts degree was one of several alternate prerequisites. R.I.A certification was another.

7. From April of 1978, immediately following the completion of his M.B.A. examinations, until July of 1982, Mr. McLellan worked full time for London Laminates Ltd.

8. From February of 1982 to August of 1984, Mr. McLellan worked full time for the Canadian Federation of Canadian Business.

9. In August of 1984, Mr. McLellan started full time with Fanshawe College. From 1984 to 1989, Mr. McLellan taught the following courses:

- basic accounting,
- intermediate accounting,
- financial accounting,
- cost accounting,
- personal finance,

management accounting, and
a number of small business courses.

10. Ms. Sylvia Brown is a teaching master at Fanshawe College. Unlike the grievor, she was given credit for her 3 year B.A. degree in the calculation of her initial placement on the grid. The posting that led to her appointment stipulated that her duties were to "prepare and teach courses in a variety of business areas including accounting, finance, investment securities and organizational behaviour." Her areas of concentration for her 3 year B.A. were English, psychology and sociology. The resume submitted to the College described her B.A. as follows: "Bachelor of Arts (Psychology and English)". In cross examination, Ms. Brown acknowledged that the discipline of psychology is relevant to the teaching of organizational behaviour.

11. Ms. Alison Wiseman is a teaching master at Fanshawe who teaches courses in accounting and finance, which includes income tax. For the purposes of initial placement on the grid, the College gave Ms. Wiseman credit for her 3 year B.A. degree, for which she specialized in math and took course work in accounting and economics as well. The Staff Requisition for her appointment as a teaching master at Fanshawe described her duties as follows: "To prepare and teach courses in accounting and finance, including advanced levels of accounting, income tax, personal and corporate finance and auditing." In cross examination, Ms. Wiseman declined to agree that a knowledge of math was relevant to the teaching of finance or accounting. She stated that the math she studied was theoretical and

not the practical math that would be particularly helpful in the areas of income tax and accounting. She did agree, however, that she acquired problem solving skills in the process of obtaining her math degree and that those skills have assisted her in her teaching at Fanshawe.

12. The Board of Arbitration is satisfied that Ms. Wiseman's math B.A. was sufficiently relevant to the courses she teaches at Fanshawe that the fact that the College granted her credit for her B.A. degree does not constitute an example of the College granting B.A. credit for the general knowledge and general problem solving skills that any student is presumed to acquire through obtaining a B.A. degree, whatever its focus.

13. Mr. Paul Jarvis teaches at Fanshawe in the management studies area. He obtained a 4 year honours B.A. with a major in business administration. It was common ground that the College made an error when, initially, it did not give him credit for his B.A. When the error was discovered in March of 1989, the College provided him with compensation retroactive to his date of hire. Counsel for the Union argues that the same practice should apply to Mr. McLellan, i.e., that he should receive compensation for the error the College is alleged to have made in the calculation of his starting salary retroactive to his date of hire.

C. THE COMPUTATION OF POINTS FOR (A) RELEVANT OCCUPATIONAL EXPERIENCE AND (B) RELEVANT FORMAL QUALIFICATIONS AS DONE BY THE COLLEGE:

- | | | | | |
|----|--|---|---|---------------------|
| 1. | B.A. - Sept 1969 -
April 1972 | no credit given
because not sufficiently
relevant to appointment | | (in
dispute) |
| 2. | Work, full time, as
auditor with federal
government,
spring, 1972 to
September, 1976 | no separate occupational
experience credited
because would constitute
double counting | | (in
dispute) |
| 3. | R.I.A. - actual time
spent getting certifi-
cate: Sept 1974
to Sept 1976 | 5 years credited (Sept 1971
to Sept 1976) because
that is the norm
for an R.I.A.

5 yrs. x 1.5 points = 7.5 points | 7.5
points
for
formal
qualif. | (not in
dispute) |
| 4. | M.B.A. -Sept 1976 -
spring 78 | 2 years credited,

2 years x
1.5 points = 3 points | 3
points
for
formal
qualif. | (not in
dispute) |
| 5. | Work, part time,
at federal Dept. of
Agriculture,
spring, 1977 to
fall, 1979 | no credit given
because part time | | (not in
dispute) |

6.	Work, full time, at London Laminates, summer, 1978 to summer, 1982	4 years credited 4 years x 1 point = 4 points	4 points for occup. exper.	(not in dispute)
7.	Work, full time, at Canadian Feder- ation of Independent Business, April, 1982 to fall, 1984	2.5 years credited 1 year x 1 point = 1 point 1.5 years x <u>2/3 points = 1 point</u> 1 + 1 = 2 points	2 points for occup. exper.	(not in dispute)

<u>Total YEARS for occupational experience</u>	=	6.5
<u>Total YEARS for relevant formal qualifications</u>	=	7.0

<u>Total POINTS for relevant occupational experience</u>	=	6.0
<u>Total POINTS for relevant formal qualifications</u>	=	<u>10.5</u>

TOTAL POINTS		<u>16.5</u>
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CALCULATION FOR PLACEMENT
ON THE GRID:

	16.5 (points)
-	<u>8.0</u> (minimum)
	<u>8.5</u>

8.5 ROUNDED UP = 9

Placement on the grid, therefore, would be at
Step 9.

(Note - College exercised its discretion and started Mr. McLellan at Step 10)

D. ISSUES IN DISPUTE:

There are two areas of dispute in the computation of points for Mr. McLellan's relevant occupational experience and relevant formal qualifications: first, whether occupational experience can be credited for work Mr. McLellan performed during the 5 years that have been credited to him as formal qualifications for his R.I.A. work/study program, and, second, whether Mr. McLellan's B.A. degree is of sufficient relevance to his appointment to be accorded formal qualification credit.

E. CALCULATION REQUESTED BY THE UNION:

4.5 additional years of occupational experience, from spring 1972 to Sept, 1976, for his full time work with the federal government as auditor, notwithstanding that these same years were credited as formal qualifications for his R.I.A. certification.

3 additional years credit for relevant formal qualifications for his B.A. degree from Sept. 1969 to April, 1972

Total YEARS of Occupational Experience Requested by Union:

6.5 years granted by College
4.5 additional years claimed by Union
11.0 years

Total YEARS of Formal Qualifications Requested by Union:

7.0 years granted by College
3.0 additional years
10.0 years

Total POINTS for Occupational Experience Requested by Union:

5 years @ 1 point = 5 points
6 years @ 2/3 point = 4 points
9 points

Total POINTS for Formal Qualification Requested by Union:

10 years @ 1.5 points = 15 points

GRAND TOTAL OF POINTS REQUESTED BY UNION:

9 + 15 = 24 POINTS

CALCULATION FOR PLACEMENT ON GRID:

24 points
-8 minimum (as per "Computing Initial Placement")

16 POINTS

16 points = placement at Step 16
BUT maximum starting salary for Step 16
qualifications, which Mr. McLellan has, is
Step 12.

THEREFORE, UNION REQUESTS PLACEMENT AT STEP 12.

D. POSITION OF THE UNION:

Counsel for the Union asserts that the College erred in not giving Mr. McLellan credit for his B.A. degree when calculating his initial placement on the grid. Counsel asserts that there is no logical distinction between the circumstances, on the one hand, of Ms. Alison Wiseman and Ms. Sylvia Brown, both of whom received credit for their B.A. degrees in the calculation of their initial placement on the grid, and, on the other hand, of Mr. McLellan, who did not receive credit for his B.A. Counsel asserts that Mr. McLellan's B.A. degree is relevant because it augmented his communication and writing skills.

Counsel for the Union maintains that the relevance that must be established for a degree to be given credit is relevance to the appointment to the position at Fanshawe, not just to the subjects taught. Counsel argues that Mr. McLellan was appointed, in part, on the strength of the breadth of the education he received through his B.A. degree and that, accordingly, it should be deemed sufficiently relevant to be credited in the calculation of his starting salary.

Counsel further emphasizes that a B.A. is a prerequisite to admission into the M.B.A. program. Counsel argues that having recognized the relevance of Mr. McLellan's M.B.A., the College cannot deny the relevance of his B.A. since, he maintains, a person cannot have a M.B.A. without a B.A.

Counsel for the Union submits, in addition, that the College also erred in calculating Mr. McLellan's occupational experience. Counsel asserts that the College breached the terms of the Classification Plan when it failed to credit Mr. McLellan with 4.5 years of work performed during the 5-year period that was credited to him as occupational experience for obtaining his R.I.A. certification. Counsel argues that that work should be counted because it was unrelated to the R.I.A. certification. He maintains that the only reason such work would not be credited is if the work was part of an educational program itself, something he argues was not the case with the R.I.A. certification. Counsel comments that the example against double counting in Section A of the Classification Plan respecting work as a graduate assistant reveals that it is only work which is part of an advanced degree that cannot be double counted. As counsel for the College correctly pointed out, however, no evidence was presented respecting the relationship between the work of graduate assistants and their degrees.

Counsel argues that to exclude Mr. McLellan's work experience which took place during the years that were credited for his R.I.A. certification fails to reflect the full scope of relevant assets which Mr. McLellan has brought to the College. Counsel asserts that when a person performs work is irrelevant. He maintains that it should make no difference to the evaluation of relevant assets whether a person worked for several years and then went to school or whether he or she gained work experience while going to school.

With respect to the retroactivity of the compensation requested for Mr. McLellan, counsel acknowledges that the jurisprudence does not favour his position. Counsel argues, however, that the grievor is entitled to compensation back to the commencement of his employment and not to just 27 days prior to the filing the grievance.

Counsel asserts that article 3.02 of the agreement, when read together with the Classification Plan, imposes an ongoing obligation on the College to have properly calculated Mr. McLellan's starting salary in 1984. Counsel asserts that it is the existence of article 3.02 in the agreement that distinguishes this case from most of the others. Article 3.02 provides as follows:

3.02 Determination of starting salaries and progression within the salary scales shall be in accordance with the College's Classification Plans dated August 1975 and as set out in the "Guidelines for the Implementation of Salary Adjustments and the Classification Plans" and the application to certain present employees above the maximum scale shall continue as set out in the "Guidelines" attached hereto, which also sets out the terms of reference of the Joint Educational Qualification Sub-Committee.

Counsel argues that article 3.02 clearly bestows jurisdiction on this Board to decide what Mr. McLellan's starting salary should have been under the prior collective agreement. Counsel argues that to deny Mr. McLellan retroactive compensation to reflect the proper starting salary would be to nullify the College's obligation in article 3.02 to correctly calculate the starting salary.

It would appear from the representations of counsel for the Union that the Union does not rely on past practice to ground its argument that the College should provide Mr. McLellan with compensation back to his date of hire. For clarity, however, the Board concludes on the evidence, specifically, the uncontradicted evidence of Mr. Howard Rundle, the Vice-President, Academic, that the College, in February of 1989, formally changed its practice of paying compensation for mistakes made in the calculation of starting salary retroactive to the date of hire. Mr. McLellan's grievance was filed on May 10, 1989.

E. POSITION OF THE COLLEGE:

Respecting the B.A. degree, counsel for the College asserts that it should not be credited in the calculation of Mr. McLellan's starting salary because it is not sufficiently relevant to his appointment to teach accounting at the College.

Counsel argues that the truism that all education is mind expanding and may generally assist one in the performance of one's subsequent work is insufficient to meet the standard of relevance required for a degree to be accorded credit under the terms of the Classification Plan. Counsel maintains that the Classification Plan expressly stipulates that it is the "subject areas" of a degree that must be "relevant to the appointment." Counsel argues that Mr. McLellan's assertion that he brings all his education, knowledge and experience to bear in the analysis of business problems is insufficient to render his B.A., with a major in English, relevant for the purposes of the Classification Plan. Counsel further

notes that Mr. McLellan did not give any evidence to support the suggestion that he learned problem solving skills through the courses he took towards his B.A.

Counsel further argues that Ms. Brown's B.A. was relevant because she had a concentration in psychology which is directly relevant to organizational behaviour, a subject she was required to teach. With respect to Ms. Wiseman, counsel asserts that even if we adopt Ms. Wiseman's assertion that her math degree is not relevant to the accounting courses she teaches, a proposition counsel finds difficult to accept, that would simply mean that the College erred in giving her credit for her B.A. degree and would not establish that Mr. McLellan's English B.A. is relevant to the accounting courses he teaches.

Turning to the calculation of relevant occupational experience, counsel for the College asserts that the provisions of the Classification Plan relating to the calculation of relevant occupational experience expressly prohibit double counting of work experience and educational experience. Counsel maintains that the prohibition against double counting does not simply extend to work that forms an integral or necessary part of a course of study, but rather extends to work of any kind which overlaps in time with a course of study which is credited as relevant formal qualifications. Counsel emphasizes, in addition, that the prohibition against double counting is further repeated in the section of the Classification Plan expressly relating to the calculation of R.I.A. certification as a relevant formal qualification. It stipulates, therein, that "years included herein [relevant formal qualification] are not also to be included under Factor A [relevant occupational experience]."

Respecting the calculation of relevant formal qualifications or educational experience, counsel for the College emphasizes that the terms of the Classification Plan stipulate that the years that are to be counted are those that "constitute the norm in institutions of post-secondary education in the Province..." "regardless of the length of time actually spent by the individual in obtaining the diploma." It is pursuant to this direction that the College credited Mr. McLellan with 5 years for his R.I.A. certification, notwithstanding that he spent only 2 years of study to obtain that qualification. Counsel asserts, then, that years attributed to the R.I.A. certification, whether as the norm or as actual time spent, and overlapping years of work experience are mutually exclusive under the terms of the Classification Plan. More specifically, counsel asserts that Mr. McLellan cannot receive credit for the work he performed as a full time auditor from 1972 to 1976 because he received formal qualification for his R.I.A. from 1971 to 1976.

Counsel comments that the grievor was put in a better position by having been given formal qualification credit for the 5 R.I.A. years, notwithstanding that he took courses for only two of those years, because formal qualification years are weighted more favourably than years of work experience.

Respecting the Union's claim for compensation retroactive to the date of hire, counsel for the College argues that the issue of the calculation of the grievor's starting salary which was set under a prior collective agreement may be adjudicated under the current collective agreement because the breach, if one occurred, would be a continuing breach. He

maintains, however, that while the issue may be adjudicated, the compensatory relief would be limited by the terms of the collective agreement to some 27 days prior to the filing of the grievance.

E. **DECISION:**

The Classification Plan that has been agreed to by the parties for establishing where new teachers should be placed on the grid sets out specific criteria which must be met for work and education to be accorded credit for placement on the grid. It is readily apparent from a review of the Classification Plan that the parties have agreed that not all years of post secondary education and not all years of work experience will receive credit.

Respecting "formal qualifications" or education, the parties have agreed, for example, that "only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree," are to be recognized. The parties have further determined that "[n]o credit is to be given for a year of study in which there was significant duplication of other studies". They have agreed, as well, that the number of years to be counted in respect of a relevant degree or certification will be the "norm in institutions of post-secondary education in the Province of Ontario" "regardless of the length of time actually spent by the individual in obtaining the diploma."

Of particular importance to the matter at hand and the determination of whether Mr. McLellan's B.A. should be credited, the parties have expressly stipulated the following:

Therefore only the highest qualification will be used in computation unless the subject areas are from different disciplines and all relevant to the appointment.

Accordingly, for Mr. McLellan's B.A. degree to be credited, the "subject areas ... [must be] relevant to the appointment."

In Re Confederation Colleges of Applied Arts and Technology and O.P.S.E.U. (grievance of Norman Huggins), decision of P. John Brunner dated March 25, 1983, the board of arbitration determined that the grievor's Masters degree in Science (Biology) was not sufficiently relevant to his appointment in Automotive Parts Merchandising to be accorded credit for placement on the grid. At p. 18, the board stated the following:

So too the Classification Plan speaks of relevant formal qualifications which are required to be "relevant to the appointment". With all due respect, we are not prepared to accept the contention that a Masters Degree in Science (Biology) is relevant to a teaching appointment in Automotive Parts Merchandising, whether one views it generally or specifically in relation to Communication Skills or Personal Growth, two of the Automotive Parts Merchandising courses taught by the grievor. In our view, the College was quite correct in only giving Huggins credit for three years with respect to his Bachelor of Arts Degree.

The parties have clearly placed limitations on when a degree, such as a B.A. degree, will be accorded credit in the calculation of placement on the grid. When a B.A. degree is not the highest qualification, it does not receive credit simply because it constitutes valuable, broadly based, higher education which will inevitably serve to generally assist a teacher in the performance of his or her work. Moreover, the words of the Classification Plan make it plain that the parties have agreed that for a B.A. to be given credit, its subject areas must be relevant to the appointment. We conclude on the basis of the clear language of the Classification Plan that to receive credit the subject areas of the B.A. must be directly related to a significant aspect of the appointment. It is insufficient that they simply help a teacher to better perform peripheral aspects of his or her general work.

Moreover, the mere fact that a B.A. degree is one of the alternative admission prerequisites for an M.B.A. degree, does not, on its own, establish that its "subject areas are ... relevant to [Mr. McLellan's] appointment".

The Staff Requisition for the job to which Mr. McLellan was appointed stipulated that the duties to be performed were to "[p]rovide instruction in accounting and related courses, at all levels, to post-secondary students in accounting and business administration programs. Produce course outlines, supplementary notes, tests and other materials for these courses." The qualifications stipulated on the Staff Requisition were that the "[a]pplicants should be members of a recognized professional accounting association and have several years of related experience. Ability to communicate is essential and teaching experience

would be an asset." The courses Mr. McLellan has been assigned to teach pursuant to the Staff Requisition described above are basic accounting, intermediate accounting, financial accounting, cost accounting, personal finance, management accounting and a number of small business courses.

The major area of concentration in Mr. McLellan's B.A. was English literature. His area of minor concentration was sociology. It would appear, though, that the information he provided the College for the purpose of salary calculation was simply that his B.A. was in English. Beyond his English and sociology courses, Mr. McLellan did not detail, in evidence, the other courses he took to obtain his B.A.

Having carefully reviewed the evidence and submissions, the Board of Arbitration cannot conclude that the "subject areas" of Mr. McLellan's B.A. (English major; sociology minor) are relevant to his appointment. He was appointed to teach accounting and finance courses. The evidence and submissions have not established to the satisfaction of the Board that the subject areas of English literature and sociology are sufficiently related to accounting and finance to be deemed relevant for the purposes of attracting credit for placement on the grid. That his B.A. might generally assist him in communicating or preparing course outlines does not establish relevance for the purposes of the Classification Plan.

The Board is further satisfied that the circumstances of Ms. Brown and Ms. Wiseman are distinguishable from those of Mr. McLellan. From the evidence presented it would appear, as outlined in the Facts, that the subject areas of their respective B.A.s were more directly relevant to their respective appointments.

We turn, then, to the determination of Mr. McLellan's occupational experience, specifically, whether the College erred by declining to credit Mr. McLellan with years of work experience which overlapped with the years they credited for his R.I.A. certification.

According to the Union, it should not matter whether relevant work and relevant education are performed/obtained simultaneously, or whether they are performed/obtained sequentially. The Union asserts that if, standing on their own, both the education and work experience are relevant, then, save for the prohibition respecting an integrated work/study program, it should not matter whether they occur together or in sequence. The College, on the other hand, asserts that the Classification Plan clearly prohibits counting both relevant education and relevant work experience when they occur in the same years.

At least three stipulations against double counting are set out in the Appointment Factors section of the Classification Plan. Section (A), dealing with "Experience: Relevant Teaching/Relevant Occupational", sets out the two following examples of the general principle against double counting:

Double counting must be avoided. For example, if an applicant worked as a graduate assistant while pursuing an advanced degree, the person shall not be given full credit for both experience and educational time.

Similarly, relevant teaching experience means full years of teaching experience at a level compatible with the level required of the applicant. Again, double counting must be avoided for teaching experience as, for example, a graduate assistant while pursuing advanced qualifications.

Section (B), dealing with "Relevant Formal Qualifications", expressly precludes double counting respecting the R.I.A. certification, among others:

...

Formal integrated work/study program such as P.Eng.,C.A., C.G.A., C.M.A., (formerly R.I.A.), Certified Journeyman - per year (level) completed: (maximum of 5 years)	1 1/2 points
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(Note that years included herein are not also to be included under Factor A)[Experience:...Relevant Occupational]

[emphasis added]

In Re Cambrian College and O.P.S.E.U. (Grievance of Ms.Pepin), decision of a board of arbitration chaired by J.W.Samuels dated June 20, 1986, the board of arbitration considered the prohibition in the Classification Plan against double counting. The Board stated one of the two issues before it as follows:

Does one count as years of experience a period of time during which the grievor was working full-time as a teacher but obtained a Bachelors of Arts degree in evening and summer courses? Or does the grievor get credit simply for the degree, and no credit for the full-time teaching load she also carried during the period?

At pp. 4-5, the board concluded that years of teaching experience while obtaining a B.A. (with a concentration in French) should be counted in their entirety:

With respect to the grievor's teaching experience, in our view it should have been counted in its entirety. The fact that she worked hard and earned two years of her BA during a period when she was a full-time teacher does not diminish in any way her 18 years of experience. This does not mean that there is any "double counting" to be done. To "double-count" is to give credit more than once for one "enterprise"---for example, as is set out in the Classification Plan, to give "experience" credit to a graduate assistant who is using the experience towards the fulfilment of a degree. This is all education time, not experience. Similarly, if a person undertakes a "formal integrated work/study program such as P. Eng...", the Plan makes it clear in the "Note under that category that years included as educational time are ont also to be included as "experience". This is done because the years of experience are part and parcel of the education itself. But the grievor undertook two separate "enterprises" simultaneously. She taught full-time, and she got her degree. The teaching was not used to get her degree, and the study was not part of her full-time teaching. They were separate and distinct "enterprises" conducted during the same period of time. There is no double-counting in giving credit to both "enterprises".

It would be useful to consider another example. Suppose a newly-hired employee had started teaching as the grievor did in 1962, and took off three years to do a full-time BA, then taught again until 1981. This person would come to the College with sixteen years as a full-time teacher, and a three-year BA. After the some period, the grievor came with eighteen years as a full-time teacher, and a three-year BA. Obviously, the grievor came with more assets and this should be recognized under the Classification Plan.

(See also, Re Conestoga College and OPSEU (grievance of A. Hopkins) decision of D.H. Kates dated August 10, 1987 which follows Re Pepin and involves circumstances where the subject area of the B.A. was entirely unrelated to her work as a registered nurse). Re

Pepin and Re Hopkins are distinguishable from the instant matter because they do not deal with the counting of years of experience overlapping with years of formal qualification credited for R.I.A. certification. Overlapping years of experience and years spent gaining R.I.A. certification is the subject of a clear and separate prohibition against double counting in section (B) of the Classification Plan.

Whether it would be a more accurate reflection of the assets of an individual if the College ignored the time at which work experience and formal qualifications in the form of R.I.A. certification were acquired, and thus ignored overlap in the years during which the two areas were pursued, is not the issue. The sole issue is the determination of the agreement of the parties as reflected in their Classification Plan.

The Union's suggestion that the R.I.A. is not an integrated work/study program is not born out by either the evidence or the terms of the Classification Plan. The Classification Plan specifically describes the R.I.A. as such: "Formal integrated work/study program such as ...C.M.A., (formerly R.I.A.)..." Moreover, Mr. McLellan testified that the R.I.A. certification required 2 years of related work experience approved by the Society of Industrial Accountants of Ontario.

The prohibitions against double counting clearly eliminate years of work experience that form part of the accreditation requirements in an integrated work/study program. The Board is satisfied, however, that the prohibition extends to all relevant work experience that

occurs during the very years that are credited for the formal qualifications of an R.I.A., in this case from Sept 1971 to Sept 1976.

The provision in Section (B) of the Classification Plan which stipulates that "years included ...[in a 'formal integrated work/study program such as C.M.A, (formerly R.I.A.)] are not also to be included under Factor A [Relevant Occupational Experience]" constitutes a clear prohibition against counting years which were credited as formal qualification for the R.I.A. as work experience as well. The Section which contains this prohibition expressly provides that the years that are to be counted for relevant formal qualifications are the years in the course of study which constitute the "norm in institutions of post-secondary education in the Province of Ontario" "regardless of the length of time actually spent by the individual in obtaining the diploma." Accordingly, in the absence of a clear direction to the contrary and having regard to the generality of the prohibition, the Board is satisfied that the stipulation that years included for the R.I.A. are not also to be included under work experience covers years that were credited to the R.I.A. on the basis of the "norm".

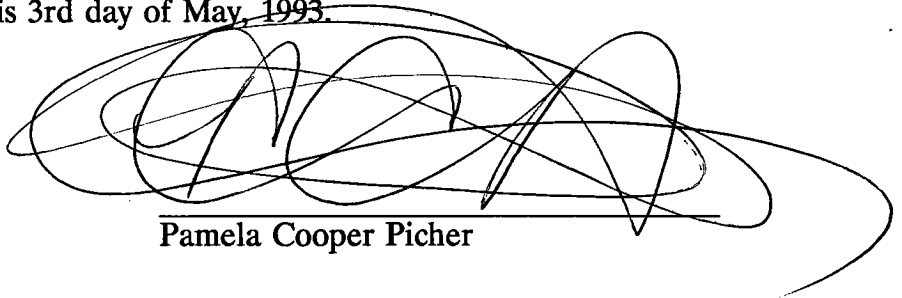
In the result, for the reasons set out above, the Board concludes,

1. That the College did not breach the terms of the Classification Plan by declining to give Mr. McLellan formal qualification credit for his B.A. degree; and

2. That the College did not err by declining to give Mr. McLellan occupational experience for work he did from Sept 1971 to Sept 1976, which are the years that were credited to him in respect of formal qualifications for his R.I.A. certificate. Accordingly, having regard to the foregoing, the Board of Arbitration concludes that the College did not breach the terms of the Classification Plan by declining to give Mr. McLellan credit for his B.A. degree when calculating his placement of the grid.

Accordingly, the Board finds that the College did not breach its obligations under the collective agreement in the manner in which it calculated Mr. McLellan's starting salary. The grievance is hereby dismissed.

DATED in Toronto this 3rd day of May, 1993.



Pamela Cooper Picher

I DISSENT

"Jane Grimwood"

Union Nominee

I CONCUR

"David Guptill"

College Nominee

DISSENT OF COLLEGE NOMINEE

I must respectfully dissent from the Award of the Majority, with respect to its interpretation of the prohibition against "Double Counting", and therefore the result.

There is clearly a distinction to be made concerning the R.I.A. certification, between work which is a pre-requisite or condition precedent to acceptance, and a characterization that the work is the flip side of the study requirement. The Majority has failed to recognize this.

This is buttressed by the temporal overlap absurdity. When someone does something cannot logically affect entitlement to credit, yet that is precisely what the College's position is.

Under this scenario, then, the Grievor would have attained 17 points, reduced to the 16 maximum level.

As far as the retroactivity issue, Article 3.02 is sufficiently clear to allow the Board to "reach back" to the date of hire. Admittedly, it is an unusual remedy. But then, clearly, so is the obligation in the Article.

I would have allowed the Grievance.

Jane C. Grimwood

May 3, 1993