

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION  
(hereinafter referred to as "the Union")

- and -

GEORGE BROWN COLLEGE  
(hereinafter referred to as "the College")

Grievance of Eugene Panko

Before: M. G. Mitchnick - Chairman  
S. Nicholson - Union Nominee  
R. Gallivan - Employer Nominee

Appearances:

For the Union:

G. Richards - Senior Grievance Officer  
E. Panko - Grievor

For the College:

S. Raymond - Counsel  
S. Roy - Vice-President, Human Resources  
H. Zimmer - Chairperson, Faculty of  
Technology  
Z. Ulla - Manager, Labour Relations

Hearings held in Toronto on January 22nd and May 26th, 1997 and  
March 2nd and 4th and June 12th, 1998

## A W A R D

The grievor, Eugene Panko, grieves his lay-off from the College, and in particular the refusal of the College to allow him to bump the more junior member of the faculty, Robert Young.

In that regard Article 27.06(a) of the collective agreement provides:

**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.

. . .

The grievor has been teaching Machine Shop courses for the College since 1979. Prior to that he had substantial Tool-&-Die-making experience in private industry. He did his apprenticeship at Delhi Die and Manufacturing, a job shop serving local

industry. His duties there were to manufacture special tools, gauges, jigs, fixtures, dies and injection moulds as well as the manufacture and repair of the injection moulds. He also had to do his own welding, tool and cutter grinding, make his own carbide lathe cutting tools, heat-treating and machine repair and maintenance. Subsequently he was at both DeHavilland Aircraft and Westinghouse in a similar capacity, and finally from 1975 to 1979 did tool and die manufacture and repair at Associated Tool and Engineering in Hamilton. At George Brown the bulk of the grievor's time has been spent teaching the Apprenticeship courses (all three levels) for either the Tool & Die or Machinist qualification. His teaching in the post-secondary diploma courses, conversely, has been limited, teaching in the actual Technician course only in 1984, as well as teaching two intake courses to technician students in the spring of 1983.

There is absolutely no dispute but that the grievor is a competent teacher, and a highly-qualified Tool & Die Maker. At the same time, however, the grievor himself acknowledges the dramatic changes that computerization has brought to both design and manufacturing in industry. The grievor also acknowledges the importance of a teacher moving with the times, so as to stay "current". Mr. Young, the focus of this displacement application, teaches an assortment of courses in the post-secondary Technician program. Those courses, as one would expect, place a heavy emphasis on drafting and design. Given the grievor's background and experience, there is little doubt of the

grievor's ability to step in and teach the fundamentals of those drafting areas in terms of the basic theory involved. The problem is that the actual methodology for the application of those basic theories has changed dramatically, with the advent of Computer-Assisted Design. That certainly is true, as the grievor acknowledges, in the larger companies in industry, and those would be a primary focus for jobs upon graduation for these post-secondary diploma Technicians. Even the design functions of the first semester course MENG 2004 is taught in today's marketplace with an emphasis on computers and the applicable software. The same is true in the second semester course, in terms of Computerized Numerical Control (CNC), Programmed Logic Control (PLC) and Mechatronics. As well, the Quality Assistance courses are all founded now in Statistics, and the grievor demonstrated and admitted to lack of familiarity with even some of the most basic concepts in his evidence (for example, "mean", versus "median"). But the most direct problem for the grievor is with the two Computer-Aided Drafting and Design courses themselves, which are taught wholly in the computer lab. The Course Outlines for these latter provide:

COURSE NAME:	Computer Aided Drafting I
COURSE CODE:	CADE1006
PREREQUISITE:	Self-directed introduction to Computers (or equivalent)

The purpose of this course is to provide students with a basic understanding of the features, limitations and considerations associated with the operation of a computer-aided drafting (CAD) system. Students will

gain hands-on experience using a current release of AutoCAD for the Windows 95 platform, using 2-dimensional construction commands. In addition students will reinforce their experience with available peripherals.

. . .

Upon completion of the course, the student will have demonstrated the ability to:

1. - identify CAD hardware components and system configurations,
2. - copy drawing files to and from a personal computer,
3. - operate typical CAD workstation components,
4. - use a systematic approach to create drawings (specific to the students' discipline) using AutoCAD release 13 for Windows 95,
5. - construct drawings with the necessary dimensions that will communicate to the end user the correct sizes and specifications,
6. - produce accurate drawings using available printing devices, and
7. - identify the features, limitations and considerations associated with the basic commands and characteristics of AutoCAD.

And then:

COURSE NAME: Computer Aided Design I

COURSE CODE: CADE2003

PREREQUISITES: Computers in Engineering Applications II - CADE1004

This course is designed to develop and apply the principles of Computer Aided Design Drafting. The student will develop and expand the use of programming tools and aids to increase drafting efficiency in the completion of complex design and detail drawings.

At the end of the course, the learner will be able to:

1. Copy, organize and create files on a stand alone personal computer.

2. Construct two dimensional drawings with the necessary dimensions, that will communicate to the end user the correct sizes and specifications.
3. Produce professional looking drawings that realize productivity gains over conventionally created hand drawings using advanced CADD construction and editing techniques.
4. Plot out computer generated drawings using the relevant features of the design drafting package.
5. Employ self-directed strategies to learn new features of software packages and other technology independently by applying or transferring previously acquired knowledge.

From the College's perspective, some degree of comfort and familiarity with computers, just to be able to "trouble-shoot" effectively for the students in the lab, is absolutely essential in the teacher. And beyond that, of course, is a question of the teacher's facility with the actual Computer-Aided method of drafting, and those specific software programs. As Ms. Zimmer, the chair of the Technology Department testified, that computer requirement does not necessarily preclude existing staff in the Technology Department from advancing into that area: the College makes available the requisite training, to those seeking to broaden and keep current their knowledge-base, as part of their professional development. But the initiative has to come from the faculty member. Some of the faculty members, to Ms. Zimmer's understanding, have taken up such initiatives. The grievor, to 1996 at least, never had. The lay-off notice came to the grievor in January 1996. The grievor testified that he has no recollection of an express offer being made to him to bring up

his computer skills prior to the actual lay-off notice, but he acknowledges that he did in fact have no interest in doing so at that time. The grievor testified that he still was doing any of his design or drafting work manually, using the traditional drafting-board, because he "found it easier" that way.

Basically, the grievor at the time of his lay-off notice had no background in computers or their application whatsoever. In the period January to April 1996, the grievor took an evening course at the College in Computer Numerical Control. In the fall of 1996 he commenced the College course in Auto CAD II, but was told he needed to go back and take Auto CAD I (the basic course). He did that, obtaining a "C" grade. The following semester (January 1997) the grievor took the Auto CAD II course. He indicates that disruption in his personal life intervened, however, and he failed to complete the course. The grievor testified that he subsequently tried again, but was unable to get his final project off the disk. He says that the teacher was unable to retrieve his work either, so that he could not assign the grievor a grade.

Accordingly, the grievor to this day has not successfully completed Auto CAD II. Notwithstanding that, the grievor notes, he was hired in the spring of 1997 on a sessional basis by Centennial College to teach what apparently was a basic course in Auto CAD.

On that latter point, we would note, that teaching period at Centennial was not part of the qualifications that the College had at the time that the critical assessment of the grievor's

qualifications had to be made. We have no details of that course but the point in any event is that the invitation to teach it at another College arise a good deal later, after the grievor had made efforts at least to upgrade his computerized drafting skills.

As of the time of the lay-off, the grievor had no background which would suggest that he could teach a computer-based course of that kind. As arbitrator Swan put it in his Seneca College (Morgulis) decision dated August 19th, 1994 and upheld on judicial review (brought by the Union on other grounds) on March 4th, 1996, Union's application for judicial review dismissed:

As we read the collective agreement, it requires that the displacing Professor be qualified immediately to perform the requirements of the position, and that individual may not claim, for example, time for retraining or re-qualifying prior to taking up the duties. But the words of the collective agreement must be understood in the context of teaching in a College, where there is normally a summer break to prepare for classes beginning again in September, and where similar breaks occur between terms at other occasions in the year. There is also a provision for preparation time, and the collective agreement must be understood in light of the availability of such preparation periods to allow the Professor to brush up on courses which he or she has not taught for a while.

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It is the basic qualification itself that the grievor was lacking at the time of the lay-off here. The competence, skill and experience to teach Computer-Aided Design at both the basic and advanced level of all of these courses being taught by Mr. Young was not simply an "ideal" for the College, as Mr. Richards characterizes it, but the essence of the courses themselves. Nor does that "essence" reflect a standard of course content

arbitrarily imposed by the College upon existing staff at the time of a lay-off, as Mr. Richards also argues. The evolution of that course content, and thus of the qualifications required to deliver it, was a simple reflection of the state of the art as it had evolved in industry. And, we would have to add, that evolution would have been apparent to anyone wishing to stay fully current in the design field, and to protect one's versatility as a teacher in the Technology Department. In the case of the present grievor it is unfortunately clear that the work left to be done as of the point of the projected lay-off was a great deal more than "mere brushing up". Computer-assisted Design was a whole new discipline, distinct from (although drawn from the principles of) traditional manual drafting, and the grievor had not even begun to equip himself for a move in that direction.

For the foregoing reasons, therefore, and based on the evidence as it existed at the time of the lay-off, the board has no alternative but to dismiss the present grievance.

Dated at Toronto this 23rd day of September, 1998

I dissent (see attached)

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M. G. Mitchnick

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"S. Nicholson"  
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S. Nicholson

I concur

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"R. Gallivan"  
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R. Gallivan