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CAAT (A)

Local 138

IN THE MATTER OF AN ARBITRATION

BETWEEN

**ST. CLAIR COLLEGE
(the "College")**

and

**OPSEU
(the "Union")**

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MAY 2001*

RE: GRIEVANCE OF JERRY PENEVA

Board of Arbitration:

**Michel Picher
Richard O'Connor
Michael Sullivan**

**Chair
College Nominee
Union Nominee**

Appearing for the College:

Barry Brown

Counsel

Appearing for the Union:

**Nelson Roland
Mary Anne Kuntz
Sandi Webster
Jerry Peneva**

**Counsel
Grievance Officer
President, Local 13A
Grievor**

**Hearings in this matter were held in Windsor on January 20,
November 6, December 7, 2000 and January 3 and 4, and
January 17, 2001.**

INTERIM AWARD

This arbitration concerns a grievance against a 20 day suspension. By notice dated January 14, 1999 the College advised the grievor, Mr. Jerry Penava, that he would be suspended for 20 working days commencing January 18, 1999. It alleges that he failed to provide adequate instruction to students, refused to answer their questions and addressed students in a demeaning manner.

During the course of the testimony of Ms. Marg Dore, Manager of Human Resources, it emerged that a report was submitted to the College by Ms. Dore concerning the state of the Department in which the grievor worked. Although a separate report by Ms. Dore concerning the result of student interviews which she conducted following a series of complaints about Mr. Penava was adduced in evidence, the larger report concerning the department as a whole was not disclosed. When counsel for the Union asked the witness to produce the departmental report counsel for the College objected. He expressed the concern that the report might disclose information of a confidential nature, some of which could concern other faculty members, which is not relevant to the grievor's case.

The Board ruled to direct production of the departmental report, subject to a series of conditions related below. Part of the dispute in the instant case concerns whether Mr. Penava was placed in an unfair situation by reason of students in one of his courses having inadequate prerequisites in drafting. His

counsel also stresses that the evidence indicates that students complained about another professor, identified by name. He submits that the grievor should be entitled to examine the report to determine whether it supports, in whole or in part, Mr. Penava's view that his difficulties stemmed from the inadequate preparation of the students in their prerequisite drafting courses. He also submits that the report could bear on whether Mr. Penava was unfairly singled out or treated in a discriminatory fashion as compared to at least one other professor who also attracted student complaints, and perhaps others.

We are compelled to agree. While it obviously remains to be seen whether the departmental report submitted by Ms. Dore contains information relevant to the instant grievance, fairness would demand that the report be produced for the purposes argued by the Union's counsel. In our view, however, the report should be produced only on a strict *in camera* basis so as to properly balance the College's legitimate interest in preserving the document's confidential nature with the grievor's right to access information potentially relevant to his own defence.

We therefore ruled as follows:

- The departmental report prepared by Ms. Dore is to be produced to the grievor and his counsel.

- The document shall be dealt with strictly *in camera*. It is not to be copied other than for the purposes of this hearing, and its contents are not to be disclosed outside the hearing by anyone.
- Prior to its production, the College shall white out the names of persons identified in the report, with the exception of the grievor and the other professor already identified as the subject of student complaints. Should the Union believe that the identity of any person whose name is covered is relevant and material to this dispute, the Board will hear submissions from both parties and rule on the issue, on a case-by-case basis, if necessary.

The College shall produce the report to counsel for the Union no later than June 29, 2001.

Dated at Toronto this 8th day of March 2001.



Michel G. Picher
Chair

"Richard O'Connor"
Richard O'Connor
College Nominee

"Michael Sullivan"
Michael Sullivan
Union Nominee