

## 93E105 PLUMMER VS LOYALIST

IN THE MATIER OF AN ARBITRATION

BETWEEN:

**LOYALIST COLLEGE**

(the "College")

- and -

**ONTARIO PUBLIC SERVICES EMPLOYEES UNION**

(the "Union")

GRIEVANCE RE H. PLUMMER

BOARD OF  
ARBITRATION:

Michel G. Picher	-	Chairperson
Al Merritt	-	College Nominee
Derek Blackadder	-	Union Nominee

APPEARING FOR  
THE COLLEGE:

Ann Burke	-	Counsel
D. Butler	-	V.P. Human Resources

APPEARING FOR  
THE UNION:

Mary Mackinnon	-	Counsel
Alick Ryder	-	Counsel
Harry Plummer	-	Grievor and President of Local 420

Hearings in this matter were held in Toronto on April 27, 1994; May 15 and June 5, 1995.

## AWARD

This grievance, filed by Mr. Harry Plummer, a Professor in the Business Department of Loyalist College of Applied Arts and Technology in Belleville, and President of the Union's Local 420, alleges a violation of the collective agreement by the College in that the fall semester of the 1993/94 academic year was scheduled to begin earlier than September 1, 1993. The grievance also states that the College's actions compromised the grievor's rights to a vacation of two months within July and August of 1993, contrary to the intention of the collective agreement. The Union seeks no compensation for the alleged violation of the agreement, but requests a declaration from the Board of Arbitration that the College did violate the collective agreement by scheduling the grievor's academic year to commence on August 31, 1993. The College denies that there has been any violation of the collective agreement.

The following provisions of the collective agreement bear on the resolution of this dispute:

6.01 It is the exclusive function of the Colleges to:

(iii)

manage the College and, without restricting the generality of the foregoing, the right to plan, direct and control operations, facilities, programs, courses, systems and procedures, direct its personnel, determine complement, organization, methods and the number, location and classification of personnel required from time to time, the number and location of campuses and facilities, services to be performed, the scheduling of assignments and work the extension, limitation, curtailment, or cessation of operations and all other rights and responsibilities not specifically modified elsewhere in this Agreement.

11.03

The academic year shall be ten months in duration and shall, to the extent it be feasible in the several colleges to do so, be from September 1 to the following June 30. The academic year shall in any event permit year-round operation and where a College determines the needs of any program otherwise, then the scheduling of a teacher in one or both of the months of July and August shall be on a consent or rotational basis.

15.01

A full-time employee who has completed one full academic year's service with the College shall be entitled to a vacation of two months as scheduled by the College.

15.02

In scheduling vacations, the College will take into consideration the maintenance of proper and efficient staffing of College programs and operations and the request of employees. The College will notify employees of their vacation period at least four weeks prior to the commencement of the vacation period concerned. It is understood that following notification of vacation periods, vacation schedules may be changed in circumstances beyond the College's control or by mutual agreement. The College agrees that seniority shall be given consideration in resolving conflicting vacation requests.

[emphasis added]

## I. EVIDENCE

Mr. Plummer has been employed by the College for 21 years. As a full-time Professor in the Business Department, he has most recently taught courses in income tax and computer studies, and has previously taught courses in accounting. He relates that the business program normally operates in semesters. The fall semester of 15 to 16 weeks normally ends in the week before Christmas and the second semester runs for 15 or 16 weeks, between the beginning of January and the end of April. Normally Mr. Plummer's vacation is scheduled between late June and late August, by arrangement with his Dean. He also relates that some years ago he did teach in summer programs, including an accelerated accounting program. It appears that during his early years of service the scheduling of the summer vacation was broken up by his involvement in summer courses although, later, as he gained seniority, he came to have what he describes as a "better preference". He relates that he has not taught summer courses since 1982.

The College calendar for the academic year 1993-1994 contains the following list of scheduled dates:

### FALL 1993

Deadline for Fee Payment:	
New Students	July 15
Returning Students	August 13
Registration/Orientation	August 31
First Day of Classes	September 1
Labour Day	September 6
Deadline for Refund of Fall Semester Fees	September 17
Thanksgiving Day, College closed	October 11
Fall Semester Ends:	
Most Programs	December 17
CEIC Sponsored Students	December 24

### WINTER 1994

Registration/First Day of Classes	January 3
Deadline for Refund of Winter Semester Fees	January 14
Equal Consideration Deadline for Applications to 1994 Fall Semester	March 1
Spring Break:	
Except D.S.W., S.S.W., E.C.E.	February 28-Mar 4
D.S.W., S.S.W., E.C.E.	March 14 to 18
Good Friday	April 1
Winter Semester End Dates Begin	April 29

As can be seen from the above, the College calendar established that registration fell on August 31 and that classes would commence on September 1, 1993. The instant grievance, however, was precipitated by the receipt by Mr. Plummer of his Standard Workload Form, issued to him on or about April 25, 1993. The Standard Workload Form (S.W.F.) is a document intended to convey to the teacher full information with respect to his or her assignment in a coming semester, including such factors as teaching contact hours, attributed hours, class size, preparation, feedback and complementary hours, as well as contact days and teaching weeks within the period in question. The S.W.F. issued to Mr. Plummer stated that it would cover the period from August 31, 1993 to December 17, 1993 for a total of 16 teaching weeks.

Mr. Plummer relates that he immediately grieved the assignment reflected in his S.W.F.. He relates that, previously, student registration was scheduled after Labour Day, followed by the commencement of classes. He states that over the years he noticed that the commencement date moved earlier and earlier in September, with classes eventually commencing before Labour Day, which is permissible under the collective agreement. However, he states that when he saw the beginning of his assignment scheduled for August 31, breaking what he describes as the "September 1st barrier", he decided it was time to grieve.

Mr. Plummer relates that in his opinion there was no necessity to commence his assignment on August 31. Insofar as feasibility is concerned, he stresses that for some 23 years the College started his assignment after September 1st. He states that, if necessary, the College could schedule a part of the first semester to continue after the Christmas holidays, for example, by adding a week in January, prior to the commencement of the second semester.

The evidence further discloses that, in fact, some changes were made to the schedule reflected in the calendar. When planning for the orientation week for the academic year 1993-1994 was finalized, the following schedule was issued:

#### **REDUCE AND INSERT A PHOTOCOPY OF EXHIBIT 13**

As can be seen from the above, registration was moved up to August 30 with first year classes scheduled to commence August 31 and classes for other years commencing September 2. Mr. Plummer acknowledges that his timetable for the first semester of 1993-1994 did not involve the teaching of first year classes on either Monday or Tuesday. On those days, he taught third year classes. He taught an

introductory computer class to first year students on Wednesday and taught both first and third year students on Thursdays and Fridays. He further states that in his view the first day which appears on his S.W.F. is the first day he is responsible for contact with students, even though he might not necessarily be required to teach a regular class that day. He states that, for example, students could be in orientation. He acknowledges, however, that he was not required to do any teaching prior to September 1, 1993. In his testimony, Mr. Plummer confirms that his grievance does not assert an entitlement to uninterrupted vacation through July and August, although he suggests that such a claim could be made. More specifically, he states that his concern is the "creeping start of classes" and stresses that the grievance is in respect of the commencement of the academic year, not the scheduling of classes. In his view, the academic year begins when students begin to accumulate credit for a course. As both his S.W.F. and the final timetable indicated that the academic year began on August 30, he asserts that there has been a violation of his rights under the terms of article 11.03 of the collective agreement.

The College submits that its decisions with respect to the scheduling of the commencement of the 1993-1994 academic year were motivated by administrative necessity. The decision-making process was explained by Mr. Ray Michol, Dean of Academic Resources. He relates that the Dean's Committee, composed of the Academic Deans and chaired by the Academic Vice-President of the College, has input into the scheduling of an academic year. He explains that normally the Registrar of the College makes a scheduling proposal to the Deans for their input, usually a year and a half in advance of the year being scheduled. According to Mr. Michol, the critical date to be determined is fall registration, as the balance of the year flows from that date. Ultimately, the date which is identified by the Dean's Committee is forwarded for approval to the President's Committee, which makes the final determination.

Mr. Michol explains that for many years registration of all students was done on the Tuesday after Labour Day. He states that practice continued until approximately five years ago. According to his evidence, it was **decided to split** the registration of first year students from that of second and third year students, to allow for more direct introductory involvement with the first year students, with second and third year students registering one or two days later. This, he explains has provided a better means of preparation and orientation for new students, with the split in registration being generally beneficial to all.

He further explains a number of major factors which have contributed to the College's thinking with respect to the commencement of the academic year. Among those is an increased concern on the part of the Deans with respect to the number of student contract hours available in a semester. Since the late 1980's, student contact hours have declined steadily because of budget pressures. The average of student contact hours per week has gone from the range of 25 to 27 hours to the present rate of 20 to 22 hours. With registration taking place after Labour Day, which might fall on the 6th or 7th of September,

until the late 1980's, the College might find itself with 14 teaching weeks prior to Christmas. With a rate of student contact hours of 25 to 27 hours per week, the teaching load could be accommodated in that time. However, with a reduction of contact hours to the 20 or 22 hours level which developed more recently, the College was compelled to attempt to schedule a 16-week fall semester coupled with a 16-week winter semester.

A second factor related by Mr. Michol involves the problem of an imbalance in semesters. If the College were to implement a 14-week fall semester, coupled with an 18 week winter semester, it would have an imbalance in certain of its programs. For example, some courses which are offered in both semesters would involve fewer hours in the fall semester than in the winter semester. In the result, the need to standardize the length of courses given in both semesters was a factor considered with respect to the possibility of students registering before September 1.

A third factor, as related by Mr. Michol, is funding. He states that in 1991 the College came to understand that it would face a penalty in provincial funding if it did not offer a 32-week program for each academic year. He relates that most post secondary programs are approved for funding based on a 32-week year. As a result, this factor, combined with the others, led the College to opt for scheduling two 16-week semesters. It appears that a variation in the length of the fall semester could put the College at risk for the delivery of the required number of weeks of instruction to be given to post-secondary students, with consequences for its funding.

A fourth factor, noted in Mr. Michol's explanation, is the importance of orientation. The College's experience has been that students who leave during a semester tend to do so predominantly within the first weeks of the academic year. This it attributes, in substantial part, to the loneliness and disorientation experienced by students who may be away from home for the first time. Consequently, the College considers it an important part of its program to devote sufficient time and attention to the orientation of first year students in the days immediately surrounding their registration. However, as orientation activities are not included in the computation of student contact time, the need for a more substantial orientation period brought further pressure to bear on lengthening the fall semester.

Mr. Michol relates that the need to increase and improve orientation as well as the need to schedule a 16-week semester, driven in part by the reduced number of student contact hours, contributed to the decision to schedule registration on Monday, August 30, 1993, with the first classes scheduled for the following day. He relates that a 16-week first semester could then be projected to end, as normally had been the case in the past, in the week prior to Christmas. He explains that the College considered the alternative of completing the first semester in January, and concluded that model was not efficient either

from the standpoint of the professors or the students. Ending the term in January would involve examinations after the Christmas break. Since the entitlement of students to proceed to second semester courses could depend on their first semester marks, the College would have to schedule a week off in January before commencing the second semester, to allow for marking and the normal turnaround from one semester to another. Additionally, the College had concerns that students who depend on summer vacation earnings to support their studies would suffer unduly if the second semester program were extended further into the Spring. Finally, with regard to the convenience of the students, the College did not wish to push the first semester to an end date of December 22nd, considering that some 300 of its registered students are from Atlantic Canada and require a reasonable period of time to travel home for the Christmas holidays.

Mr. Michol indicates that the decision to commence classes on August 31st involved no adverse impact on the vacations of the academic staff. He explains that normally the 1993-1994 program year would end on Friday, April 29th, with the academic year ending June 20th or 21st. The standard vacation for a member of the academic staff would generally be from approximately June 20 until the third week in August.

Under cross-examination, Dean Michol conceded that other formulas beyond the two 16-week semesters are possible. He confirmed that, among the 23 colleges within the Ontario system, some have adopted 36-week academic years, utilizing two 18-week terms. He also noted that two colleges have elected to follow a trimester system, with trimesters of 14 weeks, 14 weeks and 7 weeks, respectively. He notes that two colleges do have a first term which extends to late January, after which the College takes a break prior to the commencement of the next term. Those colleges, which use a 36-week program, extend their academic year close to the end of May.

He further relates that the program and scheduling needs of the various college can depend on the make-up of its students. Loyalist College is comprised of approximately 3,200 full-time post-secondary students, and 200 non-post-secondary students. In addition, the College offers courses to more than 6,000 part-time students. In answer to questions from counsel for the Union, Dean Michol also disputed the utility of starting the second term in late January for the purpose of establishing a winter intake of secondary students who conclude their secondary studies in January. He states that the College once tried to accommodate that kind of intake and did not attract many students.

Dean Michol further confirmed that the difficulties which the College had experienced in scheduling student contact hours had a substantial impact on its funding. In respect of the 1992-1993 academic year, the College suffered a penalty, which he estimated at a loss of \$70,000 to \$80,000 in provincial

grants, because it had delivered too few weeks of student contact hours. He explained that the funding paid to the College is based on an average enrolment over a three-year period relative to the student enrolment in the rest of the system. Funding for a full-time equivalent student is based on the assumption that a student is in class for 32-weeks a year, or for 64 or 96 weeks for a two- or three-year program, respectively. He explains that the funding shortfall experienced by the College came about as a result of not delivering enough teaching weeks in some program areas due in part to a shorter fall semester caused by starting the academic year after Labour Day. On that basis, the College considered it a priority to maximize the fall semester to 16 weeks.

Dean Michol was pressed by counsel for the Union to concede that the scheduling of two 16-week semesters is not a funding issue, because the Ministry of Colleges and Universities does not require that the minimum of 32 weeks must necessarily be divided equally. Acknowledging that he is not aware of any requirement of the Ministry that semesters be equal, Dean Michol responded that there is nevertheless a critical academic delivery issue involved which, in his view, is tied to the funding question. Specifically, he stresses that difficulties arise if identical courses given in two separate semesters are not equal in contact hours as might occur, for example, if the first semester were 14 weeks and the second semester were 18 weeks.

Counsel for the Union also asked Dean Michol whether a 16-week semester could not have been scheduled between September 1st and December 17th, bearing in mind that three teaching days count as a full week for the purposes of the provincial guidelines. He responded that while that is true mathematically, it ignores the importance of orientation. Stressing that the College orientation part of teaching duties, in which faculty generally participate and in respect of which they are "SWF'ed", the Dean responded that it was not practicable, having regard to the need to provide a reasonable period of orientation, to commence the entire process on September 1st. He says that he had received expressions of concern from some students with respect to the earlier start date before it was implemented, but no complaints after the fact. He also acknowledged that different considerations operate in respect of the nursing program which, for many years, has started earlier than other programs, generally on or about August 30th or 31st. This, he explains, stems from the fact that the discipline of nursing imposes more controlled clinical and theoretical hours on its students. The only other historical exception of which Dean Michol was aware involved Recreational Program students who attend at an outdoors program at a lake setting, beginning one week before the normal academic program.

Further evidence with respect to the increased emphasis on the orientation program was given on behalf of the College by Mr. J.E. Boone, Vice-President of Student Affairs. Mr. Boone, who is a member of the President's Committee, to which the College's Registrar reports, has fairly close knowledge of the

scheduling process. He was himself the Registrar of the College from 1972 to 1984, at which time he assumed his present position.

He relates that in preparing the draft schedule for an academic year the College's Registrar consults with the Orientation Committee. That group is comprised of the Director of Admissions, two Recruitment Officers, an academic representative from each of five or six program groups, a counsellor and a member of the student council. He relates that commencing the academic year around Labour Day is always an issue, with a perennial concern about getting 32 weeks into the academic year while accommodating an appropriate orientation period. According to his evidence, orientation is always a bone of contention between the academic and student affairs representatives on the President's Committee. From the standpoint of student affairs, which he represents, Mr. Boone stresses that 60% of the College's students are from outside the Belleville area, a large number coming from the Maritimes. As a result, many first year students are away from home for the first time and their initial impressions of the College and the college experience can substantially impact their willingness to stay. In this regard, he notes that historically most students who withdraw do so within the first 10 days. From that perspective, he submits, orientation takes on substantial importance for first year students, most of whom come directly from high school.

Mr. Boone relates that prior to 1989 the College normally conducted classes and orientation at the same time, with orientation and registration being on the same day, generally after Labour Day. In the fall of 1989, the College increased the number of orientation days to span three or four days, rather than two days. For the first time, orientation was provided to first year students as a separate group. This had the two-pronged effect of bring more attention to their needs, and discouraging hazing by returning students. Having the first year students register and undergo orientation in a two-day period prior to Labour Day, with faculty participating in some areas of the orientation program, was seen as an important improvement. The ability of beginning students to familiarize themselves with the library and bookstore, obtain academic counselling and to involve themselves in social and group activities that promote class bonding, was seen as important to them and beneficial to the College's overall program.

Mr. Boone relates that the ability to schedule orientation was nevertheless dependent on the vagaries of the timing of Labour Day, and the ongoing tension with the academic administrators in the College. He relates that from 1989 to 1992 there was a gradual erosion of the orientation process, as it was gradually encroached upon and cut back to two or two and a half days. In fact, he states, orientation suffered with the scheduling of the 1993-1994 academic year. The pressure to "get more teaching in" forced the scheduling of many orientation activities into the evening, causing a general tightening of the orientation process. Mr. Boone relates that classes were scheduled for first year students on the first day of the academic year because of pressure from the academics who wanted to get on with classroom teaching.

Mr. Boone also gave evidence explaining the turnaround between semesters. With the fall semester ending December 17, 1993, marks for the semester were to be provided to the Registrar by December 22. As the ability of students to progress into second semester programs is dependent on their first

semester performance, the marks process is intrinsic to generating timetables for the following semester. As a result, students receive their marks when they return in January and they can then register for their second semester courses. However, as he points out, for a 16-week semester ending on December 17 to be accommodated, the semester must begin on Monday, August 30, 1993.

In respect of the possibility of having first semester exams in January, Mr. Boone replied that he does not like that option. He states that it has been tried elsewhere and that students do not like it, as it requires them to face exams after the Christmas break, and it pushes the academic year into May, impacting their access to summer jobs.

Mr. John Rigsby, the Vice-President of Finance for the College, gave further evidence with respect to the funding question. Shortly before he arrived at the College, in 1993, it received an auditor's report which brought to the College's attention the funding lost to the College based on changes to program durations from the durations initially reported in the enrolment report for 1991-1992. By way of example, the report cites the broadcasting radio program which ran for 15 weeks in the fall semester and 16 weeks in the winter, for a total of 31 weeks. That program duration was estimated to be repeated in the second year of the two-year program, for a total of 62 weeks. However, the second year program only totalled 30 weeks, with 15 weeks in each semester. This resulted in an underfunding of approximately \$9,000. When program duration problems of that kind are multiplied more broadly over other programs, the need for consistent adherence to projected program duration becomes apparent. He further points to a letter received by the College from the Ministry of Colleges and Universities dated January 19, 1993 concerning the process of activity-based calculations applied by the Ministry to determine the College's funding. While the formula applied by the Ministry, which apparently involves the consideration of three year periods, is fairly complicated, it does not appear disputed that the letter, which denied the College's request to modify the total program duration of a number of programs used in the calculation of its 1990-1991 activity base, resulted in the loss of some \$90,000 to the College's funding. In cross-examination, Mr. Rigsby agreed with counsel for the Union that the loss of funding was caused by changes in the projected duration of programs, and that problem can be dealt with independently of the start date of the fall semester. Under examination by counsel for the College, he confirmed that the correspondence from the Ministry shows that if the College delivers less teaching program than it previously projected, there will be an adverse impact on its ministerial funding.

## II. ARGUMENT

Counsel for the Union submits that the College had not made out a case that justifies an exception to the requirement found in article 11.03, that the academic year be September 1 to the following June 30. He stresses that it is incumbent upon the Employer to establish that it was not "feasible" within the

meaning of the article to schedule the 1993-1994 academic year between those dates, and that it has not done so. He points to a dictionary definition of the word "feasible" which included the phrase "...capable of being done or carried out ...". Counsel submits that the College has not demonstrated that it would not have been feasible to commence the academic program on September 1, as contemplated in the collective agreement.

He further submits that the S.W.F. which a teacher receives effectively defines the academic year for that individual. Pointing to the terms of article 11.01 B 1, counsel notes that the workload assigned or attributed by the College to a Professor is agreed to include teaching contact hours, attributed hours for preparation, attributed hours for evaluation and feedback as well as attributed hours for complementary functions. He stresses that Mr. Plummer's S.W.F. and timetable indicated that his academic year would commence on August 31, 1993. The fact that his work for the initial day was effectively cancelled does not, in counsel's submission, alter the academic year workload which was given to hire as reflected in the S.W.F.

With respect to the dictionary definition, counsel submits that the word "feasible" means that something is capable of being done. He argues that that involves a higher test than the mere application of reasonable business judgement. In the instant case, he maintains that the College failed to bring forward factors which would establish that it was not feasible to schedule the program to commence on or after September 1, 1993. Counsel stresses that "feasibility" should be interpreted so as to give reasonable protection to the teaching staff, and that the College should not be able to invoke it unless there is some substantial reason, such as a lack of space, or a demonstrable funding problem which would justify an exception to the scheduling requirements of article 11.03.

Counsel does not deny that serious funding problems could go to the feasibility of scheduling a program within a particular time. On the evidence before the Board, he submits that there was no funding problem advanced by the College with substantial implications for the start date of any program taught by the grievor. Specifically, he stresses that it was possible for the College to fit 16 weeks of teaching into a fall semester with a start date on September 1, finishing on December 17th. This, he submits, is possible because Ministerial guidelines treat three teaching days in seven as a week for the purposes of program delivery. On that basis, he submits that the College could have fashioned two 16 week semesters while staying within the parameters of article 11.03. Alternatively, counsel submits that the College could have extended the first term into the month of January, as at least one other College does.

Counsel for the College takes issue with the suggestion implicit in the argument of the Union that the academic year turns upon the dates that may appear on an individual teacher's S.W.F.. This, she

submits, could result in their being 300 different academic years in a College, each turning on the Standard Workload Form of individual teachers. She submits that that is not the intention of article 11.03, which contemplates, in general terms, a single academic year for the institution. On that basis, she submits that, as reflected in the orientation timetable reproduced above, the academic year was effectively commenced with the registration of first year students on Monday, August 30, 1993. Counsel further notes that, insofar as the grievor was concerned, it was clear from May of 1993, when the orientation timetable was published, that there would be no classes for second and third year students until Thursday, September 2nd. She submits that, on the basis of his timetable, Mr. Plummer knew in advance that, because of the scheduling of his classes, he would not be required to perform any teaching functions before September 1.

Counsel stresses that article 15.01 does not limit the ability of the College to schedule vacations in such a way as to require staff to perform some work in July or in August. There is, she submits, nothing sacrosanct in July and August from the standpoint of scheduling the  
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two-month vacation to which employees are entitled. In this regard, she traces the vacation pattern of the grievor, noting that from 1990 through 1993 inclusive, his vacation was scheduled to commence in June and to terminate well before the end of August. In 1993, his vacation was from June 28th to August 27th. In the result, she submits, the grievor was quite properly scheduled to be back on campus on the day the academic year commenced. Noting that the grievor agreed to commence his vacation in late June, and was in fact accorded a full two-month vacation as contemplated under the collective agreement, she submits that there can be no merit to the suggestion, which appears on the face of the grievance, that the College's actions compromised Mr. Plummer's right to a vacation of two months under article 15.01.

With respect to the issue of the application of article 11.03, the fundamental position of the College is that it must be addressed on the basis of there being a single academic year for the whole institution, without regard to the structuring of any single professor's Standard Workload Form. In her submission, article 11.03 does not preclude an academic year starting before September 1, but stands for the mutual understanding of the parties that normally the year should start on or after September 1, unless that should not be feasible. With respect to the meaning of the word "feasible, counsel refers the Board of Arbitration to several dictionary definitions including the following definition from the Shorter Oxford English Dictionary:

"... capable of being done, carried out, or dealt with successfully in any way possible, practicable".

From the Webster's Collegiate Thesaurus, she cites the following:

"... doable, practicable, viable, workable".

Noting that there are no prior decided cases on the meaning of the word "feasible" within the context of article 11.03, counsel stresses that the article must not be interpreted so as to raise a standard of impossibility, as she suggests the Union would have it. She submits that the issue is whether it makes practical and professional sense to commence the academic year on September 1, 1993. She submits that it is incumbent upon the College to show that to achieve the College's legitimate teaching objectives it could not start the academic year on September 1 without giving up a substantial part of its ability to do so.

As to the factors going to feasibility and the delivery of the College's program, counsel refers to the elements considered by the Employer. The first is the financial imperative dictated by the College's recent experience, having lost funding because of inconsistency in its rates of program delivery. She submits that the evidence discloses that, in light of prior projections, for the College to fail to provide 16 weeks of academic program in the first term would have resulted in a funding shortage.

Secondly, she submits that the financial imperative must be understood in light of the program delivery issues described in the evidence of Dean Michol. The reduction of average weekly program hours from the range of 25 to 27 hours per week to the figure of 20 to 22 hours per week impressed upon the Dean's Committee the need to begin classes as early as possible in the academic year, even if to do so was to the detriment of the orientation program. This, she submits, is reflected in the evidence concerning the tug-of-war which went on between the student services staff and academic program staff in the fashioning of the academic year. She submits that the compromise in respect of those two interests was instrumental in the decision to move the orientation program into the period before Labour Day and to nevertheless reduce the extent of orientation activities.

Counsel next notes the evidence confirming the College's view as to the need for equally balanced terms. Two 16-week semesters would allow for consistency in the delivery of courses which are offered in either semester. By contrast, an imbalance in the length of the semesters would result in inconsistency within a given course as it might be presented from one semester to another.

Finally, counsel stresses the importance of the College's concerns in respect of protecting, at least to some degree, the integrity of the orientation process particularly as it impacts the first year students. She stresses the evidence of Vice-President Boone concerning the rates of retention of first year students, particularly as they experience the first days of the fall semester. The importance of having the first year

students on campus for some two and a half days prior to the arrival of the upper class students is, she submits, a legitimate pedagogical and administrative consideration which it was appropriate for the College to consider in fashioning the academic year to commence on August 30th.

Further to the issue of feasibility, counsel submits that the suggestion of Mr. Plummer to the effect that the first semester could be extended into January is not as simple as it seems. This, she submits, would cause problems from many standpoints, including the smooth turnaround between semesters, a process she submits would be disrupted by the delay in marking first semester exams and returning grades for the purposes of second semester registration. This would involve the loss of a week in January and would, in all probability, be unpopular among the students.

Secondly, with respect to the suggestion of counsel for the Union that 16 weeks of teaching could have been scheduled between September 1 and December 17, 1993, counsel for the College concedes that to do so would be possible. She adds, however, but that it would mean the effective elimination of any meaningful orientation for first year students. With respect to the circumstances of the grievor, counsel further notes that he had an obligation to be at work as of August 30, after the conclusion of this two month vacation and, that although he had no classes to teach on either August 30 or 31, he should reasonably be expected to do something.

In summary, counsel submits that the actions of the College were not only reasonable, but were necessary to achieve the feasibility of a meaningful orientation program for first year students, given the need to establish a 16-week term for the first semester, having regard to funding considerations and program delivery. She submits that on the whole the College has established that it did what was practicable, and that it did so within a manner consistent with the intention of article 11.03 of the collective agreement.

Counsel for the College refers the Board to an arbitral precedent which, although not directly on point, does involve a somewhat similar issue. In **Lambton College and Ontario Public Service Employees Union**, a Board of Arbitration chaired by Arbitrator Kenneth P. Swan issued a unanimous unreported award dated May 10, 1993. That case concerned a grievance by the Union against the scheduling of the academic year to commence on August 31, 1992. The grievance in that case did not take issue with the need to start the academic year before September 1 for reasons of feasibility, as was then provided for in article 4.03 of the collective agreement, the precursor of article 11.03. The Union asserted, however, that the College effectively added to the workload of teachers for the 1991-1992 year by scheduling the academic year to commence in August, in violation of the workload limits then found in article 4.01 (a) of the collective agreement.

The Board of Arbitration rejected the Union's grievance, finding that the workload limits within the collective agreement were not offended by the College's decision to schedule classes on August 31, 1992. Although the issue is not precisely the same as the issue before us, some of the analysis reflected within the award is useful for the purposes of this case. At p7-9, the following comments appear:

The problem from which this grievance arises is known to all academic institutions. The difficulty is that the solar and lunar cycles on which we have based our calendar are not regular in themselves, nor synchronized with each other. As a result, Labour Day, which is always the first Monday of September and traditionally the day after which classes begin after the summer break, has an awkward tendency to move backward in date from September 7 to September 1, skipping a day in leap years to add to the confusion.

There are various ways to make an academic year fit around this moving target, all of which have both supporters and detractors. In the present case, the College, which had 'typically' resolved the problem by starting classes on the first day after Labour Day, determined instead to start classes on the Monday before Labour Day, August 31. In that year, Labour Day was on September 7, which is the latest date on which it can possibly occur, and so the College's solution was one chosen in light of the most extreme scheduling problem which the perambulations of Labour Day can present.

...

In the present case, there is no specific breach of the collective agreement in relation to any of these limitations. It is common ground that, within the academic year actually scheduled by the College, which is clearly fit within a ten month period, beginning on August 24, 1991, there is no question of exceeding any of the limitations, and no grievances were filed in relation to any workload assignment issue. As the facts have been agreed before us, the Union is not taking issue with the choice of the start and finish dates of the academic year under clause 4.03, effectively conceding that, for the purposes of this grievance, it was not "feasible" in this College to schedule the academic year otherwise. Once that concession has been made, and it has been demonstrated that there has been no other breach of the collective agreement, we think that the only possible result of this arbitration is that the grievance must be denied.

### III. DECISION

We turn to consider the merits of this grievance. As a cautionary note, we should stress that we do not consider it appropriate in this case to make any comment which could be taken as a conclusive or categorical definition of the word "feasible" as it appears in article 11.03 of the collective agreement. We do so because it appears to us that, on the one hand, to risk an unduly broad construction of feasibility might undermine the rights and protections of academic staff in respect of the normal scheduling of the academic year. Whatever the word "feasible" may have been intended to mean, we must conclude that it could not have been intended to be so broad so as to give the College carte blanche to schedule the academic year to commence prior to September 1st, as it sees fit, without any objective constraints, or for mere administrative convenience. On the other hand, there is equal danger in adopting an overly narrow view of the term, equating it, for example, with the word "possible", so that the College is unduly constrained from ever beginning the academic year before September 1st, even where it might have

good pedagogical or operational reasons to do so. It appears to this Board that the factors which govern the issue of feasibility for the purposes of article 11.03 must, of necessity, be looked at on a case by case basis, having regard to all relevant considerations which apply to a specific College, in a specific calendar year.

For the purposes of this case, there are clearly a number of factors advanced by the College to justify its position that it was not feasible, within the meaning of article 11.03, to commence the academic year 1993-1994 no later than September 1, 1993. Those factors include consistency in delivery of the academic program, funding, the pedagogical concerns surrounding orientation and the overall convenience of students and academic staff.

In our view, the evidence in the instant case is not clearly compelling, as it relates to funding, as a factor going to the feasibility or non-feasibility of an academic year which would commence on or after September 1, 1993. While the Board appreciates the difficulty which the College encountered in relation to a prior year, in respect of which its funding was reduced by reason of shortfalls in its academic programs, it is not clear that it could not have avoided that problem by nevertheless scheduling a 16-week term in the fall of 1993 commencing on or after September 1st. It would appear, as counsel for the Union quite correctly argues, that within provincial guidelines the College could have fashioned a 16 week first term between September 1 and December 17, 1993. In the circumstances, we cannot accord significant weight to the issue of funding as it bears on the question of scheduling the academic year.

In our view, however, there is substance to the other factors raised by the College. The issue of the consistent delivery of academic programs is, we think, reasonably compelling in the instant case, at least insofar as it bears on the wish of the College to offer two semesters of equal length. The evidence discloses that within a number of programs the same course is given both in the first term and in the second. In those circumstances, there is an obvious value to consistency in the length of the teaching semester. Against that background, it is not appropriate to suggest that the College could have shortened the fall term, while merely adding more teaching time to the second semester. We are satisfied that the College's decision to opt for two 16-week terms was, therefore, appropriate from the standpoint of delivering a balanced academic program. That finding does not, of itself, dispose of the grievance, however. As noted above, the College could nevertheless have scheduled a 16-week semester beginning on September 1. The question then becomes whether it could have done so without legitimate concern for the orientation program aimed at first year students.

This Board accepts that student orientation, particularly as it applies to first year students entering the College, is a legitimate and substantial pedagogical concern. There can be little doubt that the way a College receives post-secondary students, many of whom are away from home for the first time, and the

quality of attention which it brings to them during the first critical days of their attendance at the College can and does have a substantial impact on the rate of student retention which, at least in part, must be seen as a reflection of the quality of the program being offered. On this issue, the evidence is reasonably compelling. If, as the Union contends, the College could have commenced the academic year on September 1, there can be little doubt that that would have involved a substantial sacrifice of orientation time for the entering students. The testimony of Vice President Boone, which we accept, is to the effect that a very critical aspect of the orientation period involved having the entering students on campus, alone, for a period of at least two days before the return of the upper class students. In addition to the program orientation which the entering students can receive in their first classes, they have the benefit of a brief period that promotes social bonding, and a sense of belonging among themselves. There can be little doubt, on the evidence before us, that to require the College to commence the academic year on or after September 1, thereby losing two days, would have substantially undermined the quality and value of the first year students' orientation period. That, in our view, is a factor which goes, quite properly to the issue of feasibility contemplated in article 11.03.

We are also of the view that the issue of overall convenience to students and academic staff, and the orderly transition or turnaround from one semester to another is a factor which can be advanced in support of the College's decision. To push the days allowed for the orientation of entering students further back, so that the academic year would not have commenced until September 1, 1993 would have created inevitable pressure on the date for the end of the first term which, depending on the length of the orientation could have fallen as late as December 22. Given that many of the students at the College are away from home, some from as far as Atlantic Canada, the College cannot be insensitive to student desires to have a reasonable opportunity to travel to and from their homes for the Christmas holiday. To a very real extent, the College is in competition with other institutions, and to disregard those concerns could, over time, have a real impact on its desirability and, ultimately, its enrolments.

Similarly, the prospect of pushing the first term into a part of January, which would involve the suspension of courses for a minimum of one week during that month to allow for the marking of exams and an appropriate turnaround between semesters, while possible, involves a substantial degree of disruption and inconvenience to the students. While the creation of a breakpoint between terms in mid or late January might be possible, it would have the effect of creating an idle week during which no teaching would be delivered, lengthening the overall academic year. That, in turn, would reduce the number of weeks available to students to pursue summer employment. While the College could, of course, look upon that issue with detachment or indifference, it is not inappropriate for its administrators to consider the adverse impact which a late finishing date might have on the attractiveness of the College from the standpoint of its consumers, the students. Admittedly, this concern is somewhat less compelling than

concerns which are pedagogically grounded, such as the need for a reasonable period of orientation for entering students. However, to the extent that the College is, in part, a business, it is not inappropriate for those considerations to be fully considered.

It is obvious from the language of article 11.03 that the parties did not intend to restrict the College entirely in its ability to schedule a part of the academic year prior to September 1. That is apparent from the qualifying phrase "to the extent it be feasible". For the reasons touched upon above, we are satisfied that the feasibility of presenting a particular academic program, including an adequate period of orientation for entering students, consistency and balance in the delivery of the academic program and the convenience of teachers and students in the timing of semester breaks and the year end are legitimate factors going to the feasibility of scheduling an academic year. In the instant case, we are satisfied that the College has demonstrated that it would not have been feasible to commence the academic year 1993-1994 on or after September 1, 1993, without undue sacrifice to the legitimate pedagogical concerns of first year student orientation, combined with the delivery of an academically balanced program in both semesters, and legitimate concerns for the convenience of the students and teachers in respect of the timing of the break between the two terms and the timing of the year's end. These are, in our view, considerations which it was legitimate for the College to take into account in assessing the feasibility of commencing the academic year on or after September 1. Clearly, the College's action involved no violation of Mr. Plummer's rights insofar as the scheduling or duration of his vacation is concerned. Nor was there any substantial effect on his professional life as he was scheduled, in any event, to be in the service of the College from and after August 27, 1993. More importantly, apart from those considerations, the College acted for valid educational and business purposes which could not have been achieved without the adjustment which it made in the commencement of the academic year. In those circumstances, it has, in our view, satisfied the standard necessary to make an exception to the general rule described in article 11.03 of the collective agreement.

In the result, we can find no violation of the collective agreement. The grievance must therefore be dismissed.

DATED at Toronto this 9th day of November, 1995.

Michel G. Picher - Chairperson  
"Al Merritt"  
College Nominee

DISSENT ATTACHED  
"Derek Blackadder"  
Union Nominee

## DISSENT OF UNION NOMINEE

I respectfully dissent from the decision of the majority.

I cannot agree with the conclusion that an occasional, depending on the positioning of Labour Day within the calendar, extension of the first semester of the College's academic year to a date as late as December 17th is not feasible. Clearly the funding formula for Colleges of Applied Arts and Technology allows the College to, in years when it is required, to schedule its academic year in such a way that neither the College's funding nor the right of employees to schedule vacation up to September 15' are endangered.

The evidence presented with regard to the need for student orientation at the beginning of each academic year was, as the majority have noted, compelling. Clearly, retention rates are directly proportional to orientation efforts. However, in weighing that evidence against the provisions of the collective agreement, I am struck by the failure of the College to have considered alternative ways in which to deliver that orientation - ways which in my opinion would not have constituted a violation of the collective agreement.

I cannot agree that, in regard to the scheduling of semester end dates, Loyalist College is in competition for students with other CAAT's. The same collective agreement governs at each of the colleges.

The word 'feasible' has a specific meaning and, I must conclude, was agreed to by the parties to the collective agreement for a reason. Counsel for both the Union and the College offered definitions of 'feasible' which support a narrower interpretation of the collective agreement than was argued for by the College and agreed to by the majority. In my opinion the College did not establish any significant need that would justify an exception to the rule established by the parties in 11.03 of the collective agreement.

Derek Blackadder"  
Union Nominee