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88C343
L560
CAAT(A)

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SENECA COLLEGE
(Hereinafter referred to as the College)

AND

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

AND IN THE MATTER OF THE GRIEVANCE OF W. QUANSAH (OPSEU FILE 88C343)

BOARD OF ARBITRATION: Gail Brent
Andrew Shields, College Nominee
Wayne Roberts, Union Nominee

APPEARANCES:

FOR THE COLLEGE: G. F. Luborsky, Counsel
M. Fogel, Dir. of Employee Relations
H. Atkins, Dean, Technology Division

FOR THE UNION: David Wright, Counsel
Ted Montgomery, President Local 560
W. Quansah, Grievor

Hearing held in Toronto, Ontario on June 12, 1989.

DECISION

This decision deals only with the preliminary issues raised by the College concerning our jurisdiction in relation to the grievance (Ex. 1). The grievance is dated September 6, 1988 and the substance of it is reproduced in full below:

> STATEMENT OF GRIEVANCE:
> By his memo of July 26, 1988 to Mr. Harold Atkins, Dean of Technology, the Director of Employee Relations has without proper knowledge prejudiced my application to the WMG (WRA). This contravenes the Collective Agreement Art 4. The Director of Employee Relations also has contravened Arts 2, 7 and 27.
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> SETTLEMENT REQUIRED:
> 1. The College should cause the memo of July 26, 1988 be rescinded

or otherwise rectify his incorrect Arithmetic.
2. The College should compensate me for any overload in work.
3. The Director of Employee Relations should confine himself to his properly assigned duties.

For the purpose of this decision the following facts were outlined to us. The grievor was at all material times a teaching master at the College in the Mechanical Engineering Department under the ultimate responsibility of the Dean of Technology, H. Atkins. On or about May 10, 1988 the grievor received a standard workload form (SWF) with which he concurred at the time. The SWF allocated 2.5 hours per week on account of his activities on the Health and Safety Committee. That figure had been arrived at by the Workload Monitoring Group (WMG) in 1987.

Sometime after May 10, 1988 the grievor wrote to his immediate supervisor (G. Dunsford, the Chair of the Department) and asked that the 2.5 hours for the Health and Safety Committee be revised to 5.5 hours. On June 6, 1988 Mr. Dunsford requested more details, and the grievor responded on June 9th. Mr. Dunsford then forwarded the request to the Dean. The Dean requested advice from Mr. Fogel, the Director of Employee Relations. On July 26, 1988 Mr. Fogel wrote a memo to the Dean (Ex. 3) setting out his opinion as requested. Since that memo is the one referred to in the grievance, the body of it is reproduced below:

> With regard to your inquiry, to my knowledge there is no "college policy" with regard to workload hours to be attributed to Health and Safety Committee activities. The decision to provide Dr. Quansah with 2.5 hours in the past was based on a Workload Monitoring Group decision in June 1987.
>
> The Occupational Health and Safety Act stipulates that a member of a committee is entitled to time from his work as is necessary to attend meetings of the committee, to inspect the physical condition of the workplace (if designated by the union members of the committee) not more often than once a month, and to investigate cases where an accident has occurred.

> Dr. Quansah is apparently a member of the Newnham Campus Health & Safety Committee, the Fairmeadow Campus Health & Safety Committee and the Central Health and Safety Committee. It is my understanding that each of these committees meets once every three months for a period of 2-3 hours each, which may as well include the inspection of the physical condition of the workplace. Assuming 3 hours for each meeting once in three months would lead to an expenditure of time in the order of 9 hours every three months or 3 hours per month or .75 hours per week for committee meetings which could include the time necessary for workplace inspections. Even if one allows for another hour per month for the inspection of each campus for which Dr. Quansah has responsibilities (i.e. Newnham and Fairmeadow), this would run to an additional 2 hours per month or .5 hours per week for a grand total of 1.25 hours per week. Accordingly, the College is being generous in attributing 2.5 hours per week for Health and Safety Committee duties.

The Director of Employee Relations does not decide what goes on the SWF; that decision is made by the Dean. After the Dean makes his decision the Director of Employee Relations has no power to change the hours attributed on the SWF. Teaching Masters who wish to dispute a SWF can have the matter reviewed by the WMG. The grievor initiated such a proceeding on August 10, 1988, before this grievance was filed. The grievance was filed before the WMG met on September 30, 1988 to hear the grievor's workload complaint. It apparently was filed when the grievor first became aware of and read Mr. Fogel's memo to Dean Atkins (Ex. 3).

Mr. Fogel is one of the College appointed members on the WMG. At the grievor's request he did not participate in the decision of the WMG concerning the grievor's complaint. The WMG rendered a majority decision giving the grievor credit for 4.25 hours per week on account of his Health and Safety Committee work. He had asked the WMG for 5.5 hours. Following the decision the grievor did not file a grievance before the Workload Resolution Arbitrator (WRA).

The Union is not pursuing any allegations regarding Articles 2, 7 and 27.

The College raised four grounds for asserting that we lack jurisdiction

to hear and determine this matter. They are, in summary:

1. That the process for dealing with complaints under Article 4.02 is established in the collective agreement and excludes our jurisdiction as a board of arbitration established under Article 11.
2. That even if this board had jurisdiction to deal with a complaint under Article 4.02 we could not because there is no jurisdiction to grant an increase in the decision rendered by the WMG, which is the essence of the second remedy requested.
3. That the essence of the grievance is the memo (Ex. 3) and that is not arbitrable being an internal College document which is not disciplinary and is not part of the grievor's personal file. It was also argued that we lacked jurisdiction to determine the proper work assignment of a member of management.
4. That the grievance, if it is a complaint about the fundamental fairness of the process, is a substantially different matter than that which the parties dealt with as the grievance during the grievance procedure.

Those grounds were, of course, substantially elaborated upon in argument, and we were referred to several portions of Article 4 along with the decisions in Fanshawe College and OPSEU, (1982) unreported (O'Shea); Fanshawe College and OPSEU, (1983) unreported (Brent); Seneca College and OPSEU, (1978) unreported (Brown); and Seneca College and OPSEU, (1984) unreported (Brent).

The Union's position, in summary, was that there has been no substantial change in the grievance; that the matter of whether the grievor has been prejudiced or judged fairly is a matter for the merits; and that documents do not have to be disciplinary to be arbitrable. The primary submissions which

it made, though, related to the jurisdiction of a board of arbitration under Article 11 to deal with matters relating not to the mechanics of a workload assigned to an individual but to the process by which they are determined. In particular, the Union asserted that a board of arbitration has jurisdiction to determine whether there was a standard of "fairness" and whether that standard had been breached by the WMG. The Union referred us to the following cases: Fanshawe College and OPSEU, (1989) unreported (Burkett) and Seneca College and OPSEU, (1988) unreported (P. Picher).

Despite the fact that we have greatly summarized the positions of the parties, we have considered them fully in reaching our decision. We have also referred to the collective agreement and to the authorities cited to us.

Without reproducing all of the portions of Article 4 to which we were referred, suffice it to say that the parties have agreed upon teaching master workloads and a system by which individual workload complaints can be handled expeditiously at the local level. Article 4.02 deals with the individual teaching master's assigned workload as set out on the SWF and the process by which the teaching master can assert his/her disagreement with the workload and have the matter dealt with. Article 4.02(1)(f)(ii) provides the following:

> Grievances arising with respect to Article 4, other than Articles 4.01 and 4.02 shall be handled in accordance with the grievance procedure set out in Article 11.

Article 11 is the normal grievance procedure under which this board of arbitration is constituted. Article 4.02 then proceeds to establish the composition of the WMG, its function, its jurisdiction, and so on. Article 4.02(4)(e) provides that its decisions will "be binding on the College, the Union Local and the teacher involved". If the WMG cannot reach a majority

decision, there is a provision in Article 4.02(5)(a) for reference of the complaint to the WRA by the teacher. Article 4.02(6)(i) then provides as follows:

> Having regard to the procedures set out herein for the resolution of disputes arising under 4.01 and 4.02, no decision of the Group or Award of the WRA is subject to grievance or any other proceeding.

Two decisions of Article 11 boards of arbitration (Ms. Picher's Seneca case and Mr. Burkett's Fanshawe case) have dealt with this new language. In the former it would appear that no preliminary objection may have been raised. In the latter there was a preliminary objection, and Mr. Burkett dealt with it in the context of a Union policy grievance regarding the general application of standards set out in Article 4.01. The matter regarding the extent to which an Article 11 board of arbitration is excluded from considering questions which arise in the context of workload complaints or the workload complaint resolution procedure is one which we recognize could be of considerable importance to the parties. Certainly, after Mr. Burkett's decision there is room to argue that Articles 4.02(1)(f) and 4.02(6)(i) do not exclude our jurisdiction to the extent that they appear on the surface to do. Be that as it may, we consider that there would be no point in embarking on such an important exercise unless we had the jurisdiction to grant the remedies requested in this grievance, and which the Union told us it was requesting.

As set out above in the grievance (Ex. 1), the remedial action requested is:

> 1. The College should cause the memo of July 26, 1988 be rescinded or otherwise rectify his incorrect Arithmetic.
> 2. The College should compensate me for any overload in work.
> 3. The Director of Employee Relations should confine himself to his properly assigned duties.

Regarding the first remedy requested, it is our finding that we have no

jurisdiction to deal with such an internal document in the manner requested. The memo is not part of the grievor's personal file. It is not disciplinary in nature. The memo is an internal document which was written to the Dean following his request for advice from the Director of Employee Relations, who had no part to play in the actual decision as to the number of hours which should be attributed to the grievor's activity on the SWF. Even if we were to assert a jurisdiction under Article 4.02 as the Union asked, we would not have the jurisdiction to grant such a remedy.

The second remedy requested is clearly beyond our jurisdiction. It calls for an actual workload determination and adjustment and that is a something which the parties have clearly placed beyond our jurisdiction by virtue of Article 4.02(1)(f). Therefore, even if we were to assert the jurisdiction under Article 4.02 which the Union has asked, we could not grant that remedy.

The third remedy requested is also clearly beyond our jurisdiction. The College alone has the right to determine the "properly assigned duties" of a member of management, and that is something that is not dealt with at all in the collective agreement. There is no claim that any member of management has violated the collective agreement by performing bargaining unit work; the assertion is rather that the Director of Employee Relations had no business writing Exhibit 3 to the Dean. We do not accept that we have the jurisdiction to so direct any member of management in the performance of management tasks.

In summary, therefore, we are of the view that we lack the jurisdiction to grant any of the remedies specified in the grievance. The Union has raised important arguments about the need to subject alleged improper procedures practiced in the course of workload determination to arbitration. However, the particular remedies sought in this case do not make it necessary for us to

determine general procedural questions in order to deal with this grievance. As a consequence, we will make no determination on any other point raised in argument so as not to prejudice the positions of the parties should an issue of this sort arise again in another situation.

For all of the reasons set out above, therefore, the grievance is dismissed.

DATED AT LONDON, ONTARIO THIS 1st DAY OF August, 1989

Gail Brent

Gail Brent

I concur / ~~dissent~~

"Andrew Shields"

Andrew Shields, College Nominee

I concur / ~~dissent~~

"Wayne Roberts"

Wayne Roberts, Union Nominee