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IN THE MATTER OF AN ARBITRATION

BETWEEN:

FANSHAWE COLLEGE

- and -

ONTARIO PUBLIC SERVICES EMPLOYEES UNION

GRIEVANCE OF R. DEMOPOULOS

BOARD OF ARBITRATION:

JANE H. DEVLIN

CHAIR

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COLLEGE NOMINEE

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UNION NOMINEE

ROBERT J. ATKINSON, FOR THE COLLEGE

DAVID R. WRIGHT, FOR THE UNION

OPSEU NO.: 96A078

HEARING DATES:

December 15, 1997
January 20, 1998
January 21, 1998
February 13, 1998
June 15, 1998

June 23, 1998
September 18, 1998
November 24, 1998
January 12, 1999
March 4, 1999

The Grievor, Rai Demopoulos, worked as a Professor at the College from 1982 until her layoff, which took effect on July 30, 1996. The Union contends that the Grievor's layoff was contrary to Article 27.06 of the collective agreement, the relevant provisions of which are as follows:

Article 27
JOB SECURITY

. . .

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 fulfill 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 employee 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 fulfill the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College.
- . . .

In accordance with Article 27.08 B of the collective agreement, for purposes of the arbitration hearing, the Grievor identified two full-time positions for which she claimed she possessed the required competence, skill and experience. One of these positions was occupied by Dana Morningstar, who commenced employment with the College on a part-time basis in 1988 and subsequently obtained full-time employment in 1990. The other position was occupied by Don Johnson, who began work on a part-time sessional basis in 1981 and obtained a full-time position in 1985. Both Ms. Morningstar and Mr. Johnson attended and participated in the hearing of Ms. Demopoulos' grievance.

Article 27.06 of the collective agreement represents a sufficient ability or threshold clause and, accordingly, the skill, competence and experience of the Grievor are to be measured against the requirements of each position, rather than against the skills of the individual incumbent. However, what constitutes a position under this collective agreement has been the subject of a number of awards between the parties. In St. Clair College and Ontario Public Service Employees' Union, May 15, 1989 (Carter (unreported)), the Board determined that the "position" referred to in Article 8.05 (now 27.06) consisted of "the core pattern of duties and responsibilities performed by an incumbent

teacher during the course of her employment". In this regard, the Board commented as follows:

Both parties agree that article 8.05 no longer contemplates a competition between employees, but differ as to how this new language is to be applied. As we read this language it expressed an intention that the competence, skill, and experience of the displacing employee be measured against the benchmark of the content of the position being claimed. The problem, however, is to define the content of that position in an objective manner so as to maintain in the lay off situation a balance between respect for seniority and recognition that an employer is not required to re-organize its work assignments to accommodate the particular qualifications of a more senior employee. In situations where job content is not well defined, as in this case, this task can pose considerable difficulties.

In the board's view, what one must do in this kind of case is to determine the core pattern of duties and responsibilities performed by an incumbent teacher during the course of her employment. It is this core pattern of duties that forms the content of the position against which the competence, skill, and experience of a displacing employee must be measured. If it can be established that a displacing employee is capable of performing the core pattern of duties and responsibilities being performed by an incumbent with less seniority, then under the terms of article 8.05 the incumbent would be displaced.

In determining this core pattern of duties and responsibilities, however, it is not sufficient to take a snapshot of the duties and responsibilities of the incumbent at just one point of time. Not only may some of the duties change from semester to semester, but some may also be peripheral to the central core of duties. Rather, what we must do is to examine the actual work assignments given to an incumbent over an extended period of time to identify the basic pattern of duties and responsibilities performed by that incumbent. It is this core pattern of duties that makes up the "position" and provides an objective standard against which to measure the competence, skill, and experience of the displacing employee.

In a subsequent award in the same matter, the Board declined to consider future teaching assignments and determined that assignments prior to the date of layoff were "the only concrete evidence of the responsibilities that define the position": See St. Clair College and Ontario Public Service Employees Union, October 12, 1989 (Carter (unreported)).

Thereafter, in Niagara College of Applied Arts and Technology and Ontario Public Service Employees Union, October 31, 1989 (Brown) unreported), the majority reviewed the earlier of the two St. Clair College awards and commented as follows:

The Carter award did not define the position in terms of future teaching assignments which would not be set by the College at that time for the entire academic year. If that was to be the criteria, it would be possible to defeat the seniority rights of the laid-off employee by structuring future courses in a manner which would effectively prevent that employee from exercising the displacement rights under Article 8.05 (b). As this clause has been changed by the parties from a relative equality competition clause contained in past Collective Agreements, to a sufficient ability requirement by which the laid-off employee must meet the conditions set out in the Article, in order to give effect to the seniority factor. The application of seniority is of significant importance to employees who are subject to lay-offs and which must be given effect under the terms of the agreement. We conclude that this Article requires the grievor to have the requisite competence, skill and experience to fill the position as at the time of lay-off. The "position" at that time is that which the incumbent fills with his responsibilities for teaching assignments at that time. That is the position of Mr. Eden who has been named by the grievor as the individual he seeks to displace under Article 8.05(b). We find that the grievor has the obligation to establish that as of the date of lay-off, he meets the

requirements of Article 8.05(b) to fulfill the position of Mr. Eden within that definition.

...

Although the majority of the Board in the Niagara College award found that the incumbent's position consisted of his teaching assignments at the time of layoff, we note that in that case, the Board was not asked to determine whether the position claimed by the grievor ought to involve any consideration of prior teaching assignments. Instead, the Board was asked only to consider courses taught by the incumbent in the fall and winter terms following the Grievor's layoff. The majority, however, declined to consider courses taught in the winter term on the basis that it would be possible to defeat the seniority rights of the laid off employee by structuring future courses in a manner which would effectively prevent that employee from exercising his or her displacement rights.

A similar conclusion regarding future teaching assignments was reached by the majority of the Board in Niagara College and Ontario Public Service Employees Union, November 20, 1989 (Devlin (unreported)). In that case, the Board reasoned that at the time the College made the decision to lay off the Grievor, the teaching assignments for the winter term had not yet been made and that if such assignments were considered, the Board would be altering the

nature of the position considered by the College at the time of the layoff decision and by the grievor at the time of the filing of his grievance.

The meaning to be given to the term "position" in Article 27.06 of the collective agreement was also recently considered in Fanshawe College and Ontario Public Service Employees Union, June 4, 1998 (Burkett (unreported)). In that case, the grievor identified two positions for which he claimed that he possessed the requisite skill, competence and experience. One was an ongoing position and the other, a newly-created position. In respect of both of those positions, the Union maintained that the Board ought to consider only the courses taught by the incumbents in the fall term which coincided with the grievor's layoff. In respect of the ongoing position, the College maintained that the Board ought to consider the core pattern of teaching assignments of the incumbent over some representative period. In respect of the newly-created position, on the other hand, the College contended that the Board ought to take into account not only the incumbent's assignments in the fall and winter terms, but also assignments which the College contemplated for the position over time.

The majority of the Board then reviewed the jurisprudence set out earlier in this award and concluded as follows:

...

When reference is had to the foregoing jurisprudence under this collective agreement we are driven to the conclusion, for the same reasons articulated by arbitrators Brown and Devlin, that the "position" in respect of which a grievor must establish his/her ability under article 27.06 is the position occupied by the junior incumbent, comprised of the courses being taught during the term that the layoff is to be effective. This is not a surprising result given the competing interests that are at stake; the preference given to senior employees for continued active employment, on the one hand, and, on the other hand, the College's need to have its course offerings taught by qualified professors. In the face of these competing interests it would make little sense to have the senior employee laid off to the street if he/she is capable of teaching the bundle of courses the College has assigned to a junior professor at the time of the proposed layoff. Indeed, such a result, while it would not advance the interest of the College in having its course offering taught by qualified individuals, would undermine seniority rights. We reiterate that under this collective agreement seniority operates to permit the senior employee to displace the junior employee in a layoff situation where the senior employee can establish that he/she has the "competence, skill and experience" to teach the bundle of courses assigned to the junior employee during the term that the layoff is to take effect.

...

Having determined to consider only those courses taught by the incumbent in the fall term which coincided with the grievor's layoff, the majority proceeded to assess his claim to the newly-created position. As the majority concluded that the grievor possessed the requisite skill, competence and experience to fulfill the requirements of the position, it was unnecessary to decide whether he could also fulfill the requirements of the ongoing position, which was occupied by the more senior of the two incumbents. Accordingly, the majority did not specifically address the relevance of prior teaching assignments in circumstances where the position is an ongoing one.

In this case, apart from Ms. Morningstar's appointment as Co-ordinator of the Corporate Communications and Public Relations Program which was effective April 1, 1996 and involved a newly created-position, the positions identified by the Grievor are properly characterized as ongoing ones.

Accordingly, it is necessary to determine the scope of the teaching assignments which comprise these positions. In particular, we must decide whether to limit our consideration to courses taught by the incumbents during the fall term of 1996.

Having considered the matter carefully, the Board is of the view that the term "position" in Article 27.06 is properly interpreted in the manner suggested by Arbitrator Carter and involves the "core pattern of duties and responsibilities" carried out by an incumbent over some representative period. In adopting this interpretation, we note that in a community college setting, Professors frequently teach a number of different courses, some of which may be at the entry level and some at more advanced levels. Moreover, courses taught in a particular term may simply be a matter of scheduling and not a true reflection of the responsibilities of the incumbent. Equally, however, the seniority rights of an employee should not be defeated based on a single course taught in a term which may coincide with the employee's layoff which is not reflective of the teaching assignments of the incumbent over a representative period. For these reasons, therefore, the Board is not prepared to confine its consideration to the

courses taught by Ms. Morningstar and Mr. Johnson in the fall term of 1996. Instead, the Board proposes to consider their assignments over the two year period extending from the winter term of 1994 up to and including the fall term of 1996.

As indicated previously, in the spring of 1996, Ms. Morningstar was also appointed Co-ordinator of the Corporate Communication and Public Relations Program. Accordingly, it is necessary to consider an employee's right to displace another employee designated by the College as Co-ordinator. This issue was recently addressed by a Board chaired by Arbitrator Swan in Canadore College and Ontario Public Service Employees Union, November 26, 1998 (unreported). In that case, the Board reviewed the provisions of the collective agreement pertaining to Co-ordinators which are as follows:

Article 14 SALARIES

Guidelines Allowances - Professors

14.03 A 3 Coordinator Allowance - Coordinators are teachers who in addition to their teaching responsibilities are required to provide academic leadership in the coordination of courses and/or programs. Coordinators report to the academic manager who assigns their specific duties. It is understood that coordinators do not have responsibility for the disciplining of teachers in the bargaining unit. It is not the intention of the

Colleges to require employees to accept the designation of coordinator against their wishes.

Those employees who are designated as coordinators will receive an allowance equal to one or two steps on the appropriate salary schedule. Such allowance will be in addition to the individual's salary.

The Board then concluded as follows:

...

In our view, there can be no general rule abstracted from either the collective agreement or the arbitral jurisprudence that a person who has been designated as a coordinator is somehow insulated from being displaced pursuant to clause 27.06. In every case, the question must be whether the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned. If that is the case, and the displacing employee is the more senior, then the displacement will have been authorized by the terms of that provisions. There is simply nothing in the collective agreement which raises an appointment as coordinator to the level of a "super seniority" position to prevent an otherwise valid displacement under this provision.

...

We agree with the conclusion reached by the Swan Board that a Professor's designation as Co-ordinator does not insulate him or her from displacement under Article 27.06 of the collective agreement. In each case, therefore, it is necessary to determine whether the grieving employee has the competence, skill and experience to fulfill the requirements of the position. At the same time, however, as the College has the discretion to appoint Co-ordinators, it is not bound to assign those duties to the grieving employee and may dispense with the designation or assign it to another Professor.

Finally, prior to considering the facts in this case, the Board notes that the Grievor is required to demonstrate that she has the skill, competence and experience to fulfill the requirements of the position occupied either by Ms. Morningstar or Mr. Johnson at the time of layoff. Moreover, although there is provision for preparation time which may allow a Professor to “brush up on courses”, this period is not intended to provide an employee with an opportunity to become qualified for the position in issue: see Niagara College and Ontario Public Service Employees Union November 20, 1989 (*supra*); Seneca College and Ontario Public Service Employees Union August 19, 1994 (Swan (unreported)) and Ontario Public Service Employees Union and George Brown College, July 24, 1998 (Mitchnick (unreported)).

As to the Grievor’s qualifications, the evidence indicates that from 1962 to 1965, she attended the University of Minnesota where she was enrolled in a program leading to a Bachelor of Arts degree with a double major in English and fine art. The program included courses in English literature, modern European and Russian literature. The Grievor, however, completed just over two years of study and, therefore, did not obtain her degree at that time. During the month of January, 1979, she attended a program at the Massachusetts Institute of Technology in which she studied photography and 20th century history.

From 1983 to 1991, the Grievor attended the University Western Ontario on a part-time basis, obtaining an Honours B.A. in visual arts in 1991. In addition to courses completed at the University of Minnesota for which she received approximately two years' credit towards her degree, the Grievor took courses in film, art criticism and art history as well as studio courses in printmaking and photography. In 1985, the Grievor completed a one week pre-service teacher training course and in 1987, she completed teacher training 2, both of which are offered by the Western Region Colleges of Applied Arts and Technology. In 1990, the Grievor also completed a 75-hour course on teaching English as a second language ("ESL").

In the spring of 1996, the Grievor obtained a Master of Arts degree in journalism from the University of Western Ontario. Among the courses completed for this degree were Canadian politics and government, journalism ethics, reporting, writing and editing for print, radio and television broadcast, a research and information technologies workshop, arts journalism, organizational communications and new issues in Canada. In addition, she served a one month internship at TVOntario where she was involved in writing the daily web page for the Studio 2 program. She also participated in the preparation of a one-hour documentary on the changing environment in high school classrooms.

As to the Grievor's work experience, the evidence indicates that from 1964 to 1965, she worked as a Library Assistant. During the 1970's and early 1980's, the Grievor worked as a freelance fibre artist, a textile instructor and operated a small business in which she was involved in the design, marketing and sale of clothing, rugs and tapestries. During this period, she also displayed her work at various exhibitions. From 1988 to 1996, the Grievor worked as a freelance photographer and also exhibited her work.

From 1975 to 1976, the Grievor worked on a voluntary basis as a play therapist in the occupational therapy department at University Hospital in London. From 1976 to 1978, she was involved in a newly established pre-vocational assessment program at the Hospital in which, among other matters, she interviewed clients referred by physicians; planned and supervised assessments; recommended and monitored internal hospital placements; made referrals to government and community agencies; liaised with hospital staff, community and government agencies; and supervised occupational therapy students on field placements.

From 1981 to 1982, the Grievor was a part-time instructor for Introduction to Non-traditional Occupations ("INTO"), a program sponsored by the Women's Workshop. As the name suggests, the program was designed to

introduce women to male dominated occupations such as welding, woodworking and auto mechanics. In 1982, the College assumed responsibility for delivery of the program and the Grievor continued teaching the program until it was phased out in 1986. In the meantime, she began working as a Professor on a full-time basis in 1983. The Grievor testified that although not formally appointed by the College, she and two other Professors fulfilled the role of Co-ordinator for the INTO program. The Grievor's duties in connection with the program included interviewing and evaluating students; curriculum development; ordering materials; scheduling guest speakers; assisting in the evaluation of work skills; organizing technical workshops; arranging and monitoring student placements; and liaising with College faculty, local employers and government agencies. The Grievor testified that she also provided instruction on resume and report writing as well as the use of the library and provided personal and vocational counselling.

From 1985 to 1986, the Grievor taught English in various upgrading programs to the grade 12 level. During this period, she also taught CarSel Career Selection in which she assisted students searching for employment; evaluated skills and provided instruction on resume and report writing. In the 1987/88 academic year, the Grievor taught a course entitled Women in Trades and Technology ("WITT"), which was similar to INTO although it also included courses in math and science which were taught by other Professors. Between

1987 and 1990, the Grievor taught a number of courses in photography; a course in audio-visual techniques and a design history course. In 1988 and 1989, she also delivered a film criticism course, which was offered to faculty and staff at the College and at King's College.

In 1990, the Grievor was granted a leave of absence to complete her Honours B.A. and from 1991 to 1994, she taught ESL up to grade 12 and also had some involvement in a bridging course between grade 12 and the post-secondary level. From 1994 to 1996, the Grievor taught courses in photography and audio visual techniques. During the 1994-95 academic year, her workload was reduced by 20% and during the 1995-96 academic year, by 60% to enable her to complete her Masters degree.

At the time of the Grievor's layoff, she was assigned to the Community Access Department of the General Studies Division, which provides courses at the non post-secondary level. Ms. Morningstar and Mr. Johnson were assigned to the English and Humanities Department, which offers courses at the post-secondary level. Dr. Terry Boyd, the Chair of the Division at the time of the Grievor's layoff, testified that a number of the courses taught by Ms. Morningstar and Mr. Johnson are in the liberal studies stream of the two year general arts and

science program. This stream provides a substitute for first year university for students who intend to continue their studies at the university level.

Dr. Boyd also testified that the positions occupied by Ms. Morningstar and Mr. Johnson at the time of the Grievor's layoff involved teaching English and related subjects and developing appropriate curricula for courses in this field. In order to fulfill the requirements of these positions, Dr. Boyd testified that an individual would require an honours degree in English and a Bachelor or Masters of Education as well as demonstrated experience teaching and developing English courses at the post-secondary level. In the absence of the degrees referred to, Dr. Boyd testified that he would require letters of reference or other documentation to indicate that the individual possessed the necessary "skill set". It was Dr. Boyd's view that at the time of her layoff, the Grievor did not have the skill, competence and experience to teach any of the courses taught by either Ms. Morningstar or Mr. Johnson.

Dealing firstly with the Grievor's claim to the position occupied by Ms. Morningstar, the more junior of the two incumbents, the evidence indicates that during the two year period from 1994 to the fall of 1996, Ms. Morningstar was assigned to teach the following courses: ENGL 173 - Practical Writing for Fine Artists; COMM 135 - Professional Communication; COMM 222 - Professional

Communication; CMNC 255 - Language and Communication Skills II; INDI 102 - Popular Culture and Art; ENGL 142 - Language & Media; HUMA 201 - Canadian Identity and ENGL 225 - Effective Writing. As indicated previously, effective April 1, 1996, Ms. Morningstar was also appointed Co-ordinator of the Corporate Communication and Public Relations Program. In the fall term of 1996, she taught CORP 501 - Emerging Business Technologies and in the winter term, she taught PBRL 601 - Independent Study - Public Relations Topic.

Dr. Boyd testified that the core duties of Ms. Morningstar's position consisted of ENGL 173 - Practical Writing for Fine Artists; INDI 102 - Popular Culture and Art; ENGL 142 - Language and Media; and ENGL 225 - Effective Writing as well as her responsibilities as Co-ordinator of the Corporate Communication and Public Relations Program. As indicated previously, Ms. Morningstar's designation as Co-ordinator does not insulate her from displacement under Article 27.06. In any event, leaving aside for the moment her responsibilities as Co-ordinator, the Board has carefully considered the content of the remaining courses and is of the view that while the Grievor could have taught the first three courses referred to, in view of the literature component in ENGL 225 - Effective Writing, she was not immediately qualified to teach that course.

As to the individual courses, the evidence indicates that ENGL 173 - Practical Writing for Fine Artists is a first year course which introduces fine art students to the formats and principles of written communication in an art related context. In the Board's view, the Grievor possessed the skill, competence and experience to teach this course as her B.A. included studio courses as well as courses in film, art criticism and art history involving both critiques and analytical essays. She also completed an arts journalism course for her M.A., which included critical theory and practice in writing theatre, film and art critical reviews for newspapers and magazines. In addition, the Grievor worked for many years as a fine artist; taught courses in art and photography involving critiques and essays; and had practical experience in submitting proposals to galleries and to the Ontario Arts Council.

The Board is similarly of the view that the Grievor possessed the requisite skill, competence and experience to teach INDI 102 - Popular Culture and Art. This course introduces students to the interrelationship between popular culture, mass media and fine arts. The course is taught to radio broadcasting, general arts and science students and is a general education elective for students in the computer programming, design and legal assistant programs. In respect of this course, the Grievor's Honours B.A. included courses in film, photography, art history and art criticism. In addition, she testified that many of her journalism

courses as well as her internship at TVOntario dealt with the effects of mass media and the relationship of images to cultural issues. She also dealt with the influence of changes in design in the design history course which she taught previously.

ENGL 142 - Language and Media is a first year course for television and broadcast students which focuses on the analysis of non-fictional essays dealing with the television medium. As to the Grievor's skill, competence and experience to teach this course, the evidence indicates that her M.A. included courses in communication theory dealing with the effects of mass communication as well as an advanced radio/television course. In this latter course, the Grievor was involved in the production of a 20 minute documentary which dealt with the media coverage of the Ipperwash Provincial Park conflict. The Grievor testified that she has also written numerous critical essays pertaining to film and television, including major essays on the National Film Board and the impact of television.

Although, as the College pointed out, ENGL 173, INDI 102 and ENGL 142 were all developed by Ms. Morningstar, curriculum development is the responsibility of all Professors. It would also appear that these particular courses were developed by Ms. Morningstar prior to the two year period considered by

the parties and, accordingly, in the Board's view, the issue concerns the Grievor's ability to teach the courses, rather than develop them. Moreover, although at the time of her layoff, the Grievor had not previously taught any of the three courses, to a large extent, it is her recent academic studies which qualify her to teach these courses. Furthermore, as noted in a number of awards, having taught a particular course in the past is not the only means by which an employee can demonstrate his or her skill, competence and experience to fulfill the requirements of a particular position: see Niagara College and Ontario Public Service Employees' Union November 20, 1989 (supra) and Ontario Public Service Employees Union and George Brown College (supra).

In the Board's view, however, different considerations apply to ENGL 225 - Effective Writing, a course which is offered to general arts and science students. The course includes the analysis of short stories and non-fictional essays and, among other matters, students are involved in evaluating prose texts, which explore broad themes in literature, and in identifying and critiquing aesthetic elements in a variety of literary styles and genres. In this case, the Grievor took a limited number of literature courses at the University of Minnesota some thirty years prior to her layoff. More recent courses at the University of Western Ontario did not involve the study of literature. Moreover, although the Grievor previously taught English in upgrading programs as well as ESL to grade

12 and in the bridging course, these courses did not involve a literature component. Accordingly, at the time of her layoff, the Grievor had no experience teaching literature at the either non post-secondary or post-secondary level, nor had her more recent academic studies involved literature courses. In the result, given that literature is a central feature of ENGL 225, we are not persuaded that at the time of her layoff, the Grievor possessed the skill, competence and experience to teach this course.

Nevertheless, the Union pointed out that a number of Professors who do not have degrees in English, who previously taught ESL, were later assigned to teach English and communication courses at the post-secondary level. Many of these Professors, however, were assigned to teach courses which deal with basic report writing and business communication. As to the Grievor's skill, competence and experience to teach such courses, we note that in addition to the Grievor's journalism program which included essays, report writing and editing, she taught a number of courses which included the preparation of reports. She also taught English in upgrading programs and ESL and her audio-visual course included a computer laboratory. In these circumstances, therefore, we are prepared to find that the Grievor could also teach basic communication courses, such as COMM 135 - Professional Communication, another course taught by Ms. Morningstar.

The Union contended, however, that a number of the Professors referred to have also been assigned to teach literature-based courses. Nevertheless, the evidence indicates that only one of these Professors, namely, Tony Parisio, was assigned to teach ENGL 225 - Effective Writing. While Mr. Parisio's resume indicates that he has a degree from Georgetown University in linguistics and French, Dr. Boyd testified that he also has the equivalent of a Bachelors of Education. Moreover, according to Dr. Boyd, Mr. Parisio's studies also focused on literature and theology and he has an extensive background in literature. In addition, Mr. Parisio previously taught English at a College overseas and at the secondary school level.

As to the other Professors referred by the Union, the evidence indicates that they were assigned to teach CMNC 255 - Language and Communication Skills II or ENGL 286 - Literature and Communication. CMNC 255, a course which is offered to technology students, was also taught by Ms. Morningstar on a number of occasions. This course is designed to provide students with skills and knowledge required to formulate and articulate responses to literature with emphasis on the analysis of audience, purpose, message and prose texts. The text for this course is a compilation of non-fictional essays and it would appear that the course is somewhat less literary than ENGL 225. Nevertheless, CMNC 255 involves a literature component and, for the reasons

set out previously, we have reservations regarding the Grievor's immediate ability to teach this course. ENGL 286, a course which was not taught by Ms. Morningstar, is evidently similar to CMNC 255 although it is taught to business, rather than technology, students.

Although it is apparent that certain Professors who do not have degrees in English have been assigned to teach CMNC 255 or ENGL 286, their academic backgrounds and teaching experience differ from those of the Grievor. In this regard, we note that Joseph Dunlop-Addley, one of the Professors assigned to teach CMNC 255, authored *A Guide for Students: Researching and Writing for the Humanities*, which is used in a number of English courses, including ENGL 225 and CMNC 255. In any event, in the Board's view, it is not simply the fact that the Grievor lacks a degree in English which is problematic. The Grievor took only a limited number of literature courses at the university level many years prior to her layoff and neither her more recent studies, nor the courses she taught at the College have involved literature. In these circumstances, the Board is of the view that considerably more than "brushing up" would be required in order for the Grievor to teach courses involving a literature and, in particular, ENGL 225 - Effective Writing. This latter course was clearly identified as part of the core pattern of duties and responsibilities of Ms. Morningstar's position.

In view of this finding, strictly speaking, it is unnecessary to consider the remainder of the courses assigned to Ms. Morningstar. However, in respect of duties relating to the Corporate Communication and Public Relations Program, the Board notes that in support of her claim, the Grievor relies primarily on her work at University Hospital, her experience in connection with the INTO program and a limited number of courses taken in her M.A. program, including communication theory, organizational communications, journalism ethics and journalism and the law. Although the College acknowledged that there is no requirement for the Co-ordinator to teach all of the courses in the program, it is not clear that the Grievor's prior experience or the courses taken in her M.A. program would provide her with sufficient knowledge of the subject matter covered by the program to be able to fulfill all of the duties of Co-ordinator. These duties include responsibilities such as making recommendations regarding the design and revision of the program, course development and revisions to curricula.

As to the position occupied by Mr. Johnson, the evidence indicates that during the period from 1994 to the fall of 1996, Mr. Johnson was assigned to teach the following courses: ENGL 137 - College English and Communication I; ENGL 237 - College English and Communication II, which was subsequently replaced by COMM 101 - Business Communication; ENGL 172 - English for

Academic Purposes, which was replaced by ENGL 189 - English for Academic Purposes; ENGL 289 - English for Academic Purposes II; ENGL 241 - College English; HUMA 102 - Creative Writing; ENGL 270 - Critical Reading and Writing; ENGL 163 - Writing for Hospitality and ENGH 165 - Writing to Communicate.

As is evident, Mr. Johnson was assigned to teach a number of courses referred to as “basic communication courses”, such as COMM 101 - Business Communication and ENGL 137 - College English and Communication I. For the reasons set out previously, given the Grievor’s academic background and her teaching experience, we are satisfied that she possessed the skill, competence and experience to teach such courses. Moreover, we note that ENGH 165 - Writing to Communicate, a course developed by Mr. Johnson and first taught in the fall term of 1996, offers photography students an opportunity to develop and enhance their writing ability. In this course, students follow a sequence of reading and writing assignments, all dealing with photography or aspects of photography. In this case, in addition to the skills referred to previously which would qualify the Grievor to teach basic communication courses, we note that she previously taught photography courses involving written assignments and also has experience as a professional photographer. In the circumstances, therefore, the Board finds that the Grievor possessed the skill, competence and experience to teach this course.

Nevertheless, it would appear that the core duties and responsibilities of Mr. Johnson's position included ENGL 189 - English for Academic Purposes; ENGL 289 - English for Academic Purposes II; ENGL 270 - Critical Reading and Writing and HUMA 102 - Creative Writing. Having carefully considered the content of these courses, the Board finds that although the Grievor could have taught ENGL 189 - English for Academic Purposes, we are not satisfied that at the time of her layoff, she possessed the required skill, competence and experience to teach the remainder of the courses referred to.

As to the individual courses, the evidence indicates that ENGL 189 - English for Academic Purposes is designed to assist students with an ESL background to develop competency in oral expression, listening, reading and writing to enable them to function at an appropriate post-secondary level. In this case, the Grievor completed a 75-hour course on teaching English as a second language. From 1991 to 1994, she taught ESL up to grade 12 and also had some involvement in the bridging course between grade 12 and the post-secondary level. Accordingly, although the Grievor had not taught ESL at the post-secondary level prior to her layoff, given her training and experience in teaching ESL, we see no reason why she could not have taught ENGL 189 - English for Academic Purposes.

ENGL 289 - English for Academic Purposes II, a course developed by Mr. Johnson, is designed to assist students with an ESL background to reinforce competency in oral expression, listening, reading and writing to enable them to function at an appropriate post-secondary level. Although it is not apparent from the course description, both Mr. Johnson and Dr. Boyd testified that this course involves a literature component and, in this regard, was compared to CMNC 255 - Language and Communication Skills II and ENGL 286 - Literature and Communication, for non-ESL students. Accordingly, although the Grievor's training and experience in teaching ESL would assist her in teaching this course, in view of the literature component, we have reservations regarding the Grievor's ability to teach this course similar to those expressed in relation to CMNC 255, the course taught by Ms. Morningstar.

ENGL 270 - Critical Reading and Writing, which was developed by Mr. Johnson and another Professor at the College, is an academic reading and writing course which offers students an opportunity to develop and test their ideas on particular subjects by following a sequence of assignments dealing with professional and student autobiography, fiction and non-fiction. This course is offered to general arts and science students and is a general education elective for students in other programs. In the Board's view, ENGL 270 clearly involves more than a basic communication course and would appear to require some

knowledge of the theoretical principles involved in teaching critical reading and writing. Moreover, it is not clear that the skills acquired by the Grievor in either her journalism program or her courses in art and film criticism are readily transferrable to a literary context. In the result, the evidence fails to demonstrate that at the time of her layoff, the Grievor possessed the skill, competence and experience to teach this course.

In the Board's view, the Grievor also lacked the skill, competence and experience to teach HUMA 102 - Creative Writing. In this course, students develop their analytical and expressive skills by producing creative works in the following genres: poetry, short fiction, journals and autobiography. The course, which was developed by Mr. Johnson, is offered as an elective to students in various programs, including legal assistant, computer and fine arts programs. Although the Grievor taught a number of courses requiring students to exhibit creative and expressive skills in areas such as art and photography, HUMA 102 is specifically related to creative writing. It is a field in which the Grievor had no training or teaching experience at the time of her layoff and although she maintains a journal and testified that she has read and written autobiographical work, we are of the view that considerably more would be required to find that she was qualified to teach this course.

Nevertheless, the Union pointed out that Larry MacDougall, a Professor who does not have a degree in English, was assigned to teach HUMA 102 in the summer of 1997. According to Dr. Boyd, however, Mr. MacDougall taught the course from the perspective of a commercial writer and the content of the course was different from that of the course taught by Mr. Johnson. Although the Union submitted that in view of the Grievor's journalism degree, she could teach HUMA 102 from the same perspective as Mr. MacDougall, the Grievor seeks to displace Mr. Johnson and it is the content of the courses he teaches in respect of which she must demonstrate her skill, competence and experience.

In the result, it is evident that there are aspects of the core pattern of duties and responsibilities of the positions occupied by both Ms. Morningstar and Mr. Johnson for which the Grievor did not possess the required skill, competence and experience. Accordingly, we are compelled to conclude that the Grievor was not entitled to displace the incumbents of these positions. The present grievance

