

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**ALGONQUIN COLLEGE**

(the "college")

-and-

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

(the "union")

**AND IN THE MATTER OF** the grievance OPSEU No. 241532 – D. Robert  
Grievance

**SOLE ARBITRATOR:** D. D. Carter

**APPEARANCES FOR THE UNION:**

S. Ballantyne, Counsel

D. Robert, Grievor

T. Fernie, Chief Steward Local 415

P. Kennedy, First Vice President Local 415

J. Wilson, Secretary Local 415

**APPEARANCES FOR THE COLLEGE:**

J. D. Sharp, Counsel

L. Pousseau, Director Human Resources

D. McCutcheon, Manager Employee Relations/  
Workload/HRIS

M. Uremovich, Dean School of Advanced  
Technology

A hearing of this matter was held at Ottawa, Ontario, on May 28, September 5, and  
October 2, 2003.

## AWARD

This grievance arises out of the lay off in June of 2002 of the grievor, Diane Robert, from her position as a full-time professor in the Precision Electronics Assembly Program in the Electronics Department at the college. This matter was taken to arbitration but, on the first date of the hearing, the parties agreed to adjourn the matter in order to attempt to reach a settlement. Subsequently, a settlement was reached on all matters except for the grievor's claim for lost seniority, wages and benefits. The text of this settlement is set out below:

Proposal to CESC Academic

RE: Diane Robert

This proposal is intended to find a long term solution to the redundancy of Ms. Robert. It is based on finding a complement position which she can be assigned to on an ongoing basis. This plan involves displacing a junior employee and requires training assistance for both the displaced employee and Ms. Robert.

The Plan

1. Pursuant to article 27 (ii) of the collective agreement, the parties agree that Mr. James Standing will be displaced from his position by Ms. Diane Robert,
2. Pursuant to article 27.06A (i), the parties agree that Mr. Standing will be reassigned to the vacant position most recently held by retired professor Claude Dugas. In the circumstances, the union waives the job posting provisions of the collective agreement.
3. During the fall term Mr. Standing will be assigned at ½ time to assist with the training of Ms. Robert and ½ time to undergo his own training and re-integration to the classroom, including some classroom activity.
4. During the winter of 2004 term, Mr. Standing will be assigned to a ½ teaching load and will continue to train Ms. Robert with the remainder of her training.
5. Ms. Robert will be recalled effective July 28 2003.
6. The CESC will fund a total of \$23,000 towards this plan.
7. All grievances relating to Ms. Robert's redundancy and subsequent lay-off notice will be withdrawn; however, this agreement is without prejudice to the right of Ms. Robert and OPSEU to pursue her claim for lost seniority, wages and benefits. It is understood that Arbitrator Carter is seized with this issue and will be hearing it on September 5, 2003.

The disposition of these outstanding issues depends upon how one characterizes the activities of the grievor since her recall on July 28, 2003, when under the terms of the settlement she displaced James Standing as the lone faculty member in the Co-operative Education Department. Under this settlement, Standing was to devote half of his time over the fall and winter terms “to assist with the training” of the grievor.

The union argued that the position in the Co-operative Education Department in which the grievor was eventually placed was one where you learn as you go and that the grievor had the competence, skill, and experience to do just that at the time she was placed in the position. Viewing the matter in this way, the union argued that the training contemplated under the terms of the settlement was no more than a lengthy familiarization period. Therefore, according to the union, the grievor should have been placed in the position over a year earlier when she identified Standing’s duties as work that she had the skill, competence, and experience to perform. If the placement had occurred at this earlier time, she would not have suffered the losses that occurred during the period of layoff.

The college submitted that the onus was on the grievor to establish that she could do the job in the Co-operative Education Department with only a brief familiarization period. According to the college, the evidence did not support the proposition that the grievor could step into the position without considerable

guidance from Standing. In the college's submission what was required was that the grievor essentially shadow Standing over a period of two terms so that she could gain experience with all phases of the co-operative education program. This extensive period of shadowing, according to the employer, must be characterized as training rather than just familiarization. Therefore, the grievor did not have the skill, competence, and experience to walk into the job and immediately perform it at a level of reasonable proficiency.

The union and the college were in agreement that under the terms of this collective agreement the grievor must establish that she has the skill, competence, and experience for the position in order for her to assert her claim successfully. Where they differed was as to whether the guidance provided by Standing was job familiarization or job training. Some useful guidance as to the distinction between these two concepts can be found in *Fanshawe College* (Barbara Ford grievance), September 22, 1993. In his award Arbitrator Michel Picher observed:

“...[T]he authorities are relatively consistent in their approach to the distinction between familiarization and training, particularly in the context of a layoff. Absent contrary language in a collective agreement, the normal expectation is that an employee who bumps into a position goes to a job for which he or she is qualified, with the understanding that the individual may need little more than familiarization with the surroundings and routines that

attach to the new job.”

Speaking to this same issue, Arbitrator Paul Weiler in *Kelsey Hayes Canada Ltd.* (1972) 1 L.A.C. (2d) 54 draws a distinction between “a familiarization period which any employee must have to learn the details and environment in his new job” and period of time to “develop significant new abilities”.

These two authorities both draw a clear line between job familiarization and job training. The former situation contemplates that an employee brings to the job in question sufficient skill, competence, and experience to perform the job adequately after only a reasonable orientation while the latter situation contemplates that the employee must develop new skills and knowledge before the job can be performed at an adequate level. This important distinction must be applied to the facts of this case.

The grievor in her testimony impressed me as a very competent individual. She has been a teacher at the college since 1981 and has had full-time status since 1990. She testified that during her first week in the position she met with Standing for approximately an hour a day during which time he explained what was happening in the department. The rest of the time she spent reading on her own in order to familiarize herself with the workings of the department. After the first week, Standing left on vacation at which point she was left largely to her own devices until he returned from vacation on August 25. During this time she

continued to familiarize herself with her new position. Upon Standing's return from vacation the grievor began to shadow the Co-operative Education Preparatory Course taught by Standing. She is now teaching the Friday session of that course.

The grievor further testified that in her previous position in the Precision Electronic Assembly Program she had had considerable experience arranging and coordinating job placements of two to four weeks to provide students in the program with work experience. It was her testimony that, in addition to her considerable experience as a teacher, she brought to her new position experience in marketing college programs, locating placements, student counseling, and fluency in both English and French. This evidence in my view placed a significant tactical burden of the college to establish that the grievor required more than just a period of familiarization with her new position.

The previous incumbent in the position, James Standing, provided useful insights into the nature of the position and its requirements. He testified that he started in the position nine years ago. During his first year in the position he taught the preparatory course but also spent considerable time going to classes in the areas that provided co-operative education to learn the basics of those programs. He also testified that marketing was an important aspect of the position and that an integral component of marketing was maintaining the software program and website for that function. He testified that that he had been assisting the grievor with the

software and website. He testified that she was making good progress but that it would take both terms before the grievor had a firm grasp on the whole process. His own experience was that he had spent close to a year of shadowing before he acquired full knowledge of all aspects of the co-operative program, learning as he went along.

Do these facts point to a period of job familiarization of a period of job training? If the only duties of the position were teaching the co-operative preparatory course, I would have no difficulty in reaching the conclusion that what we are looking at is job familiarization. The grievor is presently teaching an element of the course and her past experience as a teacher indicate that she could deal with the other elements of the course. Marketing, however, is also an essential element of the job and here the evidence is less favourable. First, the grievor is not yet familiar with a substantial number of the discrete programs that participate in the co-operative program. Second, it has not been established that the grievor is sufficiently familiar with the marketing software so as to be able to use it without the guidance of Standing. Finally, there is Standing's testimony that it took him almost a year of shadowing before he had a firm grasp of the position.

On this evidence it is my conclusion that this is not a job where you just learn as you go. There is a significant body of knowledge and special skills in the area of marketing that are required by the job and these elements of the job

must be mastered before it can be said that an individual has the competence, skill, and experience to perform the job. The evidence indicates that Standing was trained in these skills through an extensive shadow program and that now the grievor is being trained in much the same way. Therefore, my conclusion is that what the grievor is now experiencing is job training rather than merely job familiarization.

For these reasons this grievance is dismissed.

Dated at Kingston, Ontario, this 8th day of October, 2003.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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D. D. Carter, Sole Arbitrator