

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

ST. LAWRENCE COLLEGE

(The "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(The "Union")

AND IN THE MATTER OF THE RETIREMENT/DISCHARGE GRIEVANCE OF WAYNE RUNTE

BOARD OF ARBITRATION

David K.L. Starkman
Richard O'Connor
Ronald Kelly

Chair
College Nominee
Union Nominee

APPEARANCES FOR THE COLLEGE

J. Lynn Thomson
Cindy Bleakney
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Counsel
Human Resources Consultant
Executive Director, Brockville
Campus
Student-at-Law

Amanda Holmes

APPEARANCES FOR THE UNION

Susan Ballantyne
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Chief Steward

A Hearing in this matter was held on October 28, 2003, January 20, 23, March 25, April 30 and June 3, 2004 at Kingston and Brockville, Ontario

AWARD

The issue in this arbitration is whether the grievor resigned his employment in April, 2003 as alleged by the College, or whether the College unjustly terminated his employment as alleged by the Union.

The grievor, Wayne Runte, has been employed full-time by the College since 1975. He is a chartered accountant and taught in the School of Business. He has been the Chair of the Business School, and between 1982 and 1989 held senior management positions with the College. In 1990 he returned to teaching, and his salary was red circled at the management level.

In 1995, it was determined that his salary could no longer be red-circled at the management level. The grievor received a lump sum payment, pension contributions were deducted, and his salary reverted to the professor grid as set out in the collective agreement.

Each year the grievor received an annual pension statement. He stated they were one to two years in arrears, that he did not review them carefully, and that one would need greater detail to know how the best sixty consecutive months were calculated.

The College has had a Voluntary Leave Incentive Plan for a number of years. The Plan offered a financial incentive of one-half an individual's salary to employees who met the

criteria to leave the employ of the College. In 2002, the grievor and a co-worker, Mr. Allen Jones, made a private proposal to the College whereby they would both resign from the College, if they received a retirement bonus in excess of what was provided for in the Plan. The grievor stated that when they made the proposal, he did a quick calculation of his pension entitlement but did not review or confirm the details. Their request was denied by the College. The grievor stated that, at that point, he determined that he could not afford to retire.

Mr. Jones proceeded with his retirement plans and accepted the terms of the College's Voluntary Leave Incentive Plan. At that point he requested detailed calculations of his pension entitlement.

On April 7, 2003 the grievor wrote to the College requesting consideration for the early retirement leave package as follows:

Dear Lorraine:

Please accept this letter as a request for you to consider me for the early retirement leave package.

I am attending two interviews on Monday, April 21, 2003 for another job opportunity. Should I be successful, I would like to take advantage of the package. However, if possible, I would prefer to complete my summer teaching assignment and retire June 20, 2003.

Lorraine, it is important to know your decision prior to April 21, 2003, as it will obviously impact my approach to my interview. If the College Management Committee responds favourably to my request, and I am offered the position, I will be able to confirm acceptance no later than April 23, 2003.

Thank you for your consideration.

Yours sincerely

Wayne Runte
Professor

On April 8, 2003 the College approved the grievor's request as follows:

Dear Wayne:

I have reviewed your letter dated April 7, 2003, and I am pleased to inform you that your request for the Voluntary Leave Incentive Plan has been approved.

Your voluntary leave date will be effective April 30, 2003. Your financial incentive will be 50% of your annual salary: \$38,283.50 (50% x \$76,567). This will be paid in two equal lump sums, payable in May 2003 and May 2004.

Your signature on the duplicate copy of this letter indicates your acceptance of this offer. Please return the signed copy to me by April 22, 2003. If you require further benefit information before you reach your decision, please feel free to contact Courtney Donovan, Human Resource Consultant, as she is responsible for College Benefits. If you decide not to respond by April 22, 2003, the College will consider this application abandoned.

I know that this is a very complex decision. If I can be of any assistance, please let me know.

Yours sincerely,

Lorraine Carter
Executive Director
Brockville Campus

cc Pennie Carr-Harris, Director, Human Resources
Courtney Donovan, Human Resources Consultant

Employee's Signature: _____ Date: _____
Witness: _____ Date: _____

The grievor testified that, at the time he inquired about early retirement, he did not expect any problems with his pension, and that his sole concern was being able to supplement his pension income with other employment activity.

In mid-April the grievor met with Allen Jones to review the pension information Mr. Jones had received. He noted that there were issues dealing with the best sixty months and issues dealing with holiday pay, which resulted in a diminished pension by approximately twenty-five dollars per month. He suggested to Mr. Jones that he follow the matter up with the pension plan which apparently Mr. Jones did, and the matter was resolved. The grievor stated that the difficulties with Mr. Jones' pension calculations raised a red flag in his mind because he knew that his best sixty consecutive months were not his final five years of employment but rather were between 1982 and 1989 when he had been employed in management.

A week after meeting with Mr. Jones, the grievor met with Ms Gail Henry, a co-worker, to review her pension documents. Again he noted errors with respect to the calculation of the best sixty consecutive months and with respect to holiday pay, with differences of between two and three thousand dollars per year.

The grievor testified that he spoke to Ms Carter, the Executive Director of the Brockville

Campus, sometime between April 15th and 24th and advised of these discrepancies, and stated that his expectations were that the pensions would be adjusted.

The grievor was seeking employment in Virginia. He had been advised by Ms Carter that the retirement date could not be extended beyond April 30th. Originally interviews were to take place in Virginia on April 21st or 22nd but were postponed until April 28th. The grievor was being cautious and requested from Ms Carter a written extension until April 29th, of the deadline set by the College for confirming early retirement, and Ms Carter e-mailed confirmation of the extension.

The grievor had an interview in Virginia on April 28th. Following the interview he telephoned Ms Carter and advised that he would need another day to complete the interview process. She agreed.

On April 29th, the grievor again telephoned Ms Carter and stated that it looked positive enough to proceed with the early retirement process, and, according to the grievor, he then said that he could not sign off until he had received and verified the pension documents, and reminded Ms Carter of the pension analysis he had done with Mr. Jones and Ms Henry.

According to the grievor, Ms Carter said she would contact Ms Courtney Donovan, in Human Resources to arrange to get the pension details as soon as possible. The grievor then said that, upon his return, he would contact Ms Donovan to review the

documentation. According to the grievor, Ms Carter appeared to agree to allow him to review and confirm his pension documentation prior to finalizing his acceptance of the early voluntary incentive plan. Ms Carter never advised him to sign the document or that his request to take the incentive plan would be treated as withdrawn.

The grievor met with Ms Donovan upon his return on May 5th. No pension information was available. Ms Donovan apologized and said she had put a rush on it but it had not as yet arrived from Toronto.

According to the grievor, he advised Ms Donovan that, without the pension documentation, he could not sign off. He retained CMG-Worldsource Financial Services Inc. as his financial advisor and told them to tell the College not to process anything until he had made a final decision. This firm sent a memo to Ms Donovan dated May 23, 2003 which provided as follows:

SUBJECT: Mr. Wayne Runte

1. TD2 - Tax Deduction Waiver in respect of funds to be transferred.
2. Wayne has directed me to fax this to you for action (once he has approved his monthly pension amount)
3. If you require any further info please call and ask for Greg.

Ms Barb Berry, a professor and co-worker of the grievor testified that she applied for the early retirement incentive on April 28th, and received her pension information on May 6th. She had some concerns with the information and talked to Ms Carter who referred

her to the grievor.

Ms Berry and the grievor met on May 13th to review her pension calculations. The grievor noted some difficulties and phoned CAAT pension and the concerns were rectified.

Ms Berry stated that, when she had not signed the letter indicating her acceptance of the voluntary retirement, Ms Carter phoned her at home, and reminded her at work that she needed to sign so that the process could get started.

The grievor received his pension information on May 17th. He stated that the calculation of his best sixty consecutive months was not correct, and the question of certain payments into the plan were an issue. He telephoned Ms Donovan to explain his concerns and asked for his pensionable earnings calculation for 1982-2003 which was e-mailed to him at home on May 29th. The grievor stated that he had not accessed his e-mail at the College for many, many months.

The grievor testified that he pointed out his pension concerns to Ms Carter on several occasions who said he should discuss them with the pension people and to keep her posted. The grievor assumed the pension plan administrators were going to make adjustments to his pension calculation. On June 30th the grievor was advised that the pension plan had turned down his request for adjustments. He phoned Ms Carter and asked for a meeting for July 2nd.

At the meeting he told her that he could not accept the incentive plan offer. She appeared flustered and said she had never been faced with this situation before. On July 4, 2003 Ms Carter wrote to the grievor in part as follows;

The purpose of this letter is to clarify the College's position with respect to your status as a College employee. It is the College's position that you retired under the Voluntary Leave Incentive Plan effective May 1, 2003, and your last day as a full-time employee was April 30, 2003.

On April 7, 2003, you submitted a written request for consideration under the Voluntary Leave Incentive Plan. By letter dated April 8, 2003, I confirmed the College's approval of your request. In order for you to complete negotiations with respect to your personal business ventures, I twice extended the date for you to confirm your acceptance of the offer until ultimately it was scheduled for April 29, 2003.

On the afternoon of April 29, 2003, you contacted me by telephone since you were in Virginia on this business and, therefore, unable to meet with me in person. During our conversation, you clearly indicated to me that you had accepted the College' offer as detailed in my letter to you of April 8, 2003. We discussed, and we confirmed, that your last day of work as a full-time employee would be April 30, 2003. You indicated to me that you would be contacting Courtney Donovan directly on May 1, 2003, and would be providing her with a copy of the signed letter accepting our offer. I sent an e-mail confirmation of our conversation to Human Resources staff, copied to you, within minutes of our telephone conversation.....

I have been clear with you from the onset that my approval of your application and your acceptance of the College's offer, under the Voluntary Leave Incentive Plan, was not conditional on whether or not you were in agreement with your earned pension benefit calculations from the CAAT Pension Plan. While I have been sympathetic to your discussions about pension calculations I have never believed, nor have I led you to believe, that your discussions with them meant that you have not retired.

The College relied on your verbal acceptance of the voluntary leave incentive and I believe your actions since April 29, 2003, only serve to confirm your intent to retire effective May 1, 2003. The College relied on your verbal acceptance of the offer and, as you are aware, made staffing decisions impacting bargaining unit members based on your verbal undertaking. Two months have now passed and the College is not

prepared, at this late date, to allow you to withdraw your decision to retire.....

The grievor testified that, given the lateness of his application for early retirement, he advised the College that he would commit to teaching certain spring semester courses in the event he retired. He acknowledged receiving, in mid-May, a partial load teaching contract which he put aside and did not sign because, in his mind, he was still in the process of determining if he was retiring.

On May 16, 2003 the grievor received a cheque from the College in the amount of \$6,500.00. He talked to Ms Carter who advised he could keep the cheque until the situation had resolved and then we can decide. The grievor stated that on June 28, 2003 there was a deposit to his account of approximately what a regular two week payment for a full time professor would have been, and he therefore assumed that his employment as a full-time professor was being continued.

In September, 2003 the grievor received a cheque representing the first of two installment payments of his voluntary retirement incentive. The grievor did not receive a SWF for the fall semester as he had in previous years.

Ms Carter had a different recollection than the grievor of the events in April to June, 2003. In her testimony she stated that the plan was clear that the leaving date was the end of April and that she had no authority to change the date.

She stated that she met with the grievor on April 23rd in her office. The grievor advised that the meeting in Virginia had been postponed and asked for a one week extension which she granted, and they then talked about the grievor teaching on a partial load contract in the spring should he choose to accept the early retirement package.

The grievor phoned her on April 28th from Virginia and asked for an extension to April 29th which she granted. The grievor phoned again on April 29th, and according to Ms Carter, advised that everything had not gone as hoped, but that he was prepared to say yes to the College's offer, that he would be back in Brockville to teach as arranged, that he would bring a signed letter to Kingston on May 1st, and that he would meet with Ms Donovan to get the paperwork going.

Ms Carter advised him that she did not know when he would receive the first pension cheque. She then sent an e-mail to Ms Donovan, and to Pennie Carr-Harris with a copy to the grievor which provided as follows:

Wayne Runte contacted me by phone a few minutes ago indicating that he is accepting the college offer dated April 8, 2003 for the Early Leave Plan. His last day of full time employment is thus April 30, 2003.

Courtney, Wayne will contacting you directly on Thursday to confirm the paperwork. I told him that given the date of his acceptance of the offer I did not know when he would receive his first cheque.

Wayne will receive a part time contract to complete the teaching of the spring semester course that begins tomorrow as we do not have time to find a suitable replacement.

Wayne, Courtney, Pennie: did I miss anything?

Lorraine Carter

Ms Donovan responded:

I have forwarded this email to Lynn Gerdis and Jean Leegsma so that they are aware as to when to stop Wayne's pay. Have we received the signed letter of acceptance?

Ms Carter replied:

Wayne is in Virginia today. He says he will bring the signed letter on Thursday.

The grievor stated in his testimony that he did not receive any of this e-mail correspondence because it was sent to his College e-mail address which he rarely, if ever, accessed.

Ms Carter acknowledged that the grievor came to her office on several occasions in May-June and explained his issues with the calculation of his pension. She asked him to sign the pension documents and indicate that he disagreed with the calculation, but the grievor refused to sign the document until the calculations were resolved. Ms Carter indicated that, while their discussions had been about the pension calculations, at no time during this period did the grievor indicate that it was not his intention to retire.

Ms Carter stated that she found out in August for the first time that she did not have a signed partial load contract for the grievor.

Ms Carter testified that it was her responsibility to insure that the voluntary leave documentation was signed and that she did not personally follow up to obtain the grievor's signature. She stated that she had no authority to waive the signature requirement but stated that she took the grievor at his word that he was accepting the Voluntary Leave Incentive Plan as offered by the College. When the grievor advised her on July 2nd that he did not want to retire, she was dumbfounded, as she had never heard of anyone unretiring.

At the meeting the grievor told her he could not afford to retire. She advised him that staffing arrangements had been made for the fall semester and that it was not possible to return to May 1st.

Ms Courtney Donovan testified that she is responsible for processing the pension and incentive leave payments. She met with the grievor on May 5th and received certain information concerning a tax deduction waiver and a TRD pension claim. She received the information from the pension plan and forwarded the same to the grievor. She stated that the grievor had specific questions about the calculation of his best sixty consecutive months and she made inquiries on his behalf of the pension administrators. She also provided certain information to the pension plan from the grievor's file.

Ms Donovan stated that there were approximately ten to fifteen voluntary early retirements in 2002 and 2003 and the grievor was the last. She processed all the requests and all prior applicants had signed indicating that they were accepting the retirement proposal. It was part of her job to bring it forward if there was no signature on the document and she acknowledged contacting Ms Berry several times at home and at the College to get her signature.

With respect to the grievor, she stated that he did not come to see her on May 1st with the signed letter. They met on May 5th and had a conversation about the letter. She wanted him to sign. The grievor wanted to receive the pension documents and look at the numbers before he signed the early retirement documents .

Ms Donovan sent the first part of the retirement cheque to the grievor in September, 2003. She stated that she did not recall why she sent it at that time as she knew that the grievor had still not approved the pension numbers or signed off. She stated that she thought he was going to retire, but that he had a dispute with CAAT pension and, in her mind, they were different issues.

DECISION

The Union submitted that the grievor never formed an intention to resign his employment and that his intention was always conditional on being able to afford to

retire.

Reference was made to the decision in *Re University of Guelph and C.U.P.E., Loc. 1334* (1973), 2 L.A.C. (2d) 351 (O.B. Shime), where the Board comments at p. 359:

The net result of the cases clearly establishes that absent any other conduct the expression or uttering words to the effect that an employee is quitting are not sufficient to result in a severance of employment. Boards of arbitration in that category of cases have conducted a search to ascertain what has been characterized as a "true" intent or a "continuing" intent. In this they have looked at other conduct in order that a more objective appraisal may be made. The search for a true intent or a continuing intent also explains why some boards have reinstated the grievor even after he changed his mind. Implicit in these cases is the understanding and recognition by arbitrators that the uttering of the words I quit may be part of an emotional outburst, something stated in anger, because of job frustration or other reasons, and as such it is not to be taken as really manifesting an intent by the employee to sever his employment relationship. Boards of arbitration have then looked at other conduct and the course of events in order to establish a more objective basis upon which to find that the grievor did intend to sever the relationship.

Similar comments can be found in *Re Kemptville District Hospital and International Union of Operating Engineers, Local 796*, (1975) 8 L.A.C. (2d) 144 (T.C. O'Connor), *Re Goodyear Canada Inc. and United Rubber Workers, Local 232*, (1978) 21 L.A.C. (2d) 85 (S. Shiff), *Re Automotive Industries/Weston Division and Amalgamated Clothing & Textile workers Union, Local 1813*, (1988) 2 L.A.C. (4th) 9 (T.A.B. Joliffe), *Re Coca-Cola Ltd. and United Brewery Workers*, (1980) 26 L.A.C. (2d) 354 (S.M. Beck),

The College submitted that the terms of the Voluntary Leave Incentive Plan required the employee to leave as of April 30th and in exchange he would be paid one-half of his salary. In its submission, the Leave Plan was not contingent on the employee making application for and being accepted by the CAAT pension for retirement. In other words, the leave plan and retirement are separate and unrelated concepts. An employee could accept the leave plan and leave the employ of the College but not necessarily have applied for, or be in receipt of, retirement benefits.

In its submission, the grievor applied for the plan in his letter of April 7th, and did not mention that his acceptance of the plan was in any way conditional on his being satisfied with his pension numbers. In his conversation with Ms Carter on April 29th he clearly indicated his intention to accept the College's Early Leave Incentive Plan, and it was only in June when he was informed by CAAT pension that it would not agree with the grievor's pension calculations that the grievor sought to resile from his acceptance of the terms of the Leave Incentive Plan. Reference was made to a number of arbitral awards standing for the proposition that once an employee has effectively resigned, it is the employer's option whether to permit such employee to withdraw his resignation, *Canada Post Corp and C.U.P.W. (Dolen)*, (1996) 59 L.A.C. (4th) 71 (D.R. Munroe), *TRW Canada Ltd. v. Thompson Products Employees' Assn. (Cotroneo Grievance)*, 1998, O.L.A.A. No. 679, (K.A. Hinnegan), *RE Ontario Hydro and Canadian Union of Public Employees, Local 1000*, (1994) 45 L.A.C. (4th) 225 (M.G. Mitchnick), *Re Brookfield Foods Ltd., Division of Scotsburn Co-Operative Services Ltd. And Canadian*

Brotherhood of Railway, Transport & General Workers, Local 503, (1987) 31 L.A.C. 93d) 292 (P.E. Darby), *Re Meadow Park Nursing Home and Service Employees Union, Local 210*, (1993) 36 L.A.C. (4th) 283 (G.J. Brandt), *Re Thompson General Hospital and Thompson Nurses M.O.N.A., Local 6*, (1990) 15 L.A.C. (4th) 257 (F.M. Steel), *Re Felec Services Inc. and International Brotherhood of Electrical Workers, Local 1541*, (1989) 8 L.A.C. (4th) (W.D. Hamilton), *Re United Automobile Workers, Local 1535 and Northern Electric Co. Ltd.*, (1969) 21 L.A.C. 53 (J.A. Hanrahan), and *Re Government of Province of British Columbia an British Columbia Government Employees' Union*, (1987) 30 L.A.C. (3d) 138 (H.A. Hope).

The College submitted that the grievor had been provided with annual statements concerning his pension entitlement for a considerable number of years, and could have precisely confirmed the quantum of his entitlement had he chosen to do so. As well, prior to the end of April he had reviewed the pension statements of Mr. Jones and Ms Berry, and knew that there might be problems with the calculations, and if this had been a legitimate issue he could have taken steps to resolve them prior to accepting the Leave Incentive Plan on April 29th.

In the College's submission, the grievor knew that April 30th was a firm deadline for retiring and it is not credible that the grievor could think, when he spoke with Ms Carter on April 29th, that he was being granted an indefinite extension to inquire into his pension entitlements, and then to determine whether he wanted to retroactively accept

the Early Leave Incentive Plan offer.

In reply to the College's submissions, the Union submitted that it was clear to the College that the grievor's acceptance of the Voluntary Leave Plan was always conditional on his being able to afford it. From the grievor's point of view, retiring and resigning were one and the same, as the monetary value of the early leave incentive, coupled with his pension, would have to give him sufficient money to support his lifestyle.

The Union also submitted that it was reasonable for the grievor to assume that the April 30th deadline was fluid as he had already committed to looking after the two courses to be taught in the spring semester, and the year before, when he had been pursuing the early retirement proposal in conjunction with Mr. Jones, discussions concerning that matter had continued until the later part of May.

The issue to be determined is whether the grievor resigned his employment. Most of the arbitral jurisprudence referred to the Board primarily involved situations in which an employee stated that he is quitting or resigning, and thereafter, wished to resile from that statement, and Boards of Arbitration have consistently recognized that there are situations in which an employee may have said they are resigning in a fit of anger or emotion when, in reality it was not their intention to resign. Consequently, Boards of Arbitration have looked to the objective conduct of such employees to determine whether such objective conduct is consistent and indicative of a subjective intention to

resign.

In this matter the evidence disclosed that the grievor had been aware of the existence of the Voluntary Leave Incentive Plan for a number of years. He had some interest in leaving the employ of the College, as, together with Mr. Jones, he had made a customized proposal to leave the College to Ms Carter and ultimately to the College President which had been turned down. Mr. Jones ultimately accepted the terms of the normative voluntary incentive leave plan, the grievor, at that time, did not ostensibly because he could not afford to do so.

In April, 2003 the grievor indicated to Ms Carter that he wished to be considered for the Leave Incentive Program, that he needed an answer prior to his interview in Virginia later in the month, and that, if he was to resign, he would like the resignation to be effective as of June 30th. Ms Carter promptly advised him that he was eligible for the Leave Plan, but that the resignation date was fixed at April 30th. Then, throughout the month of April, Ms Carter accommodated the grievor's request for an extension of time to respond to the offer, ultimately extending it until April 29th so he could consider his options in Virginia.

Prior to going to Virginia, the grievor had the opportunity to review the pension statements of both Mr. Jones and Ms Henry, and had noted errors which had been brought to the attention of the CAAT pension and apparently been resolved. Also, prior to April 29th, while the grievor had perhaps not made any detailed calculation of his

pension, he knew that there might be a problem with the calculation of his best sixty consecutive months, because in his case they were not his most recent years but were years earlier when he had worked in management.

The evidence concerning the telephone call between the grievor and Ms Carter on April 29th is contradictory. According to the grievor he advised Ms Carter that it looked positive enough to proceed with the process but that he could not sign off until he had received and verified the pension documents, and that he reminded Ms Carter of the pension analysis he had done with Mr. Jones and Ms Henry.

According to Ms Carter, the grievor phoned on April 29th, and advised that everything had not gone as hoped, but that he was prepared to say yes to the College's offer and that he would be back in Brockville to teach as arranged and that he would bring a signed letter to Kingston on May 1st and that he would meet with Ms Donovan to get the paperwork going.

The evidence of the conduct of the parties in the days and weeks following April 29th is not conclusive. Immediately following the meeting Ms Carter sent an e-mail to Ms Donovan indicating that the grievor had accepted the offer and did not mention that it was conditional on the grievor approving or being satisfied with the CAAT pension calculations. Ms Donovan received the e-mail and inquired as to whether the grievor had signed the letter of acceptance. Ms Carter advised that he had not, but that he would bring the signed acceptance on Thursday.

The grievor returned but did not meet with Ms Donovan or bring the signed letter on May 1st. Ms Donovan contacted the grievor and they met on May 5th. At that time, the grievor advised that he did not wish to sign the papers until he had reviewed the pension numbers.

The grievor did not make any further effort to clarify the situation with the College until meeting with Ms Carter on July 2 and advising that he had decided not to accept the Voluntary Leave offer. Between May 5th and July 2nd, no one at the College made any further effort to contact the grievor directly and ask him to sign the paper, or to advise him that the Voluntary Leave Plan option was no longer available to him.

The grievor was not offered a SWF for the fall of 2004 and made no inquires concerning that matter. The College sent the grievor a partial load teaching contract; the grievor did not sign it and the College took no steps to find out why the grievor had not signed the contract.

The College did not send the grievor the first installment of his Voluntary Leave Plan payment until September, 2004, and Ms Donovan, who initiated the payment at that date, could not recall the reason for the delay in sending the money or why she sent it at that time.

The College made arrangements in the spring of 2003 by transferring employees to teach the courses which it believed were being vacated by the departure of the grievor.

It may be, as the grievor asserts, that during the period of May to July, 2003 he was acting on the belief that his acceptance of the Leave Plan was conditional on his approving his pension numbers and that the College was content to wait a reasonable period of time for him to make a final decision. Alternatively, it may be, as the College asserts, that the grievor had accepted the Leave Plan offer at the end of April, and, only when he found out that the pension numbers were not to his liking, did he attempt to renege on his acceptance.

Conversely, it may be that the College acted on the understanding that the grievor had accepted the Voluntary Leave offer conditional on his approving the pension numbers as alleged by the grievor, but was nevertheless confident that any issues would ultimately be resolved, and therefore proceeded to make staffing decisions based on the assumption that the grievor would resign his employment. When the grievor ultimately advised he was not resigning, it was into the summer vacation period, and at that point in time, the College was unable or unwilling to reverse the staffing decisions that had been made.

The College, in its submissions, asserted that acceptance of the Voluntary Leave Plan and the retirement pension are separate and distinct. In order to be eligible for the Voluntary Leave Plan, an applicant must be a full-time employee, with at least twenty years of full time service and be at least fifty years of age as of their departure date. There is no requirement that an employee apply for or be in receipt of pension plan benefits in order to be eligible to be considered for the Voluntary Leave Plan.

Given the age and length of service requirements set out in the Plan, it is not surprising that most employees applying for the Plan would be considering some form of retirement, at least in the short term, and would therefore be interested in the quantum of their pension entitlement should they resign from the College. The Board also notes that the viva voce evidence of witnesses called by both the Union and the College referred, on many occasions, to acceptance of the Plan and early retirement almost interchangeably.

The Leave Plan is for long term full-time employees who are at least fifty years of age. The College recognizes in its offer letter to applicants that "this is a complex decision", and given its importance and finality, and the cost implications for both the College and the applicant, the College wanted to be certain that there are no misunderstandings. In this Board's view that is why the text of the plan expressly provides that: "The employee has up to two weeks to accept the College's offer. If no response is received, the application will be considered abandoned".

This admonition is repeated in the College's letter to the grievor which states that: "Your signature on the duplicate of this letter indicates your acceptance of this offer. If you decide not to respond by April 22, 2003, the College will consider this application abandoned".

From the College's perspective it endeavoured to accommodate the grievor throughout the month of April while he explored opportunities in Virginia, and that on April 29th he

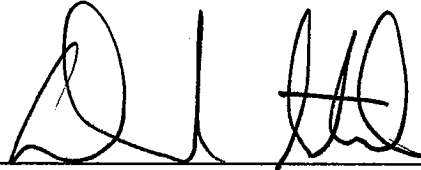
did finally accept the College's offer. The Panel accepts that a verbal acceptance is satisfactory, if it is proven, and the applicant's signature is simply greater proof of the applicant's intention.

In this matter the College is asserting acceptance of the offer by the grievor. The grievor denies any unconditional acceptance, and asserts that his acceptance was conditional on his being satisfied with the pension numbers because only then would he know if he had sufficient monies to retire. Without repeating all of the evidence and arguments concerning the behaviour and motivations of the parties which are set out above, the Panel is not satisfied that the grievor's actions clearly indicated his intention to unconditionally accept the College's Leave Plan offer.

Considering the seniority of the grievor, and the significance of the decision to sever the employment relationship, and the considerable contradictory evidence, we have concluded that the grievor did not form the intention, on April 29, 2003, to unconditionally accept the terms of the Voluntary Leave Incentive Plan and to resign his employment with the College. We have therefore concluded that the College violated the provisions of the collective agreement by not treating the grievor as a full-time seniority employee in accordance with the provisions of the collective agreement after April 30, 2003.

The grievance is therefore allowed. The Panel will remain seized should the parties be unable to agree on a remedy.

Dated at Maberly, Ontario this 20th day of July, 2004

A handwritten signature in black ink, consisting of several loops and a horizontal line across the middle, positioned above a horizontal line.

David K.L. Starkman
Chair

"I dissent" – see attached

Richard O'Connor
College Nominee

"I concur"

Ronald Kelly
Union Nominee

DISSENT

I dissent from the majority view of the Board. Mr. Runte requested to be considered for the Voluntary Leave Incentive Plan by letter dated April 7 to Lorraine Carter, Executive Director of the Brockville Campus of St. Lawrence College.

This request was approved and confirmed in writing by Ms. Carter on April 8, 2003, and he was advised therein that the effective date of his leaving would be April 30, 2003. Mr. Runte made efforts to have this date adjusted to June 30, 2003, but Ms. Carter was unequivocal in her response and advised that his leaving date could not be extended beyond April 30, 2003. In this same April 8, 2003, letter from Ms. Carter, Mr. Runte was advised that his decision to accept the offer was required by April 22, 2003, or his request would be considered as abandoned.

Mr. Runte was seeking work opportunity in Virginia at this time and the interviews that had been scheduled initially were rescheduled to April 28, 2003, beyond the time frame for his evaluation of and decision on the early leave plan. Mr. Runte being obviously mindful of the expiry date, met with Ms. Carter and requested an extension of one week which Ms. Carter granted to April 28, 2003, and initialed the date change on Mr. Runte's letter at his request. Events in Virginia caused Mr. Runte to request a further extension to April 29, which Ms. Carter granted, and, at his request, confirmed said extension to him by e-mail to a Virginia address he provided.

It is abundantly clear by Mr. Runte's conduct vis a vis extensions to the date for acceptance or rejection of the early leave plan that the April 30 date was not negotiable and he was under a deadline to make his decision.

Ms. Carter's testimony was that in a further call on April 29, 2003, Mr. Runte accepted the early leave arrangements and agreed to provide the signed letter to Mrs. Donovan on his return on May 1, 2003. Immediately following this 'phone conversation Ms. Carter sent an e-mail to Mrs. Donovan and to Pennie Carr-Harris with a copy to Mr. Runte confirming the conversation and Mr. Runte's acceptance of the early leave plan. Ms. Carter's e-mail was unequivocal and conclusive. It is, in my view, inconceivable that she would have conducted herself as she did had Mr. Runte in any way qualified his acceptance of the offer.

His conduct in requesting extensions and confirmation of same in writing from Ms. Carter certifies he clearly understood the timelines and constraints of the early leave plan and I am persuaded by Ms. Carter's conduct immediately following her second 'phone conversation with Mr. Runte on April 29, 2003, that his acceptance of the offer was without equivocation.

For all of the foregoing reasons I would have dismissed the grievance.

Richard J. O'Connor

July 23, 2004