

92A420
Local 655
CAAT (A)

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS AND
TECHNOLOGY IN THE FORM OF CAMBRIAN COLLEGE
(hereinafter called the "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(FOR ACADEMIC EMPLOYEES)
(hereinafter called the "Union")

GRIEVANCE OF PETER SELECKY
OPSEU FILE NO. 92A420
(hereinafter called the "Grievor")

BOARD OF ARBITRATION:

Richard H. McLaren

Gary Majesky, Union Nominee

R.J. Gallivan, College Nominee

COUNSEL FOR THE COLLEGE:

Michael Hines

COUNSEL FOR THE GRIEVOR:

Peter Selecky (the Grievor)

COUNSEL FOR THE UNION (As to the
procedural aspects only of this
proceeding):

Michael Mazucca

A HEARING IN RELATION TO THIS MATTER WAS HELD AT SUDBURY, ONTARIO,
ON APRIL 7, 1993.

I N T E R I M O R D E R

Mr. Peter Selecky grieves that:

"Having had an unsatisfactory response to my complaint about the terrible new smoking policy, I am proceeding with my grievance."

(Exhibit # 1)

The remedies requested in the grievance were:

"considerable amelioration of conditions along with incentive to comply with new resulting policy."

(Exhibit # 1)

At the hearing on April 7, 1993, three alternative remedies were requested: (i) the designated smoking room #1147 in the College be made more suitable for smoking; (ii) the financial costs not otherwise covered by the collective agreement of a smoking withdrawal programme for the Grievor be paid for by the College; or, (iii) an exception to the College's smoking policy be made permitting the Grievor to smoke in his office.

The smoking policy of the College reads:

Collège CAMBRIAN College's policy on smoking is intended to provide a safer and healthier work environment for all employees and students and to reduce damage due to smoking on college premises.

POLICY

1. Smoking is not permitted in any Cambrian owned building except in specifically designated areas (Smoking is permitted only in room 1147 in the Main Building of the Barrydowne campus)
2. All College personnel and students will play a role in the implementation of the policy. Repeat offenders of the policy should be brought to the attention of the Vice-President, Student Services, who has executive responsibility for the policy, and/or to the attention of his designate, the Manager of Health Services.
3. Normal College discipline will be enforced for those who refuse to comply with the policy.
4. Tobacco products will be neither advertised nor displayed in any Cambrian building.
5. The policy will be reviewed periodically in consultation with the Joint Occupational Health and Safety Committee.
6. The effective date of the policy is January 1, 1992.

(Exhibit # 3)

Mr. Hines on behalf of the College raised an objection to the jurisdiction of the Board to hear the matter because the grievance did not raise an arbitral issue. The Board ruled that this objection would have to be determined after hearing the merits of the case.

Mr. Mazucca advised the Board that he appeared not representing the Grievor but on instructions of the Union on the basis which the Board characterized as the procedural aspects of the arbitration proceedings before the Board. Mr. Mazucca also advised the Board that the

Union takes no direct objection to the College's smoking policy as set out above.

Mr. Selecky not only appears on his own behalf, but does so as a party having carriage of the matter, his status being defined by Article 32.05 (H). It reads:

"It is understood that nothing contained in this Article shall prevent an employee from presenting personally a grievance up to and including a hearing by the arbitration board without reference to any other person. However, a Union Steward may be present as an observer, commencing at Step One, if the steward so requests".

Mr. Selecky advised that the chief steward at the College had refused to find a steward to process the above grievance. Mr. Selecky then found his own representative and proceeded to take the grievance through the grievance procedure and ultimately before this Board. He expected the support of the Union lawyer in the arbitration proceeding, but was advised late afternoon of the day prior to the hearing that he would have to appear and present his own case. He was taken by surprise at this turn of events and was unable to proceed the morning of the hearing.

The Board ordered an adjournment on the basis that it would be a denial of natural justice not to give the Grievor an adjournment in all of the circumstances of this situation.

Mr. Hines raised the issue of the costs of the day, which were not inconsiderable, given that everyone had to travel to Sudbury for the hearing. He sought an order requiring the Union to pay the full costs of all members of the Board of Arbitration and his own Counsel fee

and disbursements.

The Board ruled that the College's Collective Bargaining Act, RSO 1990 c. 15, s. 46 (7) provided for the fees and expenses of the Board to be shared by the parties. The Board has no jurisdiction to amend that legislation so as to award a one half share of one party as costs against the other party.

In respect of Mr. Hine's counsel fee and disbursements for the day the Board noted this to be an unusual proceeding in that the carriage of this action was in the control of Mr. Selecky, the Grievor. He had always had carriage of the matter from the outset. The Union could have advised him of its unwillingness to support him with legal counsel on the substantive merits of the case at an earlier time. It did not do so because the local Union required a ruling from the Union regarding the constitution and its relationship to Article 32.05 (H). The Union then had to determine its own position. It did so and is the reason for the restriction on the appearance of Mr. Mazucca. The Board in these unusual circumstances was unwilling to use its discretion in ordering any costs on an adjournment to deviate from the normal disposition in labour matters where each party's costs are borne by themselves. There is, therefore, no order as to costs.

The matter is ordered to be continued on August 11 and August 12, 1993.

DATED AT LONDON, ONTARIO THIS 30th DAY OF APRIL, 1993

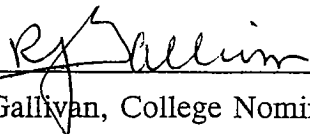


Richard H. McLaren
Chairman of the Board of Arbitration

I concur

Signed "Gary Majesky"
Gary Majesky, Union Nominee

I dissent on the Cost
Issue only
See Attached Dissent


R.J. Gallivan
R.J. Gallivan, College Nominee

DECISION OF R.J. GALLIVAN

Until the very eve of the hearing the grievor understood that the union would represent him before the Arbitration Board. When at the last moment the union changed its mind, it left the grievor with inadequate time to prepare his case on his own. Thus I believe that to have denied him his request for an adjournment would have been a denial of natural justice.

To deny the College reimbursement of its extra costs incurred as a consequence of that adjournment is equally a denial of natural justice. The College was an innocent victim of the union's internal politics and sloppy administration. As a consequence it incurred unnecessary expense. Since the principles of natural justice are not reserved for application only to grievors, the College should be reimbursed its costs by the union. The majority's failure to so order lends credence to that somewhat cynical but apparently now appropriate definition of collective bargaining: "management bargains, the union collects".

R.J. Gallivan