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IN THE MATTER OF AN ARBITRATION

BETWEEN CONESTOGA COLLEGE

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

IN THE MATTER OF THE GRIEVANCE OF J. SORBARA

MR. O.B. SHIME, Q.C.	CHAIRMAN
R. DIXON	COLLEGE NOMINEE
E. ZIEMBA	UNION NOMINEE

APPEARANCES

MR. R.J. DRMAJ	COUNSEL, and others for the College
MS.J. MIKO	REPRESENTATIVE, and others for the Union

A hearing in this matter was held at Toronto on Tuesday,
March 31, 1987.

AWARD

The grievor, Joseph Sorbara, a teaching master claims that he was improperly laid off contrary to the Collective Agreement and requests that his layoff be rescinded. The

grievor further maintains that courses that he taught in the Offset Printing Program were similar to courses given in the Graphic Technician Program. The College submits that the grievor did not have sufficient knowledge to displace anyone presently teaching in the Graphic Technician Program.

The person that the grievor sought to displace is Mr. R.N. Organ, who is a more junior employee at Conestoga College, although he had previously been a teacher at Niagara College. Mr. Organ was present at the hearing and chose to represent himself. He participated in all aspects of the hearing.

Mr. Organ testified that the Graphic Technicians Program is concerned with taking a design and converting it to camera ready art. When this is completed, the design is reproduced on film by a camera and then goes to film and from there to proofing and plate making. The program is concerned with technicians in the pre-press area. In the first year of the course Mr. Organ teaches Line Photography, Pre-Press Proofing and Platemaking, Halftone Photography, Film Stripping and Photography. In the second year of the course he teaches Halftone Photography 11, Film Stripping 11, and Process Colour Separation Theory and Technique. The

Graphic Technician Program is for two years and Mr. Organ taught in both years.

As well, Mr. Organ has considerable experience in the industry, all of it in the pre-press area. He testified that he has worked in this area for all of his working life and teaches in his own area of expertise.

The grievor, Mr. Sorbara, also had considerable experience in the industry. As indicated previously, has taught in the Offset Printing Program and claims that some of the courses he taught overlapped with the courses taught in the Graphic Technician Program. He maintains that the combination of his experience and teaching are sufficient to qualify him to teach the course currently being taught by Mr. Organ.

Under the Collective Agreement the grievor, who is senior to Mr. Organ, is entitled to replace him if his "competence, skill and experience are relatively equal" to that of Mr. Organ. The courses taught by Mr. Organ have been outlined above and we are satisfied that the grievor could teach many of the courses taught by Mr. Organ. The difficulty in this case is that Mr. Sorbara testified that in two areas his skill or competence did not equal that of Mr. Organ. Those two

areas are Photography-Graphic Technician and Process Colour Separation Theory and Technique.

Initially, Mr. Sorbara testified that he was not equivalent to Mr. Organ in the Photography Course which is taught over sixty-four hours but felt that his experience would enable him to teach the course. When cross examined, he admitted that he hadn't taught the course and that his experience and qualifications were limited. He stated that if he were given two or three weeks to update himself, he could teach the course. He also testified that part of this course involved the use of lighting and that he was very limited in that area although he had some experience in studio lighting.

The Process Colour Separation Course involves the teaching of both theory and technique. This course is given over eighty-four hours. Initially, Mr. Sorbara testified that he hadn't taught this course and that he had no equivalency in this area but felt that his experience would enable him to teach this course.

Mr. Sorbara admitted that Mr. Organ was qualified to teach these courses but was also candid to admit there was a difference between the two of them.

In effect, the evidence comes to this, Mr. Organ is a highly qualified Graphic Technician who taught in this area for a number of years. He is also an acknowledged expert in the area. Mr. Sorbara who is more senior is an expert in the area of Offset Printing. He is not an expert in the area in which he now wants to bump. He has some experience which he wishes to apply to the Graphic Technician area and he has teaching experience which overlaps to some extent. At least in the photography area he admits that he would have to update himself. In these circumstances, can it be said that Mr. Sorbara is relatively equal to Mr. Organ?

The union submits that the grievor need not have the immediate qualifications to be relatively equal. It maintains that his teaching experience coupled with his practical experience and background knowledge made him relatively equal to Mr. Organ. The union further maintains that the grievor did not have to show that he had taught the courses that Mr. Organ is now teaching in order to be considered relatively equal. In sum, the union vigorously claims that Mr. Sorbara is relatively equal to Mr. Organ and he should be entitled to replace him.

The College submitted that there were serious differences between the courses taught by Mr. Organ and those taught by Mr. Sorbara and that Mr. Sorbara's teaching experience could not be used to establish that he could teach the

Graphic Technicians Course. More particularly the College claims that the Offset Printing Course was a one year course leading to a certificate and is taught to a constituency sent from Canada Employment, whereas the Graphic Technician Course is a two year course leading to a diploma and is taught to persons who have completed Grade 12. Based on those facts, the College says there are significant differences in the quality of the courses and Mr. Sorbara's experience in one cannot be utilized in the more difficult course. The College also maintains that Mr. Sorbara did not teach all the courses that Mr. Organ taught and in some instances there was no equivalent course and accordingly it cannot be said that Mr. Sorbara was relatively equal to Mr. Organ.

At the outset, it is our view as the union argued, that relative equality does not mean identical. Thus it is not necessary for Mr. Sorbara to have taught the exact courses that Mr. Organ taught. They both are teachers and presumably they both could have taught some of the courses albeit their styles of teaching might have been different. Also, a grievor is entitled to rely on other experiences to satisfy the requirement of relative equality. Thus, much of Mr. Sorbara's experience is relevant and we are satisfied that a combination of his practical experience and teaching experience would have permitted him to teach many of the courses in question. In that sense, despite the College's argument, he was relatively equal to Mr. Organ, in most cases.

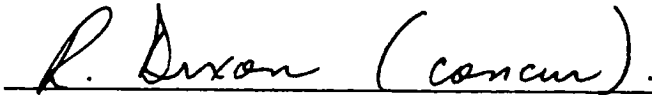
More particularly, we are satisfied that Mr. Sorbara's experience would have enabled him to teach the Process Colour Separation Course and for that limited purpose he was "relatively equal" to Mr. Organ.

The flaw in this case is Mr. Sorbara's limited experience in the photography area. As he himself stated his experience and qualifications in that area were limited and that there was a difference between him and Mr. Organ. Mr. Sorbara admits he would have to update himself, that is, he would have to expand his education in the area. Thus what we are faced with is an acknowledged expert in the area, whose skill and competence are pitted against a person who admits to his limitations and lack of competence in the area. In these circumstances can it be said that Mr. Sorbara is relatively equal to Mr. Organ? Mr. Sorbara admits there are differences and he admits his lack of skills and competence require that he update those skills. This is not a situation where a person has some skills, rather he is in a deficit position with respect to those skills. Given that Mr. Organ is an expert in the area, it is very difficult to say that Mr. Sorbara is relatively equal to him. Accordingly, after considering the evidence as a whole, it is our view that Mr. Sorbara has not satisfied us that he is relatively equal to Mr. Organ and the grievance is dismissed.

DATED AT TORONTO this 8th day of September, 1987.



Owen B. Shime, Q.C.
Chairman



R. Dixon
College Nominee

E. Ziemba
Union Nominee

Dissent

I have reviewed the award and find that I must dissent.

There have been six similar "bumping" grievances before various Boards of Arbitration; J. Rennie vs. Conestoga College, S. Brouwer vs. Conestoga College, R. Keating vs. Conestoga College, H. Bailey vs. Conestoga College, F. Symanyk vs. Confederation College of Applied Arts and Technology and R. Brown vs. St. Lawrence College. Like Mr. Sorbara, none of these grievors had their bumping rights upheld at arbitration.

Reviewing these awards, I find that Mr. Sorbara is not trying to bump into a new trade. Both of these teachers are life-long printers. The only difference between them is their individual seniority and expertise in the printing trade. The third party has more experience in photography. I disagree with the majority that this puts Mr. Sorbara in a deficit position. He has agreed to update himself in this particular skill. This coupled with his teaching experience would suffice.

In my opinion, this award gives the College a green light to get rid of any teacher regardless of seniority. By highlighting a certain aspect of a trade, photography in Mr. Sorbara's case, the College can dump any teacher in the system. The Collective Agreement's bumping clause, that allows the senior teacher to bump into another position, provided that his competence, skill and experience are relatively equal, has not protected Mr. Sorbara. This, despite the fact that he was bumping another printer - someone in his own trade. If Mr. Sorbara's competence, skill and experience after 18 years are not "relatively equal" then whose could be? What teacher in the system can pass such a means test?

Mr. Sorbara has given the best years of his working life to the College. He was confident that after 18 years, the Collective Agreement provided job security. To-day he finds himself displaced by a teacher with less seniority.

On page 6, the majority finds 'Thus, much of Mr. Sorbara's experience is relevant and we are satisfied that a combination of his practical experience and teaching experience would have permitted him to teach many of the courses in question. In that sense, despite the College's argument, he was relatively equal to Mr. Organ, in most cases.' I would have stopped at this point and allowed the grievance.

In conclusion, seven Arbitration Boards have ruled that job security as defined by the Collective Agreement's bumping clause, does not exist. The Union must take whatever action is necessary to change this or many more life-long teachers will find themselves in the same position as Mr. Sorbara.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ed Ziemba".

Ed Ziemba
Union Nominee

EZ/lr