

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Sheridan College,

College,

- and -

Ontario Public Service Employees Union,

Union

BEFORE: Michael Bendel, Chair
Ren! St. Onge, College nominee
Michael Sullivan, Union nominee

APPEARANCES: For the Union:

David Wright, Counsel
Wilma Van der Hurk, Chief Steward, Local 244
Maxine Stenning, Grievor

For the College:

Stephen C. Raymond, Counsel
Rosalie Spargo, Labour Relations Specialist
Jan Thompson, Academic Director, School of
Community Services
Linda Love, Director, School of Educational
Services
Susan Bowden, Human Resources Representative

Third Parties:

Anita Agar, representing herself
Brian Dwyer, representing himself

Hearing held in Oakville, Ontario, on April 15, 1997.

INTERIM ARBITRAL AWARD

I

The grievance of Ms. Maxine Stenning, a professor, arises from her lay-off in August 1996, following notice of lay-off in March of that year. She is entitled, under the seniority provisions of the collective agreement, to bump or displace a junior employee if she has the competence, skill and experience to fulfil the requirements of the junior employee's position.

The collective agreement provides that any employee seeking to bump has to identify, at the time of referring the grievance to arbitration, two full-time positions which he or she claims the right to occupy. The grievor has named two employees with less seniority, Ms. Anita Agar and Mr. Brian Dwyer, into either of whose positions she asks to be reassigned.

A preliminary question arises in relation to the grievor's claim to Mr. Dwyer's position. Mr. Dwyer, it appears, has only occupied his present position since the spring of 1996. He had himself been given notice of lay-off, which the College later rescinded upon his being assigned to a position recently vacated by

Ms. Debbie Hoffmann. Mr. Dwyer, it appears, does not teach the same courses as Ms. Hoffmann did, although he occupies her position. The union requested documentation from the College concerning the courses taught by Ms. Hoffmann when she occupied the position. The College refused, saying that the information sought is not relevant to the grievance. The union has now asked us to order the production of the documents in question on the ground that they are arguably relevant to the grievance.

This award is limited to a consideration of the preliminary issue of the relevance to this grievance of Ms. Hoffmann's employment history.

II

The provisions of the collective agreement that were referred to in argument are these:

Article 27 JOB SECURITY

...

27.06When 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 fulfil 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 fulfil the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College.

...

Lay-Off Grievances

27.08 A An employee claiming improper lay-off, contrary to the provisions of this Agreement, shall state in the grievance the positions occupied by full-time employees and non-full-time employees whom the employee claims entitlement to displace...

27.08 B If the grievance is processed through Step 2, the written referral to arbitration in 32.03 shall specify, from the positions originally designated in 27.08 A, two full-time positions, or positions occupied by two or more partial-load or part-time employees (the sum of whose duties will form one full-time position), who shall thereafter be the subject matter of the grievance and arbitration...

Mr. Wright, on behalf of the union, stated that the underlying dispute between the parties on this preliminary matter related to the identification or definition of the "position"

occupied by Mr. Dwyer for the purposes of Article 27.06 (ii) (a). It was arguable, he maintained, that the grievor could satisfy that provision by demonstrating her competence, skill and experience to teach the courses previously taught by Ms. Hoffmann while she occupied the position. There was no good reason to restrict the inquiry to the courses that Mr. Dwyer was currently teaching. Mr. Wright noted that Mr. Dwyer had presumably benefitted from a broad reading of Article 27.06 (i) when he was reassigned to Ms. Hoffmann's position after receiving notice of lay-off, and the grievor should likewise benefit from a broad reading of the provision. In the course of his submissions, Mr. Wright referred to Re St. Clair College and Ontario Public Service Employees' Union (1989), 6 L.A.C. (4th) 442 (Carter).

According to Mr. Raymond, counsel for the College, the grievor was attempting to lay claim to three positions, namely Ms. Agar's, Mr. Dwyer's, and Ms. Hoffmann's. Under Article 27.08 B, she was limited to two positions. Having identified the positions held by Ms. Agar and Mr. Dwyer in the referral to arbitration, the grievor could not now add Ms. Hoffmann's. The issue on the merits of the grievance will be whether the grievor has the competence, skill and experience to fulfil the requirements of the position occupied by Ms. Agar or that occupied by Mr. Dwyer. The duties performed by Ms. Hoffmann when she occupied the position now held

by Mr. Dwyer could not be relevant to this grievance. Mr. Raymond referred, in addition to Re St. Clair College, supra, to Re Niagara College of Applied Arts and Technology and Ontario Public Service Employees Union (unreported award of arbitrator Brown, dated October 31, 1989).

III

Re St. Clair College, supra, was a case similar to this one, and involving the same provisions of the collective agreement (though differently numbered). The issue there was whether the grievor, who sought to displace a junior employee, had to demonstrate that he had the competence, skill and experience to teach the courses then being taught by the junior employee, or whether it was sufficient that he had the competence, skill and experience to occupy a position as a teaching master in the junior employee's section. The board of arbitration stated the following (at pages 445-6):

As we read this language [of what is now art. 27.06] it expresses an intention that the competence, skill and experience of the displacing employee be measured against the bench-mark 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 reorganize 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 art. 8.05 [now art. 27.06] 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 at just one point in 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.

It is clear to us, from a perusal of the passage just cited, that, in defining the "position" which the grievor must demonstrate she was capable of filling, we must restrict our inquiry to the core pattern of courses taught by Mr. Dwyer at the College. It is Mr. Dwyer whom the grievor seeks to displace, not Ms. Hoffmann. As arbitrator Carter wrote in the above-noted award, "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" (emphasis added). We take this as a recognition that, since job content in this type of situation is not well-defined, the focus should be on the courses taught by the junior employee throughout his or her teaching career at the College, rather than on the courses taught by previous incumbents of the position occupied by the junior employee. It is a recognition that the senior employee, if successful on the grievance, will be replacing the junior one; and, as stated in Re Niagara College, supra, at page 9, the displacing employee must be "fully capable of stepping into the shoes of the incumbent". It follows, in our view, that courses taught by previous incumbents of the position occupied by the junior employee can be of no relevance.

The process whereby Mr. Dwyer came to be assigned to Ms. Hoffmann's position is also irrelevant to this grievance, in our view. The union has not alleged any impropriety in that assignment, and, in any event, we could scarcely deal with such an allegation in the context of the present grievance even if one had been made.

We must therefore dismiss the union's request for the production of documents. The hearing will continue on the dates previously fixed.

DATED at Thornhill, Ontario, this day of June 1997.

Michael Bendel,
Chair

I concur/I dissent

Ren! St. Onge,
College nominee

I concur/I dissent

Sullivan,

Michael
Union nominee