

**IN THE MATTER OF A WORKLOAD RESOLUTION ARBITRATION HELD  
PURSUANT TO ARTICLE 11.02 OF THE COLLECTIVE AGREEMENT  
BETWEEN:**

**College Compensation and Appointments Council  
for the Colleges of Applied Arts and Technology  
(Fanshawe College)**

**(“the College”)**

**and**

**Ontario Public Service Employees Union  
(for Academic Employees)**

**(“OPSEU”)**

**Re: Workload Grievance of Kathryn Tamasi**

**Workload Resolution Arbitrator: Peter F. Chauvin**

**Appearances for the College:**

<b>Robert J. Atkinson</b>	<b>Counsel</b>
<b>Michael Goodmurphy</b>	<b>School of Human Services Chair</b>
<b>Sheila Wilson</b>	<b>Labour Relations Consultant</b>
<b>Sue Miller</b>	<b>Employee Relations Manager</b>
<b>John Mackara</b>	<b>Manufacturing Sciences Chair</b>
<b>Pam Skinner</b>	<b>Health Sciences and Human Services Dean</b>

**Appearances for OPSEU:**

<b>Gavin Leeb</b>	<b>Counsel</b>
<b>Paddy Musson</b>	<b>Local President</b>
<b>Darryl Bedford</b>	<b>Chief Steward</b>
<b>Kathryn Tamasi</b>	<b>Grievor</b>

**Hearings held on January 29, September 8 and October 24, 2008**

This is a Workload Resolution Arbitration under Article 11 of the Collective Agreement that is binding between the parties. I have been appointed as the Workload Resolution Arbitrator (the “WRA”) to determine this matter.

The collective agreement states that the workload resolution process is meant to be an informal and expeditious manner to resolve workload disputes. Article 11.02 G states that “it is recognized that speedy resolution of workload disputes is advantageous to all concerned”. Article 11.02 F states that the WRA shall determine the appropriate procedure, that “it is understood that the procedure shall be informal”, and that following “informal discussions” the WRA is only required to provide a brief explanation of the reasons for the Award if one of the parties requests such reasons. The informal and expeditious nature of the workload resolution process was confirmed by the Ontario Court of Appeal in *George Brown College of Applied Arts and Technology v. Ontario Public Service Employees Union* (2003), 68 O.R. (3d) 161.

Commonly, the parties are not represented by lawyers at a Workload Resolution Arbitration. In this case they were. Extensive representations and submissions were made over the course of three days. The workload resolution process has taken longer than is stated in Article 11.01 B, and the parties extended the time for rendering this Award. The parties have requested that I provide reasons for this Award. In keeping with Article 11, this Award will be as brief as possible, and will consider only the most pertinent representations and submissions.

### **Ms. Tamasi’s Representations**

Ms. Tamasi is the Academic Coordinator of the College’s Developmental Services Worker Program (the “DSW Program”). The DSW Program consists of four terms, spread over two years. During the first two terms the students attend academic classroom courses. During the last two terms the students must perform 950 hours of field placement work in community agencies. As the Academic Coordinator, Ms. Tamasi’s duties pertain primarily to the first two terms while the students are being taught their academic classroom courses.

On her Standard Workload Form (“SWF”) for the Fall of 2007 (the “F07 SWF”) regarding the September to December 2007 term, Ms. Tamasi was given 11 attributed complementary hours per week for coordinating duties (in addition to the 6 mandatory complementary hours per week she was given under Article 11.01 F for routine out of class

assistance to individual students and for normal administrative tasks). Ms. Tamasi was also given 2 hours per week for the mentoring of part-time professors. Hereinafter, all hours referred to are per week.

Ms. Tamasi claims that this allocation of hours does not reflect the work that she actually performed during the Fall 2007 term. Ms. Tamasi submitted that she performed considerably more mentoring and coordinating work, primarily because there was an increase in the number of part-time professors during that term. Accordingly, Ms. Tamasi requests that she be granted an additional 4 hours per week for the mentoring of part-time professors, an additional 3 hours per week for coordinating work, and an additional 2 hours per week for attending to students with special needs.

The parties provided me with Ms. Tamasi's Fall (September to December) 2006 SWF (the "F06 SWF") and her Winter (January to April) 2007 SWF (the "W07 SWF"). The parties also provided me with statistics going back to the Fall of 2004 ("F04") term and the mentoring and coordinating hours that were given to Ms. Tamasi on her SWFs. These numbers, which were not significantly disputed, are reflected in the following chart:

<b>SWF</b>	<b>F04</b>	<b>W05</b>	<b>F05</b>	<b>W06</b>	<b>F06</b>	<b>W07</b>	<b>F07</b>
<b>Number of Students</b>	203	204	231	198	230	169	195
<b>Full-time Professors</b>	10	9	8	8	6	6	3
<b>Part-time Professors</b>	1	1	3	2	4	2	6
<b>% of Part-time Professors</b>	9.1	10	27.3	20	40	25	66.7

<b>Total Teaching Hours</b>	81	81	81	81	81	66	54
<b>Hours Taught by FT Professors</b>	78	75	75	77	71	58	24
<b>Hours Taught by PT Professors</b>	3	6	6	4	10	8	30
<b>% of Hours Taught - PT Professors</b>	4	7.4	7.4	5	12.3	12.1	55.6

<b>SWF Mentoring Hours</b>	0	0	1	0	1	1	2
<b>SWF Coordinating Hours</b>	11	12	11	11	11	11	11

With regard to mentoring, Ms. Tamasi submitted that in F07 five of the six part-time professors were new to the DSW program or were teaching new courses. Ms. Tamasi submitted

that newly hired part-time professors require extensive orientation and assistance. Ms. Tamasi submitted that full-time professors normally mentor part-time professors by assisting them with their orientation, course preparation and course delivery. However, with the reduction of full-time professors, Ms. Tamasi submitted that she had to assume much of this mentoring. Ms. Tamasi submitted that 2 hours are inadequate and requests an additional 4 hours for the mentoring of part-time professors.

With regard to coordinating work, Ms. Tamasi submitted that full-time professors have time assigned on their SWFs for such things as course preparation and delivery, meetings with students, attending program meetings and performing administrative work. Ms. Tamasi noted that part-time professors are paid an hourly rate per teaching hour, with no pay specifically allocated for these other duties. Ms. Tamasi submitted that part-time professors do not perform this work to the same extent as a full-time professor. Accordingly, with the reduction of full-time professors, Ms. Tamasi submitted that she had to assume much of this work. Ms. Tamasi submitted that this has resulted in a broad array of additional coordinating duties, all of which take a considerable amount of time to perform. Ms. Tamasi requests an additional 3 coordinating hours for this increased work.

Thirdly, Ms. Tamasi submitted that she assumed more work to assist in the accommodation of students with special needs, such as planning individual timetables, arranging for special examinations, preparing special course materials, arranging meetings with counselors, and revising existing accommodations. Ms. Tamasi submitted that much of this was formerly performed by full-time professors. With regard to this, Ms. Tamasi requests an additional 2 coordinating hours on her SWF.

Ms. Tamasi stated that over the years, her workload has gradually increased, and that she has worked substantially in excess of 44 hours per week. However, it was agreed that such work could have been the subject of a jurisdictional dispute between the academic and non-academic OPSEU bargaining units, and that this could have significantly affected the way that the parties chose to deal with this situation. Accordingly, the parties agreed that this excess work should not be taken into consideration in determining this matter.

Finally, Ms. Tamasi stated that even though she signed her F06 and W07 SWFs, she did not agree with them and signed them only because she feared that the DSW program could be

discontinued. Mr. Leeb argued that Ms. Tamasi should not now be prejudiced by this and that the College should not benefit from this. Also, OPSEU cited Article 11.02 F6 which states that “the Award ...shall have no application beyond the end of a 12 month period from the date of the beginning of the workload assessment”, and submitted that SWFs are not meant to set a precedent.

### **The College’s Representations**

As a threshold issue, the College submitted that my jurisdiction is not to determine whether the College's attribution of hours was correct, but rather to determine whether there are compelling reasons to interfere with the College’s exercise of its management rights discretion under Article 6.01, or whether the College’s attribution was arbitrary, discriminatory or in bad faith. Also, the College submitted that the attribution of hours can only be an approximation and that considerable deference must therefore be afforded to the College’s exercise of its discretion. In support of this, the College relied upon two unreported grievance arbitration Awards of Professor Richard McLaren dated May 2, 1995, *Fanshawe College, Union Policy Grievance* and August 11, 2006, *St. Lawrence College, Frank McLaren Grievance*.

In response to this, OPSEU strongly disputed that the College’s attribution is either part of management rights or is subject to only an arbitrary, discriminatory or bad faith test. Rather, OPSEU submitted that the standard is correctness. OPSEU referred to Articles 11.01 A, 11.01 D2, 11.01 E1, 11.01 F, 11.01 G2, 11.02 A2 and 11.02 A4 and submitted that these Articles mandate that the SWF be based on specified formulas, include certain elements, and be a correct assessment of the workload.

With regard to mentoring, the College stated that 4 of the 6 part-time professors, (which includes 1 partial load professor), were experienced college professors who had taught the same or a similar course in the past. The College submitted that in almost all cases the full-time professors who previously taught the course, but were now on a leave or a secondment, or were still teaching in the DSW Program, provided the course materials and made themselves available for consultation and assistance. The College noted that in two cases, the part-time professors co-delivered the course with a full-time professor, and that in three cases the same part-time professor taught two sections of the same course. In support of this, the College provided

detailed charts outlining the teaching assessments for F06, W07 and F07. The College also stated that all of the part-time professors were provided with orientation.

In view of all of this, the College submitted that the increase in part-time professors did not result in Ms. Tamasi having to assume significantly more mentoring hours than she performed in F06 or W07. The College submitted that Ms. Tamasi has been properly compensated for any additional mentoring that she may have performed in F06 and F07 by the additional 1 mentoring hour that she was granted on each of her F06 and F07 SWFs. The College submitted that the 1 hour for mentoring that Ms. Tamasi was granted in W07 was generous, given that in W07 there were only 2 part-time professors and that the total teaching hours declined from 81 to 66. The College further noted that in F07 the total teaching hours again declined substantially from 66 to 54. In view of all of this, the College submitted that the 2 mentoring hours that Ms. Tamasi was granted on her F07 SWF was appropriate.

With regard to Ms. Tamasi's request for an additional 3 hours for coordinating work, the College submitted that the 11 coordinating hours that Ms. Tamasi has been granted since F05 properly compensate her for this work, and are consistent with the coordinating hours that are provided to other Academic Coordinators of the College's other similar programs. The College also submitted that many of the administrative tasks that Ms. Tamasi has cited in support of her requests are not affected by an increase in part-time professors, and that Ms. Tamasi could perform these tasks between May and June, when there are no classes, or she could have obtained assistance from administrative staff.

The College disputed Ms. Tamasi's submission that part-time professors primarily only provide classroom instruction and do not assist with course preparation, attend meetings or meet with students outside of the classroom hours as much as full-time professors perform this work. The College submitted that part-time professors do perform this work even though there are paid an hourly rate per teaching hour. The College also noted that if the partial load professor is not considered to be a part-time professor the statistics regarding the percentage of part-time professors and the percentage of hours taught by part-time professors go down significantly in favour of the College.

Finally, with regard to Ms. Tamasi's request for an additional 2 hours for assisting with the accommodation of students with special needs, the College noted that in F07 there were no

students in the second semester of the DSW Program because the W07 intake was cancelled. As such, the College submitted that there would have been far fewer students with special needs. Also, the College submitted that the work of accommodating students does not increase just because there is an increase in part-time professors.

In closing, College submitted that even though Ms. Tamasi is a hard-working and dedicated faculty member, all of Ms. Tamasi's requests for additional hours should be dismissed.

### **Ruling**

With regard to the test that I should apply, I do not accept the College's submission that its attribution falls under the management rights clause. The workload resolution process is set out in detail in Article 11. It is not governed by Article 6.01. Nor do I accept that my jurisdiction is limited to determining whether the College's attribution was arbitrary, discriminatory or in bad faith. This is not supported by Professor McLaren's two grievance arbitration Awards. In *Fanshawe College, Union Policy Grievance* the issue was whether the College had violated Appendix II which requires the College to give preference to the designation of full-time positions, but subject to operational requirements. Arbitrator McLaren did not apply an arbitrary, discriminatory or bad faith standard, but rather ruled that ruled that:

“...it cannot be said that the management method was wrong in their assessment of operational requirements or failed to do an assessment... In the absence of a finding that they did so incorrectly then this board of arbitration ought not to interfere...”

In *Lawrence College, Frank McLaren Grievance* the issue was whether a Coordinator should have been granted two steps on the salary schedule pursuant to Article 14.03 A3. Professor McLaren noted that the Article was silent with regard to the criteria that should be used to determine this. In this context Professor McLaren applied an arbitrary, discriminatory or bad faith standard. However, in view of the numerous provisions of Article 11 which set out criteria by which the SWF hours must be attributed, including Articles 11.01 F and 11.01 G2, and the fact that these two Awards are not WRA Awards, I do not find that they establish that an arbitrary, discriminatory or bad faith standard should be applied in this case.

The workload resolution process is meant to be an informal and expeditious process. It is also, as the parties acknowledged, in part, a somewhat subjective process. For example, Ms. Tamasi's main premise was that she took over mentoring and coordinating work that was formerly performed by full-time professors. However, no specific evidence was given to directly substantiate this premise. Rather, it was implied that this was a natural and inevitable consequence of this change in staffing. The College disputed this premise, stating that Ms. Tamasi did not take over this work. Again, the College did not provide specific evidence to substantiate its premise. This was not wrong for either party. Rather, it results from the expedited nature of this process.

This does not mean that these representations are of no weight. Rather, I must consider and compare all of the representations made by the parties, assess the reasonableness of those representations against all of the information that I have, give an appropriate weight to those representations, and render an attribution. Given the nature of this process, this assessment is not scientific, but rather it is the best possible approximation. In view of this, it is appropriate to afford some deference to the College's attribution. However, in the end my role is to determine whether the College's attribution was, in this context, reasonable and should be upheld.

The starting point for determining this matter is the prior SWFs and the related statistical data. They provide a baseline of what the parties have agreed upon, or a WRA has ruled, as being appropriate hours for specified mentoring and coordinating work. Ms. Tamasi states that she should not have agreed with her F06 and W07 SWFs, but rather should have disputed them. She requests that they not be considered. However, the process of resolving workload disputes would be seriously impaired if either of the parties could make such a claim. I would have no point of reference for assessing the F07 SWF. Prior agreed upon SWFs are relevant and can be considered.

I do not accept OPSEU's argument regarding Article 11.02 F6. Article 11.02 F6 applies to WRA Awards. Ms. Wigle's F06 and W07 SWFs were not resolved by a WRA Award. As such, Article 11.02 F6 does not apply. Also, Article 11.02 F6 states that "the Award shall only have application to the teacher affected by the matter" for a 12 month period. This indicates that a SWF resolved through a WRA Award does set some precedent for that professor for 12 months. There is nothing in the collective agreement that precludes agreed upon SWFs from having any

precedential value. Prior agreed upon SWFs are relevant and set at least some point of reference for a WRA.

That does not mean that the prior SWFs are conclusive. It could be argued that the prior SWFs are incorrect. The party alleging this may face an onerous burden to establish this. One would expect that the more common argument would be that there was a change in the workload to warrant a change in the SWF. In any event, the WRA must be satisfied that the SWF accurately reflects the workload of the term being considered. In this regard, the most relevant statistics can be distilled to the following:

<b>SWF</b>	<b>F04</b>	<b>W05</b>	<b>F05</b>	<b>W06</b>	<b>F06</b>	<b>W07</b>	<b>F07</b>
<b>% of Part-time Professors</b>	9.1	10	27.3	20	40	25	66.7

<b>Total Teaching Hours</b>	81	81	81	81	81	66	54
<b>Hours Taught by PT Professors</b>	3	6	6	4	10	8	30
<b>% of Hours Taught - PT Professors</b>	4	7.4	7.4	5	12.3	12.1	55.6

<b>SWF Mentoring Hours</b>	0	0	1	0	1	1	2
<b>SWF coordinating Hours</b>	11	12	11	11	11	11	11

These SWFs and the statistical data reveal a number of patterns. In F04, W05 and W06 there was up to 20% of part-time professors who taught up to 6 hours, representing up to 7.4% of the total teaching hours. Ms. Tamasi was given 0 hours for mentoring and 11 hours for coordinating work. This indicates that 0 hours for mentoring and 11 hours for coordinating work is appropriate where there is up to 20% of part-time professors teaching up to 6 hours, representing up to 7.4% of the total teaching hours.

In F06 the part-time professors rose to 40%. They taught 10 teaching hours, representing 12.3% of the total teaching hours. Ms. Tamasi was originally given 0 hours for mentoring. However she disputed this and was ultimately given 1 hour for mentoring. Ms. Tamasi accepted this resolution of her dispute. Again, in W07 she accepted 1 hour for mentoring. This indicates that 1 hour for mentoring and 11 hours for coordinating work is appropriate where there are up to 40% of part-time professors teaching up to 10 hours, representing up to 12.3% of the total teaching hours.

The issue is whether there was a change in F07 to warrant granting Ms. Tamasi more than 2 mentoring hours and more than 11 coordinating hours. In some ways the statistics support Ms. Tamasi request for additional hours, while in other ways they do not.

The number of students went down from 230 in F06, when Ms. Tamasi accepted 1 hour for mentoring and 11 hours for coordinating work, to 195 in F07. There were no students in the second semester because the W07 student intake had been cancelled. This decrease in students is reflected in the total number of teaching hours, which steadily decreased from 81 in F06 to 66 in W07 to 54 in F07. Accordingly, on these statistics, the total amount of work to be done appears to have decreased from F06 to F07, suggesting that there would have been less mentoring and coordinating work to do. Again, Ms. Tamasi accepted 1 hour for mentoring and 11 hours for coordinating work in F06 and W07.

However, other statistics support Ms. Tamasi's request. The number of full-time professors decreased from 6 in F06 and 6 in W07 to 3 in F07. The number of part-time professors increased from 2 in W07 to 6 in F07, with the result that the percentage of part-time professors increased from 40% in F06 to 66.7% in F07. The percentage of hours taught by part-time professors increased from 12.3% in F06 to 55.6% in F07. The actual hours taught by part-time professors went up to 30 in F07.

Thus, notwithstanding the decrease in students and total hours taught in F07, more of those hours were taught by part-time professors. The question is whether this amounted to more work, and whether, if it did, the 2 hours for mentoring and 11 hours for coordinating work that Ms. Tamasi was granted adequately compensated her for this extra work.

It is reasonable to conclude that Ms. Tamasi took on some of the mentoring that the full-time professors formerly performed. The full-time professors were given hours on their SWF for mentoring. In F07 there were fewer full-time professors and more part-time professors teaching more hours. I accept the College's detailed analysis of the number of part-time professors who had taught the same or a similar course in the past. However, I find that the increase in part-time professors would have resulted in at least some increase in mentoring for Ms. Tamasi.

With regard to coordinating work, full-time professors are attributed hours for coordinating work, while part-time professors are paid an hourly rate to teach their courses, with no pay specifically designated for meeting with students, attending program meetings, administrative or other coordinating work. I accept the College's submission that the part-time professors would still have done some of this work. However, it is reasonable to conclude that the part-time professor would have done less of this work than a full-time professor and that some of this work was taken on by Ms. Tamasi.

Accordingly, I find that, on balance, Ms. Tamasi assumed more mentoring and coordinating work in F07 than she performed in W07. The more difficult task is to determine how many additional hours should be attributed to Ms. Tamasi for this additional work. Based upon the parties' representations and the analysis of the most pertinent SWFs and statistics that I have conducted above, I grant Ms. Tamasi 1 additional hour for mentoring and 1 additional hour for coordinating work. This brings Ms. Tamasi's mentoring hours up from 1 in W07 to 3 in F07. I do not grant Ms. Tamasi an additional hour for assisting with the accommodation of students with special needs, because I find that the representations of both the parties indicated that there was insufficient support for an increase in hours for this work.

I remain seized with regard to the implementation of this Award.

Signed at Toronto on December 12, 2008

"Peter F. Chauvin"

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Peter F. Chauvin

Workload Resolution Arbitrator