

IN THE MATTER OF AN ARBITRATION

90A 229

B E T W E E N:

NORTHERN COLLEGE

(The Employer)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(The Union)

AND IN THE MATTER OF THE GRIEVANCE OF N. TUNNICLIFFE - #90A229

BOARD OF ARBITRATION:

Kenneth P. Swan, Chairman  
A. Shields, Employer Nominee  
Jon McManus, Union Nominee

APPEARANCES:

For the Employer:

John Saunders, Counsel  
Jim Cotnam, Human Resources Officer

For the Union:

Laura Trachuk, Counsel  
Richard Mason, Local President  
Nan Tunnicliffe, Grievor  
Dennis Amendola

A W A R D

A hearing in this matter was held in Timmins, Ontario on May 18, 1990, at which time the parties were agreed that the board of arbitration had been properly appointed, and that we had jurisdiction to hear and determine the matter at issue between them. That matter was put before us on the basis of representative facts agreed to by the parties, but originally arose from a grievance of Nan Tunnicliffe representing 17 employees, filed as Grievance No. 90A229 on April 5, 1989.

The original grievance was in the following terms:

Northern College maintains that Article 8.14(b) refers to the computing of seniority for positions outside of the collective agreement and not for positions within the bargaining unit. (See attached memo). We maintain that Article 8.14(b) refers to the computing of seniority for members of the bargaining unit who were originally hired outside of the collective agreement.

The agreed statement of facts presented by counsel at the arbitration hearing was as follows:

WHEREAS a grievance dated April 5, 1989, was filed by Nan Tunnicliffe representing a group of 17 employees (Appendix A attached) alleging that the College had incorrectly calculated the seniority of these persons;

AND WHEREAS the matter was not settled through the grievance procedure;

The parties are now agreed that the following are representative facts to be considered for this arbitration.

- (1) The parties are signatories to collective agreements dating back prior to 1981.
- (2) Attached to this Agreed Statement of Fact are the Collective Agreements between the College and the Union.

- (3) Elaine Meckbert was employed by the College as a partial load teacher from 87-09-08 to 88-05-06. On 88-09-07 she commenced employment with the College as a full time teaching master. Currently, the College credits her seniority from 88-09-07.
- (4) Marilyn Trodd was employed by the College as a part time teacher from 85-10-22 to 86-06-16. On 87-07-27 she commenced employment with the College as a full time teaching master. Currently, the College credits her seniority from 87-07-27.
- (5) In calculating the seniority of full time teaching masters the College credits those persons who were previously employed as sessional employees with the "seniority" which they earned as such pursuant to Appendix III of the Collective Agreement.
- (6) In January of each year, the College posts a list showing the seniority of each employee. When posting this list, the College has never knowingly credited full time teaching masters with seniority based on their previous teaching as part time or partial load teachers.
- (7) As far as counsel are aware, the College's past practice regarding this matter, until the present grievance, has only been challenged by the Union in the following cases:

Fanshawe College - Brunner - Oct. 19/83  
Algonquin College - Kates - June 22/84  
St. Lawrence College - Swan - Jan. 19/89  
Sheridan College - Weatherill - May 17/82

The collective agreement between the present parties contemplates five different kinds of teaching appointments, three of which are included in the bargaining unit, and two of which, while they are alluded to in the collective agreement, are excluded from the bargaining unit. Inside the bargaining unit are found full-time continuing teaching appointments of two kinds, at first on a probationary basis, and subsequently on a seniority basis once the probationary period is completed. Also included are partial

load teaching appointments, which are defined as appointments involving teaching of more than six hours per week and up to and including twelve hours per week on a regular basis. Partial load teachers are treated differently from full-time teachers, but they are still granted bargaining unit membership.

Outside the bargaining unit are found part-time teaching appointments, involving six hours or less of teaching per week, and sessional appointments, which are full-time appointments of not more than twelve months duration in any twenty-four month period; these are non-continuous appointments, which may become regular full-time appointments if they exceed the maximum length specified.

The collective agreement deals with seniority for these different kinds of appointments in a diffuse and rather unsatisfactory manner. The provisions of the collective agreement which are essential to the resolution of the present grievance are as follows:

**Article 1  
RECOGNITION**

1.01 The Union is recognized as the exclusive collective bargaining agency for all academic employees of the Colleges engaged as teachers (including teachers of Physical Education), counsellors and librarians, all as more particularly set out in Appendix I hereto save above the rank of Chairmen, Department Heads and Directors, persons covered by the Memorandum of Agreement with the Ontario Public Service Employees Union in the support staff bargaining unit, and other persons excluded by the legislation and teachers, counsellors and librarians employed on a part-time or sessional basis.

NOTE A: "Part-time in this context include persons who teach six hours per week or less."

NOTE B: "Sessional in this context shall mean an

appointment of not more than twelve months duration in any twenty-four month period."

**Article 3**  
**SALARIES**

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3.03 (1) The Salary scales as set out in Appendix I will apply to persons teaching more than twelve (12) hours on a regular basis. Persons teaching over six (6) and up to and including twelve (12) hours on a regular basis will be covered by paragraph (2) hereof and Appendix II.

3.03 (2) Persons who teach over six (6) and up to and including twelve (12) hours per week on a regular basis shall be referred to as "partial-load" employees and shall not receive salary, vacations, holidays or fringe benefits (except for coverage of Workers' Compensation and liability insurance) under this Memorandum and Appendix I but shall be paid for the performance of each teaching hour at an hourly rate within the range of hourly rates set out in Appendix II and in accordance with the other provisions of Appendix II.

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**Article 8**  
**SENIORITY**

8.01(a)(i) A full-time employee will be on probation until the completion of the probationary period which shall be two (2) years' continuous employment.

(ii) A full-time employee hired after September 1, 1981, who has completed a probationary period at another Ontario College of Applied Arts and Technology or who holds a valid Ontario Teacher's Certificate and who has one year or more of teaching experience in Ontario will be on probation until the completion of the probationary period which shall be one year's continuous employment.

. . .

(d) Upon the completion of the employee's probationary period, a full-time employee shall be credited with two (2) years' seniority if treated under 8.01(a)(i) or one (1) year's seniority if treated under 8.01(a)(ii). An employee who commenced full-time employment with the College directly from the College's predecessor educational institutions shall be credited

for the purpose of this Article with seniority equal to the employee's continuous service in such predecessor institution. The list of predecessor educational institutions referred to herein is attached as Appendix VII of the Collective Agreement.

. . .

8.05 When 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:

(a) 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.

(b) failing placement under paragraph (a) above, such employee shall be reassigned to displace another full-time employee in the same classification provided that:

(i) the displacing employee has the competence, skill, and experience to fulfil the requirements of the position concerned;

(ii) the employee being displaced has lesser seniority with the College.

(c) failing placement under paragraph (b) above, such employee shall be re-assigned to displace a full-time employee in another classification upon acceptance of the identical employment conditions as the classification concerned provided that:

(i) the displacing employee has the competence, skill, and experience to fulfil the requirements of the position concerned;

(ii) the employee being displaced has lesser seniority with the College.

(d) failing placement under paragraph (c) above, such employee shall be re-assigned to displace a partial-load employee (as referred to in Appendix II) or a part-time employee upon acceptance of the identical employment conditions as the partial-load or part-time employee concerned provided that:

- (i) the displacing employee has the competence, skill, and experience to fulfil the requirements of the position concerned;
- (ii) the partial-load or part-time employee being displaced has lesser months of service with the College as determined in both Appendix II and IV than such displacing employee's months of seniority.

(e) failing placement under paragraph (d) above, such employee shall be reassigned to displace a sessional employee (who has more than ninety (90) days remaining on the sessional employee's term appointment) for the remainder of such sessional employee's appointment provided that the displacing employee has the competence, skill, and experience to fulfil the requirements of the position concerned. Such a reassigned employee shall be laid off without further notice at the termination of the sessional appointment.

8.07 (a) In January of each year, the College shall prepare and post lists as follows:

- (i) a seniority list of all regular full-time employees showing the employee's name, classification, division or department, and seniority as determined pursuant to this Article.
- (ii) a list of all probationary employees showing the employee's name, division or department, date of hire, and date of completion of the probationary period.
- (iii) a seniority list of all partial-load employees employed since the previous January showing the employee's name, division or department, and accumulated service to date.

Such lists shall also be sent to the Union Local President.

8.14 (a) A person who has been in a position that is now covered by the Agreement and has been or is assigned up to and including August 31, 1978, a position with the College outside the Agreement will be credited with and continue to accumulate seniority for the purpose of this Agreement while in the employ of the College.

(b) Employment with the College in a position ordinarily outside the bargaining unit in the course of which teaching, counselling or library assignments have been undertaken in the College (other than on an unusual or isolated basis) shall count in computing seniority of persons hired by the College in positions outside the Agreement. Such seniority shall be credited in the proportion that the teaching, counselling or library assignment is of a full-time assignment based on one-quarter, one-half or three-quarters of a month of seniority for each full month's employment.

(c) A person who is covered by the Agreement and is assigned a position with the College outside the Agreement after August 31, 1978, will be credited with and maintain seniority as at the date of assignment for six (6) years thereafter while in the employ of the College.

## APPENDIX II PARTIAL-LOAD EMPLOYEES

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2. It is agreed that Article 8 has no application to partial-load teachers except as referred to in Section 8.05(d) and Section 8.15(b). Such partial-load teachers may be released upon two (2) weeks' written notice and shall resign by giving two (2) weeks' written notice.

3. For the purpose of determining the service of a partial-load teacher under Section 8.05(d) a partial-load teacher will be entitled to credit for service from September 1, 1971 (but not earlier) on the basis of one-half (1/2) month's credit for each full month of service up to January 1, 1977 and thereafter on the basis of one-half (1/2) month's credit for each calendar month in which the employee teaches thirty (30) hours or more.

\*It is understood that some variation of this formula will be required to take into account the results of the deliberations of the task force and/or arbitration board concerning the "post-secondary/non-post-secondary" issue, referred to in a letter of understanding attached to this agreement on page 89.

3. (Effective September 1, 1988) For the purpose of determining the service of a partial-load teacher under Section 8.05(d) and for the purpose of determining progression through the grid 10 months of on-the-job experience will entitle the employee to one year of service and to progress one step on the grid.

On-the-job experience will be calculated as follows: A partial-load teacher will be entitled to credit for service from September 1, 1971 (but not earlier) on the basis of one-half (1/2) month's credit for each full month of service up to January 1, 1977 and thereafter on the basis of one-half (1/2) month's credit for each calendar month in which the employee teaches thirty (30) hours or more.

. . .

**APPENDIX III  
SESSIONAL EMPLOYEES**

1(a) A sessional employee is defined as a full-time employee appointed on a sessional basis for up to twelve (12) full months of continuous or non-continuous accumulated employment in a twenty-four (24) calendar month period. Such sessional employee may be released upon two (2) weeks' written notice and shall resign by giving two (2) weeks' written notice.

. . .

(c) If a sessional employee is continued in employment for more than the period set out in paragraph (a) above, such an employee shall be considered as having completed the first year of the two (2) year probationary period and thereafter covered by the other provisions of the Agreement. The balance of such an employee's probationary period shall be twelve (12) full months of continuous or non-continuous accumulated employment during the immediately following twenty-four (24) calendar month period.

. . .

**APPENDIX IV  
PART-TIME SERVICE**

In the administration Section 8.05(d) and for that purpose only, a part-time employee shall be considered to have service based on one-quarter (1/4) month's credit respectively for each full month of employment with the

College.

As will be obvious from the agreed statement of facts, the issue between the parties is whether service as a partial-load or part-time teacher prior to appointment as a full-time teacher should count in some way toward the seniority with which the employee is to be credited as a full-time teacher. It will be seen that the collective agreement is not particularly forthcoming on this issue, and it is therefore necessary to deal with the present dispute on the basis of what inferences may be drawn from the language which the parties have chosen to express their intention.

As set out in the agreed statement of facts, issues along these lines have arisen in only four previous awards of arbitrators under this collective agreement or one of its predecessors. It is of value to review in some detail how those four awards have dealt with the matter which is now before us.

In Re Sheridan College and Ontario Public Service Employees Union (Smith), unreported, May 17, 1982 (Weatherill), the board of arbitration was faced with the question of the seniority of an academic employee who had been given a number of appointments, of varying kinds and involving fluctuating teaching loads, most of which were not specified by the College as fitting within one of the five particular classes of academic employment described above. At issue was whether a period of employment which the majority of the board of arbitration identified as partial-load employment should be counted toward the grievor's probationary period. After quoting paragraph 3 of Appendix II, which was

identical to the pre-September ~~1988~~ provision in the current collective agreement as quoted above, except for the note relating to the "post-secondary/non-post-secondary" issue, the board came to the following conclusion on page 10:

This provision, which has been in the collective agreements since 1976, and which is roughly analogous to a provision in the 1975 agreement providing for a four-year probationary period for those who would now be called "partial-load" employees, allows for a fair and logical determination of the proper seniority date of an employee who, like the grievor, has, in a number of years of continuous employment, worked on both a full-time and a partial-load basis. The twenty-four month probationary period may be made up of twenty-four months of full-time employment, or forty-eight months of partial-load employment. Partial-load employment counts half as much as full-time employment.

In Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union (Gurofsky), unreported, October 19, 1983 (Brunner), a board of arbitration dealt with the ability of employees whose status is part-time, sessional or partial-load to earn seniority for subsequent full-time employment. At pp. 7-8 and 10-11, the board made the following observations which are here relevant:

Under the Collective Agreement dated October 8, 1981, and subject to what will be said in a moment, only a full time employee in the Academic Staff bargaining unit accumulates seniority under Article 8. Part time employees, that is those who teach six hours or less per week, are entitled to be credited with "service" in accordance with the formula set out in Appendix IV, but only for the purposes of Section 8.05(d) in the case of a lay-off.

A "sessional" employee as defined by paragraph 1(a) of Appendix III does not have seniority while he occupies such status but is entitled to be credited with seniority

if he continues in the College's employ after the twelve month period specified by that paragraph.

"Partial-load" employees, that is those who teach more than six hours and up to and including thirteen hours per week on a regular basis, are excluded from the seniority provisions of Article 8 except in cases of lay-off (Section 8.05(d) and recalls (Section 8.15(b)) in which event they are entitled to a credit for "service" as provided by paragraph 3 of Appendix II.

. . .

As we have stated, his "service" either as a "partial load" or "part time" employee is only relevant and material for the purposes of lay-off and recall under Sections 8.05(d) and 8.15(b). Once an employee has gained full time status within the bargaining unit and has completed his probationary period and been credited with two years of seniority for this purpose, his "service" as a part time and partial load employee has no relevance. A close reading of Sections 8.05(d) and 8.15(b) make this quite clear.

The College took the position that a full time employee is entitled to be credited with seniority only from the commencement of his employment as a full time member of the Academic Staff bargaining unit as prescribed by Section 8.01(d). Thereafter seniority continues to accumulate while the employee is in the active employ of the College or on a leave of absence as catalogued by Section 8.11.

In our opinion the Employer's position in this respect is correct as the plain and unambiguous words in the two Sections to which we have referred make clear. If one could look back at the Collective Agreements dated September 17, 1975 and February 15, 1977, which were in force during the grievor's probationary period, the same result would inevitably follow. The only material difference between Section 8 of the Agreement of October 8, 1981, and the one dated September 17, 1975, is that the concept of "service" prevailed instead of that of seniority. Other provisions such as those that dealt with the probationary period of "partial load" employees are not material for the purposes of this grievance.

It will be observed that the board of arbitration in Re Fanshawe College reached the opposite conclusion from that reached in Re

Sheridan College, but without any explanation as to why it had chosen to depart from the earlier award. It is clear, however, that the earlier award was before the Re Fanshawe College arbitration, since it is referred to on page 15 in respect of a different issue.

Subsequently, however, the matter arose again in Re Algonquin College and Ontario Public Service Employees Union (Wilson), unreported, June 22, 1984 (Kates). In this case, after reviewing both the Re Sheridan College case and the Re Fanshawe College case, the board of arbitration chose between the two alternative interpretations as follows, at pp. 12-13:

Counsel for the employer submitted that the Arbitration Board [in Re Sheridan College] in relying upon Section 3 of Appendix II for the purpose of attributing seniority for the grievor's past service as a partial load employee was clearly and patently wrong. Section 2 of Appendix II plainly restricts the application of seniority accumulated by a partial load employee to Article 8.05(d). In the event of redundancy the partial load employee does enjoy some protection based on his length of service. In that event, and as Section 3 of Appendix II clearly contemplates, a formula is provided for calculating a partial load employee's length of service. That is to say because of the uneven nature of the partial load employee's teaching schedule a formula was necessary in order to attribute appropriate credit for past service. In having regard to the introductory words in Section 3, the employer reiterated the proposition that it was never intended that that formula be applied to the seniority provisions of Article 8 other than Article 8.05(d).

In reaching our conclusion on this aspect of the case this Board simply cannot add more to the argument advanced by Counsel for the employer. We do not appreciate how the Arbitration Board in the Sheridan College case was warranted in applying the formula contained in Section 3 of Appendix II to a partial load employee for purposes of crediting the grievor with seniority as a full time employee under Article 8.01

where the language of both Sections 2 and 3 of Appendix II restricts the application of Article 8 of the collective agreement to lay off situations under Article 8.05(d). Nor will it serve any useful purpose on our part to speculate as to why, on the facts adduced, the Board would treat the relevant provisions of Appendix II in the manner described. It merely suffices for our purposes to state for the foregoing reasons that we do not agree that the application of the formula contained in Section 3 of Appendix II was intended for the purposes urged upon us by the trade union.

Rather, the Board is satisfied that, because the grievor was at all material times prior to January 3, 1983, a partial load employee, his seniority as a full time employee upon completion of his probationary period of one year's continuous employment ran from the date of his appointment as a full time employee. In other words, we adopt the position urged upon us by the College and incorporate as our own the reasoning expressed in The Fanshawe College case (supra). That is to say, owing to the grievor's status as a partial load employee he was not entitled to any credit for his past service in that capacity under Article 8.01(a)(ii) and 8.01(d) of the collective agreement after he was appointed a full time employee on January 3, 1983.

Finally, the issue is considered once again in Re St. Lawrence College and Ontario Public Service Employees' Union (Abel), unreported, January 19, 1989 (Swan), a decision written by the present chairman. In that award, the following appears at pp. 7-9:

We turn first to the question of whether the grievor is entitled to count any of his periods of part-time or partial-load employment prior to January 28, 1985. This issue divides into two separate considerations. During 1984, the grievor's employment always fell below the 13 hour per week limit for partial-load employees, but during the month of January, because of additional assignments, his workload in the third week rose to 28 hours, while his workload in the fourth week was at 16 hours. Immediately after that last week, he began the sessional appointment from which time his accepted service counts.

The Union argues first that the provisions of Appendix II, paragraph 3 entitle the grievor to count his partial-load employment from September to December at one-half month's credit for each of those months. The argument is based first on a comparison with Appendix IV, which specifies that part-time employees are considered to accrue service credits "in the administration of Section 8.05(d) and for that purpose only", and Appendix II, paragraphs 2 and 3 in which no such restrictive language as "for that purpose only" is found. In our view, however, the effect of reading paragraph 2 of Appendix II, which provides that Article 8 has no application to partial-load teachers except for 8.05(d) and 8.15(b), combined with the service calculation set out in paragraph 3 of that Appendix, was clearly intended to achieve the same result as the wording used in Appendix IV. Given that the probationary period calculation is found in Article 8.01, and that Article 8 has no application to partial-load teachers except as specified, we are of the view that no credit is given for partial-load service towards the probationary period.

The Union also refers, however, to Re Sheridan College and Ontario Public Service Employees Union (Smith), unreported, May 17, 1982 (Weatherill). This suggests that partial-load service may be counted at the half-time basis specified in Appendix II, paragraph 3 for the purposes of determining the position on a seniority list of an employee who has already completed a probationary period.

The Employer argues that this case is simply wrong, but in our view it may readily be distinguished in any event from the matter before us. In that case, there is no discussion of counting time as a partial-load employee toward the completion of a probationary period. The concept of "seniority" appears throughout clause 8.05, and it is entirely possible that the board in the Sheridan College (Smith) case was considering it in that context. In any event, there is nothing in the case to suggest that the question now before us was raised before that board and considered before they came to the conclusion which they did. In our view, the clear words of Appendix II mean that the grievor is not entitled to count any of his partial-load service toward his probationary period, whether or not such service may be used to establish seniority once the probation is completed.

Both parties made substantial arguments to us on the

basis of res judicata, but we are of the view that the present situation is better dealt with on its merits than on the basis of some structure of deference to prior awards between the parties. That view is particularly compelling when one considers how patchy the history of interpretation of the provisions relevant to this issue has been. Of the four arbitrations on this issue, only Re Sheridan College has concluded that service as a partial-load teacher can count toward seniority in the full-time bargaining unit. Of the three cases going the opposite way, one does so without reference to the contrary view taken in Re Sheridan College, one finds Re Sheridan College to be "clearly and patently wrong", and the third attempts to distinguish Re Sheridan College on a basis which, even to the author of the majority award in that decision, does not now seem particularly compelling. Particularly as the Union has advanced two arguments not canvassed in the earlier awards, we think it is appropriate to deal with the matter as if it were before us anew.

The Union argues that, while clause 8.01(d) on its face appears to provide all of the seniority entitlement for full-time employees who complete their probationary period, it does not actually exclude credit for previous teaching experience, and in fact previous sessional appointments are counted as a part of the probationary period. While the collective agreement is entirely silent on the question of partial-load and part-time seniority credits being calculated for full-time seniority, the Union argues that an inference can reasonably be drawn from clause 8.05 that the

parties intended such credit to be given.

In the Union's argument, because part-time and partial-load employees may assert their length of service with the College against the seniority of a full-time employee who is attempting to bump them under one of the subclauses of clause 8.05, it must not have been intended that partial-load or part-time employees who subsequently accept a full-time appointment have to abandon all of their service with the College, should they subsequently find themselves in a lay-off position. In the Union's submission, it would be unfair to strip such employees of all such protection based upon service at the same time as giving them a full-time appointment on a continuing basis.

In our view, however, this inference is not readily drawn from the entire structure of Article 8. An employee who is given a full-time continuing appointment in the form of a probationary appointment, unless clause 8.01 is interpreted so that service as a partial-load or part-time employee can, if of sufficient duration, entirely negate the probationary period, will apparently automatically lose all acquired service credits, and will have to wait until the termination of the probationary period in order to achieve any seniority status at all. During the probationary period, the employee is entitled only to notice of release, and may not even grieve that release. Clause 8.05 applies only to the reduction and lay-off of full-time employees who have completed the probationary period; until that period has been completed, an employee has no rights whatsoever under clause 8.05 regardless of

how much past College service as a partial-load or part-time employee he or she may have. While this is not conclusive of anything, it does indicate that the parties seem to have intended for there to be a firm distinction drawn between the seniority of full-time continuing employees, and the service, which is expressly stated in Appendices II and IV to be for very limited purposes, of partial-load and part-time employees.

The Union also asserts that clause 8.14(b) resolves this matter. In the Union's submission, the language of that provision is sufficient to mean that part-time and partial-load positions "shall count in computing seniority". The difficulty we have is that, in context, all of clause 8.14 would appear to be designed to apply to persons who are hired on a full-time basis at the College, but a part of whose work assignment includes teaching, counselling or library assignments. When read with subclauses (a) and (c), this appears to be aimed at, for example, persons who are appointed as "Chairmen, Department Heads and Directors", or persons above those ranks, who are described in clause 1.01 as excluded from the academic bargaining unit, although the language of that provision seems to contemplate that they might nevertheless be engaged as teachers, counsellors or librarians.

In our view, the compelling words of clause 8.14(b) are that the part-time teaching assignments contemplated "shall count in computing seniority of persons hired by the College in positions outside the Agreement". While this language, on its face, might include partial-load and part-time teachers, such an interpretation

faces the difficulty that Appendix II, paragraph 2 specifies that Article 8 has no application to partial-load teachers except as referred to in section 8.05(d) and 8.15(b). Similarly, Appendix IV specifies that the service calculation for part-time employees is in relation to the administration of section 8.05(d) and for that purpose only, which seems to us to be essentially to the same effect.

In our view, while we might have wished for clearer language to interpret, the best conclusion to be drawn is that the parties did not intend partial-load or part-time service to be counted either toward the probationary period once an employee has been given a full-time continuing appointment, or toward the seniority of that employee once the probationary period has been completed in accordance with clause 8.01. It follows, therefore, that neither of the two fact situations described in the agreed statement of facts, paragraphs 3 and 4, discloses a breach of the collective agreement.

Because we have been asked to deal with this matter on the basis of an agreed statement of facts, and do not have the grievance itself directly before us, we simply make a declaration in those terms, and remain seized of this matter in order deal with any difficulties which may arise in applying it to all of those affected by the group grievance filed on April 5, 1989.

DATED AT TORONTO, this 11<sup>th</sup> day of June, 1991,

  
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Kenneth P. Swan, Chairman

I concur

"A. Shields"  
A. Shields, Employer Nominee

I dissent

"Jon McManus"  
Jon McManus, Union Nominee