

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**SENECA COLLEGE  
(the "College")**

**and**

**OPSEU LOCAL 560  
(the "Union")**

**REGARDING A UNION GRIEVANCE RESPECTING  
CLASSIFICATION OF INSTRUCTOR POSITIONS IN SCHOOL OF  
AVIATION AND FLIGHT TECHNOLOGY – GRIEVANCE #01C111**

**BOARD OF ARBITRATION**

<b>PAMELA COOPER PICHER</b>	<b>CHAIR</b>
<b>PETER HETZ</b>	<b>COLLEGE NOMINEE</b>
<b>PAMELA MUNT-MADILL</b>	<b>UNION NOMINEE</b>

**Appearing for the College:**

William LeMay	Counsel
Kavita Chiba	Director, Employee Relations
Laurel Schollen	Co-Dean, Faculty of Technology
Ted Brown	Chair, School of Aviation and Flight Technology

**Appearing for the Union:**

Michael D. Wright	Counsel
Ted Montgomery	President
Larry Olivo	Vice-President
Sean McFarling	Student At Law

A hearing in this matter was held in Toronto on February 20, 2002.



positions, within the meaning of article 32.10, which defines and limits the scope of those matters that may be properly filed as Union grievances. The College contends that because, in its submission, Ms. Young was "an employee [who] would [have been] personally entitled to grieve" the classification of the posted position, the matter has been carved out of those differences that may be filed as Union grievances. The College emphasizes that when the posting was put up on February 15, 2001, Ms. Young was working in the bargaining unit as a partial load professor.

The February 15, 2001 posting for three Flight Instructors is set out below:

Seneca College of  
Applied Arts & Technology

DATE: February 15, 2001

**FLIGHT INSTRUCTORS (3) – SCHOOL OF AVIATION & FLIGHT  
TECHNOLOGY**

The Flight Instructors will be responsible for carrying out scheduled preparatory ground instruction, flight instruction and simulator instruction, evaluating student progress and consulting with aviation professors regarding student progress and instructional effectiveness. The Flight Instructors will teach the specific techniques/practical skills acquisition related to flying and evaluate student performance within the assigned courses. In addition, the Instructors may, from time to time, be called upon to contribute to other activities ancillary to the provision of instruction, such as procurement and control of instructional supplies and maintenance and control of instructional equipment.

The minimum qualifications are: one year (desirable) experience as a Flight Instructor, a valid Transport Canada Commercial Pilot License with Group I Instrument Rating and a Class 4 Flight Instructor Rating. A Class III Flight Instructor Rating and 500 hours of flight experience

## INTERIM DECISION

The Union has filed a policy grievance under the collective agreement covering Academic Employees. The Union asserts that in its posting of February 15, 2001, the College improperly classified the three posted positions of Flight Instructors in the School of Aviation and Flight Technology. The Union argues that these positions should have been posted as Professor positions instead of Instructor positions. The Union requests by way of remedy that the College "designate the positions now described as 'Flight Instructor' positions as Professor positions in the academic bargaining unit." Under the collective agreement, the position of Professor is paid at a higher rate than that of Instructor.

The College has raised a preliminary objection to the arbitrability of the grievance on the ground that pursuant to article 32.10 of the collective agreement, the grievance is not properly a Union grievance and, instead, should have been filed as an individual grievance. On this basis, the College asserts that the Board of Arbitration should dismiss the grievance.

More specifically, the College maintains Ms. Jasmin Young, the employee who was awarded the third posted position of Flight Instructor on November 1, 2001, approximately eight months following the posting, "would [have been] personally entitled to grieve" the issue of the proper classification of the posted

Instructor. The Duty Professor is the individual delegated on a daily basis to supervise the flying program. As Duty Professor, Ms. Young was responsible for insuring that the conditions were safe and suitable for conducting the flight training. As well, she supervised the briefings of the students going up to fly, first in a mass briefing and then in individual briefings respecting the exercises the students would be performing in the air. Ms. Young was further engaged in flight training which is also a duty assigned to Professors. The flight training she did involved meeting with students and teaching them while flying in aircraft.

12. The College acknowledges that there were significant differences between what Ms. Young was doing as a partial load Professor in February of 2001, at the time the grievance was filed, and what she is doing in the posted position of Flight Instructor.

Relevant provisions of the collective agreement include the following:

### **Article 32 GRIEVANCE PROCEDURES**

**32.01** Articles 32.02 to 32.05 [individual grievances] inclusive apply to an employee who has been employed continuously for at least the preceding four months.

...

#### **Union Grievance**

**32.10** The Union or Union Local shall have the right to file a grievance based on a difference directly with the College arising out of the Agreement concerning the interpretation, application, administration or alleged contravention of the Agreement. **Such grievance shall not include any matter upon which an employee would be personally entitled to grieve and the regular grievance procedure for personal or group grievance shall not be by-passed except where the Union establishes that the employee has not grieved an unreasonable standard that is patently in violation of this Agreement and that adversely affects the rights of employees.**

...

**CLASSIFICATION DEFINITIONS FOR  
POSITIONS IN THE ACADEMIC  
BARGAINING UNIT**

**(to be used in conjunction with the Job Classification  
Plans for positions in the Academic Bargaining Unit.)**

**CLASS DEFINITION**

**PROFESSOR**

Under the direction of the senior academic officer of the College or designate, a Professor is responsible for providing academic leadership and for developing an effective learning environment for students. This includes:

a) The design/revision/updating of courses, including:

...

(b) The teaching of assigned courses, including:

...

(c) The provision of academic leadership, including:

...

In addition, the Professor may, from time to time, be called upon to contribute to other areas ancillary to the role of Professor, such as student recruitment and selection, time-tabling, facility design, professional development, student employment, and control of supplies and equipment.

**CLASS DEFINITION**

**INSTRUCTOR**

The Instructor classification applies to those teaching positions where the **duties and responsibilities of the incumbent are limited to that portion of the total spectrum of academic activities related to the provision of instruction to assigned groups of students through prepared courses of instruction and according to prescribed instruction formats; and limited to instruction directed to the acquisition of a manipulative skill or technique; and under the direction of a Professor.** Notwithstanding such prescription, the

the posting. There is no evidence to suggest that Ms. Young even applied for the posted position at any significant time before she was placed in the job.

At the time the grievance was filed, therefore, there was no one in the posted position. Moreover, Ms. Young, the only person the College asserts would have been "personally entitled to grieve" for the purposes of article 32.10, did not enter the position until some eight months following the posting and some seven months following the filing of the grievance.

This Board cannot conclude that the issue of the appropriate classification of the posted position as either an Instructor or Professor constituted a "matter upon which [Ms. Young] would [have been] personally entitled to grieve..." within the meaning of article 32.10 given that in February of 2001, when the positions of Flight Instructor were posted, Ms. Young was performing a partial load Professor job in respect of which neither she nor the Union had any complaint; given that the partial load Professor position that Ms. Young occupied at the time of the posting and the filing of the grievance was significantly different from the job in dispute; and given that there is no evidence to suggest that Ms. Young had even applied for the posted position at anytime close to the posting date or grievance date. Ms. Young had no direct or immediate interest or stake in the dispute. She had no timely complaint regarding the classification of the position as Instructor. At the time relevant to the filing of the grievance, Ms. Young had no personal complaint respecting the classification of the posted Instructor positions because,

Instructor is responsible for and has the freedom to provide a learning environment which makes effective use of the resources provided or identified, work experience, field trips, etc., and to select suitable learning materials from those provided or identified to facilitate the attainment by the students of the educational objectives of the assigned courses.

The Instructor's duties and responsibilities include:

- ensuring student awareness of course objectives, instructional approach, and evaluation systems;
- carrying out regularly scheduled instruction according to the format prescribed for the course, including as appropriate, classroom, laboratory, shop, field, seminar, computer-assisted, individualized learning, and other instructional techniques;
- tutoring and academic counseling of students in the assigned groups;
- evaluating student progress/achievement, assuming responsibility for the overall assessment of the students' work within the assigned course, and maintaining records as required; consulting with the Professors responsible for the courses of instruction on the effectiveness of the instruction in attaining the stated program objectives.

In addition, the Instructor may, from time to time, be called upon to contribute to other activities ancillary to the provision of instruction, such as procurement and control of instructional supplies and maintenance and control of instructional equipment.

[emphasis added]

In support of its position that the grievance is not properly filed as a Union grievance, the College relies on **Re Loyalist College of Applied Arts and Technology and Ontario Public Service Employees Union, Local 420**, unreported decision of Kathleen O'Neil dated May 29, 2001. In **Re Loyalist College**, the grievance claimed that the disputed work assignment had been

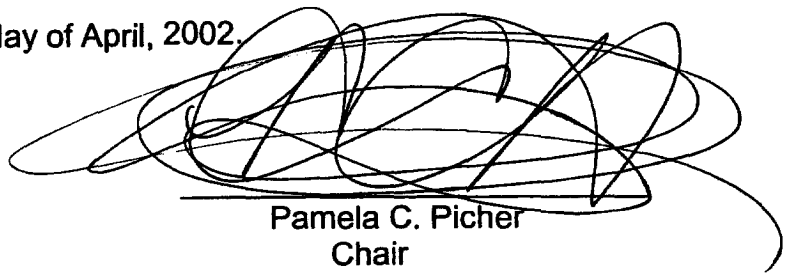
at that point, the dispute respecting the classification had no personal impact on her.

Accordingly, for the reasons set out, the Board concludes that during the relevant period the subject of the grievance was not a "matter upon which [Ms. Young] would [have been] personally entitled to grieve ..."

In the result, therefore, the Board concludes that the grievance is properly filed as a Union grievance and the preliminary objection of the College is hereby dismissed.

This matter will be scheduled, forthwith, for hearing on the merits of the grievance.

Dated at Toronto this 23<sup>rd</sup> day of April, 2002.



Pamela C. Picher  
Chair  
s.c.

"I dissent"

"Peter Hetz"

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College Nominee

"I concur"

"Pamela Munt-Madill"

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Union Nominee

claims would have been personally entitled to grieve the issue of the classification of the posted positions.

6. Ms. Young started to work as a Flight Instructor on a sessional basis on September 1, 2001; she started full time in the position on or about November 1, 2001.
7. Ms. Young worked as a partial load Professor at the School of Aviation and Flight Technology, for 12 hours per week, earning \$51.88 per hour (the rate for professors), in the instant bargaining unit, i.e. the academic bargaining unit, during the following periods:
  - September 07, 1999 to December 10, 1999
  - January 24, 2000 to April 14, 2000
  - May 1, 2000 to August 18, 2000
  - August 21, 2000 to December 8, 2000
  - January 2, 2001 to April 13, 2001
  - April 30, 2001 to August 24, 2001
8. Ms. Young was employed as a sessional employee, for 18 hours per week, as follows:
  - July 19, 1999 to August 27, 1999  
[employed as a project person to develop post diploma training program]
  - September 4, 2001 to December 14, 2001  
[employed as a sessional Flight Instructor]
9. Ms. Young worked outside the bargaining unit, in the Support Staff bargaining unit, as coordinator for the aviation continuing education program. During these periods, she worked for the College but was not employed by the School of Aviation and Flight Technology:
  - December 13, 1999 to January 22, 2000 (24 hrs per week)
  - January 24, 2000 to March 31, 2000 (12 hrs per week)
  - September 1, 2000 to December 31, 2000 (24 hrs per week)
  - April 2, 2001 to August 31, 2001 (16 hrs per week)
  - September 4, 2001 to September 15, 2001 (16 hrs per week)
10. The testimony of Mr. Edward Brown, the Chair of the School of Aviation and Flight Technology, establishes that as a Partial Load Professor in the School, Ms. Young did not teach any classroom courses. She acted as a Duty Professor.
11. Mr. Brown's testimony reveals that as a Duty Professor, Ms. Young performed duties that may only be filled by a Professor, not an

would be desirable. Candidates must be familiar with the Transport Canada Private and Commercial Pilot License flight test standards, as well as the Multi-Engine and Instrument Rating flight test standards. A three year post-secondary diploma in Aviation and Flight Technology would be desirable.

Excellent communication and human relation skills are requisite to interact effectively with the College's multicultural/racial/able student and staff population, as in an understanding of and commitment to education equity. The ability to convey the practical applications of aviation subjects to students, respecting their diverse backgrounds, experience and individual learning styles is necessary. The Flight Instructors must be able to work independently and as team players.

Seneca College is committed to employment equity and welcomes applications from women, racial/ethnic minorities, persons with disabilities, Aboriginal people, and francophones.

For the purposes of the preliminary objection only, the Board finds the following facts, most of which are not in dispute:

1. The posting of the three Flight Instructor positions was dated February 15, 2001.
2. The Union grievance asserting that the positions in the School of Aviation and Flight Technology were Professor positions and had been improperly classified as Instructor positions was filed on March 1, 2001, almost two months before any of the three positions had been filled.
3. Two of the posted positions were filled the last week of April of 2001.
4. Neither of these two persons was "an employee who [had] been employed continuously for at least the preceding four months" within the meaning of article 32.01 of the collective agreement. Accordingly, it is common ground that neither of the individuals who became incumbents in the disputed positions at the end of April of 2001 would have been personally entitled to grieve the classification of the posted position of Flight Instructor.
5. The third posted position of Flight Instructor was filled on approximately November 1, 2001 by Ms. Jasmin Young, the person the College

improperly assigned to Instructors because it was work that was reserved to Professors. At p. 14, the Board stated that,

The "matter" of the grievance is the assignment of theory to instructors *instead of professors*. That is something that can be grieved by an individual instructor, either in an attempt to be relieved of the assignment, or in an attempt to be reclassified upwards to a professor, as a result of accepting it.

In contrast to the matter at hand, the situation in **Re Loyalist College** was the appropriate work assignment for a position that was classified as Instructor. The appropriate classification for the position itself was not in dispute. In the instant situation, the issue is more broadly based than in **Re Loyalist College**; it is the appropriate classification for the posted position itself. Moreover, in **Re Loyalist College**, it was the instructors who were actually given the disputed work assignment who the Board concluded were personally entitled to grieve the work assignment. In the instant matter, in contrast, there were no instructors in the position of Flight Instructor at the time of the posting, or at the time of the filing of the grievance or, for that matter, for nearly two months following the filing of the grievance. In view of the substantial differences between the circumstances in **Re Loyalist College** and the circumstances at hand, this Board does not find the decision in **Re Loyalist College** to be helpful to the College's preliminary objection.

It is common ground that those individuals who were placed in the disputed Instructor positions two months following the filing of the grievance

would not have been entitled to file a grievance respecting the appropriate classification of their position. They did not meet the prerequisite for filing an individual grievance in article 32.01 because neither was "an employee who [had] been employed continuously for at least the preceding four months."

Ms. Young is the person the College claims would have been personally entitled to grieve the classification of the posted position. As of February 15, 2001, when the three Instructor positions were posted, Ms. Young was a partial load Professor, performing duties which neither party suggests were improperly assigned as Professor duties. Ms. Young had no complaint respecting her own work as partial load Professor and, it would seem, no basis for complaint. In her partial load position, Ms. Young was receiving the partial load Professor rate of \$51.88 per hour instead of the partial load Instructor rate of \$37.56 per hour.

Ms. Young's work as a partial load Professor was acknowledged by the College to be substantially different from the work involved in the disputed position of Flight Instructor, notwithstanding that there may have been some overlap. Moreover, there is no evidence to suggest that her work as partial load Professor was being assigned to the Instructor position and taken away from her. Indeed, she remained in the partial load Professor position through August 24, 2001 or some six months following the posting. Ms. Young was not actually appointed to the Instructor position in dispute until some eight months following