

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ST. LAWRENCE COLLEGE

(THE COLLEGE)

AND:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(THE UNION)

AND IN THE MATTER OF A UNION POLICY GRIEVANCE NO. 2003-417-0031

BOARD OF ARBITRATION:

HOWARD D. BROWN, CHAIR
ED SEYMOUR, UNION NOMINEE
ANN BURKE, COLLEGE NOMINEE

APPEARANCES FOR THE EMPLOYER:

PAT BRETHOUR, COUNSEL
CINDY BLEAKNEY, HR CONSULTANT

APPEARANCES FOR THE UNION:

PEGGY E. SMITH, COUNSEL
MARY ANN WHITE, STEWARD L. 417

A HEARING IN THIS MATTER WAS HELD AT KINGSTON ON

NOVEMBER 2, 2004

AWARD

The grievance of the Union concerns the application by the College of Article 27.15 of the collective agreement for Academic Employees. Specifically "that the College's procedure #P-27 does not adhere to the collective agreement". The remedy requested by the Union is that the policy be withdrawn by the College and rewritten and requested the Board to declare a violation of this Section of the collective agreement by the College.

There is no issue between the parties as to the Board's jurisdiction to make a determination of the grievance. The Union's claim is that the College is not applying the terms of Article 27.15 equally amongst the members of the bargaining unit insofar as payment of the relocation expenses. This Article is as follows:

"27.15 An employee reassigned by the College under the provisions of 27.06 to a work location more than 80 kilometres distant from the employee's previous work location shall be reimbursed for necessary expenses incurred in transporting the employee's household furniture and effects to a residence near such new work location up to a maximum amount of \$1,000. Packing and insurance charges shall not qualify as an expense for reimbursement purposes. To qualify for reimbursement, such relocation of residence and expense incurred as a result must take place within one year of the reassignment."

The College implemented Procedure P-27 concerning relocation expenses for its employees dated November 1, 1978. This procedure was updated effective January 22, 2003. An issue however arose as to its application in relation to the terms of the

collective agreement as set out above and by letter dated April 11, 2003, the policy was further amended as set out in the procedure effective April 16, 2003 in Section (5)

therefore that:


“Where a transfer from one campus location to another is made as a result of the application of the seniority articles in Union collective agreements: -

Reimbursement for moving-related expenses if any, will be in accordance with the terms and conditions of the applicable collective agreement.”

This followed the Step Two meeting of the Grievance Process and it was the evidence, was intended to meet the Union’s concern expressed in its grievance. Ms. Bleakney testified that the conditions of the earlier policies were never applied to academic employees of which she was aware. Nonetheless, the Union proceeded with its grievance which was referred to arbitration in accordance with the terms of the collective agreement, to support its position that the College failed to acknowledge the Union as the exclusive bargaining agent for employees within the bargaining unit in the provision and application of relocation expenses. The Union maintains that the College is in violation of the collective agreement when it makes individual arrangements with bargaining unit members for relocation expenses which may and have not been in accordance with Article 27 but have differed in amounts paid to individual employees affected by Article 27.06(a) which concerns the College decision to “layoff or reduce the number of full-time employees... in which circumstances the expenses are restricted to a maximum amount of \$1,000.00 pursuant to Article 27.15 which is the only entitlement available to all

bargaining unit members. The College's relocation policy which was implemented without consultation of the Union fails to recognize the exclusive role of the Union in Article 1.

The Union therefore takes issue with Sections 2, 3 and 4 of the procedure for relocation expenses effective April 16, 2003 which procedure is set out below -

 St. Lawrence College PROCEDURE	# of Pages 1	Procedure #: P-27
	Approved by: Executive Committee	
	Originator: Human Resources	
Title: Relocation Expenses	Effective Date: 16 April 2003	Replaces: 22 January 2003

PROCEDURE:

- 1) When a new employee is recruited from outside a daily commutable distance of the campus, the College will pay - up to 5% of the employee's annual starting salary - the incurred expenses listed below, as documented by invoice or receipt. In the event of extenuating circumstances, the College may consider requests for additional financial assistance as appropriate, but such requests will be reviewed on an individual basis without precedent.
 - Real estate commissions
 - Lawyer fees
 - Temporary accommodation costs
 - Moving company costs (excluding insurance)
 - Traveling expenses.
- 2) When the College transfers an employee from one campus location to another, the College may pay the following incurred expenses as documented by invoice or receipt:
 - Real estate commissions
 - Lawyer fees
 - Temporary accommodation costs
 - Moving company costs (excluding insurance)
 - Traveling expenses.
- 3) Where a transfer from one campus location to another is a result of mutual agreement between the employee and the College and the College determines that the benefits of the transfer accrue primarily to the College, the College will pay - up to 5% of the employee's annual starting salary - the following incurred expenses as documented by invoice or receipt:
 - Moving company costs (excluding insurance)
 - Traveling expenses.
- 4) Where a transfer from one campus location to another is made at the direct request of the employee and the College determines that the benefits of such a transfer accrue primarily to the employee:
 - The employee will pay all moving and moving-related expenses.
- 5) Where a transfer from one campus location to another is made as a result of the application of the seniority articles in Union Collective Agreements:
 - Reimbursement for moving-related expenses, if any, will be in accordance with the terms and conditions of the applicable Collective Agreement.

It is the Union's position that the above-noted Sections of this Policy are outside of the terms of the collective agreement and in direct violation thereof as the relocation expense issue is clearly provided by Article 27.15. Specifically, it was submitted that Section 2 does not refer to circumstances when the transfer of an employee can occur and where it applies to a bargaining unit member which is covered by the collective agreement, the Colleges discretion is thereby contained and the Union is not involved in the application of that Section of the Policy. Similarly in Section 3, the Union is not included as part of a mutual agreement with an employee rather than with the Union as required in such transfers. An employee of the bargaining unit may not directly deal with the College for a transfer without the involvement of the Union as is indicated in Section 4.

The Union therefore requests the Board to award that the policy is not effective and direct that the payment for relocation expenses be restricted to the terms of Article 27.15 so that all affected employees are paid the same and maintain the integrity of the bargaining unit. To that request, the response of the College is that the provisions in its policy to pay relocation expenses to employees outside of what is required by the collective agreement is not within the Board's jurisdiction as the policy applies to all employees of the College.

It is the submission for the Union that the College unilaterally applies its Relocation Expense Policy and fails thereby to acknowledge that the Union is the exclusive bargaining agent for the Academic employees. The right to pay such expenses is

modified through the negotiation of the parties as recorded in Article 27.15. The College cannot extend those benefits beyond the negotiated position set out in that Article which is triggered by the terms of Article 27.06 following involuntary layoffs and transfers. Under the collective agreement, unilateral expenses for relocations of employees do not fall within the terms of the collective agreement so that the College cannot introduce unilaterally a discretionary payment to certain members of the bargaining unit under varying circumstances.

That policy can erode the integrity of the bargaining unit as every employee does not know their entitlement other than as applied through the terms of the collective agreement and cannot access an outside policy to obtain additional relocation benefits. Reference was made to Re Govern of Province of Alberta 21 L.A.C.(4th)300; Re Canadian Broadcasting Corp. and CEP, 112 L.A.C.(4th)353 (Knopf); Re Loyalist College of Applied Arts and OPSEU 225 D.L.R.(4th)123.

The Union submits that the integrity of the bargaining unit has and must be maintained to allow the bargaining unit members and the Union to enforce payment under the terms of the collective agreement which would not apply where there is bargaining by individual employees for terms beyond what is provided in the collective agreement which were not negotiated with the Union.

Reference was made specifically to the following part of the decision of the Court of Appeal in the Loyalist College case as follows:

“The words of Judson, J. are significant for this appeal in at least two ways. As he points out, all similarly situated employees in a bargaining unit are governed by identical terms of employment. Here we have no evidence that the College required all those in Ms. Bergman’s position to pursue graduate work. Subjecting her to a different condition of employment is antithetical to the notion of collective bargaining. Indeed employers are ordinarily prohibited from bargaining directly with employees because permitting employers to do so would allow them to divide and conquer, to play one employee off against another and thus defeat Union solidarity.”

The Union submits that intent should be applied as relevant to the discretionary relocation expenses set out in the policy of the College without access to the grievance process under the collective agreement under which payment could not thereby be enforced.

In the Canadian Broadcasting Corp. award (supra), Arbitrator Knopf stated:

“An individual’s control over his/her terms or conditions of employment is determined by the collective agreement. Basically, the only ability of an individual to bargain or alter terms or conditions of employment is what if anything is allowed specifically in a collective agreement. Further an Employer cannot unilaterally change terms and conditions of employment or add contrary to the collective agreement. However, residual management rights do allow employers to add unilaterally on matters that are not covered by a collective agreement...”

The Employer submitted that this grievance does not concern the Union’s assertion that while the Employer has the right to transfer employees, the Union must be

involved in those discussions. That involves how the policy might be applied in matters which fall outside the collective agreement and cannot be the subject of a grievance where greater benefits than provided by the collective agreement have been paid. There is no evidence to show that the College was in violation of the collective agreement in the application of its relocation policy which provisions fall outside of the terms of the collective agreement as there is no factual basis for the grievance to show that the application of the policy was in violation of the Union's status as the exclusive bargaining agent. The Policy of the College is not renewable as such by the Board. The Policy for relocation expenses applies to all employees of the College and Section 5 was amended to meet the Union's concern as to the application of Article 27.15. With reference to the Alberta case (supra), it was submitted that the terms of the relocation policy lie outside the scope of the collective agreement and do not constitute a violation thereof.

It is trite to state that the Board's jurisdiction arises from the terms of the parties' collective agreement and is concerned with the interpretation, application, administration or contravention of the provisions of the agreement as set out in Article 32.04 (c) of the collective agreement. Matters therefore that clearly fall outside of such application to members of the bargaining unit represented by the Union, do not come within the purview of the Board. In the Canadian Broadcasting Corp. award (supra), reference was made to Re Long Manufacturing Ltd. and I.A.M. 63 L.A.C.(4th)35 (Martin) in which the Arbitrator referred to matters which are not covered by a collective agreement and for which the Employer "must deal directly with individual employees" such as with health and safety which cannot be found to contravene the specific terms of the collective. Arbitrator

Knopf referred to this case setting out the general principles in this issue which need not be repeated here but stated:

“An individual’s control over his/her terms or conditions of employment is determined by the collective agreement - further an Employer cannot unilaterally change terms and conditions of employment or act contrary to the collective agreement. However, residual management rights to allow Employer’s to act unilaterally on matters that are not covered by a collective agreement.”

The question is whether the College Policy as to Relocation Expenses deals with matters which fall directly within the collective agreement and are subject to its terms. Clearly, Article 27.15 specifically deals with the reassignment of an employee by the College to move to another location in which circumstances the reimbursement for expenses is not to exceed \$1,000.00. For members of this bargaining unit therefore, the College is required to exercise its Policy in accordance with that term where the circumstances which trigger the application of 27.15 occur. Factual situations of individual employees which may fall within Sections 2, 3 and 4 of the College’s policy and do not apply to members of the bargaining unit are not reviewable by the Board being outside of the administration of the collective agreement for which the Board does not have authority to consider.

What is necessary for the College, is to apply the specific terms of Article 27.15 when those particular circumstances arise in the relocation of a member of the Academic bargaining unit. Where however, the College has dealt directly with an individual member

of the bargaining unit and applied terms other than as negotiated and set out in Article 27.15, there would be a violation of the collective agreement as it would have bypassed the Union as exclusive bargaining agent of the Academic employees and in matters coming under the terms of the collective agreement must be represented by the Union.

As the collective agreement clearly has provided for relocation expenses for members of the bargaining unit, it is the College's responsibility to administer those terms set out in Article 27.15 which precludes a negotiation of those costs with an individual member of the bargaining unit in terms inconsistent with Article 27.15. The Policy of the College in Procedure P-27 as it applies to all employees of the College, cannot as a policy, be struck by this Board but its terms are subject to the application of Article 27.15 when a reassignment of an employee by the College under Article 27.06 arises. In those circumstances, for the College to deal directly with an individual bargaining unit member, as to relocation expenses would be a violation of the Union recognition clause and the specific terms in Article 27.15.

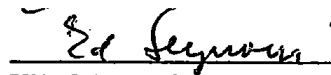
Where therefore, circumstances arise which cause the relocation of an employee pursuant to Article 27.15, the College policy as to relocation expenses must in total be applied to members of the Academic Bargaining Unit within the terms and extent of

compensation as provided in Article 27.15 of the collective agreement and we so declare which is the Board's award in this grievance.

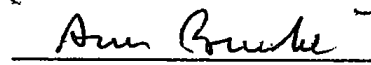
DATED AT OAKVILLE THIS 13TH DAY OF JANUARY, 2005



HOWARD D. BROWN, CHAIR



ED SEYMOUR, UNION NOMINEE



ANN BURKE, COLLEGE NOMINEE