

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

ST. LAWRENCE COLLEGE

(The "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 417

(The "Union")

AND IN THE MATTER OF A GRIEVANCE CONCERNING STEP 1 OF THE
GRIEVANCE PROCEDURE

David K.L. Starkman
Ronald Kelly
Richard O'Connor

Chair
Union Nominee
College Nominee

APPEARANCES FOR THE COLLEGE

Pat Brethour
Jim Libson
Cindy Bleakney

Counsel
Human Resources Consultant
Human Resources Consultant

APPEARANCES FOR THE UNION

Susan Ballantyne
Mary Ann White

Counsel
Chief Steward

A Hearing of this matter was held on February 7, 2006 at Kingston, Ontario

AWARD

The Union grieves that the College has violated the provisions of article 32.03 of the collective agreement by not having the correct people attend Step One of the grievance procedure.

The relevant portions of Article 32.03 provide:

Step One

An employee shall present a signed grievance in writing to the employee's immediate supervisor setting forth the nature of the grievance, the surrounding circumstances and the remedy sought. The immediate supervisor shall arrange a meeting within seven days of the receipt of the grievance at which the employee, a Union Steward designated by the Union Local, if the Union Local so requests, the immediate supervisor and the supervisor of that person shall attend and discuss the grievance. If a Human Resource representative is to attend, the Union Local will be given the option of having an additional Union representative present...

The background facts are not in dispute. In August, 2005, Mr. Wayne Runte filed a grievance which concerned access to certain information in his personnel file. The College made arrangements for the Step I meeting and advised that, in attendance would be Ms Lorraine Carter, who is the grievor's immediate supervisor, and Mr. Volker Thomsen, who is Ms Carter's immediate supervisor and who is also the President of St. Lawrence College.

Subsequently, by e-mail dated September 28, 2005 the Union was advised by Ms Pennie Carr-Harris as follows:

Further to our discussion yesterday Graeme, this is to formally confirm the College's decision to adjust the administrative reporting structure in relation to individual grievances filed by our academic employees on our Brockville and Cornwall campuses.

In order to abide by the Collective Agreement, as affirmed by our recent arbitration decision on this matter, I am informing Local 417 that Lorraine and Pat will report to me, as the Executive Director of Human Resources, for the purposes of individual academic grievances. This means, of course, that I will attend Step 1 with Pat or Lorraine as their supervisor. In the event that we have to proceed, to Step 2, Mr. Volker or his designee will convene a Step 2 meeting.

The Union objected claiming that Ms Pennie Carr-Harris was not, in fact, Ms Carter's supervisor. In its view, Mr. Thomsen remained her supervisor and therefor Mr. Thomsen was required to attend the Step 1 grievance meeting.

By e-mail dated February 6, 2006, the day before the arbitration hearing, Ms Carr-Harris wrote to the Union as follows:

In order to avoid any confusion, I write this e-mail to clarify my role as Pat Duncan's and Lorraine Carter's supervisor for labour relations purposes. I have full authority to resolve grievances presented at step 1. As you are aware, I also have full authority to resolve grievances when I am appointed as the President's designee to hear step 2 grievances. I trust this resolves the concerns you have raised in this regard.

DECISION

In a decision dated May 17, 2004, involving these parties, this Board allowed a Union grievance which alleged that the College did not have the appropriate persons attending the Step 1 grievance meetings at the Brockville and Cornwall campuses and at pp. 6-7 stated as follows:

Having considered the matter, this Board has determined that the language is clear that the immediate supervisor and the supervisor of that person must attend the Step 1 grievance meeting. If the supervisor of the immediate supervisor is the President of the College, then the language of the collective agreement requires the President to attend. It may be that there are circumstances when language is appropriately read into a collective agreement, but these should be very rare occasions, where, inter alia, the language on its face is unenforceable, inherently contradictory, or contrary to law.

This is not such a case. The College can determine the management structure it prefers. If however, the College President is the supervisor of a grievor's immediate supervisor then the College President is required to attend the Step 1 grievance meeting as set out in article 32.03 of the collective agreement.

The Union submitted that the question to be determined is 'who is the supervisor of the grievor's immediate supervisor', and that merely calling Ms. Carr-Harris the supervisor of the grievor's immediate supervisor does not make it so. What is determinative are the tasks the person actually performs, and, in its view, Ms Carter does not report to Ms Carr-Harris but continues to report to Mr. Thomsen, the College President.

The College submitted that, under the management rights provision of the collective agreement, it has the authority to organize the College as it sees fit, which includes the

right to institute a dual reporting structure, and therefore this Board does not have the jurisdiction to inquire into or to interfere with a bona fide exercise of managerial discretion.

It is clear that management has the right, under the provisions of this collective agreement, to manage and organize the College in the manner it prefers, providing that such organization does not conflict with the provisions of the collective agreement. In this matter the Union alleges that, in fact, Mr. Volker Thomsen, is the supervisor of Mr. Lorraine Carter, and that pursuant to Article 32.03 of the collective agreement he is therefor required to attend the Step 1 grievance meeting.

The College asserts that it has implemented a dual reporting structure whereby, for the purpose of labour relations, Ms Pennie Carr-Harris, the Executive Director of Human Resources, is Ms Carter's supervisor, and for other purposes, Mr. Thomsen, the College President, remains her supervisor.

In a prior decision, this Board upheld a grievance alleging that Mr. Thomsen, the College's President was required to attend the Step 1 grievance meeting because the collective agreement language was clear on its face, and it was not disputed that Mr. Thomsen was the supervisor of the grievor's supervisor. In this case, the College has changed the reporting arrangements and has implemented what it refers to as a dual reporting arrangement.

The Union challenges the veracity of this change in reporting arrangements, and alleges that Ms Carter, in fact, continues to report to Mr. Thomsen and that the College is only attempting to exempt the President from attending the Step 1 meeting by permitting him to appoint a designee to attend Step 1 grievance meetings which is not permitted by the terms of the collective agreement.

Under the provisions of this collective agreement, the Employer has a wide latitude to organize the workplace as it sees fit, and this would include the ability to establish dual reporting arrangements. In the context of this proceeding, no oral evidence was presented, so it is not possible for this Board to resolve claims concerning the bona fides of the organizational structure. Consequently, with the information before us, it is not possible for this Board to determine whether, in fact, Ms Carter reports to Ms. Pennie Carr-Harris for labour relations purposes, or whether the College is only claiming that she does for the purpose of complying with the provisions of the collective agreement, and having Ms Carr-Harris attend the Step 1 grievance meeting, rather than the College President.

Lacking any evidentiary basis for doubting the College's assertions, this Board has therefor accepted that Ms Carr-Harris is Ms Carter's supervisor for labour relations purposes. Article 32.03 does not indicate which supervisor is required to attend the Step 1 grievance meeting in circumstances where there is a dual reporting arrangement. In this matter, given that Ms Carr-Harris is the supervisor for purposes of labour relations, that she is the Executive Director of Labour Relations, and that the

collective agreement requires a Step 1 meeting within seven days of the written grievance being presented, it is not unreasonable that Ms Carr-Harris attend the Step 1 meeting as Ms Carter's supervisor.

This Board has therefore determined that the College did not violate the provisions of the collective agreement by not having Mr. Thomsen attend the Step 1 grievance meeting, and accordingly the grievance is dismissed.

Dated at Maberly, Ontario this 8th day of March, 2006



David K.L. Starkman
Chair

"I dissent" - see attached
Ronald Kelly
Union Nominee

"I concur"
Richard O'Connor
College Nominee

DISSENT

submitted by Ronald J Kelly, Union Nominee, in the matter of a grievance concerning Step 1 of the Grievance Procedure, between St. Lawrence College and OPSEU

I cannot concur with this decision.

While the Employer has the right to organize the workplace – and that may include establishing dual reporting arrangements, this Board saw no evidence that a reorganization had occurred in the more than 15 months since the first time this Board was asked to rule that the supervisor of the immediate supervisor must attend a Step 1 grievance meeting.

The onus of proof of reorganization has to lie with the Employer in this instance. The employer offered no proof. No organization chart was submitted, no formal announcement to staff or Union local was tendered, no executive memos and no job descriptions were filed.

Only a couple of e-mails to the Union, from the Director of Human Resources, purported to show reorganization. One e-mail noted the “College’s decision to adjust the administrative reporting structure in relation to individual grievances filed by our academic employees on our Brockville and Cornwall campuses.” The second e-mail, sent on the eve of the arbitration hearing, asserts that the Director is “supervisor for labour relations purposes.”

That second e-mail goes on to note that the Director has full authority to resolve grievances at Step 1 and at Step 2 “when I am appointed as the President’s designee to hear step 2 grievances.”

Is she not a designee at the Step 1 hearing? No, she says that she is “supervisor for labour relations purposes.” I see that as playing games with this Board and with the Collective Agreement and with the Board’s decision of May 17, 2004, on this same issue.

The majority agree that it was not possible for this Board to determine

whether there had been reorganization or that a dual reporting system had been set in place. And this board determined that the language of the Collective Agreement is clear that if the supervisor of the immediate supervisor is the President of the College, then the President must attend the Step 1 grievance meeting.

The President of the College was the immediate supervisor of the employee's supervisor at the time the grievance was filed. The President declined to attend the Step 1 hearing. The President and the Director of Human Resources knew that the President could not decline to attend the Step 1 hearing unless the workplace had been reorganized

Had the College, the College President, the Director of Human Resources officially reorganized the management structure? Had they set in place – formally – a dual reporting system? The Board saw no evidence that they had made any changes, no proof of compliance with the original decision of this Board. Even if they did so – with the email on the eve of the arbitration hearing – it would have been a change after the fact.

The Union doesn't have to prove a negative, doesn't have to prove that something didn't happen: The College has to show that they made changes to the management structure. The College knew that they had to make changes: The Union would be expected to offer evidence that questioned the changes but, since no changes were formally made, the Union doesn't have to offer evidence that could cause the Board to doubt 'assertions'.

For these reasons I dissent.

A handwritten signature in black ink that reads "Ronald J. Kelly". The signature is written in a cursive style with a horizontal line underneath the name.

Ronald J Kelly,
Union nominee

Dated March 10, 2006