

GRIEVANCE AWARD

Feb²⁰ 90

Headnote: 89A224 and 89B589

HEADNOTE

OPSEU FILE # 89A224 & 89B589

OPSEU Local # 657

Union Grievances & Canadaore College

Award Dated February 20, 1990 (Brown)

WORKLOAD - College using full-time faculty members to teach in the Continuing Education program which results in the faculty members in question having workloads which exceed the maxima set out in the collective agreement - Faculty members undertaking such work voluntarily - No agreement between Local Union and College in this regard - College negotiating arrangements directly with the faculty members in question.

GRIEVANCE UPHELD - The College is in violation of the workload provisions when it assigns work to fulltime faculty members which exceed the maxima set out in the collective agreement even where such work is outside the normal duties of a teaching master (ie Continuing Education) and even where the faculty member undertakes such work voluntarily unless the College has an agreement with the Local Union - There is still an assignment of work by the college even though the faculty member undertakes the work voluntarily.\

David Wright

89A224

4657

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANADORE COLLEGE

(The Employer)

AND:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(The Union)

AND IN THE MATTER OF UNION GRIEVANCES RE ARTICLE 4 AND 7.02
85B589 AND 89A224

BOARD OF ARBITRATION:

HOWARD D. BROWN, CHAIRMAN
DAVID CAMELETTI, EMPLOYER NOMINEE
W. MAJESKY, UNION NOMINEE

APPEARANCES FOR THE
EMPLOYER:

ANN E. BURKE, COUNSEL
AND OTHERS

APPEARANCES FOR THE
UNION:

DAVID WRIGHT, COUNSEL
AND OTHERS

A HEARING IN THIS MATTER WAS HELD AT NORTH BAY ON SEPTEMBER
28TH, 1989.

AWARD

A grievance was filed by the Union on November 21st, 1988, alleging a violation of Article 4 with regard to the use of full-time faculty members in Continuing Education courses in addition to the regular work load. The Union filed a grievance on February 15th, 1989, claiming a violation of Article 7.02 of the Collective Agreement with regard to the hiring of Michael Lamb, Ron Davidson and Vickie Paine-Mandha. The grievances were processed through the grievance procedure of the Collective Agreement and not being resolved were referred to arbitration in accordance with the terms of that agreement. There is no dispute as to the composition of the Board of Arbitration nor as to its jurisdiction in this matter.

The Agreed Statement of Facts filed by the parties at the hearing are as follows:

1. There are no local agreements between Canadore College (The "College") and O.P.S.E.U., Local 657 (the "Union") regarding the question of full-time faculty members teaching courses offered by Canadore's School of Continuing Education, in addition to their regular workload in the College's regular, full-time day programs.
2. By memo dated November 7, 1988, to the President of the Union, Dean Barner, from Mr. Bill Garrett, Dean of Instruction, the College informed the Union that full-time faculty members could be hired to work in Continuing Education (Part-Time Studies),

in addition to their regular workload, provided the full-time faculty member undertook such work voluntarily. At that time, the College also took the position that payment for such work would be negotiated directly with the faculty member involved.

3. On November 21, 1988, the Union filed a grievance against this policy.
4. During the winter term of the 1988-89 academic year, three full-time faculty members (Michael Lamb, Ron Davidson and Vickie Paine-Mantha) were employed by the College to work in Continuing Education in addition to their regular workload.
5. When the three full-time faculty members noted in paragraph 4 above, taught in Continuing Education during the winter term of 1988-89, they were paid by the Continuing Education Department as a separate entry on their regular paycheques. The teaching involved was not recorded on their Standard Workload Forms (SWF) nor was there a reduction of any kind made to their SWF's to accommodate hours taught in Continuing Education. The rates paid to these three full-time faculty members for these hours were negotiated directly between the individuals involved and Continuing Education. No formal written agreements were entered into in respect of teaching in Continuing Education.
6. Continuing Education courses are usually scheduled between 7:00 p.m. and 10:00 p.m. in the evening, one night per week for three hours as "one semester" courses. They are directed to an adult clientele between the ages of 25 and 50.
7. The subject areas taught are Business, Technical Studies, Health Services, courses leading to certification by outside agencies such as real estate licensing and, General Interest courses such as dancing, painting, guitar. These courses do not necessarily require approval from the Ministry of Colleges and Universities (the "Ministry") before they may be offered.
8. "Approved" or "Credit" courses are funded by the Ministry, when taught under the auspices of Continuing Education, on the basis of 1080 hours as one (1) funding unit. Full-time day

courses are funded by the Ministry at the rate of 759 hours as one (1) funding unit. The resulting difference in funding is \$2,675.11, as between full-time day courses (\$6,866.92) and continuing education courses which have been "approved" or are "credit" courses (\$4,191.81). In addition, continuing education courses (which are not "approved" or "credit" courses) are sometimes funded by such outside agencies as the Purchasing Management Association of Canada, the Ontario Real Estate Association or by other fees charged directly to businesses. Other continuing education courses such as general interest courses are unfunded.

9. Full-time day courses are taught as part of various programs by full-time faculty members and lead to a certificate or diploma. They are aimed at recent secondary school graduates and are generally scheduled to begin between the hours of 8:00 a.m. and 3:30 p.m. These courses are fully funded by the Ministry and require that Ministry's approval before they can be offered. These courses are offered as part of one to three year programs in which the student is enrolled as a regular, full-time student.
10. Students enrolled in Continuing Education courses (who are not full-time post secondary students) do not receive credit toward any of the full-time, day programs offered by the College.
11. On February 15, 1989, the Union filed a grievance against the hiring of Michael Lamb, Ron Davidson and Vickie Paine-Mandha.

Those parts of Article 4 referred to in this dispute are as follows:

4.01 (1) Each teacher shall have a workload that adheres to the provisions of this Article.

4.01 (2)(a) Total workload assigned and attributed by the College to a teacher shall not exceed forty-four (44) hours in any week for up to thirty-six (36) weeks in which there are teaching contact hours for teachers in post-secondary programs including nursing and for up to thirty-eight (38) weeks in which there are teaching contact hours in the case of teachers not in post-secondary programs.

The balance of the academic year shall be reserved for complementary functions and professional development.

Workload factors to be considered are:

- (i) teaching contact hours
- (ii) attributed hours for preparation
- (iii) attributed hours for evaluation and feedback
- (iv) attributed hours for complementary functions.

4.01 (2) (b) A "teaching contact hours" is a College scheduled teaching hour assigned to the teacher by the College.

4.01 (3) Each teaching contact hour shall be assigned as a fifty (50) minute block plus a break of up to ten (10) minutes.

The voluntary extension of the teaching contact hour beyond fifty (50) minutes by the teacher and any student(s) by not taking breaks or by re-arranging breaks or by the teacher staying after the period to consult with any student(s) shall not constitute an additional teaching contact hour.

4.01 (4) (b) No more than four (4) different course preparations or six (6) different sections shall be assigned to a teacher in a given week except by voluntary agreement which shall not be unreasonably withheld.

4.01 (8) (a) the College shall allow each teacher at least ten (10) working days of professional development in each academic year.

(b) Unless otherwise agreed between the teacher and the supervisor, the allowance of ten (10) days shall include one period of at least five (5) consecutive working days for professional development.

(c) The arrangements for such professional development shall be made following discussion between the supervisor and the teacher subject to agreement between the supervisor and the teacher, and such agreement shall not be unreasonably withheld.

4.01 (12) (a) The contact day shall not exceed eight (8) hours from the beginning of the first assigned hour to the end of the last assigned hour.

(d) A teacher may agree in writing to waive the premium credits provided for in Article 4.01(12)(c) above for a specified period of time.

4.02 (1)(b) The SWF shall include all details of the total workload including teaching contact hours, accumulated contact days, accumulated teaching contact hours, number of sections, type and number of preparations, type of evaluation/feedback required by the curriculum, class size, attributed hours, contact days, language of instruction and complementary functions.

Article 7 deals with the exclusive functions of Management specified in that Article and the reference in the grievance to Article 7.02 is as follows:

The College has agreed that these functions will be exercised in a manner consistent with the provisions of this Agreement.

The Union alleges that the Employer has violated the work load provisions of the Collective Agreement through the policy of hiring regular faculty to work in the Continuing Education or part-time studies over and above their regular work load. The services of the Faculty are arranged through direct negotiations between the College and the individual as there is no local agreement to permit this form of work. It is the Union's position that there has been a violation of Article 4.01 as to the work load provisions for these Teaching Masters. The Union requests the Board to declare that there has been a violation of the agreement and order that the practice cease and desist immediately.

The Employer's position is that the work was not assigned to the Teaching Masters in the program by it and therefore the intention to limit the Management's right to assign work through the provisions of Article 4 is not relevant. Reference in its submissions is made to Article 8.09 which is as follows:

Extension and Continuing Education programs and courses which are not included in the regular assignment of full-time employees are excluded from the application of this Article for all purposes.

Article 8 of the Agreement is headed "seniority." It is the College's position that Article 4 does not apply in the circumstances where the individual teaching in the Continuing Education Program is in addition to and not included in the teacher's regular work load assignments for the College.

Barbara Sauro is the program consultant in the School of Continuing Education, a position in the support staff bargaining unit and is responsible to set up the Continuing Education courses and to recruit faculty members to teach in the courses of Business Accounting, Health Science, Micro Computer, Social Sciences and Secretarial courses. She said she used a variety of methods to find faculty to teach the courses, some volunteered their services by telephone or by submitting a resume to the Personnel Office who include College faculty, support staff

and persons outside of the College. When the courses are set for the semester, she would approach the person who taught the course previously and as well would approach full-time faculty who have taught in Continuing Education courses before to ascertain their interest in teaching at night. If so, she would discuss the curriculum, salary and the time for the courses. Sometimes advertisements for instructors are placed in the local newspaper. She uses many contacts within the College and the community to find instructors with expertise in the courses and who would be appropriate to teach them. She would then approach these persons for the purpose to obtain their services.

Mr. Davidson is a co-ordinator of the Business Accounting courses at the College with whom she has contact as to the accounting courses in the winter term. He told her that if she was stuck to call him as he would teach at night. If a faculty member refused her offer to teach one of these night courses, she would not inquire as to his reasons and would continue her search for someone else. She was not aware of any full-time faculty member who was disciplined for refusing to teach evening courses in Continuing Education. She said that less than 10% of the Continuing Education courses were taught by full-time faculty.

It is the submission for the Union that there are two limits on the workload of the faculty set out in

Article 4 which deals with the total hours per week and the total teaching hours per week. The teaching contact hours are not to exceed 18 in any week under Article 4.01(9). The contact day does not exceed 8 hours. The key document in this calculation is the Standard Work Load Form set out in Appendix (viii) of the Agreement and referred to in Article 4.02 (1)(b). That provides the Union's opportunity to monitor the application by the College of the workload provisions of the Agreement as all teaching activities are to be included in the SWF's. On the facts of this case the hours of teaching of the faculty members in the Continuing Education were not contained in their SWS's and was work over and above their regular work load as calculated under Article 4 and set out in their SWF's. These individuals were involved in three teaching contact hours in addition to their regular work load.

The Continuing Education courses are not part of the seniority-lay-off provisions in Article 8 and there is no mention of such exceptions in Article 4 indicated in Article 8.09. The Continuing Education courses are not included in the regular assignment to the full-time faculty. A full-time faculty member would not have a right on a lay-off to bump into Continuing Education to displace someone not in the bargaining unit who was teaching a course. Nothing in the agreement provides the right of the College to schedule teaching hours outside of Article

4. The faculty member who teaches in Continuing Education is not covered by Article 8 which deals with seniority. Provision has been made in Article 4.01 (13) for a Union Local and a College to agree in writing on terms governing work load assignments but no local agreement exists at this College. By Article 4.02 (7) it is recognized that the College and the Union Local have the authority to agree to a local application of Article 4. Therefore in its submission if the Employer decides to assign full-time faculty to work in Continuing Education, it can be done only by a local agreement with the Union and it cannot by-pass the Union and negotiate directly with individuals. That cuts across the principle of collective bargaining. Reference was made to re Mohawk College and OPSEU (unreported - Kates, September 1988) in which award a local agreement was upheld by the Board; re Seneca College and OPSEU (unreported - P.C. Picher, February 1988); re Fanshawe College and OPSEU (unreported - Burkett, March 1989).

It was submitted by the Union that provisions in Article 4 allows for the agreement of the individual in certain circumstances such as in Article 4.01 (3) in the voluntary extension of teaching contact hours and in course preparations in 4.01 (4)(b), 4.01 (8)(b), 4.01 (12)(d) where a teacher can agree to waive premium credits. Those are the provisions where the voluntary wishes of the

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faculty member can be taken into account but that cannot be read into Article 4.01 (1). In its submission if the work is not assigned by the College, it is attributed to the teacher as being work for the College the hiring of full-time faculty members to teach courses in Continuing Education in addition to their regular teaching work load is contrary to Article 4 in its submission and those provisions cannot be by-passed by the College without the consent of the Union. The assignment of courses for the purpose of Article 4 is not just upon the College's insistence that a faculty member teaches a certain course. It was argued that there is a difference between the College's right to direct employees as indicated in Article 7 and to assign work which it wants done which is a separate matter from either voluntary or compulsion performance of teaching duties.

It is Employer's position that Article 4 is not applicable in the circumstances of this case as the work was not assigned by the College to the Teaching Masters. The College could assign its Teaching Masters to whatever teaching it required and in whatever amount under its right set out in Article 7 to direct its employees. Any restriction of that broad scope must be found in Article 4 which provides that it must direct its employees in a number of ways and to determine what a faculty member can be required to do by the College as a proper work

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assignment. The reference in Article 4.01 (2)(v) is to assignment of contact hours which are contained in the SWF. Those hours are determined by reference to the fact of assignment by the College to the Teaching Masters. Even if such hours are not assigned, they are attributed by the Employer. The weekly hours attributed to a teacher are set out in Article 4.01 (4)(a) which is related to assigned teaching hours. Where the teacher has a right to do something on his own such as in Article 4.01 (3), (4)(d), (6) and (10), the provision requires that the employee perform the task required by the Employer. It is the Employer's position that it does not require faculty members to teach courses in Continuing Education whereby the total teaching hours would exceed the limits set out in Article 4. Where a Teaching Master has voluntarily chosen to accept the work outside of his regular teaching assignment, those hours are not required to be included in the assigned work load under Article 4. Further, such hours cannot be considered work. In its submission, Article 4.01 should be applied on the basis that it requires an assignment by the College to employees to do a particular piece of work. By Article 8.09 part-time employees are protected from bumps. Any faculty member can refuse to teach in Continuing Education for whatever reason and to perform that work is completely voluntary unlike overtime which may require a valid reason to refuse it.

The College relies on the award of Mr. T.J. Bastedo in re Fanshawe College and OPSEU (unreported - February 1982). In that case a full-time Teaching Master taught 19 hours each week as part of his regular assignment and in addition taught several hours per week in Continuing Education, the total of which exceeded the maximum in Article 4. The Collective Agreement at that time provided that the College could not assign overtime without individual agreements and no agreement had been entered into for their compensation. The Board found that Article 4 did not apply to those additional teaching hours as there was a requirement to have an agreement by the employee and the Board rejected the argument that when an employee had agreed to teach, the College had made an assignment to him. The Board ruled that the separate agreement did not detract from the terms of the collective agreement or was a matter covered by the collective agreement.

Reference was made to re Fanshawe College and OPSEU (Shime - April 1987) in which the Board dealt with the claim that an employee's workload was inequitable. The College submitted that counselling duties were not assigned to the grievor and that volunteer services performed by the grievor did not impose any obligation for payment. The Board found,

"the scheme of Section 4 is to provide a procedure to relieve teachers from improper work assignments by the College. Since the right to assign rests with the College the procedure is designed to allow a decision by the College to be scrutinized by an independent third party. The procedure thus is intended to curb any abuse of the assignment right vested in the College but the scheme presumes that the College will assign the work. In this case the College has not assigned the counselling work to the grievor. She cannot unilaterally assign the work to herself and then seek compensation for it . . . The counselling service that she provided was completely gratuitous, she was on a frolic."

That Board found that there was not a violation of Section 4 of the Collective Agreement. See also re Lambton College and OPSEU (unreported - Brown, October 1984); re Algonquin College and OPSEU (unreported - Weatherill, February 1981); re Sheridan College and OPSEU (unreported - Brown, May 1983).

The issue in this dispute is whether the Employer has violated the collective agreement when full-time faculty members voluntarily teach Continuing Education courses by which the hours of teaching of that teaching master exceeds the total work load provided under Article 4.01 of the collective agreement. This issue is not the same as that which was dealt with in the Bastedo award where the issue was defined as to whether the College was required by the agreement to provide the Union with written agreements between the College and an individual teacher when that teacher volunteered to teach Continuing Education courses. That decision was based on contract

language in existence between the parties in 1981-1982 the terms of which are substantially different than contained in the collective agreement applicable to the present dispute. There is no question that the parties could enter into a local agreement concerning the voluntary use of full time faculty members to teach in Continuing Education course but the evidence is that such agreement does not apply to these parties. In that case teaching in the Continuing Educational course was recognized as here as being totally voluntary by the teacher. In that case as here the Union claimed that once the teacher's request was granted, the Continuing Education course was assigned by the College which brought it under the provisions of Article 4.01 at that time which included the following:

"It is understood that no teacher shall be assigned teaching hours in excess of the maximum teaching hours provided for herein except by voluntary agreement between a teacher and a College providing fair compensation . . ."

This provision can be distinguished from the terms of Article 4.01 (1) and (2) set out above in the current collective agreement which includes a prohibition for a teacher to be assigned or attributed a work load by the College in excess of the hours set out.

In our view, having determined that Continuing Education courses shall be taught, regardless of the method

of obtaining the services of an individual teacher to teach such courses, when an arrangement has been entered into by the College and an individual teacher, the course has been assigned by the College to the teacher who then becomes responsible for the course instruction. The College has determined that there is work to be done in Continuing Education and has made arrangements to have that work carried out by instructional assignment to individual teachers in the programme. The assignment of work is not necessarily the same or limited to the compulsion of an individual by his Employer to teach a course. Whatever the initial arrangement with the individual may be, the Employer requires the work to be done and assigns that teacher to teach a particular course in the programme. Article 8.09 of the agreement does not relate to the total work load requirements set out in Article 4. The fact that the full-time faculty member has volunteered to teach these courses in addition to his regular work load for daytime teaching at the College does not change the nature of the College requirement to provide that course to the students in Continuing Education.

The Bastedo award recognizes the principle that an Employer bound by a collective agreement cannot enter into separate contracts of employment with individual employees. That Board went on to find that:

"the voluntary arrangements entered into by the individual teacher and requested by the teacher when informed of what classes in the Continuing Education are available cannot be said either to detract from the terms of the Collective Agreement or to be matters covered by the Collective Agreement."

We find that statement is not correct in the context of the facts pertaining to the dispute in the present matter and is not binding or persuasive on this Board to follow the same conclusion.

The full-time faculty member in the bargaining unit is covered under the terms of the Collective Agreement in effect between the Union and the College and does not lose that protection, benefit or obligation at the end of his regularly assigned teaching hours during the day. Article 4.01 does not differentiate between day and night classes for the purposes of assessment of a teacher's total work load. By Article 4.01 (2)(b) an hour of teaching in Continuing Education falls within the definition of a teaching contact hour because after the arrangement has been made for the services of the teacher for that course, the teaching hour is assigned by the College to that teacher in Continuing Education. Those hours of teaching are not excluded in that definition as has been done in Article 8 which deals with seniority and more particularly in Article 8.09 referred to above.

That form of exception has not been placed by the parties in Article 4 which therefore does not expressly exclude Continuing Education teaching hours from its application. As Continuing Education course teaching hours are not excluded, there is no reason in our view, to conclude that the maximum work load provided by the parties can be ignored by a voluntary arrangement to teach with individual members of the bargaining unit who voluntarily enter into an individual contract of employment with the College.

The Board finds differently than in the Bastedo award, that such contractual arrangement to provide teaching hours does detract from the terms of the Collective Agreement. Therefore, when the College enters into a separate agreement although voluntarily obtained, with a full-time faculty member in the bargaining unit to teach courses in the Continuing Education program in the evening the arrangement must be tested under the terms of Article 4.01 in the context of determination of the work load to which the College has agreed under the terms of Article 4.

Article 7.02 of the agreement provides that management functions shall be applied in a consistent manner with the provisions of the collective agreement. We find that the circumstances of this case brings the individual

arrangement between the College and faculty members to teach in Continuing Education within the terms of the Collective Agreement and therefore the Employer must apply the terms of Article 4.01 in that regard. This finding is consistent with the Sheridan College and the Seneca College awards (supra). In the latter award the Board dealt with a claim of the Union that the College had breached Article 4 of the Collective Agreement in the manner of the assignment of work in the Faculty of Health Sciences and it was stated at page 17:

"the fact that the College knew that the large majority of the Faculty supported the application of rolling averages instead of fixed maximums does not justify an adoption of rolling averages against the will of the Union in breach of the agreement. We endorse fully the Union's submissions regarding the College's obligation to negotiate with the Union not individual faculty members . . . "

The Board declined to issue a declaration of breach of agreement for the reasons set out in that award, however, it clearly found that the College had set up teaching schedules and weekly work load hours on the basis of rolling averages rather than the fixed weekly maximum as required by the Collective Agreement without having in place a signed local agreement between the parties but having regard to the express preference of the faculty members on that issue and the previous practice of the College. The SWFS were prepared in that semester

on the basis of rolling averages. It was decided however, that the College could not justify on that basis the breach of Article 4 in the manner in which it assigned the work load to the faculty in that department.

We find on the facts relating to the issue in this matter that Article 4.01 applies to the faculty members covered by the collective agreement who teach courses in the Continuing Education program in the evenings. Therefore, where those hours exceed the work load maxima set out in that article the College has violated the terms of the Collective Agreement. In so concluding we find that College has in fact assigned and attributed such teaching contact hours defined in Article 4.01 (2) in that program. The College and the individual faculty member cannot ignore the requirements of the Collective Agreement for the purposes of a voluntary arrangement to teach in excess of the regular assignments incorporating the total work load as set out in the SWF's provided by Article 4.02 (1)(b). The work load provisions have been continuously changed in the contractual relationship between the parties the results of which in this Collective Agreement indicates the intent of strict application of the parameters of the teaching activities for members of the bargaining unit in the context of the maintenance of the integrity of that unit by the Union. By not including the teaching hours in the

SWF's of the faculty members who perform such work in the Continuing Education program and by exceeding the workload limitations in Article 4, we find that there has been a violation of the collective agreement by the Employer. These contractual terms apply to all of the faculty members covered by the agreement and therefore by increasing the work load of such teachers we conclude there has been a breach of Article 4.01 (2)(a) in the absence of a local agreement entered into by the College with the Union to deal with the specific matter in dispute in this case.

Having regard to the evidence and the submissions of the parties, the Board finds that the Union has established that the College was in violation of Article 4 of the collective agreement as alleged in the grievance, dated November 21, 1988. The Board further finds that the arrangement with the three named faculty members in the grievance, dated February 15th, 1989, to teach in the Continuing Education program in addition to their regular work load was contrary to the provisions of Article 4 and Article 7.02 of the Collective Agreement. These findings substantiate the issuance by this Board as a remedy in this matter of a declaration that the College has violated

the terms of the Collective Agreement in the manner
set forth herein and we so award.

DATED AT OAKVILLE, THIS 20th DAY OF FEBRUARY, 1990.

Howard D. Brown

HOWARD D. BROWN, CHAIRMAN

DAVID CAMELETTI, EMPLOYER NOMINEE

W. Majesky

W. MAJESKY, UNION NOMINEE

In the Matter of An Arbitration

B E T W E E N:

CANADORE COLLEGE

AND

ONTARIO PUBLIC SERVICE
EMPLOYEES UNION

AND

AND IN THE MATTER OF UNION
GRIEVANCES 85B589 AND 89A224

D I S S E N T

I have read the award of the Chairman and with respect must dissent.

My disagreement with the Chairman stems from the interpretation given to the word "assignment."

On pages 14 and 15 of the Award, the Chairman writes:

In our view, being determined that Continuing Education courses shall be taught, regardless of the method of obtaining the services of an individual teacher to teach such courses, when an arrangement has been entered into by the College and an individual teacher, the course has been assigned by the College to the teacher who then becomes responsible for course instruction... The assignment of work is not necessarily the same or limited to the compulsion of an individual by the Employer to teach a course.

My interpretation of the term "assigned" as it appears in Article 4.01(2)(a) (and elsewhere) in the collective agreement refers to a much more limited range of actions by an Employer in relation to the distribution of work.

My view is that the term embraces those circumstances in which management directs or requires the employee to engage in specific work responsibilities, and not where the employee volunteers.

This interpretation is supported in authority referred to by the Chairman specifically the award involving, Fanshawe College and O.P.S.E.U. The Chairman minimizes the importance of the decision by outlining that different factual circumstances and contractual language were involved there.

With respect, much of the majority award by the Arbitrator Bastedo deals with the proper legal interpretation to be given to the word "assign," which is the major issue before this Board of Arbitration.

On page 5, Mr. Bastedo writes as follows:

The verb 'assign' is of course transitive and requires a direct object to complete its sense. Plain meanings of the word 'assign' are:

- (a) to appoint or consign (one) to a post or duty, also, to prescribe, as a course of action or task, Webster's New International Dictionary (2nd Edition).
- (b) to appoint, designate, depute (a person) for an office, duty, or fate. Oxford English Dictionary.

The wording in question contemplates some person (the employer) deputing or designating some thing (teaching hours) to some person (the teacher). By Article 7.01, the Union acknowledges that it is the exclusive function of the employer to "...assign..employees subject to the right to lodge a grievance...Assignments are made on the direction of the employment."

It is interesting to note that the language referred to by Mr. Bastedo with respect to Article 7.01 and the Colleges' right to assign work is preserved in the present collective agreement.

This view of the term "assignment" is persuasive and is the correct one that should be adopted by this Board of Arbitration.

On this basis, I conclude that the Continuing Education courses voluntarily taught by the full time instructors during the 1988-1989 academic year at Canadore College cannot be found to be part of the total workload "assigned and attributed" by the College to them within the meaning of Article 4.01(2)(a) of the collective agreement, and accordingly deny the grievance.

DATED AT SAULT STE. MARIE, ONTARIO
THIS 20TH DAY OF FEBRUARY, 1990.



DAVID CAMELETTI, COLLEGE NOMINEE