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Local 420

IN THE MATTER OF AN ARBITRATION

BETWEEN: LOYALIST COLLEGE
 (The Employer)

AND: ONTARIO PUBLIC SERVICE UNION
 (The Union)

AND IN THE MATTER OF THE GRIEVANCE OF JIM URGUHART:

BOARD OF ARBITRATION:

H.D. BROWN, CHAIRMAN

J. McMANNUS, UNION NOMINEE

R.J. GALLIVAN, EMPLOYER NOMINEE

APPEARANCES FOR THE EMPLOYER: ANN E. BURKE, COUNSEL

APPEARANCES FOR THE UNION: JANET MOSHER, COUNSEL

A HEARING IN THIS MATTER WAS HELD AT TORONTO ON DECMEBER
10, 1987

INTERIM AWARD

Two grievances were filed by the grievor under the provisions of The Collective Agreement between the parties, one of which concerns an allegation of improper lay-off. In accordance with the provisions of the agreement, Mr. Wayne Cochrane was named by the grievor as the person he is entitled to displace in his claim for remedy. As a result, Mr. Cochrane was given notice of these proceedings by letter from counsel for the union dated December, 1987 as his interest could be affected by the results of this case.

At the hearing, the Board was advised that Mr. Cochrane was not present and that he had been told by counsel for the Employer that because of the apparent preliminary objections to the Board's jurisdiction to deal with the grievances that he was not required at this hearing which would not involve the evidence. Mr. Cochrane had also communicated with counsel for the Union and was advised that he would not be required by the Union as a witness at this hearing. The Board could not be assured by counsel that the third party would not have attended at these proceedings in any event.

The Board ruled orally at the hearing that having heard the opening statements of counsel concerning the issues raised in the grievances that it would not proceed to deal in any way with the grievances without the opportunity being given to Mr. Cochrane to attend to deal with his interest in this case.

A third party to such proceedings who has an obvious interest in the outcome of the grievance and referral to arbitration in which he is a named employee and who could be displaced has a right to attend and participate in all proceedings before the Board. A third party is not excluded from dealing with a jurisdictional issue between the parties as his interest is involved in that determination in a similar manner as in the merits of the case. If a third party independently decides not to attend a scheduled hearing his further right to participate may be at an end, but that person must be given proper notice (which was done in this case) and the opportunity to attend all hearings of the Board.

Here the third party could have understood that he was not needed or did not have to attend the hearing and the Board could not assume on the facts that Mr. Cochrane either declined to attend or ignored his right to participate in the hearing. In the interest of providing a fair hearing and applying the principle of natural justice, the Board decided not to proceed further with this dispute until the third party was properly before the tribunal.

In these circumstances the Board adjourned the proceedings without dealing with the jurisdictional issue or the merits in order to give all interested parties proper notice of the hearing. The next hearing will be set by the Board which will give the appropriate notice to all interested persons.

Dated at Oakville, this ^{1st} (1) day of December, 1987.



CHAIRMAN (FOR THE BOARD)