

CAAT(A)
95E066
Local 417

IN THE MATTER OF AN ARBITRATION

BETWEEN

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
LOCAL 417
(hereinafter referred to as "the Union")

- and -

ST. LAWRENCE COLLEGE
(hereinafter referred to as "the College")

GRIEVANCE OF S. VANDERSCHAAF

BEFORE: M.G. Mitchnick - Chairman
C. Masse - Union Nominee
H. Cook - Employer Nominee

FOR THE UNION:
J. Gilbert
M. White
S. Vanderschaaf

FOR THE EMPLOYER:
A. Burke
C. Blakeney
P. Finucan

Hearing held in Kingston on January 16th, 1996

A W A R D

This is the grievance of Sam Vanderschaaf, claiming that the College failed to pay overtime as per his agreed-upon SWF for the winter semester of 1995.

The grievor is a long-time faculty member at the College, and in fact was President of the Local in the mid-1980's, when the new "Workload" language, with its formula for recognizing "attributed" hours, first went into the collective agreement. Centrally, Articles 11.01A and B 1 provide:

11.01 A Each teacher shall have a workload that adheres to the provisions of this Article.

11.01 B 1 Total workload assigned and attributed by the College to a teacher shall not exceed 44 hours in any week for up to 36 weeks in which there are teaching contact hours for teachers in post-secondary programs and for up to 38 weeks in which there are teaching contract 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.

A Standard Workload Form ("SWF") is required to be provided to members no later than six weeks before the commencement of each teaching period. That allows a faculty member to have that minimum period of notice of the courses and class-sections to which he or she is being assigned. That stipulation set out in Article 11.02 A 1(a), states:

11.02 A 1 (a) Prior to the establishment of a total workload for any teacher the supervisor shall discuss the proposed workload with the teacher and complete the SWF, attached as Appendix I, to be provided by the College. The supervisor shall give a copy to the teacher not later than six weeks prior to the beginning of the period covered by the timetable excluding holidays and vacations. It is recognized that if the SWF is subsequently revised by the College, it will not be done without prior consultation with the teacher.

As can be seen, consultation is to take place with the faculty member prior to the final determination by the College of the SWF, and again prior to the College making any change to it. And Article 11.02 A 1 (b) makes any dispute over any change referable to the Workload Monitoring Group in the same way as the original SWF:

11.02 A 1 (b) The College may, where a change in circumstances requires it, amend assignments provided to a teacher after the original assignment, subject to the teacher's right to refer any matter to the College Workload Monitoring Group (WVG) referred to in 11.02 B 1 and if necessary, the Workload Resolution Arbitrator (WRA) referred to in 11.02 E 1 and appointed under 11.02 F 1.

The SWF thus establishes the courses and "teaching contact" hours for the faculty member. Mechanically, however, the SWF does also serve as a basis for calculating the "total workload" of the teacher in the weeks of the semester, and thus:

11.02 A 2 The SWF shall include all details of the total workload including teaching contact hours, accumulated contract 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.

"Class size" is a particularly relevant figure in that end-product of "workload", since a number of the formulae used by the

collective agreement to determine actual workload - for example, for evaluation, feedback - obviously are driven by the number of students being taught. As is apparent, at the point when the SWF's are initially prepared for the staff - a minimum of six weeks out from the start of the semester - a number has to be used for student enrolment that is purely an estimate. As the grievor, an experienced faculty member acknowledged, and as one would expect, those estimates almost never turn out to be exactly accurate. There is, therefore, at the College an "audit" date for the semester, when Financial Services verifies the actual enrolment, and reconciles the SWF's for pay purposes. That is, if a higher than expected enrolment puts a professor over the collective agreement's limit on total workload hours, even though the original SWF had anticipated no overtime, the workload is recalculated under the formulae, and payment is made for any overtime so generated. Conversely, if the enrolment comes in low, to the point where an anticipated "overtime" workload on a SWF (i.e., more than 44 total hours a week) fails to materialize, no overtime is paid. According to the evidence, no complaint has ever been made about this enrolment-auditing, and pay-reconciliation procedure at the College -- until the present case.

The series of events leading to the present complaint began when the grievor received his SWF for the second semester of 1994-95. Reviewing that SWF, the grievor was concerned to see

that his "Business Writing" class was showing at 50 students. The grievor spoke to his departmental supervisor, Pat Finucan, about that, explaining that he had no problem dealing with a class that size, but that that would mean converting it to essentially a lecture format, when it really was meant to involve a lot of "hands-on" interaction with the students. Mr. Fiducan was persuaded by those pedagogical concerns, and it was agreed that the course would be split into two, with the grievor teaching both sections. The grievor's SWF was re-done, and application of the workload formulae, including that many students over two sections in "Business Writing", produced a total of contact and attributed hours of 45.75 a week, or 1.75 hours of overtime. That SWF was signed off by both the grievor and Mr. Fiducan, as the collective agreement required, and was filed with the department.

As it turned out, when classes actually began in that second semester, the estimate of student enrolment for the grievor's "Business Writing" course proved very much high. Rather than the 50 students initially postulated, there in fact were only 21 students in the first of the grievor's sections, and 9 in the second, for a total of 30. The grievor felt that such numbers failed to justify the offering of two sections, and he again went to the office to discuss the matter. Mr. Fiducan was not at the Brockville campus that day, however (he is normally there only one day a week), and the grievor accordingly discussed his

problem with the secretary (a member of the support-staff bargaining unit). The secretary advised that, in order to accommodate timetable conflicts for certain of the students allowed into the grievor's course, it was necessary to continue with the split sections as scheduled. That, from the grievor's point of view, was the end of the matter. He testified that he simply carried out his work assignment as agreed between himself and Mr. Fiducan, and promised the overtime money to his daughter, to assist her with a car-repair bill. Unfortunately, from that perspective, the dramatic drop in student enrolment below the forecast also dropped the grievor's workload, on the basis of the formula for attributed hours on feedback and evaluation, well below the 44-hour level. That was noted by Finance in the reconciliation that took place in March, and the numbers on the SWF were adjusted, in accordance with the College's practice, to reflect that. It is not, however, the College's practice to copy such a revised SWF back to the faculty member (the College in the course of this grievance has acknowledged its deficiency in that regard), and the adjusted SWF is simply placed in the faculty member's file. Because the adjustment was one that did not call for a payment of overtime, it was not something that was brought to Mr. Fiducan's attention at all, and (unlike the grievor) Mr. Fiducan had no knowledge of what the actual enrolment in the grievor's "Business Writing" course turned out to be. Mr. Fiducan did not in fact become aware of the matter until the

grievor, at the end of the semester, failed to receive any overtime payment, and raised the present complaint.

The grievor maintains that this is a proper subject matter for an Article 32 grievance, and not an Article 11 "workload" grievance, because he has no complaint concerning his workload: his workload was exactly that agreed upon between himself and Mr. Fiducan, and he now simply seeks to be paid for it, as indicated on his SWF. The College, for its part, does raise a jurisdictional objection to the matter being properly before an Article 32 arbitration board (see Niagara College, award of this chair dated November 29, 1995), but having recorded that, and given the simplicity of the facts and issue, opted to have this board hear the matter on its merits as well.

On the merits the Union argues that the pre-semester SWF signed off between Mr. Fiducan and the grievor constituted a binding agreement which could not unilaterally be altered by the College. In support of that the Union cites:

11.01 J 2 Such teaching contact hour agreed to in excess of the respective weekly teaching contact hour maximum shall be compensated at the rate of 0.1% of annual salary. Such workload hours agreed to be in excess of the 44 hour weekly workload maximum shall be compensated at the rate of 0.1% of annual salary. Such overtime payments shall be for the greater amount but shall not be pyramided.

[Emphasis the Union's]

11.01 E 3 The number of students in a course or section shall be determined initially by the College's planning estimates and recorded on the SWF as provided for in 11.02.

The number of students in a course or section shall be reviewed after the enrolment audit dates and not later than the completion of the course or section or, at the request of the teacher, following the last day for withdrawal of registration by the student(s), and revised where appropriate ...

The essence of the Union's argument is that the grievor was not shown his revised SWF until a point (in the grievance procedure) well after completion of the course, and that he has never been consulted on the change, as contemplated by Article 11.02 A 1 (a) above.

These are not arguments, in the board's view, that can be given weight to for the purpose of upholding the grievance. The use of the word "agreed" in Article 11.01 J 1, it seems to us in the context, is designed simply to make it clear that it is only excess hours which have been authorized that the College is committing to pay overtime for. Bearing in mind the whole scheme of the "workload" articles, it also seems apparent that the type of "revision" contemplated by the above articles are those that involve an act or initiative on the part of the College, and a change to the faculty member's course or section assignment. That, in turn, is the type of change that would generate the need for further consultation. Here, as a practical matter, there is nothing to "consult" on. That is what the grievor is really acknowledging when he states that there is no issue here that he would want to refer to a Workload Monitoring arbitrator. The "change" is simply enrolment driven, and one that, from the collective agreement, is a known possibility from the outset. If

the simple inclusion of the enrolment-driven elements of the formula in the collective agreement do not make that clear enough on its own, the explicit recognition of it in 11.01 E 3 flags it beyond question. The adjustment that took place here is exactly what that Article contemplates will happen. Again, that Article reads:

11.01 E 3 The number of students in a course or section shall be determined initially by the College's planning estimates and recorded on the SWF as provided for in 11.02.

The number of students in a course or section shall be reviewed after the enrolment audit dates and not later than the completion of the course or section or, at the request of the teacher, following the last day for withdrawal of registration by the student(s), and revised where appropriate ...

The "revision" that took place here, it can be seen, was the "revision" referred to, and expressly contemplated, by the provisions of Article 11.01 E3 -- not the type referred to in Article 11.02 A1(a) (where further consultation with the staff member, prior to effecting any change in work assignment, would obviously be required). Further regarding Article 11.01 E3, we note that the "review", or audit, did take place by the College prior to the end of the course as required. And the final enrolment number, coming out of that audit, is not in dispute. Article 11.01 E 3 does not go on to explicitly state that there must be some further communication to the faculty member of the revised enrolment number at that point -- and the critical fact, being the shortfall in anticipated enrolment, is one that would be more obvious to the faculty member than to perhaps anyone else

at the College. A faculty member concerned with what that drop in enrolment might be doing to his or her projected overtime can always make that calculation on the formula, or ask the College for clarification if in doubt. That said, the present grievance demonstrates that where such re-calculation of the workload hours does in fact produce a change in a faculty member's overtime/non-overtime status from that originally anticipated in the SWF, communication of that at the same time to the faculty member would be a useful practice for Colleges to adopt.

The fact remains here, however, that the grievor performed no work for the College beyond the normal, non-overtime hours stipulated by the collective agreement, and no act on the part of the College, or the grievor, either caused that or would have changed that. The grievor's claim for overtime, as he explained in his testimony, is on the basis that he agreed to teach two sections of Business Writing, and (notwithstanding his subsequent efforts to avoid that for the College) that he did that. But the grievor has been given full credit for that on the final SWF; the problem is that, with the drop in enrolment reducing his workload on feedback and evaluation, he still did not end up performing any overtime. Given this inescapable conclusion (and the express language of Article 11.01 E 3 of the collective agreement), there is, in the board's view, no useful purpose to be served the

parties by considering the College's preliminary objection, and the grievance is hereby dismissed on its merits.

Dated at Toronto this 11th day of June 1996



M. G. Mitchnick

"C. Masse"

C. Masse

"H. Cook"

H. Cook