

HEADNOTE

OPSEU #91F228

OPSEU LOCAL #110

OPSEU (Venema, L .) and Fanshawe College
Award dated March 17. 1992 (Bendel)

Other - Admission to College Programs - Normal Entrance and Admission Requirements

Benefits - Admission to college Programs - Normal Entrance and Admission Requirements

GRIEVANCE UPHOLD: The grievor sought admission to a College program under Article 18.03 of the CMT Academic Agreement. She met the program eligibility criteria, but was screened out in a competition process due to the number of applicants. The majority concludes that Article 18.03 essentially exempts bargaining unit applicants from the normal process: instead, they are simply required to establish that they meet the objective requirements for the program . Thus, where a program is over subscribed, the employee does not have to compete with other applicants, so long as she can establish that she meets those requirements which are "objective and constant factors, ones that are fixed and easily ascertained".

The College was ordered to admit the grievor to the program for the following term.

Pamela A. Chapman

IN THE MATTER OF AN ARBITRATION

BETWEEN

Fanshawe College,

Employer,

- and -

Ontario Public Service Employees Union,

Union

BEFORE: Michael Bendel, Chair
Jacqueline G. Campbell, Employer Nominee
Brian Switzman, Union Nominee

APPEARANCES: For the Union:

Pamela Chapman, Counsel
Paddy Musson, Local President
Gary Fordyce, Chief Steward
Laura Venema, Grievor

For the Employer:

Barry Brown, Counsel
Patricia Kirkby, Dean, Health Sciences and Human
Services
Caroline Buchanan, Assistant Registrar
Gail Rozelle

Hearing held in London, Ontario, on January 13, 1992.

ARBITRAL AWARD

The grievance of Laura Venema raises the question of the proper interpretation of Article 18.03 of the collective agreement, which reads as follows:

An employee in the bargaining unit may take, for a tuition fee of not more than \$20.00, on the employee's own time, (a) Ministry approved programs or courses, or (b) other programs or courses as mutually agreed,

which the College currently offers. The employee must meet the normal entrance and admission requirements.

Ms. Venema is a professor who teaches in the Dental Assistant Program. She is interested, for various reasons, in taking the Dental Hygiene Program. In all respects, she meets the formal requirements for admission to that program. In February 1991, she applied for admission for September 1991. However, over 1,000 applications were received for the program, and enrollment was limited to 18 students. The employer uses a Grid to determine which of the applicants receive offers of admission. The grievor's score on the Grid was not high enough, and she was not offered admission to the program.

The grievor has been teaching in the Dental Assistant Program at the College since 1982. She had obtained a Diploma in that program herself in 1977, and had worked in dentists' offices as a Dental Assistant in the interim.

The Dental Assistant Program is a one-year program to train students as Dental Assistants. Successful completion of that program is a prerequisite for admission to the Dental Hygiene Program (although equivalences are recognized). The Dental Hygiene Program is also a one-year program. The critical difference between the Dental Assistant and the Dental Hygienist qualification is that the Dental Assistant is not trained or qualified to work in patients' mouths. Their work extends to assisting the dentist in all other matters, such as radiography, sterilization of instruments, preparation of materials, patient records, reception work and office management. The Dental Hygienist, in addition to performing these duties, can use instruments to clean patients' teeth. The Dental Hygienist qualification is a more prestigious one. It is the qualification to which many Dental Assistants aspire.

The College Calendar gives the following information on the Dental Hygiene Program:

PROGRAM ELIGIBILITY CRITERIA

REQUIRED ACADEMIC PREPARATION ONE OF

(a) Successful completion of a CAAT Dental Assistant program,

OR

(b) OSSD/SSGD or Mature applicant with Grade 11 or Grade 12 Biology and Grade 11 or Grade 12 Chemistry, or the equivalent,

AND THE FOLLOWING

* Successful completion of the Healing Arts Radiation Protection (H.A.R.P.) Module.

* At least one year of full time work experience as a certified or certifiable Dental Assistant.

* Must provide proof of certification or eligibility for certification by the Ontario Dental Nurses and Assistants Association.

It is not disputed that the grievor meets all of these requirements.

The Calendar goes on to give further details about admission to the Dental Hygiene Program:

RECOMMENDED ACADEMIC PREPARATION

* Grade 13/OAC Biology and/or Chemistry are highly recommended as a valuable preparation for success in this program.

RECOMMENDED PERSONAL PREPARATION

* Students should develop personal responsibility, emotional maturity and decision making skills. The ability to work independently without direct supervision is a definite asset. Above average interpersonal skills will also complement the successful applicant.

APPLICANT SELECTION CRITERIA

Where the number of eligible applicants exceeds the available places in the program, the Applicant Selection Criteria will be:

A. The General Selection Criteria applicable to all programs (See the "Admission to the College" section of this publication).

B. Achievement in the academic Program Eligibility Criteria stated above.

C. Achievement in the RECOMMENDED ACADEMIC PREPARATION.

D. Assessment of personal suitability based on life experience as indicated by:

* Supplementary Form (only applicants who achieve a high score on their academic record will be assessed on their Supplementary Form).

The practice followed by the College in admitting applicants to this program is as follows. First, it eliminates those applicants who do not meet the Program Eligibility Criteria. Then, it ranks all remaining applicants according to a Grid that gives credit for academic grades achieved in the required courses, and also for meeting the "recommended academic preparation", *i.e.* Grade 13/OAC Biology and Chemistry. Finally, it examines the "personal suitability based on life experience" of the top 75 remaining applicants, and makes offers of admission to those students, starting from the top of the list. In the fall of 1991, the grievor failed to make the final list of 75 applicants. Although she had Grade 13 Biology to her credit, she only had Grade 12 Chemistry. This, it seems, is the main reason for no offer being made to her. A previous application, in the fall of 1990, was also rejected.

The parties' positions

The union's principal argument was that Article 18.03 entitled employees to admission provided they meet the "normal entrance and admission requirements", which, for the Dental Hygiene Program, meant the Program Eligibility Criteria quoted above. Article 18.03, according to the union, did not require qualified employees to "compete" for places in over-subscribed programs with other applicants. The union noted that Article 18 is headed "Professional Development Leave"; from this, it could be inferred that the purpose of Article 18.03 was not limited to allowing employees to take courses for a nominal fee, but included guaranteeing that qualified employees would in fact be admitted to programs.

The union's alternative argument was that the process for admitting applicants to the Dental Hygiene Program was defective, in that it did not comply with certain requirements of the College's Calendar. In particular, the Calendar states that "No Ontario Academic Course (OAC) or Grade 13 Course will be required" as a program eligibility criterion or as an applicant selection criterion; this is said to be "in accordance with Ministry policy". Yet, according to the union, the College was in fact ranking applicants according to whether they had Grade 13 Chemistry and Biology or not. In addition, the Calendar states that the Admissions Grid "will include all academic and non-academic selection criteria". Yet, according to the union, the factor of "personal suitability based on life experience" was only used in the case of the 75 students who ranked highest on the academic components of the criteria. The union argued that the criteria used by the College could not be regarded as "normal" since they were inconsistent with the Calendar.

The employer replied that the word "normal" in Article 18.03 did not mean "minimum". The collective agreement provided that employees would gain admission to programs if they met the standards normally used to determine admission. The normal approach, in the case of over-subscribed programs, involved the application of the Grid. The employer conceded that there might be some ambiguity in the Calendar, resulting from different statements in the document, but the procedure it followed was in general compliance with the Calendar. In any event, its procedure was applied in the same way to all applicants and that procedure therefore constituted the "normal" one.

Reasons for decision

Employees are entitled, under Article 18.03, to "take... programs" if they "meet the normal entrance and admission requirements". The question raised by the grievance is whether, in the case of an over-subscribed program, an employee must compete with other applicants and be admitted to the program in order to be permitted to take it.

The language of Article 18.03, in our view, is quite clear. The Article does not require that employees submit an application for admission, or that, procedurally, they be treated as other applicants. The agreement is limited to the substantive aspects of the admission process: employees "must meet the normal entrance and admission requirements". As far as process is concerned, the agreement does not require that the regular process be followed. In our view, once an employee wishing to take a program demonstrates that he or she is qualified to do so, by reason of meeting the entrance and admission requirements, the employer is bound to permit the employee to take the program.

The fact that the normal admission process does not apply to employees has an important bearing on the meaning of the term "normal entrance and admission requirements". These requirements must be limited to objective and constant factors, ones that are fixed and easily ascertained. It cannot be intended to encompass criteria whose application could only be determined through the normal admission process. It is obvious that whether or not a particular applicant is admitted as a result of the normal admission process will depend on the strength of the competition, which fluctuates from year to year and which could only be assessed through that process. We have therefore concluded that the ranking of applicants for admission, by means of the Grid, while part of the normal admission process, cannot have been intended to apply to employees wishing to take programs.

This conclusion is supported by the use of the verb "meet" in Article 18.03, which suggests that employees wishing to take a program must attain a particular objective standard. According to Webster's New Collegiate Dictionary, the word means (among other things) "to conform to esp. with exactitude and precision". The word is not a particularly appropriate one to describe the phenomenon of competition that is a feature of the regular admissions procedure.

It is not disputed that the grievor met the program eligibility criteria for the Dental Hygiene Program. In our view, this means that she has "[met] the normal entrance and admission requirements". The employer violated the collective agreement when it refused to allow her to take this program in the 1991-92 year.

The appropriate remedy, in our view, is the one sought by the grievor, namely that she be allowed to take this program starting in the fall of 1992, and we so order.

DATED at Ottawa, Ontario, this 17th day of March 1992.

Michael Bendel,
Chair

concurI dissent
(dissent attached)

Jacqueline G. Campbell,
Employer Nominee

I concur see

Brian Switzman,
Union Nominee

Dissent

I have reviewed the majority award of the Board and cannot concur with the decision.

In my opinion the question raised by the grievance is whether the language of Article 18.03 confers upon an employee a privileged right to admission beyond that which may exist for other applicants.

The Board's decision is that the language of Article 18.03 does not require an employee to submit to the regular process for admission if that employee meets the entrance and admission requirements for the program. The Board further suggests that the Article does not require that an employee submit to the normal admission process.

The Union's position is that Article 18.03 guarantees admission where an employee meets minimum qualifications as determined by the program eligibility criteria and that no comparison of employees was contemplated. The Employer contends that Article 18.03 does not confer any privileged entrance and admission status to employees but rather requires them to meet the same eligibility criteria and undergo the same evaluation process as for all other applicants.

In my opinion, the use of the word "normal" rather than "minimum" supports the Employer's position. The evidence before the Board was that the "normal" process for this and other oversubscribed programs involved both an assessment against the program eligibility criteria and the applicant selection criteria.

The use of the word "normal" (defined in the Oxford Dictionary as "usual, regular, typical") is indicative that the parties did not contemplate that bargaining unit employees were to be given privileged or guaranteed status in the admission process but rather were to be treated in the same way as other applicants. The absence of wording to the contrary only reinforces this position.

I would therefore have dismissed the grievance.