

May 4/92

Between: Algonquin College
and
OPSEU Local 415

Re: Workload Complaint of Nursing Professors

Before: K. G. O'Neil

Hearing: April 23, 1992

Present: Group of Nursing Professors and
Mr. Aksim for the Professors

Mr. Warburton, Ms. Ada and Wolfe for the
College.

AWARD

This is a group complaint from the nursing faculty which claims that their workload is inequitable compared to professors in other programs and that they are not being assigned 50 minute hours in the clinical component of their workload.

Shortly after receiving the complaint in November, 1991, and at the hearing before me, the employer raised the timeliness of the complaint in that it was raised concerning matters relating to SWF's covering the Spring of 1991 which had been signed off by the professors as agreed workloads some six months before. In all the circumstances of this case, I have decided to entertain the matter, but have taken this problem into account in considering what remedy might be appropriate.

I will deal first with the general claim of inequitable workload. The nurses have carefully documented their complaint and demonstrated that many of them are scheduled to teach in several more weeks of the year than professors in some other programs. They have also demonstrated that they are assigned more teaching contact hours than many other faculty in many weeks. They acknowledge that none of their assignments violate any of the numerical norms in the workload formula, but ask for redress under Article 4.02(3)(a) which reads, referring to the Workload Monitoring Group:

The functions of the Group shall include:

(i) reviewing workload assignment in general at the College and resolving apparent inequitable assignments.

I find I must dismiss this portion of the complaint. Despite that fact that the discussion indicated that the nursing faculty may indeed be working more than their colleagues in other programs, there is nothing in the collective agreement or the workload formula which gives me the power to direct the College to deliver the nursing program in two 16 week semesters or to cease assigning faculty in May and June (the remedies sought on this portion of the complaint) where none of the parameters set out in the workload formula are violated.

In deciding this portion of the complaint, I have also considered Article 4.02 (5) (a), which reads as follows:

If following a review by the Group of an individual workload assignment which has been forwarded to the Group, the matter is not resolved, the teacher shall be so advised in writing. The matter may then be referred by the teacher to a Workload Resolution Arbitrator (WRA) provided under the agreement... (emphasis added)

When this is read together with Article 4.02(3)(a), set out above, I have some doubt that the parties intended the WRA to be doing College-wide reviews of inequitable assignments. It seems more likely that was intended to be a function of the Workload Monitoring Group, since it is listed in their functions, while the function of the WRA is specifically limited to the review of individual SWF problems. Although Article 4.02(6) makes this process referable to more than one teacher, and therefore group complaints, such as this one, is something the parties contemplated, the aspect of it which invites me to decide what is equitable among several difference programs on a global level, is not, in my view, what the parties had in mind.

I should say, however, that the point raised in the last paragraph is is not the major reason I have denied this portion of the complaint. The major reason is that there is no authority in the collective agreement to grant the remedies sought. Although my authority is open-ended in that I am directed simply to "issue a written award ...resolving the matter" (Article 4.02(6)(a)), this must be read in light of the formula the parties designed to govern workload. It specifically authorizes scheduling of teaching contact hours in up to 36 weeks, over ten months of the year. Nonetheless, the College has now been made very aware of the concerns of the nursing faculty. If they are not addressed in an adequate fashion, there is the perennial risk of declining


quality of education and morale as well as the potential loss of dedicated faculty, as well as further requests for the WMG to deal with the overall college's balance of workload under Article 4.02 (3)(a)(i).

On the question of the fifty-minute hour in the clinical component, the discussion persuaded me that a large number of clinical instructors are not engaged in "the voluntary extension of the teaching contact hour beyond fifty (50) minutes", to quote Article 4.01(3), when they do not take breaks. Rather, it was clear that many did not realize they were allowed to arrange fifty minute hours, or their equivalent over the day. Further, the structure of the ward setting and the multiple responsibilities of the nursing faculty, including, but not limited to, being on call at all times, strains the notion of voluntary extension of the fifty minute hour to the breaking point, in many of the situations mentioned. Therefore, I find merit in this portion of the complaint.

However, this matter was not raised in a fashion which would have allowed management to do something about it before the workloads were implemented, as the time lines in the collective agreement contemplate. Thus, there was no opportunity for management to consider the best way to give credit for the lack of a fifty minute hour, where warranted, before the workload was in place. It is also clear to me that the diversity of the clinical settings involved requires a response to this problem done with fine tuning which I am not in a position to do. For these reasons, my award in this matter is prospective only.

The College is hereby directed to consult with the faculty on the issue of the 50 minute hour in the clinical setting. After having done so, the College is to determine a method for acknowledging the reality of the sixty minute teaching hour in those clinical settings in which it is not realistic to say that the faculty can voluntarily choose to take or not take the equivalent of a ten minute break in each hour, and to build this into the SWF's for the Fall of 1992. I will remain seized if there is any problem implementing this portion of the award.

Dated this 4th day of May 1992



K. G. O'Neil

Award - May 4/92
Implementation -
Dec. 18/92

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Re: Workload Complaint of Nursing Professors

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IMPLEMENTATION AWARD

By decision dated May 4, 1992, I allowed the nursing professors workload complaint in part, in relation to the problem of achieving a 50 minute teaching hour in the clinical setting, and referred the matter of implementation to the management after consultation with the nursing faculty. Management attempted to comply with those directives by consulting with the faculty both individually and collectively (and had started consultation on its own initiative before the award was received). Specific proposals were distributed. The complainants are not satisfied with the proposals put out, and the parties have asked me to deal with the matter. I thank both sides for their carefully prepared written briefs which I have read and considered, and for the amount of time they have spent in trying to resolve this difficult issue.

A few general observations seem appropriate. The most obvious is that the workload formula does not specifically provide for situations like the clinical setting. One might wish it had, or that future negotiators might. However, for the present, analogy to the workload formula will have to suffice.

Another general observation which seems warranted is that no one, neither management or faculty, is suggesting that students be taught to practice 50 minute per hour nursing. I do not take management's position that the students are entitled to fifty, not sixty, minute teaching hours to be saying this. Rather, I took it as an acknowledgement that students in all settings get a teaching hour that involves 50 minutes of teaching and up to 10 minutes of break, as provided in the collective agreement. Indeed, it is difficult to see how the collective agreement can be implemented if the students are entitled to sixty minutes of instruction per hour, but management is required by the collective agreement to schedule fifty minute teaching hours for the faculty.

Further, it is within management's rights to make decisions about the content of the clinical experience within the requirements of the College of Nurses and other relevant

authorities. Defining the content of the clinical teaching hour is part of this. If making this a reality means an adjustment in the expectations of the agencies involved as to the length of time students are actually doing patient care, that is another matter entirely and something that may need attention. If there are risks in this of declining quality of education and or care, as asserted by the faculty, they are within management's right to take, and part of their responsibility. I specifically refrain from commenting on the merits of those assertions; it is not my role as a workload arbitrator.

Dealing with the specifics of the remaining dispute between the parties, the underlying problem seems to be that the professors do not agree with management about the feasibility of actually providing even the equivalent of a fifty minute hour, let alone an actual fifty minute hour, in the relevant clinical settings. From both the original hearing and the briefs, it is clear that faculty are of the view that the clinical setting will never realistically afford the appropriate breaks, and thus compensation in teaching contact hours on the basis that breaks are not possible is the only answer with the exception of a few agreed settings as well as orientation and conference time.

Although management has acknowledged that there are some settings where breaks cannot be scheduled, it is clear that it is their view that it is more the exception than the rule. They have listed as a principle to be included in the solution to this problem, that break time should be provided. I find this to be an appropriate starting place, since the collective agreement provides for breaks. For each 50 minutes of teaching, ten minutes of non-teaching time must be found. For each hour in which no break is taken, the same ratio yields 12 minutes of entitlement to break equivalent time.

Where should the break equivalent time be found? The parties are agreed that it is not to be found in an actual ten minute break each hour. Management's proposals, in my view, are by and large a reasonable range of options. They have the advantage of allowing fair scope for professional judgement and preference of faculty in the juggling of the diverse demands of the clinical settings. This is in my view clearly preferable to other possibilities, such as imposing a break schedule. Management's proposals recognize that much of the demand on faculty is continuous in not requiring the breaks to be taken each hour, which would likely be incompatible with the rhythm of the clinical settings in issue. But they do require the professor to "break" from student contact in some way, which is consistent with the idea that this should be solved by analogy to the workload formula which requires break time.

It is clear to me from all the materials that there is some break and/or lunch time as part of the routine in all of the agencies. The faculty has also acknowledged that orientation and conference time are areas in which breaks can be accommodated. What cannot be handled by actual break time should be handled within the rubric of managements proposals, subject to what is set out below.

There remains the problem, unresolved in the briefs, as to whether a faculty member is to be available to students during the break equivalent times. It seems clear from the leaving early proposals, that management did not intend faculty to be available during those times. However, when management comments that in the classroom setting, if students continue to require assistance, professors in all programs often forego their break time, it indicates that there is a remaining gray area. It is one thing for faculty to have discussions and consultations with students on break. It is quite different to be constantly on call to assist a student to give patient care during breaks, which is what the discussion at the original hearing indicated was then the case. If management's proposals are to work, it has to be made clear to the faculty and agencies involved whether or not faculty are available to do this work in the arranged break time. If faculty is spending break time assisting students to give patient care, and cannot leave the building, it is my view that this is not realistically speaking break time. I am aware from the tone of the discussion that it may require considerable cultural change for the faculty as well as the agencies to make actual breaks a reality, but I have every confidence that it can be made to work if the proper arrangements are made with the agencies. In this regard, I am not of the view that the current guidelines speak to the issue of breaks directly enough to solve this portion of the problem.

It should be made clear that not every contact between a professor and a student on break time means the break did not occur. Conversations which fall into the category of "the teacher staying after the period to consult with students" are specifically exempted by Article 4.01 (3) from consideration. The standard five hour complementary allocation in Article 4.01 (6) is meant to compensate for routine out-of-class assistance.

The exam week option indicates a willingness to assign teaching contact hours to make up lost break time which cannot be otherwise accommodated. The teachers do not see it as adequate, because of the difference between the parties on whether this time should be recouped as straight time or teaching contact hour time. The college is willing to attribute 16 teaching hours assigned but not delivered. This, together with the preparation and evaluation factor, comes to 29.44 hours attributed, which mathematically comes

out to replacing the lost break time, for the example given at the bottom of p. 2 of management brief, at straight time with a small margin. This does not take account of the fact that when teachers are actually unable to schedule breaks or their equivalent, they will have spent more than 50 minutes in student contact in each clinical hour.

The faculty's proposal goes further. It asks that with the exception of conference and orientation time, it be recognized that breaktime is not taken in the clinical setting. This proposal gives no credence to the idea that it is possible to do what management has now given permission to do, which is arrange their time so that they will actually have time free from student contact within the assigned clinical days. Actual break time is the preferred option from the point of view of both analogy to the workload formula and reduction of accumulated stress on the faculty.

When I made my award in April, the discussion indicated both that faculty were not aware of any right they may then have had to rearrange their time to create breaks and that the actual situation was such that the nursing faculty were subject to expectations which meant it was not realistic to say they were voluntarily foregoing breaks. Management's current proposals indicate that its expectations are quite different than the reality expressed at that time. Whether the provisions for actual break time will translate into reality, is something that in my view has to be tried to see if it is feasible. Exhibit 26 dates from after the award and indicates that an "informal" arrangement will not work at the children's hospital. This was only shortly after the award; it does not seem to me that management and faculty had by then had time to make clear to the agencies what the expectations of the College were as to breaks and break equivalent time. I find it appropriate to give the parties the opportunity to make a real effort to change the situation to provide actual break time.

In this light, the "exam week example" option should be a last resort, since it is not nearly as close to the scheme of the workload formula as the options which provide actual break time. However, when it is necessary to resort to that option because arrangements to provide actual break time are unsuccessful, hours for breaks not taken should be attributed in a ratio of 1:5. The competing considerations as to the level of attributed hours come from the workload formula. If these are to be atypical circumstances, the equivalent hours might be allocated on an hour for hour basis by analogy to the atypical circumstances clause (Article 4.01(7)(b)). However, if arrangements by management and faculty are not possible to create actual break time, then this is tantamount to an expectation that the teachers spend more teaching time. On balance, it appears that hours to recoup break equivalency in the situations where serious efforts are made to create

real break time and fail, will be properly attributed as teaching contact hours with the attribution of evaluation and preparation time. This may serve as an incentive for the authority of management to be brought to bear on the agencies where necessary to revise whatever expectations they have which contribute to the situations where breaks are made unrealistic. However, I recognize that there may continue to be circumstances which are mixed, where for example, a faculty member is on call during lunch, but is not likely to be involved in actual student contact on all or even a majority of that time. In cases such as this, since the SWF's are to be done in advance, attribution can be done on an estimated basis on the basis of a mixed allocation of straight time and teaching contact hours (with attribution of preparation and evaluation time for the latter). If management and the individual faculty member are not able to agree on the appropriate mix, management has the right to attribute, subject to the processes in the workload formula.

To summarize, management's proposals, as set out in their paper OPTIONS TO ADDRESS THE 60 MINUTE CLINICAL HOUR and the memo of October 2, 1992 on the "exam week example", are an acceptable basis for implementing my award with the following modifications. Emphasis should be on making arrangements with the agencies to actually provide break time over the course of the clinical days. If these efforts fail, additional hours should be attributed as teaching contact hours in an amount equivalent to time spent in teaching contact which should have been break time, with the attribution of preparation and evaluation factors. As management has already acknowledged, break week is not an appropriate time for assigning hours to address the sixty minute clinical hour. Where the situation is mixed, attribution should be appropriately mixed as discussed above. I do not find it appropriate in the circumstances of this case to make a blanket retroactive award. If there are settings in which an attempt has been made to provide actual break time and it has proved to be not feasible, attribution for the fall term would be appropriate.

I do not want to leave this matter without addressing the concern expressed in the faculty brief to the effect that it may be unsafe to take breaks, and that professional credibility will suffer if the faculty is not available as before. I have tried to make clear above that providing the equivalent of break time as contemplated by the collective agreement may mean change. If it is handled in advance in a professional manner with clarity about what the nursing faculty are in a position to offer both to the students and the agency, there is a good chance that it will work without jeopardizing either safety or credibility.

Dated this 18th day of December, 1992

K. O'Neil