

IN THE MATTER OF A WORKLOAD ARBITRATION

BETWEEN:

MOHAWK COLLEGE

- The Employer

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION,
LOCAL 240

- The Union

AND IN THE MATTER of the workload complaint of Monica Crawford

Workload Resolution Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Fred Deys

- Director, Academic Staff Relations

Bill Brimley

- Associate Dean, Faculty of Engineering
Technology

On behalf of the Union:

Sam Maga

- President, Local 240

Monica Crawford

- Complainant

Hearing held September 12, 2011, in Hamilton, Ontario.

AWARD

INTRODUCTION

The issue in this complaint is whether this college teacher “unreasonably” withheld her agreement to perform overtime work for the 2011 fall term.

BACKGROUND

The collective agreement between the Ontario Public Service Employees Union and the various colleges in Ontario, including the Employer, Mohawk College, regulates the work of teachers. Monica Crawford is a teacher at Mohawk College working in the Department of Chemical and Environmental Technology.

The collective agreement contains detailed provisions for calculating the hours of work for teaching duties. In general, the maximum total workload is 44 hours per week.

The collective agreement also has a process for the assignment of duties. A supervisor is to prepare a Standard Workload Form with proposed duties and submit the form to the teacher.

At the hearing the parties made submissions and, in so doing, outlined the key facts of this dispute. There was no disagreement on any fact necessary for the resolution of this matter.

May 24, 2011, Bill Brimley, the Associate Dean and Ms Crawford’s supervisor, provided Ms Crawford with a workload for the 14 week fall term. That workload included two sections of a Chemistry lecture course and four sections of a Chemistry lab course. The total workload was 43.750 hours per week. The cover memo indicated that Ms Crawford should raise any errors or questions with him.

May 26 Ms Crawford responded with two concerns about the proposed workload. She indicated that the amount of preparation time attributed for one of the courses was incorrect and she noted that the work she performed as course monitor (a coordinating function) was not included.

That same day Dr. Brimley corrected the error regarding the amount of preparation time. In addition, Dr. Brimley added 1.5 hours per week for Ms Crawford's work as course monitor. The new workload was 46.250 hours per week.

Under the collective agreement a teacher with concerns about a proposed workload has three working days in which to complain. Complaints are to be heard by the joint Workload Monitoring Group.

Monday May 30 Ms Crawford noted that her workload involved overtime and asked that the matter be considered by the Workload Monitoring Group. She wrote to Dr. Brimley that day and indicated that she "was not anticipating nor wanting overtime hours." She noted that in the past she had taught a total of five sections of the two courses and had found that workload "difficult to manage as both courses have weekly manual marking." She indicated that she felt the fourth lab section would "add an unmanageable amount of work". She advised that she was prepared to do the monitoring work. Finally, Ms Crawford suggested that one lab section be removed, a change which would have left her with no overtime work.

For reasons over which the parties disagreed, the Workload Monitoring Group did not meet to discuss this matter. Ms Crawford's complaint was referred to arbitration.

At the arbitration Ms Crawford indicated that she had two additional reasons for declining overtime. She has great demands in her family life as she is married with two children in

high school and her husband travels extensively, so that she has primary responsibility for the children. She said that her children were active in extra-curricular activities at school and her family lived some 30 minutes by car from the school. At least one child was in the school band and needed a ride to band practice twice per week in the morning before school. One child was involved in the Duke of Edinburgh award program which involved many activities outside school hours. She was the parent who would drive when she could not arrange car-pooling for her children.

Secondly, Ms Crawford indicated that her family did not have money worries so that she said she did not require the overtime pay.

Dr. Brimley said that when Ms Crawford noted the error in the amount of preparation time he quickly corrected it. He knew that the correction put Ms Crawford's workload into an overtime situation. He also said he had agreed with Ms Crawford that she should have a time allowance for the monitoring work. That change pushed Ms Crawford's workload even higher. Dr. Brimley said that he did not have concerns about this new workload and he gave no consideration to changing the workload to keep it under 44 hours. He said that it was very rare for a teacher to decline overtime.

PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the key provisions of the parties' collective agreement:

Article 11 WORKLOAD

...
11.01 B 1 Total workload assigned and attributed by the College to a teacher shall not exceed 44 hours in any week
...

11.01 J1 Notwithstanding the above, overtime worked by a teacher shall not exceed one teaching contact hour in any one week or three total workload hours in any one week and shall be voluntary.

...

11.01 J3 All such voluntary overtime agreements, which shall not be unreasonably withheld, shall be set out in writing on the SWF for that period by the College and filed with the teacher and the Union Local within ten days.

...

UNION POSITION

The Union noted that the Employer gave little consideration to the fact that the workload was over 44 hours and gave no consideration to reducing the total workload to 44 or fewer hours before issuing the revised Standard Workload Form.

When Ms Crawford received the revised Form, she felt that the six sections of the two different Chemistry courses and the total of 46.250 workload hours was unmanageable. As she also had family responsibilities and preferred to spend time on those family responsibilities rather than on overtime work, she declined to agree to work overtime. That decision was reasonable.

The Union said that both the Union and the teachers routinely accommodated unexpected situations in which overtime might be needed - situations such as the sudden illness of a teacher - but that 44 hours was the normal workload limit. The Employer should have attempted to arrange a workload without overtime.

The Union referred me to definitions of "voluntary" and "reasonable" and to an extract from Mitchnick and Etherington, *Labour Arbitration in Canada*, dealing with "Voluntary and Compulsory Overtime".

As for remedy, the Union sought a workload without overtime for the 2011 fall term.

EMPLOYER POSITION

The Employer submitted that the issue was whether Ms Crawford had unreasonably withheld her agreement to work the proposed overtime. It said she had.

The Employer noted that under this collective agreement teachers have considerable flexibility in scheduling when and where they perform their work. In particular, the class preparation and the marking can be done at a time and in a location of the teacher's choosing. Ms Crawford would therefore have considerable control over much of her workload and it was unreasonable for her to withhold agreement.

The Employer noted that it had offered to remove the monitoring duties of 1.5 hours per week.

The Employer said that it could arrange for overtime, that a teacher could not "unreasonably" withhold agreement to do overtime work. The Employer noted several other places in the collective agreement in which the concept of not unreasonably withholding agreement arose - some where the Employer could not unreasonably withhold agreement and some in which a teacher could not unreasonably withhold agreement - and said that in some of those places the standard that must be met before agreement could be withheld was quite high.

In any event, the Employer said that the workload on any Standard Workload Form was not exact. If the Employer came close to the 44 hour limit, that should be acceptable to a teacher.

The Employer asked that the complaint be dismissed.

CONCLUSIONS

The issue is narrow:

Did Ms Crawford “unreasonably” withhold her agreement to work the proposed overtime?

Whether a refusal to agree to overtime is reasonable must be considered, firstly, in the context of the other provisions of the collective agreement and, secondly, in the context of the Employer’s reasons for the request and the reasons for the teacher’s refusal.

Under this collective agreement the norm is a workload of 44 or fewer hours (see Article 11.01 B 1, above). Later in the collective agreement there are provisions which address the possibility of overtime but overtime is limited to one teaching contact hour per week or three total hours per week (see Article 11.01 J 1, above). Moreover, even that limited overtime is expressly said to be “voluntary,” such that the teacher must agree to any Employer proposal for overtime work (also Article 11.01 J 1, above). Finally, the collective agreement provides that a teacher cannot unreasonably withhold agreement when asked to do overtime work (see Article 11.01 J 3, above).

The agreement sets 44 hours a week as the normal maximum workload, but allows a teacher and the Employer to agree to a workload of up to 47 hours on a voluntary basis. “Voluntary” initially suggests that the teacher must be free of Employer compulsion to perform overtime, that the teacher must do the overtime of the teacher’s free will. However, the later provision states that the teacher cannot “unreasonably” withhold agreement. I view the use of “unreasonably” as indicating that any acceptable basis for withholding agreement must be one which is motivated by common sense reasons, reasons which meet a test of acceptability. To restate this concept in more positive language, I take the “unreasonably” withheld

provision to clarify the meaning of voluntary and to indicate that a teacher:

1. If asked to perform overtime work, must consider the request; and,
2. If declining, must have a reasoned and reasonable basis for saying no.

As for the other unreasonably withheld provisions of the collective agreement to which the Employer referred, those provisions provide no assistance in interpreting this section. For example, in Article 11.01 H 1 each teacher is allowed 10 days for professional development. The arrangements for taking those days are to be made following discussion between the teacher and the supervisor and those arrangements are subject to an agreement between the two "and such agreement shall not be unreasonably withheld." (Article 11.01 H 3). While the wording is similar, the underlying substantive provisions are not. There is no suggestion that the teacher has special influence on when the professional days can be taken, no provision which would be parallel to overtime work being voluntary.

I now turn to this request and response.

As for the request, there was no clear indication why the Employer wanted Ms Crawford to work overtime. The same duties had been included in the first Standard Workload Form and the workload appeared then to be under 44 hours. But when the error in the preparation time and the omission of the monitoring work were noted and corrected, the workload was 46.250 hours, in excess of the normal 44 hour maximum. After it became clear that this proposed workload involved overtime, neither Dr. Brimley nor anyone else for the Employer gave any consideration to other ways of dealing with this overtime work. As Dr. Brimley noted, it is very rare for a teacher to decline overtime. I was left with the impression that the willingness of most teachers to work paid overtime was the primary reason that no active consideration was given to alternate arrangements. At the hearing there was no suggestion that the Employer was unable to offer these courses in another way, such as by hiring a part time

instructor. In any event, the request was made without any particular reason for the proposed overtime.

As for the response, Ms Crawford felt that the six sections in total - as distinct from the five sections she had been teaching previously - was an unmanageable workload especially given the weekly marking in each section. She also had family responsibilities she needed to fulfill and, as she noted, she had no particular money worries which would motivate her to earn overtime pay from overtime work. As overtime is voluntary, she declined to agree.

Ms Crawford clearly considered the request. It was not a knee-jerk or automatic response. It was a reasoned response.

Ms Crawford's decision to withhold agreement was based on three reasons - her concern about the workload of the six sections, her concern about her family responsibilities, and her lack of financial need.

Do Ms Crawford's reasons meet a test of reasonableness? Were her reasons sensible in these circumstances?

Ms Crawford had found her workload during the previous fall with less than a 44 hour workload involving five sections of these same two courses to be to "difficult to manage". She declined to take on overtime work involving six sections as she felt the sixth section would "add an unmanageable amount of work". I think it is sensible for a professional teacher such as Ms Crawford not to voluntarily take on work which she views as unmanageable. It follows that, in these circumstances, I conclude that it was reasonable for Ms Crawford to withhold her agreement to this overtime based on her concern about the amount of work.

As for the second reason, I think it sensible for a teacher to consider responsibilities outside work in responding to a proposal for overtime. Unlike some collective agreements in which overtime is mandatory, this collective agreement does not require teachers to work overtime. It is said to be voluntary but with the proviso that a teacher's agreement cannot be unreasonably withheld. Might a hypothetical "reasonable teacher" decide that rather than teach overtime for pay, he or she would prefer to spend time on another activity?

I am sure that some teachers have responsibilities for aged parents, others including Ms Crawford have responsibilities for children, and still others are active in community organizations, etc., and wish to devote time and energy to those endeavours. In these situations, I think a reasonable teacher may well decide that he or she prefers to devote available time to one of these activities rather than to do overtime work. In particular, I conclude that it was reasonable for Ms Crawford to decide that she and her family would be better served if she withheld her agreement to the overtime work.

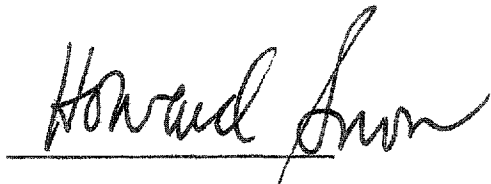
Thirdly, Ms Crawford did not require the overtime pay. In this system of voluntary paid overtime it is reasonable for a teacher to consider the issue of pay in making a decision to accept or to decline overtime. While a teacher's lack of financial need may not on its own be sufficient reason for turning down an Employer's overtime request, in this instance it supports Ms Crawford's decision to decline the overtime.

I find that Ms Crawford's decision to decline this voluntary overtime work was not unreasonable, that she did not "unreasonably" withhold her agreement. Her workload complaint is, therefore, allowed. I direct the Employer to revise her workload to consist of 44 or fewer hours of work for the 2011 fall term.

Finally, I retain jurisdiction to deal with any issues which may arise in the implementation

of this award.

Dated in London, Ontario, this 23rd day of September, 2011.

A handwritten signature in cursive script that reads "Howard Snow". The signature is written in black ink and is positioned above a horizontal line.

Howard Snow, Workload Resolution Arbitrator