

IN THE MATTER OF A WORKLOAD ARBITRATION

BETWEEN

CONESTOGA COLLEGE (“COLLEGE”)

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 237 (“UNION”)

AND IN THE MATTER OF THE WORKLOAD RESOLUTION ARBITRATION OF
PROFESSOR RUDY HOFER

WORKLOAD RESOLUTION ARBITRATOR: NELSON ROLAND

FOR THE COLLEGE: WALLACE KENNY, COUNSEL, DEBRA MARSHALL, EXECUTIVE
DIRECTOR HR, AND MITCHEL WAWZONEK, CHAIR ENGINEERING & IT

FOR THE COLLEGE: LANA-LEE HARDACRE, LOCAL ACADEMIC PRESIDENT AND
PROFESSOR RUDY HOFER, SCHOOL OF ENGINEERING

HEARING HELD IN KITCHENER, ONTARIO ON DECEMBER 10, 2010

I was appointed Workload Resolution Arbitrator by the College and the Union to hear the workload complaint of Professor Rudy Hofer.

The following decision and reasons are the result of the “informal” procedure mandated in sub article 11.05 F5 of the Academic Employees Collective Agreement.

Professor Hofer teaches in Engineering and IT. Professor Hofer complains that the workload set out in His Standard Workload Form (“SWF”) violates the provisions of the “WORKLOAD” ARTICLE 11 of the Collective Agreement.

The part of the SWF that gives rise to first part of the complaint is in the column designated “COURSE IDENT.” which reads as follows:

Eece1505 AC Circuits-Lec
Eece1505 AC Circuits-Lec
Eece1505 AC Circuits-Lab
Eece1505 AC Circuits-Lab
Eece1505 AC Circuits-Lab
Eece2470 Project Lab 4-Lab
Eece2470 Project Lab 4-Lab
Eece2470 Project Lab 4-Lab

Each “line” is assigned 2 Teaching Contact Hours. “Lec” stands for “Lecture” and “Lab” stands for “Laboratory”. “Line” 1 and 3 are designated “New” in the SWF and received a corresponding 11.01 D1 ratio of 1: 1.10. Line 6 received an “Established B” and the rest, “Repeat B” Type designations, each with the corresponding hourly attribution ratios.

Professor Hofer concisely stated his complaint on the “WORKLOAD COMPLAINT FORM” under the category “other” as follows:

“I have been assigned 8 sections. The top of my SWF incorrectly states the number as 5. I should have no more than six sections a per Art 11.01D2. The 8 sections I have been assigned are unreasonable.

I have been assigned a new course, namely EECE 1505 AC Circuits. The preparation required to teach new courses requires more time. It is unreasonable to expect me to accept a load beyond the limit of six sections as set out in 11.01D2 when assigned a new course.

Moreover I have been assigned only 3 of the 4 labs for this course. If a part-time instructor is assigned I will require additional time to be assigned in order to work [with (sic)] that faculty member to insure that students are successful.”

The College asserted that the number of different sections indicated on the SWF (5) is correct thereby denying Professor Hofer’s assertion of eight.

During the various arguments several sub articles were referred to by the parties, in addition to 11.01D2. These sub articles, including 11.01D2, are as follows:

11.01 D2 No more than four different course preparations or six different sections shall be assigned to a teacher in a given week except by voluntary agreement which shall not be unreasonably withheld.

11.01 D3 (v) “Repeat A” refers to another section which the teacher is teaching concurrently with the same course for which hours of preparation have been attributed under “New” or “Established”, but to students in a different program or year of study.

11.01 D3 (vi) “Repeat B” refers to another section which the teacher is teaching concurrently with the same course for which hours of preparation have been attributed under “New” or “Established” or “Repeat A” to students in the same program and year of study.

11.01 F1 Complementary functions appropriate to the professional role of the teacher may be assigned to a teacher by the College. Hours for such functions shall be attributed on an hour for hour basis.

An allowance of a minimum of six hours of the 44 hour maximum weekly total shall be attributed as follows:

Four hours for routine out-of-class assistance to individual students

Two hours for normal administrative tasks.

The teacher shall inform his/her students of availability for out-of class assistance in keeping with the academic needs of students.

11.01 G2 Where there are atypical circumstances affecting the workload of a teacher or group of teachers which are not adequately reflected in the Article 11 Workload, additional hours shall be attributed, following discussion between each teacher individually and the supervisor, on an hour for hour basis.

It is significant and, for this case, problematic that the term “section”, although used extensively throughout Article 11 and especially in sub article 11.01, is nowhere explicitly defined.

Number of Sections

After hearing the arguments of the parties, it became clear that the fine issue of the number of sections assigned to Professor Hofer comes down to a dispute as to whether a lab having the same course number (here 1505) counts as a section where the same professor is assigned the lecture having the same course number (again, here 1505). The Union argued that each lab is a section irrespective of whether the corresponding lecture is taught by the same professor (hence the counting of lines, in this case, to come up with the number of sections), while the College asserted that in the present circumstance, only the lecture counts as a section and the corresponding lab in the same course does not, when said lab is taught by the same person. This was characterized by the College as a “breakout” lab where the same students would attend both the lecture and the lab, both of which would be taught by the same Professor. There is no dispute that stand alone labs, i.e., labs that are not associated with lectures taught by the same professor, e.g., in this case, Eece 2740 labs, are to count as discrete sections.

The College reviewed the various sub articles in which the term “section” appears and drew attention to sub articles 11.01 D3 (v) and (vi), as particular examples, in an effort to shed light on the meaning of “section.” These sub articles define “Repeat A” and “Repeat B”, respectively, “For the purposes of the formula” that is set out in 11.01 D1. The distinction in the formula is that A

receives a 1: 0.60 hours attribution whereas B gets only 1: 0.45. It was argued that by a careful reading of (v) and (vi) one must conclude that that for separate sections to exist they must contain “different” students. In the cases of (v) and (vi), the students are different by virtue of them being (v) “in a different program or year of study” and (vi) “in the same program and year of study”. Regrettably, this comparison does nothing to define “section” *per se*. Rather it simply allows to distinguish types of sections, viz. Repeat A and Repeat B for the purposes of ratios in the formula. If there is a reference to “different students” it is not explicit and the difference of the students relates of to their presence in either different programs or years of study. The distinction in the subsections cited does not deal with different individual students. The College argued in the present case that that since the students in the 1505 lectures are the same individuals as those who are in the 1505 labs there is no additional section for the lab. This is an entirely different distinction than that set out in (v) and (vi).

The College then referred to a document which is outside the Collective Agreement but which, it was argued, is instructive as to an interpretation adopted locally of the term “section.” The document, dated October 9, 2009, is a Memorandum having the subject: **INSTRUCTIONS FOR THE PREPARATION, MONITORING, DISTRIBUTION AND TRACKING OF STANDARD WORKLOAD FORMS**. The body of the Memorandum states “The College Workload Monitoring Group developed the following instructions to standardize the procedure for the preparation...of Standard Workload Forms (SWF).” Attached was, among other things, “Instructions for the Preparation, Monitoring, Distribution and Tracking of Standard Workload Forms.” The third bullet of Paragraph 2 of the Instructions reads as follows:

“No more than four different course preparations or six different sections shall be assigned in a given week except by voluntary agreement, which shall not be unreasonably withheld (article 11.01 D2) [the article is cited in the original]. *Where a course is delivered through a combination of lecture(s) and lab(s), it is to be considered to be one section; however, the hour(s) allocated for the lecture(s) and lab(s) must be listed separately. The Chair, however, will note on the SWF that the combined lecture (s)/ lab(s) constitutes [sic] one section.*” [Emphasis is not in the original.]

On the face of the Memorandum, these instructions emanate from the Workload Monitoring Group (“WMG”) at the College. WMGs are mandated in Article 11,

have an equal number of members from the Union and the College [4 and 4] and have both general and specific “functions” (11.02 C1), including (iii) “making recommendations to the College on the operation of workload assignments at the College”. In addition, the WMG is mandated in 11.02 C1 (i) to “resolv[e] apparent inequitable assignments”. It appears that the WMG issued the Memorandum pursuant to these related functions.

It is of note that the Union spokesperson at the arbitration, Local President Hardacre, asserted that the Union never agreed to the Memorandum and especially the bullet quoted above. She advised that there was and continues to be disagreement on how the sections on SWFs are to be counted, the Union maintaining that sections are determined by the number of lines. I asked at the end of the day of hearing for the parties to provide documents where this issue is mentioned, especially as it relates to Bullet 3. I chose this method of proceeding given the time sensitive nature of the proceeding. Professor Hofer was naturally anxious to know as soon as possible exactly what his teaching assignment for next term is so as to allow him to prepare. Setting a continuation date was not feasible.

Pursuant to my request the Union and the College provided me with numerous documents and commentary thereon. Since I had simply requested documents existing at or before the hearing date, I let the documents “speak for themselves”.

It appears that the lecture/lab formula cited above (Bullet 3 of Paragraph 2 in the Instructions) has been issued under the aegis of the Conestoga WMG for many years and has remained the same through at least three revisions (2/6/2003, November 2007, and October 2009.) In addition, the lecture/lab formula has been referred to and apparently adopted by the Union in various of its publications (emails from the Academic Chief Steward dated 4/28/2008 and 10/12/2007, **“SWF Self-Check – For Faculty Use”** [found on the Union Local’s website], **The Watchdog** (also online)), wherein it advises its member on workload issues. The Union disputes that it agrees with the formula. However, the WMG itself, which is made up of equal numbers from College and Union, seems to continue to adopt and publish the formula and the Union, especially when it publishes advice to its members on SWFs, seems to continue to specifically cite the formula. No documents were produced that specifically challenged the formula itself. The Union provided documentation in which it has, in the past, advised the College that Local Agreements are to be renewed annually. I do not see the Instructions as a Local Agreement but rather as a recommendation of the Conestoga WMG

that has been repeatedly issued by the WMG and has been used with apparent approval by both parties. Given the ambiguity of the term in question, as well as recognizing equitable considerations, I believe it is appropriate to follow the longstanding adopted recommendation of the Conestoga WMG. Therefore I will rely on the Instructions as set out as they, quite surprisingly, relate directly and specifically to the issue at hand. Whereas there may continue to be a general dispute on how to count sections, it appears clear that the parties in the context of the specialized mandate of the WMG have agreed to count as one section a lecture/lab in the same course. The “bullet” could not be any clearer respecting this narrowly defined circumstance.

I note that the parties did provide me with other SWFs, both of the Complainant and of other Professors. Unfortunately the actual practice of counting section of lecture/lab combinations in SWFs appears inconsistent and ambiguous. Therefore the survey of instances in various SWFs cannot be dispositive.

The “jurisprudence” provided was also not helpful in that it dealt primarily with the “reasonable” question that became moot with the foregoing ruling.

I hold that the assignment of sections in the SWF in question does not exceed six. Therefore the issue of “reasonable” withholding of consent does not arise.

Reasonableness

Since I have found that the third bullet of Paragraph 2 of the Instructions is applicable, the question of reasonableness under 11.01 D2 does not arise.

Teaching only Three of Four 1505 Labs

Professor Hofer is concerned that given that since he is assigned only 3 of the 4 labs likely for 1505, a fourth lab will be needed to be taught by someone else, most likely a part-time Instructor, in order to accommodate the total number of students attending the lectures. As a consequence, since Professor Hofer is responsible for both lectures in 1505 and 3 of the 4 labs, he believes that he will have to communicate with the teacher of the fourth lab on a continuing basis, week after week, in order to assure consistency and high quality of teaching in the fourth lab. I find that this is a realistic concern and is integral to Professor Hofer’s duties as lecturer and primary lab teacher in 1505. The College argued that such interaction with the teacher of the fourth lab would be a usual interaction with fellow academic staff and would not attract additional hours on the SWF. It

asserted that such circumstances are already dealt with, *inter alia*, in 11.01 F1 under the rubric of routine administrative tasks which must be actually assigned by the College. Professor Hofer countered by pointing to 11.01 G2 which deals with “atypical circumstances”. I find that this instance is “atypical” and peculiar to the particular arrangement of 1505 in the instant circumstances. Therefore I add One (1) complementary hour per week under 11.01 G2, contingent upon another person teaching a fourth 1505 lab.

Substantial Amount of New Content in 2470

The Union also argued that Professor Hofer is teaching a lab (Eece 2470) which has a large majority of “new content” in it. This issue was not raised in Professor Hofer’s original written complaint. It was brought up only in the WMG discussions dealing with his complaint. It appears on Professor Hofer’s SWF that he is teaching only the lab portion of this course and that all three “lines” have been counted as “sections”, so he has been given three section credits. I have reviewed the 2010-2011 and 2008-2009 Course Outlines of Eece 2470 Project Lab and note that the 2010-2011 contains more explanation of the projects, etc. entailed in the lab. It appears that the “Course Outcomes” in the respective Outlines have quite similar content and are simply written somewhat differently which is understandable given that the Course Outlines have different authors. Additionally, the style and detail of description in “Unit Outcomes” is substantially different in expression making it unclear whether or not there is simply a greater detail in the 2010-2011 lab of what is otherwise be implicit in the earlier 2008-2009 lab “Outcomes”. I am therefore unable to conclude that there is a substantial change from the earlier lab. Hence, I cannot find for the Union and Professor Hofer on this point.

I thank everyone involved for their fine presentations.

Dated this 17th day of December, 2010 at Oakville, Ontario.

Nelson Roland, Workload Resolution Arbitrator