

IN A MATTER UNDER THE COLLEGES COLLECTIVE BARGAINING ACT, 2008

BETWEEN:

Fanshawe College

(“College”)

- and -

Ontario Public Service Employees Union

(“Union”)

(Re: Modified Workload Arrangements – School of Tourism and Hospitality)

ARBITRATOR: Jasbir Parmar

On Behalf of the College:

Sheila Wilson, Manager, Labour Relations
David Belford, Dean, Faculty of Business
Jeannine Cookson, Chair, School of Tourism and Hospitality

On Behalf of the Union:

Darryl Bedford, Local President
Fred Varkaris, Chief Steward
Kathryn Tamasi, Local 1st Vice President

Date of Hearing: August 25, 2010

Date of Decision: August 29, 2010

Introduction

1. This decision relates to a dispute between the parties with respect to the assignment of work. I was appointed pursuant to Article 11.09 of the Collective Agreement, which contemplates an expedited process. The parties proceeded by way of submissions, each party asserting its own facts with no oral evidence being led. It was agreed that I would provide a written decision with summary reasons only.

Relevant Collective Agreement Provisions

2. Article 11 of the collective agreement addresses workload assignment. Article 11.01 through 11.08 set out a number of requirements with respect to the assignment of work, relating to a variety of factors. Article 11.02.A.2 provides that a teacher's assignment of work must be set out on a Standard Workload Form, and include all details of the workload assignment. A SWF is required whenever there is a change in a teacher's assigned workload. I will refer to these provisions as the standard method of workload assignment.

3. Article 11.09, provides for a different method of workload assignment. Specifically, Article 11.09.A.1 states as follows:

In order to meet the delivery needs of specific courses or programs, Modified Workload Arrangements may be agreed on instead of the workload arrangements specified in Articles 11.01.B.1, 11.01.C, 11.01.D.1 through 11.01.F, 11.01.G.2, 11.01.I, 11.01.J, 11.01.L, 11.01.M, 11.02.A.1(a), 11.02.A.2, 11.02.A.3, 11.02.A.4, 11.02.A.5 and 11.08. A Modified Workload Arrangement requires the consent of the teacher(s) involved and the consent of the Local Union.

4. The collective agreement includes provisions which address the circumstance where the Union does not consent.

Article 11.09.B.3

In determining whether the Union's refusal to consent to the Modified Workload Arrangement should be upheld the WRA may consider any one or more of the following factors along with any other factor the WRA deems appropriate.

- Whether it enhances or diminishes the quality of learning for students.
- Whether it may lead to improvements in teaching and learning.
- Whether it leads to a reduction in the use of part-time staff and better usage of full-time teachers.
- Whether it distributes work equitably amongst participating teachers.
- Whether it may lead to a greater satisfaction with workload assignments than the regular workload formula.
- Whether it would be an efficient workload assignment process.

Article 11.09.B.4

If the WRA concludes the Union should have consented to the Modified Workload Arrangement the Modified Workload Arrangement may be implemented.

5. Article 11.09 is a new provision which did not exist prior to the present collective agreement.

Background

6. The proposed Modified Workload Arrangement is with respect to nine programs in the School of Tourism and Hospitality. These programs are delivered with timelines reflective of the nature of the industry in which the students will be employed. In particular, it is noted that in order to ensure availability for student placements in the tourism and hospitality industries between the first and second year of the programs, students need to be finished their courses by the end of March or April (depending on the program), and may not be available to commence courses again until the beginning of September or October (again, depending on the program). Thus, courses may be delivered over 10, 12, or 15 weeks, rather than the standard 15 weeks in programs in other Schools.

7. Under the prior collective agreement, effective from September 1, 2005 to August 31, 2009, there was a Letter of Understanding which provided for Alternative Workload Arrangement pilot projects. The School of Tourism and Hospitality implemented a pilot project for the Golf & Recreational Management program in the 2007 -2008 academic year

with three teachers participating. Then, in the 2008-2009 academic year, the School implemented an Alternative Workload Arrangement pilot project for the Hospitality Management – Hotel and the Hospitality Management - Food and Beverage Management programs. Six teachers participated.

8. In the 2009 -2010 academic year the Alternative Workload Arrangements were no longer available, and a new collective agreement had not been implemented. The College returned to the regular method of workload assignment, which included the creation of SWFs for each teacher.

9. In the Spring of 2010, the Chair of the School and the Dean of the Faculty met with the teachers in the School to discuss the implementation of a MWA. Eleven of the thirteen teachers agreed to the MWA, after discussions about which courses would be taught by each the teachers involved.

10. In June 2010, after having obtained the consent of the teachers involved, the College wrote to the Union seeking its consent for the MWA to be implemented beginning September 6, 2010. The rationale provided by the College was the modified timelines of the course terms in these programs (5, 10, 12, and 15 week terms), and the availability of faculty for the presentations of the final research project in the Hospitality programs.

11. The Union responded by letter dated June 25, 2010. The Union noted that the SWF process could accommodate modified timelines for courses and the final research project, noting that other Schools did so. The Union also noted that not all the faculty needed to be involved in the MWA, and provided a number of sample SWFs indicating how the assignment of work could be done in accordance with the standard assignment process in Article 11. The Union responded to the suggestion that assigning workload utilizing the standard assignment process Article 11 was excessively time-consuming by noting that it prepared the SWFs for the teachers involved in a matter of hours. The Union also noted

that in 2009-2010, when the SWF process had been used for these programs, only one workload assignment error had been identified. The Union also went through the factors listed in Article 11.09.B.3 to explain why it did not consent.

12. The parties then met on July 20, 2010 to discuss the issue further. As the Union still did not consent, the Employer then asked the Ministry of Labour to appoint a Workload Resolution Arbitrator (WRA) pursuant to Article 11.09 of the Collective Agreement.

13. The parties are in agreement that my jurisdiction to determine the dispute between the parties is set out generally in Article 11.09, and specifically in the following provisions:

Parties' Positions

14. Briefly, the College submits that it has designed the MWA based on direct consultations with faculty, and that it fully explained the MWA process to the faculty, such that their agreement and support of it is based on a proper understanding of the process. The College notes that the MWAs signed by the teachers included the language of the collective agreement provisions which no longer apply to the teacher, to ensure the teachers understood the implications of agreeing to the MWAs. The College also submits that the teachers have an understanding of the value of MWAs for these programs because of the experience of the pilot projects, and submits they were involved in the determination of which courses they would teach. The College notes that the MWAs comply with all the requirements of the collective agreement with respect to MWAs (ie. The level of teacher support, the number of teachers involved in MWAs at the College and the length of the period of assignment.). The College submits that as the students in these programs benefit from the adjusted timelines of these programs, and the teachers support the MWA, then it is not reasonable for the Union to withhold its consent.

15. The Union submits that it made its decision to not consent to the MWAs based on a thorough review of the information it was provided by the College, and based on its role as

the bargaining agent for the bargaining unit as a whole. The Union submits that if the Union engaged in a reasonable process to arrive at its decision with respect to consenting to the MWA, submitting that it did, then I should uphold its decision.

Analysis

16. The issue I must determine is whether to uphold the Union's refusal to consent to the MWA.

17. The collective agreement contains numerous detailed provisions addressing the assignment of workloads. This suggests that the assignment of workload is an important aspect of the relationship between the parties to which they have turned their mind extensively.

18. MWAs are intended to be alternatives to this standard method of workload assignment, to be utilized to address the delivery needs of specific courses or programs. It is also clear the parties intended this alternative method to be used in limited circumstances, for no more than 20% of the full-time teachers at the College and only where the consent of the Local Union and the teachers involved is obtained. This is significant, as it indicates that the parties did not intend the views of the College and the teachers to be determinative in deciding whether a MWA should be implemented. The parties recognized the Union may have a contrary view to the College and teachers involved, and nonetheless agreed that the Union's support was a prerequisite to implementing a MWA.

19. I am in agreement with the Union that an assessment of the process the Union followed to determine its position with respect to the proposed MWA is a valid and significant consideration in determining whether to uphold its refusal to consent. However, if the parties had intended the role of the WRA to be limited to a review of whether the Union properly exercised its discretion to consent to a MWA, then they could have easily

indicated that by simply agreeing to language such as “the Union shall not withhold its consent unreasonably”. Rather, Article 11.09.B.3 states that I may consider any one or more of the factors listed therein, along with any other factor I deem appropriate. Thus, I am not limited to simply reviewing the Union’s decision-making process, but may consider a variety of factors which I deem to be appropriate. That said, I observe that in the present case the Union has obviously considered the proposed MWA closely and thoroughly, turning its mind not only to the factors listed in 11.09.B.3 but also to larger bargaining unit issues such as staffing and preservation of collective agreement rights.

20. I have considered all the factors listed in Article 11.09.B.3, with respect to utilizing a Modified Workload Arrangement rather than the standard workload assignment process.

21. I appreciate that the programs offered in the School of Tourism and Hospitality have certain delivery needs, based on the nature of the industries involved, which do not fit with the traditional 15 week course delivery. I accept the College’s assertion that adjusting the timelines of the courses to accommodate the needs of the program is of significant benefit to the students.

22. However, there was no evidence presented to indicate that utilizing a MWA, rather than the standard process, to assign the workload of delivering these programs would enhance or diminish the quality of learning for students. It was simply asserted by the College that the teachers felt it was beneficial. I accept the College’s suggestion that the support of the eleven out of thirteen teachers in the program indicates, on its face, that they are of the view that MWA will assist them in their teaching and that it may lead to greater satisfaction with their workload assignments. It is a reasonable assumption that they agreed because they viewed the MWA as beneficial to themselves. However, their support for the MWA is insufficient, in and of itself, to infer that the quality of learning will be enhanced using this method of workload assignment. There are other courses at the

College which are of a duration less than 15 weeks for which the SWF process is utilized. There was no information presented to indicate that was problematic in these other faculties.

23. I also note that there is no information to suggest that the use of a MWA, rather than the standard assignment process, is beneficial in the present case because it reduces the use of part-time staff (the College acknowledged it did not have that information yet), or that it distributes work more equitably than the standard assignment process. With respect to this latter point, the College acknowledged that there were disparities in the teachers' teaching contact hours, but noted that these are also present with the standard assignment process. While the teachers may have agreed to their individual assignments under the MWA, this, in and of itself, is insufficient to conclude there is a more equitable distribution of work.

24. I have particular concern with two factors that were raised by the Union. The MWA proposed by the College contemplates that all the workload collective agreement provisions specified in Article 11.09.A.1 will not apply to all of the teachers involved. The Union submitted that the use of MWA does not require that all of those provisions be suspended. I am in agreement with that submission. There is nothing in this Article which suggests that whenever there is a MWA, all of those provisions must be suspended. The Union notes that certain provisions have been suspended, such as Article 11.08 (which deals with professional activities during non-teaching periods), with no explanation of why the circumstances of the present case require their suspension. While the teachers may have agreed to the MWA as proposed by the College, the College did not contradict the Union's concern that the teachers may not have been aware that the specified provisions did not have to be suspended as a whole.

25. The other significant factor raised by the Union is the efficiency of the MWA process, rather than the standard workload assignment process. The College used the standard process to assign work in these programs, with their modified timelines, in the 2009-2010 academic year. The College stated this required the creation of three to five SWFs per term for faculty, to document each change to their teaching assignment. The College submitted this was a “cumbersome, time consuming and error prone” process. However, the Union noted that multiple SWFs are created in other Schools. Also, there was only one identified error, documented by a single grievance, in the assignment of work in these programs when the standard process was used in 2009-2010.. Thus, it would appear that the risk of errors is insignificant. Furthermore, the Union noted it prepared draft SWFs for the affected teachers to respond in detail to the College’s proposed MWA in a matter of hours. The College acknowledged it engaged in a lengthy consultation process with the affected teachers to arrive at the MWA. This must also have taken a fair bit of time. There was no evidence presented upon which to conclude that process was less time-consuming than the standard assignment process.

26. I reiterate the point that the standard workload assignment process (Article 11.01 through 11.08) has been arrived at by agreement of the parties. These provisions set out a number of obligations of the College and the bargaining unit members, and protections for the bargaining unit members. The parties agreed that a different workload assignment process can be followed with the consent of the Union. When the Union refuses to consent to the implementation of a proposed MWA, after having thoroughly considered the proposal, a WRA is essentially being asked to permit a different method of work assignment to be followed than that upon which the parties agreed. While the collective agreement provides the WRA with that jurisdiction, the evidence should clearly indicate, given the particular facts of the case, that the proposed MWA is better method of workload assignment than the standard process. In the present case, the evidence, when

considered as a whole, does not do so. The Union has identified a number of valid concerns with the proposed MWA. I also find that the College has not provided sufficient evidence to indicate any serious problems or deficiencies in delivering the relevant programs through the standard workload assignment process.

Disposition

27. For these reasons, I uphold the Union's refusal to consent to the Modified Workload Arrangement for the School of Tourism and Hospitality for the 2010-2011 academic year.

Dated at Oakville, Ontario, this 29th day of August, 2010.

Jasbir Parmar