Oct 30, 06

WKA

IN THE MATTER OF AN ARBITRATION UNDER THE ONTARIO LABOUR RELATIONS ACT

BETWEEN:

COLLEGES OF APPLIED ARTS AND TECHNOLOGY (Algonquin College)

("the Employer")

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

("the Union")

GRIEVANCE RE UNION ACCESS TO SWF's

<u>AWARD</u>

ARBITRATOR:	**BARRY STEPHENS**	
FOR THE EMPLOYER:	**J.D. SHARP**	**Emond Harnden**
FOR THE UNION:	**SUSAN BALLANTYNE**	**Raven Cameron Ballantyne Yazbeck**

Hearing held in Ottawa, Ontario, on September 20, 2006

Right for WMG members to get SWFS

Union won

AWARD

FACTS

The union grieves that the employer has failed to provide the union with a copy of the Standard Workload Forms, or SWF's issued to teachers each semester. The parties agreed on many of the pertinent facts as follows:

1. College currently provides information to union twice/semester in spreadsheet format.

2. Grievances in 2004 represent the fist demand for all SWF information under Art. 11.02A4

3. Art. 11.02A4 has been in the collective agreement with the current language since September 1, 1985.

Spreadsheet Provides:

1. Program in which teacher is teaching
2. Employee Name
3. Employee Number
4. SWF start and end date
5. Number of different course preparation in SWF
6. Number of different sections contained in SWF
7. Current teaching contact hours
8. Planned preparation hours
9. Planned evaluation
10. Complementary hours, basic and assigned
11. Cumulative today day, current
12. Cumulative total hours, current
13. Cumulative total weeks, current
14. Planned hours
15. Actual hours

Additional Reports at same time "Course Report"

16. Course Name
17. Course section
18. Teaching hours for course
19. Type of prep, new, repeat, est'd
20. Factor accompanying the prep
21. Additional prep hours
22. Total prep hours for course

23. Number of students
24. Type of evaluation
25. Factor tied to that evaluation
26. Planned evaluation, actual evaluation

Additional Reports

27. Temporary data – Part-time/sessional/partial load
28. Part-timers and what they teach
29. Part-time hours
30. Credit, non-credit, section number

This case requires consideration of three issues:

1. Do union members of the WMG have a right to receive copies of SWF's at the time they are issued?
2. Is the union, separate from the union representatives on the WMG, entitled to copies of SWF's or revised SWF's, and if so, when?
3. Does the memorandum dated January 2002 continue to bind the parties?

Issue 1. Right of Union Members of WMG to Receive SWF's

The union asserts that its members on the Workload Monitoring Group (WMG) have a right to a copy of all SWF's at the time when they are issued. The employer rejects this assertion, and takes the position that the union has a right only to copies of contested SWF's, unsigned SWF's, and such SWF's as are relevant to any disputes between the parties. The employer goes so far as to assert that it has the right to refuse to provide a copy of a SWF to the union if it does not fall in one of these categories.

I cannot accept the employer's argument that the union members of the WMG have a restricted right to SWF's. While the provisions of Article 11 highlighted by the employer speak to specific circumstances where the members of the WMG

are to receive SWF's, that is only a part of the picture. Article 11, which deals with workload, is one of the most significant articles in the collective agreement. It takes up more than 12 pages, and it sets out a detailed process for establishing, monitoring, and resolving disputes concerning teacher workload. Central to this system is the SWF, the document that sets out the workload assigned to a teacher in a given semester. In the context of Article 11, the SWF is a jointly mandated document designed to serve the purposes of the collective agreement, not a document reserved for the employer's internal use.

In addition, Article 11 creates the joint WMG, which is given the role of representing the parties in ensuring that workload is assigned in accordance with the collective agreement, and that any disputes about such assignments are ultimately resolved through a special arbitration process. In this context, it is sufficient to point to one of the functions of the WMG set out in Article 11.02 C1(i), which reads:

> The functions of the WMG shall include:
> (i) reviewing workload assignments in general at the College and resolving apparent inequitable assignments.

The employer asserts that this right is restricted to the WMG as a whole, and that a request for information under Art. 11.02 C1(i) must be approved by the whole committee. I cannot agree with this assertion. The WMG is made up of an equal number of representatives from the employer and the union, as is normally the case with a joint labour/management committee. Given that the employer sets the initial terms of the workload assignment, it would almost always be the union that would initiate an inquiry into workload issues. If the employer's interpretation

was held to be correct, it would mean that the employer representatives on the WMG would have the ability to limit or negate the role of the union WMG members who might wish to review SWF information in the pursuit of the general goals set out in Art. 11.02 C1(i). I am not persuaded that I should read Article 11 as contemplating such an imbalance in the rights and powers of the committee members. The representatives of both parties on the WMG must be equally free to fulfill the functions of the WMG in a manner that serves both the intent of the collective agreement, and the legitimate concerns of their respective constituencies. That means, for example, that in order to fulfill the role set out in Art. 11.02 C1(i), the representatives of both parties require equal access to all workload assignment information. Art. 11.02 C1 is not restricted to disputes, but mandates the WMG to oversee the assignment of workload "in general". On the basis of this provision alone, it is my conclusion that the union members of the WMG may, as of right, request and be provided with copies of all SWF's at the time they are issued. I note that I do not see this as an automatic requirement of the collective agreement, but that, once the SWF's has been requested by a union member of the WMG, they must be provided.

The employer asserts that Art. 11.02 D2 argues against such a conclusion. It reads:

> **11.02 D2** The WMG shall have access to all completed SWF's and such other relevant workload data as it requires to review workload complaints at the College.

In my view, the employer urges too narrow a read of this language. As has already been stated, the intention of the parties manifest in the terms of Article 11

is to contain and resolve workload disputes through a jointly administered monitoring and dispute resolution system. In such a context, Art. 11.02 D2 should not be read as restricting access to information to specific circumstances, but as making it clear that, in the event of a dispute, access is not restricted, but extends to all relevant documentation, including, as the union points out, SWF's from previous semesters, and any other data that might be required.

The employer also argues that the union is already provided with electronic information extracted from the SWF's, under the January 2002 agreement, discussed below in greater detail. In effect, the employer asserts that the union is attempting to dictate the format in which the information is provided, i.e. that it will receive both a hard copy as well as spreadsheets containing much of the SWF information. However, the 2002 agreement on its face resolves issues with respect to Article 27. While it requires the employer to provide electronic information, that information is not provided until later in the semester, for example on November 30 for the semester that starts at the beginning of September, which would not assist the union in identifying and resolving a problem at the beginning of the semester. In addition, while the electronic data covers many fields of information, it does not contain all information, such as teacher comments to take one example, that may be contained on the SWF. Given my view of Article 11 as set out above, the fact that the employer currently provides electronic information extracted from the SWF's does not negate the

right of the union representatives on the WMG to get general access to all SWF's.

The employer also relies on the fact that, up until these grievances, the past practice at Algonquin has been to provide the WMG with copies of SWF's related only to workload disputes. Leaving aside the question of whether past practice at one college can bind the parties to this collective agreement, there is no evidence that the union members have requested access to all SWF's in the past, let alone that it failed to respond to a denial of such a request.

As a result, the answer to the first issue raised by the union is that the union members of the WMG have a right to request and receive copies of all SWF's at the time they are issued.

2. Does the Union Have a Separate Right to Copies of SWF's?

The union argues that it has a separate entitlement, apart from the entitlement of its representatives on the WMG, to receive a copy of all SWF's at the time they are issued to the teacher. The union asserts that the failure of the employer to provide the SWF's directly to the union amounts to an unlawful interference with the union's obligation to represent its members. While the union does not seek a ruling with respect to legislated representational obligations, it argues that the representational obligations serve as an aid to interpreting the collective

agreement provisions, supporting the full exchange of information as a necessary corollary to the union's role.

While it is true that the union has a right to the SWF's in order to fulfill its representational role it is my view, as set out above, that the parties have agreed that the union representatives on the WMG will fulfill this role, and there appears to be no independent right of automatic copies of SWF's at the time they are issued, as asserted by the union. The answer to the second question, therefore, is that the union does not have an additional right to a copy of the SWF's, apart from the right of the union representatives on the WMG.

3. Status of January 2002 Agreement

The parties signed an agreement on January 30, 2002 to resolve two grievances. The agreement deals with Article 27 and also details SWF information that will be provided to the union in electronic form by specific dates in each semester. In part, the employer argues that this agreement has been terminated by Article 7.03 of the collective agreement, which reads as follows:

> **7.03** Where it is considered mutually desirable that the Union Local and the College set out in writing the resolution of a matter as to the local application of this agreement or clarification of procedures or conditions causing misunderstanding or grievances as referred to in 7.02 (i) or (ii), such resolution may be signed by the parties and apply for the specific terms agreed upon but, in any event, shall not continue beyond the term of this Agreement as currently in effect.

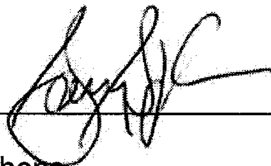
I disagree. Such an interpretation would mean that every settlement reached by the parties with respect to a grievance, would be time-limited to expire with the expiry of the collective agreement. In effect, it would mean the parties could

never settle any grievance permanently. Such an automatic mechanism would be an impediment, to the say the least, to the settlement of grievances, and cannot have been the intention of the parties. Article 7 deals with the mandate and activities of the joint Union/College Committee, and it is my view that the language in Article 7.03 is directed at the decisions reached by that committee. Given that the agreement of January 2002 was reached as a settlement to resolve two grievances, the MOA is not an agreement covered by Article 7.03, and should be accorded the normal status of a grievance settlement.

The employer also argued that the grievances should to be dismissed based on the doctrine of laches or waiver, or that the memorandum of agreement must be voided or modified due to prejudice suffered as result of the union not asserting a right to a copy of the SWF prior to the entering into the MOA. From a labour relations point of view, I can well understand the employer's position. Given the nature of the 2002 agreement, it does seem that would have been the appropriate time at which to raise and clarify, if necessary, the union's right to hard copies of the SWF's. However, I cannot go so far as to say that the doctrines of laches or waiver apply to the circumstances. As I interpret the collective agreement, the union members of the WMG have a right to request copies of the SWF's at the time they are issued. As I have already stated, there is no evidence that such a request was ever made and denied, thus there has been no employer action upon which an argument for laches or waiver can be

founded. The answer to the third question, therefore, is that the parties continue to be bound by the agreement of January 2002.

I will remain seized to deal with any issues arising from the implementation of the this award.



Barry Stephens,
Arbitrator
October 30, 2006