

**IN THE MATTER OF A WORKLOAD RESOLUTION ARBITRATION HELD
PURSUANT TO ARTICLE 11.02 OF THE COLLECTIVE AGREEMENT
BETWEEN:**

**College Compensation and Appointments Council
for the Colleges of Applied Arts and Technology
(Fanshawe College)**

(“the College”)

and

**Ontario Public Service Employees Union
(for Academic Employees)**

(“OPSEU”)

Re: Workload Grievance of Kay Wigle

Workload Resolution Arbitrator: Peter F. Chauvin

Appearances for the College:

Robert J. Atkinson	Counsel
Michael Goodmurphy	School of Human Services Chair
Sheila Wilson	Labour Relations Consultant
Sue Miller	Employee Relations Manager
John Mackara	Manufacturing Sciences Chair
Pam Skinner	Health Sciences and Human Services Dean

Appearances for OPSEU:

Gavin Leeb	Counsel
Paddy Musson	Local President
Darryl Bedford	Chief Steward
Kay Wigle	Grievor

Hearings held on January 29, September 8 and October 24, 2008

This is a Workload Resolution Arbitration under Article 11 of the Collective Agreement that is binding between the parties. I have been appointed as the Workload Resolution Arbitrator (the “WRA”) to determine this matter.

The collective agreement states that the workload resolution process is meant to be an informal and expeditious manner to resolve workload disputes. Article 11.02 G states that “it is recognized that speedy resolution of workload disputes is advantageous to all concerned”. Article 11.02 F states that the WRA shall determine the appropriate procedure, that “it is understood that the procedure shall be informal”, and that following “informal discussions” the WRA is only required to provide a brief explanation of the reasons for the Award if one of the parties requests such reasons. The informal and expeditious nature of the workload resolution process was confirmed by the Ontario Court of Appeal in *George Brown College of Applied Arts and Technology v. Ontario Public Service Employees Union* (2003), 68 O.R. (3d) 161.

Commonly, the parties are not represented by lawyers at a Workload Resolution Arbitration. In this case they were. Extensive representations and submissions were made over the course of three days. The workload resolution process has taken longer than is stated in Article 11.02, and the parties extended the time for rendering this Award. The parties have requested that I provide reasons for this Award. In keeping with Article 11, this Award will be as brief as possible, and will consider only the most pertinent representations and submissions.

Ms. Wigle’s Representations

Ms. Wigle is the Field Placement Coordinator of the College’s Developmental Services Worker Program (the “DSW Program”). The DSW Program consists of four terms, spread over two years. During the first two terms the students attend academic classroom courses. During the last two terms the students must perform 950 hours of field placement work in community agencies. During these field placements the students are periodically supervised by Field Placement Supervisors of the College.

As the Field Placement Coordinator, Ms. Wigle's duties pertain primarily to the coordination of the field placements. Among other things, Ms. Wigle communicates with the community agencies to arrange placements, assigns students and Field Placement Supervisors to placements, evaluates placements, and liaises with the agencies, the students and the Field Placement Supervisors throughout the placement to ensure that the placements are proceeding successfully.

On her Standard Workload Form ("SWF") for the Fall term (September to December) of 2007 (the "F07 SWF") Ms. Wigle was given 10 attributed complementary hours per week for coordinating duties (in addition to the 6 mandatory complementary hours per week she was given under Article 11.01 F for routine assistance to individual students and for normal administrative tasks). Ms. Wigle was also given 2 hours per week (rather than the 3 hours she was granted in F06 and W07) for the mentoring of part-time Field Placement Supervisors. (Hereafter all references to SWF time attributions are per week). Ms. Wigle claims that this allocation of hours does not reflect the coordinating and mentoring work that she actually performed during the Fall 2007 term, for the following reasons.

Prior to September 2006 full-time Field Placement Supervisors were given on their SWFs 30 minutes per student of teaching and supervision time and 30 minutes of complementary time for placement set-up, meetings with agencies and placement evaluation. Part-time Field Placement Supervisors were given 30 minutes per student for teaching and supervision, with no complementary time for placement set-up, meetings with agencies and placement evaluation.

Commencing in September 2006 there were no longer any full-time Field Placement Supervisors. Rather, all of the Field Placement Supervisors have been part-time since F06. Also, the time that part-time Field Placement Supervisors were granted for teaching and supervision was reduced from 30 minutes per student to 20 minutes per student. Ms. Wigle submitted that no rational was given for this reduction.

Ms. Wigle submitted that the absence of any full-time Field Placement Supervisors since F06 and the reduction of teaching and supervision time for part-time Field Placement Supervisors from 30 to 20 minutes per student significantly increased the mentoring work that she had to do, even if most of the part-time Field Placement Supervisors in F07 were not new to the College. Ms. Wigle submitted that she took on a great deal of mentoring work as a result of the reduction of those 10 minutes.

Ms. Wigle requested that she be granted the 10 minutes per student that has been removed from the part-time Field Placement Supervisors. This results in a total of 17 hours per week on Ms. Wigle's F07 SWF (102 students times 10 minutes per student = 1020 minutes = 17 hours). Given that Ms. Wigle was granted 2 mentoring hours on her F07 SWF, Ms. Wigle is requesting an additional 15 mentoring hours. The Union acknowledges that this is a somewhat subjective and rough estimate of the time that it submits Ms. Wigle should be granted.

Ms. Wigle submitted that since F06 she has worked much more than 44 hours per week. However, it was not clear what work Ms. Wigle was performing. Also, it was agreed that such work could have been the subject of a jurisdictional dispute between the academic and non-academic OPSEU bargaining units, and that this could have significantly affected the way that the parties chose to deal with this situation. Accordingly, the parties agreed that this excess work should not be taken into consideration in determining this matter.

Ms. Wigle acknowledged that she signed her F06 and W07 SWFs. However, Ms. Wigle stated that she did so notwithstanding that she did not agree with the mentoring hours that she was granted in them. Ms. Wigle stated that she did not dispute those SWFs because she was concerned that the DSW Program could be discontinued and because the College suggested that more full-time Field Placement Supervisors would be hired in the future. OPSEU submitted that, under these circumstances, Ms. Wigle should not be prejudiced, and the College should not benefit, from Ms. Wigle's acceptance of her

SWFs. Also, OPSEU cited Article 11.02 F6 which states that “the Award ...shall have no application beyond the end of a 12 month period from the date of the beginning of the workload assessment”, and submitted that SWFs are not meant to set a precedent.

The College’s Representations

As a threshold issue, the College submitted that my jurisdiction is not to determine whether the College's attribution of hours was correct. Rather, the College submitted that my jurisdiction is to determine whether there are compelling reasons to interfere with the College’s exercise of its management rights discretion under Article 6.01, or whether the College’s attribution was arbitrary, discriminatory or in bad faith. Also, the College submitted that the attribution of hours can only be an approximation and that considerable deference must therefore be afforded to the College’s exercise of its discretion. In support of this, the College relied upon two grievance arbitration Awards of Professor Richard McLaren dated May 2, 1995, *Fanshawe College, Union Policy Grievance* and August 11, 2006, *St. Lawrence College, Frank McLaren Grievance*.

In response to this, OPSEU strongly disputed that the College’s attribution is part of management’s rights under or is subject to only an arbitrary, discriminatory or bad faith test. Rather, OPSEU submitted that the standard is correctness. OPSEU referred to Articles 11.01 A, 11.01 D2, 11.01 E1, 11.01 F, 11.01 G2, 11.02 A2 and 11.02 A4 and submitted that these Articles mandate that the SWF include specific formulas, certain elements, and be a correct assessment of the workload.

The College submitted that Ms. Wigle’s work has not changed because the part-time Field Placement Supervisors are still able to teach and supervise the students within their 20 minutes per student. As such, the College submitted that Ms. Wigle has not taken on 10 additional minutes of mentoring work as a result of the 10 minutes that were removed from the part-time Field Placement Supervisors. The College submitted that the part-time Field Placement Supervisors have not required additional mentoring since F06.

The College also submitted that it is the new part-time Field Placement Supervisors that require mentoring, and submitted that the ratio of students to new part-time Field Placement Supervisors has gone down, from 5.5 in F06, when Ms. Wigle was granted 3 mentoring hours, to 2.8 in F07, when Ms. Wigle was granted 2 mentoring hours. In view of this, College submitted that the 2 mentoring hours in F07 was appropriate.

The College notes that the DSW Program has, at 20 minutes per student, the highest attribution for supervision time. The Child and Youth Worker, the Early Childhood Education, and the Social Service Worker Programs each have 15 or fewer minutes per student for supervision. The College submitted that the supervision of students is substantially the same among these Programs. The College acknowledged that clients in the DSW Program may have more complex physical and developmental needs than the clients in the other Programs and acknowledged that this may account for why the part-time Field Placement Supervisors in the DSW Program have 20 minutes per student for supervision. However, the College maintained that the current 20 minutes per student is appropriate and that the reduction from 30 minutes per student is not relevant to this matter.

In response to this, Ms. Wigle noted that the DSW Program has longer field placements and a greater weighting from the Ministry of Education than those other programs. In view of this, Ms. Wigle submitted that the DSW Program requires more student supervision than those other programs, and therefore warrants more student supervision time than those other programs.

Finally, the College noted that there was no student intake in W07 with the result that there were no students in the second semester in FO7. The College submitted that it would normally have been one of Ms. Wigle's significant responsibilities in F07 to arrange field placements for W08. The College noted that Ms. Wigle did not have to do this work because there were no students entering W08. In view of this, the College

submitted that Ms. Wigle's workload in F07 was substantially reduced. In view of this, the College stated that it reduced Ms. Wigle's mentoring hours by one.

In closing, the College submitted that Ms. Wigle's proposal that she be granted 10 minutes for every student is a totally artificial and unsubstantiated formula that results in an absurd conclusion. The College submitted that granting Ms. Wigle 15 additional hours based on this formula would be unprecedented and "staggering". The College submitted that a formula such as this has never been used to attribute hours on a SWF. In view of all of the above, the College submitted that even though Ms. Wigle is a hard-working and dedicated faculty member, the 2 mentoring hours properly compensate Ms. Wigle for her mentoring work. The College submitted that Ms. Wigle's request for an additional 15 mentoring hours per week should be dismissed.

Ruling

With regard to the test that I should apply, I do not accept the College's submission that its attribution falls under the management rights clause. The workload resolution process is set out in detail in Article 11. It is not governed by Article 6.01. Nor do I accept that my jurisdiction is limited to determining whether the College's attribution was arbitrary, discriminatory or in bad faith. This is not supported by Professor McLaren's two grievance arbitration Awards. In *Fanshawe College, Union Policy Grievance* the issue was whether the College had violated Appendix II which requires the College to give preference to the designation of full-time positions, but subject to operational requirements. Arbitrator McLaren did not apply an arbitrary, discriminatory or bad faith standard, but rather ruled that ruled that:

"...it cannot be said that the management method was wrong in their assessment of operational requirements or failed to do an assessment... In the absence of a finding that they did so incorrectly then this board of arbitration ought not to interfere..."

In *Lawrence College, Frank McLaren Grievance* the issue was whether a Coordinator should have been granted two steps on the salary schedule pursuant to Article 14.03 A3. Professor McLaren noted that the Article was silent with regard to the criteria that should be used to determine this. In this context Professor McLaren applied an arbitrary, discriminatory or bad faith standard. However, in view of the numerous provisions of Article 11 which set out criteria by which the SWF hours must be attributed, including Articles 11.01 F and 11.01 G2, and the fact that Professor McLaren's two Awards are not WRA Awards, I do not find that they establish that an arbitrary, discriminatory or bad faith standard should be applied in this case.

The workload resolution process is meant to be an informal and expeditious process. Also, as the parties acknowledged, it is, in part, a somewhat subjective process. For example, Ms. Wigle's main premise was that she took on much greater mentoring work as a result of the reduction of hours to the part-time Field Placement Supervisors. However, no specific evidence was given to directly substantiate this premise. Rather, it was implied that this was a natural and inevitable consequence of this change in hours. The College disputed this premise and submitted that Ms. Wigle did not take on more mentoring work. Again, the College did not provide specific evidence to substantiate its premise. This was not wrong for either party. Rather, it results from the expedited nature of this process.

This does not mean that these representations are of no weight. Rather, I must consider and compare all of the representations made by the parties, assess the reasonableness of those representations against all of the information that I have, give an appropriate weight to those representations, and render an attribution. Given the nature of this process, this assessment is not scientific, but rather it is the best possible approximation. In view of this, it is appropriate to afford some deference to the College's attribution. However, in the end my role is to determine whether the College's attribution was, in this context, reasonable and should be upheld.

It must also be kept in mind that what Ms. Wigle is requesting is an increase in her mentoring hours from 2 hours to 17 hours. Ms. Wigle disputed her F07 SWF and requested more mentoring time. At the commencement of the WRA hearing the focus was on mentoring time. However, as the hearing progressed OPSEU raised issues that would be relevant to Ms. Wigle's coordinating hours. The distinction between mentoring hours and coordinating hours was sometimes somewhat blurred. However, no request for an increase in coordinating hours has been made. My role is to determine whether Ms. Wigle should receive any increase in her mentoring hours.

The starting point for determining this matter is Ms. Wigle's prior SWFs and the related statistics. They provide a baseline of what the parties have agreed upon as being appropriate hours for specified mentoring work. Ms. Wigle states that she should not have agreed with her F06 and W07 SWFs, but rather should have disputed them. She requests that they not be considered. However, the process of resolving workload disputes would be seriously impaired if either of the parties could make such a claim. I would have no point of reference for assessing the F07 SWF.

I do not accept OPSEU's argument regarding Article 11.02 F6. Article 11.02 F6 applies to WRA Awards. Ms. Wigle's F06 and W07 SWFs were not resolved by a WRA Award. As such, Article 11.02 F6 does not apply. Also, Article 11.02 F6 states that "the Award shall only have application to the teacher affected by the matter" for a 12 month period. This indicates that a SWF that was resolved through a WRA Award does set some precedent for that professor for 12 months. There is nothing in the collective agreement that precludes agreed upon SWFs from having any precedential value. Prior agreed upon SWFs are relevant and set at least some point of reference for a WRA.

That does not mean that the prior SWFs are conclusive. It could be argued that the prior SWFs are incorrect. The party alleging this may face an onerous burden to establish this. One would expect that the more common argument would be that there was a change in the workload to warrant a change in the SWF. In any event, in the end the

WRA must be satisfied that the SWF accurately reflects the workload of the term being considered.

The parties provided me with Ms. Wigle's FO6, W07 and F07 SWFs. The parties also provided me with information going back to F04. The parties did not inform me of how many full-time Field Placement Supervisors there were before F06. The most relevant information, provided by Ms. Wigle, can be distilled to the following (the only dispute of significance is that the College submitted that there were 95 rather than 102 field placement students in F07):

SWF	F04	W05	F05	W06	F06	W07	F07
Field Placement Students	75	84	89	89	93	76	102
% Supervised by PT FPSs	87	40.5	95.5	76	100	100	100
PT Field Placement Supervisors	11	8	12	11	14	11	14

SWF Mentoring Hours	0	0	0	0	3	3	2
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Ms. Wigle is requesting many more mentoring hours. A useful starting point is Ms. Wigle's recent SWFs. Prior to F06 Ms. Wigle was granted 0 mentoring hours. With the change that came in F06 Ms. Wigle was granted 3 mentoring hours. This would appear to have compensated Ms. Wigle for that change. In W07 Ms. Wigle again accepted 3 mentoring hours. Since F06 the number of part-time Field Placement Supervisors has remained relatively the same and the percentage of students supervised by those part-time Field Placement Supervisors has remained identical, at 100%. There has been no significant change between F06 and F07. This suggests that 3 mentoring hours for F07 is appropriate unless there has been some other workload change in F07, or there is some other reason to change the F07 SWF. There are two workload changes that may explain why Ms. Wigle's mentoring hours went down from 3 in F06 and W07 to 2 in F07.

First, in F07 the ratio of students to new part-time Field Placement Supervisor went down significantly. This was not disputed. There was also no dispute that new part-time Field Placement Supervisors require the most mentoring. As such, a lower student to new

part-time Field Placement Supervisor ratio lowers the amount of mentoring work. Accordingly, this aspect of Ms. Wigle's mentoring work went down.

Second, there were no second semester students in F07. Accordingly, Ms. Wigle did not need to arrange placements for W08. To the extent that Ms. Wigle would normally be arranging placements with part-time Field Placement Supervisors, and those part-time Field Placement Supervisors would normally require mentoring in connection with that work, this would decrease Ms. Wigle's mentoring work.

However, for Ms. Wigle the most helpful statistic is that in F07 there were 102 students (or 95 if you accept the College's number). This is more students than in previous years. Also, and importantly, since F06 there have been no full-time Field Placement Supervisors and 10 minutes were removed from the part-time Field Placement Supervisors time for the teaching and supervision of students.

Ultimately, the issue is, taking into consideration all of the representations and statistics, and not being strictly bound by the prior SWFs, whether 2 mentoring hours adequately compensated Ms. Wigle on her F07 SWF.

Ms. Wigle's request turns on the extent to which I accept that she assumed greater mentoring work due to the reduction of the 10 minutes. It was not explained exactly how a decrease in teaching and supervision time for part-time Field Placement Supervisors would result in a direct minute for minute increase in mentoring work for Ms. Wigle. It is reasonable to conclude that such a reduction would cause the part-time Field Placement Supervisors to seek out or require some additional mentoring. However, it is quite questionable that it would directly translate to another 10 minutes of work for Ms. Wigle for each of the 102 students. It seemed that this rational was just used as a formula to arrive at a number to base a request. This formula resulted in an extraordinary request for an additional 15 mentoring hours.

I find that Ms. Wigle took on some additional mentoring work due to the reduction of teaching and supervision time for part-time Field Placement Supervisors and the absence of full-time Field Placement Supervisors. Taking into consideration the factors that indicate that in other areas Ms. Wigle's mentoring work may have gone down, I grant Ms. Wigle an increase from her present 2 hours per week to a total of 4 hours per week for the mentoring of part-time Field Placement Supervisors. I find that the representations of both the parties indicated that there was insufficient support for a greater increase in hours for this work.

I remain seized with regard to the implementation of this Award.

Signed at Toronto on December 14, 2008

"Peter F. Chauvin"

Peter F. Chauvin
Workload Resolution Arbitrator