

95D394-5 GEORGE, YOUROUKIS VS DURHAM

IN THE MATTER OF the individual grievances of Peter George and  
Angie Youroukis and the policy grievance of the union

AND IN THE MATTER OF the arbitration of the grievances

BETWEEN:

Durham College of Applied Arts and Technology

- and -

Ontario Public Service Employees Union

PLACE & DATE OF HEARING: Oshawa, Ontario, September 6, 1995

BOARD OF ARBITRATION:

Robert Gallivan  
Sherril Murray  
Stanley Schiff, chairman

APPEARANCES FOR THE EMPLOYER:

Donald Sinclair, executive dir. staff & student services  
Peter Thorup, counsel

APPEARANCES FOR THE UNION:

Peter McKeracher, local union pres.  
Peter George  
Angie Youroukis  
Margaret Keys, counsel

## AWARD & REASONS

The union and two individual grievors claim that the College violated s. 11.08 of the collective agreement when academic administrators called professors to promotion meetings and program and divisional meetings during the time period last spring after teaching contact weeks had ended but the summer vacation had not yet started. The grievors ask for a declaration that the events are covered by s. 11.01 F.

The parties agree that, in light of the purpose and content of the meetings, attendance is within professors' professional duties as set out in the agreement's class definition of professor. That definition clearly encompasses duties both within and without weeks containing contact hours. The parties divide on the question whether the time needed for attendance at the meetings should count as part of the total workload included on the individual's Standard Workload Form. If attendance comes within s. 11.01 F, it should; if attendance comes within s. 11.08, it should not.

Section 11.01 F reads:

**11.01 F** 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 five hours of the 44 hour maximum weekly total workload shall be attributed as follows:

three hours for routine out-of-class assistance to individual students.

two hours for normal administrative tasks.

And s. 11.08 reads:

**11.08** In keeping with the professional responsibility of the teacher, non-teaching periods are used for activities initiated by the teacher and by the College as part of the parties' mutual commitment to **professionalism**, the quality of education and professional development.

Such activities will be undertaken by mutual consent and agreement will not be unreasonably withheld.

Such activities will neither be recorded nor scheduled except as in accordance with 11.01 G 1.

It follows, says the union, that even though the meetings were held during the time period of the academic year after teaching is finished, s. 11.01 F covers them because academic administrators "assigned" them and "directed" that professors attend. The College disagrees: s. 11.01 F applies only to activities during the weeks when a professor has teaching contact hours; s. 11.08 applies to what the teacher does for the balance of the time before the vacation begins. At all events, says the College, even if s. 11.01 F would apply if attendance at the meetings had been "assigned" or "directed", that is not what happened in 1995 nor has happened as a matter of practice.

We conclude that the College is right.

For the purposes of these grievances the academic year, the time period when the professor is engaged in performing the professional duties set out in the class definition, is defined by s. 11.03 as ten months, running from September through June. Article 11 as a whole deals with teachers' workload over the academic year, both during weeks when there are teaching contact hours and weeks when there are none. The initial provision, s. 11.01, imposes on each teacher a workload defined by the provisions of the article. The first paragraph of s. 11.01 B 1, immediately following, limits the "[t]otal workload assigned and attributed by the College to a teacher" in two ways: first, it limits the workload to 44 hours in any week when there are teaching contact hours; and second, it limits the number of weeks of teaching contact hours to 36 for post-secondary programs and 38 for programs that are not post-secondary. The second paragraph of s. 11.01 B 1 sets out what the teacher is bound to do during the time period of the academic year when he or she has no teaching contact hours. Finally, the third paragraph sets out the "[w]orkload factors" that must be taken into account to determine the "total workload" referred to in the first paragraph, that is, the workload during the weeks of the academic term when the teacher has contact hours.

The immediately following provisions of Article 11 then flesh out each of these "workload factors". Workload factor (i) "teaching contact hours" - is fleshed out by the groups of provisions of ss. 11.01 B 2, 11.01 C, 11.01 I, 11.01 J, 11.01 K and 11.01 L. Workload factor (ii) - "attributed hours for preparation" - is fleshed out by the provisions of s. 11.01 D (except for paragraph (ix) of 11.01 D 3, which is obviously positioned in the wrong place in the scheme of Article 11). Workload factor (iii) - "attributed hours for evaluation and feedback" - by the provisions of s. 11.01 E. And workload factor (iv) - "attributed hours for complementary functions" - the provisions in s. 11.01 F and perhaps 11.01 H. In addition, miscellaneous groups of provisions flesh out all four workload factors - ss. 11.01 G, 11.01 M, 11.02 A (especially 11.02 A 2 and 11.02 A 5), 11.02 C (especially 11.02 C 1 and 11.02 C 2) and 11.07. Finally, ss. 11.05 and 11.06, positioned in the wrong place for their target, limit the teacher's outside activities during the time period of teaching contact hours.

With the total workload of teachers during contact weeks now fully defined, the remaining provisions of Article 11 focus on other matters of workload.

Section 11.03, already mentioned, sets the academic year for everyone. Section 11.04 then governs the workload of librarians and counsellors, while s. 11.05 limits the employment of teachers who are not members of the bargaining unit.

Then comes s. 11.08. It is the last provision in the article. Preceding provisions have elaborated the factors going into the workload during teaching contact weeks as set out in the first and third paragraphs of s. 11.01 B 1. Section 11.08 governs generally how teachers shall use the periods of the academic year when they do not have teaching contact hours - the time periods referred to in the second paragraph of s. 11.01 B 1.

From this canvass of the structure and content of the provisions making up Article 11 as a whole, we conclude that a professor's professional duties performed during the weeks of the academic year without contact hours are not governed by s. 11.01 F. "Complementary functions" within s. 11.01 F, as mentioned above, means solely the complementary functions listed in the third paragraph of s. 11.01 B 1 for the purpose of determining "total workload" during teaching contact weeks. Subject to the narrow exception set out in paragraph (ix) of s. 11.01 D 3 (which is not in issue here), complementary functions performed

during periods when there are no contact hours are governed solely by s. 11.08. Since all of the meetings the subject of the grievances, concededly about matters falling within professional duties, were held during non-contact weeks, s. 11.01 F and the provisions regarding the Standard Workload Form have no bearing. The professors' time and effort in attending the meetings are governed under s. 11.08 by the College's exercise of discretion in calling the meetings, subject to professors' consent and to their obligation not to withhold consent unreasonably. And that is so whether or not the calling of the meetings constituted "assign[ing]" them and "direct[ing]" that professors attend.

The union argues that such conclusions about the scope of ss. 11.01 F and 11.08 would cause s. 11.08 to swallow up all professors' activities. That fear is not warranted: the limit to reasonableness is the protection. For example, if a professor has other professional duties preventing attendance at a meeting a College administrator has called, the professor's refusal to consent to attendance and the failure to attend would probably not be unreasonable. We base this scenario on the experience of one of the grievors. Should professors and College not agree on particular circumstances justifying refusal to consent, the matter may be grieved and ultimately determined by arbitrators. For workload during teaching contact weeks, professors' protection is the Standard Workload Form, the Workload Monitoring Group, the Workload Resolution Arbitrator and the procedures governing them all. For workload during non-contact weeks, what serves is the College's need to act reasonably in calling for particular activities, subject always to arbitrators' review and possible reversal.

We recognize that the last sentence of s. 11.08 forbids the College from "record[ing]" or "schedul[ing]" these meetings (subject to an exception not relevant here). Even apart from the letter of understanding set out on page 105 of the collective agreement, we think that sending memoranda to call the meetings is not recording them. Nor do we think that an academic administrator's mere announcement of a meeting or two, as **shown by the evidence**, is "scheduling" for the purpose of this sentence. Looking to dictionary definitions in the light of ordinary practice in post-secondary educational institutions, we read the verb "schedule" attached to the object "activities" as meaning the listing of a series of dates, times and places for the holding of the activities in question. Sending a memorandum announcing a promotion meeting or a program meeting for a certain time and place is not scheduling the activity in this sense.

Our reasoning and the conclusions we reach about the scope of ss. 11.01 F and 11.08 are different from those in the Loyalist College award of 1991, issued by a board chaired by Jane Devlin. We simply say that, in our view, the board was wrong. However, our reasoning is similar to that in the Sault College award of 1993, issued by a board chaired by M.G. Mitchnick. That award and the award in Cambrian College issued in 1991 by a board chaired by Gail Brent support our analysis.

The grievances are dismissed.

DATED at Toronto this 11th day of October, 1995.

Robert Gallivan

Sherril Murray

Stanley Schiff, chairman

## DISSENT

With all due respect, this member finds that the majority has erred in dismissing the grievances. The evidence regarding both the curriculum development and promotional meetings established the ongoing and scheduled criteria.

The workload formula clearly contemplates the recording (SWF) of these complimentary functions. While the college professed that these meetings were not assigned, the expectation that the professors attend was crystal clear. Of some consolation to the grievors is the employer's clear statement that refusal to attend with reason would not constitute discipline. The reasoning found in the Devlin Loyalist College award of 1991 is an accurate reflection of the evidence at hand.

For the forgoing reasons, this member would have upheld the grievances.