

IN THE MATTER OF AN ARBITRATION

BETWEEN

FANSHAWE COLLEGE

College

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Union

AND IN THE MATTER OF
A GRIEVANCE OF H. ZUROWSKI

Grievor

BEFORE:

Prof. C. Gordon Simmons, Chair
Hugh John Cook, College Nominee
John McManus, Union Nominee

APPEARANCES ON BEHALF OF THE COLLEGE:

Mr. Robert J. Atkinson, Counsel
Ms. Gail Rozell, Manager, Human Resources, Fanshawe College

APPEARANCES ON BEHALF OF THE UNION:

Mr. Alick Ryder, Counsel
and Others

A hearing into this matter was held in London, Ontario on March 25, 1997 and an Executive Session held on July 3, 1997 in Kingston, Ontario. The grievor alleges that the notice

of layoff dated April 1, 1996 to be effective March 20, 1997 was improper. The grievor had been a regular full-time teacher in the nursing program within the Health Science Division. She received a B.Sc. in Nursing and a Master of Arts in Education. She had been employed full-time in the Nursing Division from August 14, 1986 until December 20, 1996. Between December 20, 1996 and March 20, 1997 she was granted release of all teaching duties in order to allow her to engage in retraining activities.

The parties had entered into a local agreement that there would be no layoffs between April 1, 1993 until March 31, 1996. In November 1995 the College declared an extraordinary financial exigency as provided in art. 29 of the collective agreement. This required a consultative process with the Union. In November 1995 the College gave notice to the Union that it planned to reduce the number of full-time employees under art. 27.05 which involves another consultative process and this process occurred during the Fall of 1995 and Winter of 1996. After this process had been completed, the College decided to layoff a number of employees at the end of the no layoff agreement which expired on March 31, 1996. On April 1, 1996 approximately 83 employees were given layoff notices. The grievor was included in this notice of layoff.

On April 15, 1996 the grievor filed the following grievance (Exhibit 2): Memo

To: *Pat Kirkby*
From: *Halina Zurowski*
Date: *April 15/26*
Regarding: **Grievance - Improper Layoff**

I grieve that my layoff is improper, issued in bad faith and is contrary to the provisions of the Collective Agreement.

I am entitled to displace full-time and non full-time positions within the following divisions:

Health Science Division/Nursing Education Division/Health Technology Division/ Human Services Division/Continuing Education Division/Health Care Program (Health Sciences)

I contend that I have the competence, skill and experience to fulfil the requirements of these positions and that my seniority is greater than any persons occupying the above.

I also contend that I have the competence, skill and experience to perform the requirements of the vacant positions in:

*Health Science Division/Nursing Education Division/Health
Technology Division/Continuing Education Division*

As remedy, I request that the College rescind my layoff notice immediately and provide me with details of my workload assignment as outlined in Article 11 of the Collective Agreement. If this layoff notice creates any break in employment between now and the time that this grievance is resolved, then I also seek a retroactive payment for all salary plus interest, benefits, seniority, etc. that I should have been entitled to.

Signed: Halina Zurowski

c.c. Local 110

The College has taken the position that the grievor's grievance is inarbitrable because she failed to identify positions that she was seeking to displace pursuant to art. 27.08. The College asserted that this failure was fatal to the grievance being arbitrated.

At the commencement of the hearing the parties sought to have this preliminary objection, together with two other issues, dealt with before proceeding to the merits.

The issues or questions that were presented to the board are the following:

1. Is the failure to identify positions as per art. 27.06 (i) fatal to the grievance proceeding on its merits?
2. What is the period for which layoff rights are assessed?
3. Is the College obliged to assign lesser than full-time assignments to a regular full-time employee?

The relevant articles in the collective agreement are as follows:

Layoff and Inventory Transfer

27.05 When a College plans to lay-off or to reduce the number of full-time employees who have completed the probationary period, or plans the involuntary transfer of such employees to other positions than those previously held as a result of such a planned lay-off or reduction of employees the following procedure shall apply:

...

- (iii) If requested by a member of the CESC within three calendar days following the meeting under 27.05 (ii), the CESC shall meet within seven calendar days of receipt of such request for the purpose of discussing the planned staff reduction, the circumstances giving rise to the reduction, the basis for the selection of the employees affected and the availability of alternative assignments. It being understood that the College reserves the right to determine the number and composition of full-time, partial-load and part-time or sessional teaching positions, the College shall give preference to continuation of full-time positions over partial-load, part-time or sessional positions subject to such operational requirements as the quality of the programs, their economic viability, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students and the community. The CESC may require that further meetings be held.

27.06 When the College decides to lay off or to reduce the number of full-time employees who have completed the probationary period or transfer involuntarily full-time employees who have completed the probationary period to another position from that previously held as a result of such lay-off or reduction of employees, the following placement and displacement provisions shall apply to full-time employees so affected. Where an employee has the competence, skill and experience to fulfill the requirements of the full-time position concerned, seniority shall apply consistent with the following:

- (i) An employee will be reassigned within the College to a vacant full-time position in lieu of being laid off if the employee has the competence, skill and experience to perform the requirements of a vacant position.
- (ii) Failing placement under 27.06 (i), such employee shall be reassigned to displace another full-time employee in the same classification provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College:
- (iii) Failing placement under 27.06 (ii), such employee shall be re-assigned to displace a full-time employee in another classification upon acceptance of the identical employment conditions as the classification concerned provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned;

- (b) the employee being displaced has lesser seniority with the College.
- (iv) Failing placement under paragraph 27.06 (iii), such employee shall be reassigned to displace two partial-load employees provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned; and
 - (b) each of the partial-load employees being displaced has lesser months of service with the College as determined in Article 26, Partial-Load Employees, than such displacing employee's months of seniority; and
 - (c) it is understood that the College retains the right to assign additional work to the employee, where warranted, subject to the limits prescribed by Article 11, Workload.
- (v)
 - (a) Failing placement under 27.06 (iv) or where the employee has waived in writing the right in 27.06 (iv), such employee shall be reassigned to displace one partial-load employee and one or more part-time employees whose assigned courses are as described in 27.06 (v) (b), provided that:
 - (i) The displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned; and
 - (ii) each of the employees being displaced has lesser months of service with the College (as determined in Article 26, Partial-Load Employees, or Appendix IX, as appropriate) than such displacing employee's months of seniority; and
 - (iii) it is understood that the College retains the right to assign additional work to the employee where required so that the work assignment so created constitutes a full-load assignment in accordance with the limits prescribed by Article 11, Workload.
 - (b) The courses taught by the part-time employees displaced must be:
 - (i) the same as, or
 - (ii) essentially the same as, or
 - (iii) pre-requisite courses to those taught by the partial-load employee concerned.

- (v) (c) Such employee shall have the layoff notice extended until completion of the assignment so created and shall maintain current salary and benefits for the duration of that assignment.
- (v) (d) Upon completion of the assignment so created, or as mutually agreed between the College and the employee, such employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (v) (e) Failing placement under 27.06 (v) (d), such employee shall be laid off without further notice upon completion of the partial-load assignment.
- (vi) (a) Failing placement under 27.06 (v) or where the employee has waived in writing the right in 27.06 (v), such employee shall be reassigned to displace one partial-load employee and engage in approved retraining activities such that the employee retains current salary and benefits for the duration of the partial-load assignment provided that:
 - (i) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned; and
 - (ii) the partial-load employee being displaced has lesser months of service with the College (as determined in Article 26, Partial-Load Employees) than such displacing employee's months of seniority.
- (vi) (b) Such employee shall have the layoff notice extended until completion of the partial-load employee's assignment and shall maintain current salary and benefits for the duration of the partial-load assignment.
- (vi) (c) Upon completion of the partial-load assignment, or as mutually agreed between the College and the employee, such employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (vi) (d) Failing placement under 27.06 (vi) (c), such employee shall be laid off without further notice upon completion of the partial-load assignment.
- (vii) (a) Failing placement under 27.06 (vi) (a), or where the employee has waived in writing the right in 27.06 (vi) (a), such employee shall be reassigned to displace a sessional employee (who has more than

90 days remaining on the sessional employee's term appointment) provided that the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned.

- (vii) (b) Such employee shall have the layoff notice period extended until completion of the sessional employee's assignment and shall maintain current salary and benefits for the duration of the sessional assignment.
- (vii) (c) Upon completion of the sessional assignment or as mutually agreed between the College and the employee, such employee shall be reassigned to a vacant full-time position if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (vii) (d) Failing placement under 27.06 (vii) (c), such employee shall be laid off without further notice.
- (viii) (a) Failing placement under 27.06 (vii) (a), or where the employee has waived in writing the right in 27.06 (vii), such employee shall be reassigned to displace a part-time employee upon acceptance of the identical employment conditions as the part-time employee concerned provided that:
 - (i) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned; and
 - (ii) the part-time employee being displaced has lesser months of service with the College as determined in Appendix IX than such displacing employee's months of seniority.
- (viii) (b) Such a reassigned person shall be deemed to be laid off and eligible for recall in accordance with 27.09 B and 27.09 C, 27.03 E and the rights under 27.09 A.
- (viii) (c) Failing placement under 27.06 (viii) (a), such employee shall be laid off with written notice of not less than 90 calendar days. Such employee shall be granted release from all or part of the normally assigned duties, for this period of notice, for the purpose of engaging in retraining activities, where such release is feasible given the normal operational requirements facing the College. Where such release is not possible, the notice period shall be extended by up to 90 days to permit retraining and the employee shall maintain

current salary and benefits for the duration of the notice period.

- (viii) (d) At the termination of the period referred to in 27.06 (viii) (c), such employee shall be reassigned to a vacant full-time position, if the employee has the competence, skill and experience to perform the requirements of a vacant full-time position.
- (viii) (e) Failing placement under 27.06 (viii) (d), such employee shall be laid off without further notice.

Lay-Off Grievances

27.08 A An employee claiming improper lay-off, contrary to the provisions of this Agreement, shall state in the grievance the positions occupied by full-time and non full-time employees whom the employee claims entitlement to displace. The time limit referred to in 32.02 for presenting complaints shall apply from the date written notice of lay-off is given to the employee.

27.08 B If the grievance is processed through Step 2, the written referral to arbitration in 32.03 shall specify, from the positions originally designated in 27.08 A, two full-time positions, or positions occupied by two or more partial-load or part-time employees (the sum of whose duties will form one full-time position), who shall thereafter be the subject matter of the grievance and arbitration. The grievor shall be entitled to arbitrate the grievance thereafter under only one of (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of 27.06.

Council of Regents
for Colleges of
Applied Arts and
Technology

11th Floor
790 Bay Street
Toronto, Ontario

June 3, 1992

Re: Displacement of Part-Time Employees

This will confirm the advice given in negotiations that it is the Colleges' [sic] intention that failing placement of a full-time employee who has completed the probationary period under 27.06 (iv), the College will give reasonable consideration to the written request of a full-time employee about to be laid off to continue a full-time assignment by displacing two or more part-time employees and the employee shall set out:

- (a) the names of such part-time employees, each of whom, have lesser continuous service with the College.

Upon receipt of such written request, the College will consider the feasibility thereof taking into account such features as:

- (b) possible reduction in efficiency, quality of performance or adverse effect upon the program objectives; and
- (c) the competence, skill and experience to fulfill the requirements of the positions concerned.

F. Upshaw
President
Ontario Public Service
Employees Union

R. Johnston
Chair
Ontario Council
of Regents

The Union asserts that art. 27.06 (i) refers to a “placement” situation only in that the person seeking a “vacant position” is not seeking to displace anyone. Accordingly, art. 27.08 has no application to 27.06 (i) because art. 27.08 refers to displacement situations only. Therefore, if art. 27.08 does not apply to the instant situation one has to look elsewhere in the collective agreement for a solution. We were urged to find that art. 27.08 does not apply to this situation and therefore we ought to look at the Letter of Understanding together with art. 27.05 (iii) and apply the word “preferences” to full-time employees versus part-time or partial-time employees as per *Lambton College* (Swan chair) unreported October 25, 1989.

The College asserts that art. 27.08 applies to this situation. Article 27.08 refers to layoff situations which is what we have in the instant situation. The parties have set out what can and cannot be grieved in a layoff situation and they have agreed that a grievor can only allege a violation in art. 27.06 and can only allege a violation of one of the subparagraphs (i) through (viii) in that article.

In support of its position, the College referred the board to a number of previous arbitration decisions involving community colleges and OPSEU. They are: *Canadore College and Ontario Public Service Employees Union (Mueck)*, unreported (MacDowell Chair), December 12, 1996; *St. Lawrence College and Ontario Public Service Employees Union (Brown)*, unreported (Shime Q.C. Chair), September 11, 1986; *Fanshawe College and Ontario Public Service Employees Union (Stokes)*, unreported (Weatherill Chair), June 17, 1987; *The George Brown College of Applied Arts and Technology and Ontario Public Service Employees Union (de Simone)*, unreported (Burkett Chair), December 29, 1995; *St. Lawrence College and Ontario Public Service Employees Union (Brown)*, unreported (Shime Q.C. Chair), February 27, 1978; and *Lambton College and Ontario Public Service Employees Union (Sayers)*, unreported (Swan, Chair), October 25, 1989.

The Union asserted that art. 27.08 should be interpreted to apply only to “displacement” grievances. The wording of the article identifies full-time and non full-time employees whom the grievor seeks to “displace”. If art. 27.08 were not given such an interpretation it would mean that a number of provisions in the collective agreement would be unenforceable. More particularly, provisions which are contained elsewhere in the collective agreement would not create benefits to employees that had been intended. For example, a placement grievance could not be grieved when one applies art. 27.08 beyond displacement grievances.

In the alternative, even if art. 27.08 applies to the instant situation and the Union must comply with its requirements, failure to have done so is not fatal to the Union’s position because it has been unable to comply in giving the names of the positions the grievor seeks because the Employer has not given the information to the Union and the grievor to allow the Union to comply. That is to say, the Union has requested information from the College regarding the winter term of 1997 for sessional, part-time employees and partial-load employees and in addition the Union has sought to have timetables concerning these employees in order to allow it to construct a workable full-time position. In support of its position the Union relies on *Re United electrical Workers, Local 504 and Canadian Westinghouse Co. Ltd.* (1964), 14 L.A.C. 279 (Reville) where the grievor in that case was to be laid off and claimed a right to be transferred to another department. However, the work in that other department was classified and the grievor had not received clearance. During the course of the grievance the regulations were altered which enabled the employer to reveal to the employee the information that he sought. The grievor in that case claimed that his seniority rights had been frustrated. The board in that case agreed with the Union’s position that the grievor’s rights had been frustrated. Its comments on p. 286 are as follows:

It is the board’s view that the ordinary rules of frustration of contract apply to this situation. It has been held by the Supreme Court of Canada in the case of *Davidson v. Norstrant* (1921), 61 S.C.R. 493, that a person under a contractual obligation cannot justify or excuse his default in performance of it by setting up the promisee’s non-performance of a condition precedent where the promisee’s non-performance is due to the conduct of the promisor, which makes it unjust or inequitable that the

promissor should rely on such non-performance. It is perfectly valid to interpolate the present situation in this statement of law as follows:

'A person under a contractual obligation (the company) obligated to comply with art. 13.07(g)(iii) cannot justify or excuse his default in performance of it (refusing the grievor the transfer in question under art. 20) by setting up the promisee's (the grievor's) non-performance of a condition precedent (obtaining the security clearance in question) where the promisee's (the grievor's) non-performance is due to the conduct of the promissor (the company's failure or neglect to supply the grievor with application forms required by the Department of Defence Production and processing such forms), which makes it unjust or inequitable that the promissor (the company) should rely upon such non-performance.'

Decision On The First Question or Issue (*supra*)

The board is unable to agree with the Union's position that art. 27.08 does not apply to the instant situation. While it is true that art. 27.08 (a) and (b) refer to displacements and not to placements the article must be interpreted, notwithstanding the eloquent submissions on behalf of Counsel for the Union, to include all of art. 27.06. We are supported in this position by the last sentence in art. 27.08 (b) which reads: "The grievor shall be entitled to arbitrate the grievance thereafter under only one of (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of 27.06." Furthermore, it is to be noticed that each of the paragraphs in art. 27.06 start with "failing placement" whereupon the employee seeking to displace someone moves on down the chain seeking someone to displace. Perhaps the parties could have included the word "placement" in art. 27.08 to be more clear but we interpret art. 27.08 to apply to all layoff situations. Moreover, art. 27.08 is prefaced by the words "Lay-off Grievances". This interpretation in our view is reasonable.

Accordingly, we are of the view that the MacDowell board in *Canadore* is dispositive of the issue that is before us. In referring to the Shime decision of *St. Lawrence College (supra)* and the Weatherill decision in *Fanshawe College (supra)* Arbitrator MacDowell in the *Canadore College* decision (*supra*) stated at p. 10:

These are admittedly old cases. But they are precisely on point, no contrary authorities were cited to us, and the language in question has been

maintained, without material change, since 1987, over several rounds of bargaining. Had the parties wished to change the contract language to avoid the interpretation given by arbitrators Shime and Weatherill, they could easily have done so. But they did not. On the contrary. Article 27.08B, as currently framed, merely reinforces the mandatory thrust of Article 27.08A; because 27.08B narrows the number of positions which can ultimately be the subject of arbitral review. The matters that can proceed to arbitration are a subset of the positions identified in Article 27.08A – which makes it all the more important for the grievor to identify the field from which the arbitrable subset is selected.

In other words, the current structure of the agreement reinforces the interpretation advanced by arbitrators Shime and Weatherill ten years ago.

In the *St. Lawrence College* case (*supra*) the grievor claimed that he had been laid off contrary to the terms of the collective agreement and was met with the employer's response that the grievance did not specify the persons whom the grievor sought to displace. In the *Fanshawe College* case (*supra*) the board of arbitration had to consider the propriety of a layoff and once again there was a problem because the grievor had not specified the names of the individuals whom he sought to displace. Since the *St. Lawrence* and *Fanshawe* decisions were released the parties changed the wording from "persons" to "positions" and this change was in effect when the *Canadore College* decision was made. The MacDowell board was of the view the change was of no material effect. We agree.

While the grievor contends that she was unable to name a vacant position because of a lack of information and the College's reluctance to provide her with any information concerning various positions that might be open or the possibility of cobbling certain part-time or partial workload positions (which is a part of issue #3 that has been stated above), the board is of the view that failing to name vacant positions that may have been available to her is a fatal flaw to this grievance. The Shime, Weatherill, and MacDowell decisions make it clear that the grievor must designate certain persons or positions that she claims she is competent to perform and has the skill and experience to fill the requirements of the positions she seeks. This the grievor failed to do throughout the grievance procedure. We do not regard the Union's allegation that the College must provide information to the grievor as to what vacant positions she seeks to be placed into but instead it is up to the

grievor when claiming a vacant position to set out what position she is claiming. The *Canadian Westinghouse* case (*supra*) is distinguishable in that the grievor stated as reported at p. 280: "I can perform the work of the following employees who have less seniority than I." The grievor in that case identified the employees whom he was seeking to displace. For the above reasons, the answer to Question #1 is yes.

The second question is: "What is the period for which layoff rights are assessed?"

The College stated that as of July 1996 there were no vacancies into which the grievor could be placed. However, the effective date of her layoff was March 20, 1997 and this included a release from duties as of December 20, 1996 for the purpose of engaging in retraining activities. It is to be remembered that the notice of layoff was dated April 1, 1996 and the grievance was filed on April 15, 1996. The Union asserts that the effective date of the layoff (December 20, 1996) is the date when the grievor can look around to displace a less senior employee. The College asserts that the time for looking around was April 15, 1996. Both parties rely on the *Niagara College* case (*supra*) for support in their respective positions. At pp. 5 and 6 the following comments appear:

By Article 8.05 it is clear that the time for such consideration is 'when the College decides to lay-off' which means the effective date of the lay-off of the grievor in this case which was October 24th, 1988. As of that date, under the terms of Article 8.05 (b) the laid-off employee has the entitlement to displace a less senior employee subject to the conditions set out in that Article to fill the requirements of the position.

The Union's position is that "the effective date of the layoff" is December 20, 1996 and if it is April 1996 the situation becomes a matter that is left open to possible abuse. For example, if the notice had been given on July 1 there would be no one teaching and no incumbents to displace. Further, if it is in April there are six weeks left to teach and the College would not want to effectuate layoffs at that time. So the time to grieve is when you are moved to the unemployment status.

The College in referring to the *Niagara College (supra)* also cited the quotation from that decision above and asserted that the words “decides to layoff” and “effective date” are somewhat confusing.

The answer, according to this board, lies in art. 27.08 A which in the last sentence of that article reads: “The time limit referred to in 32.02 for presenting complaints shall apply from the date written notice of lay-off is given to the employee.” That time limit in art. 32.02 requires that a complaint must be discussed with the employee’s immediate supervisor within 20 days following a complaint raised by the employee. The comments in *Niagara College* does not assist the board in determining this issue. That decision refers to the decision of the college and the effective date of the layoff. The decision by the College on the one hand, following notice to the employee of a layoff, and the “effective date of the layoff” are two separate and distinct dates. The notice to layoff is, for our purposes, contained in art. 27.08 A which limits the time following notice to present complaints and that is the time when the complaints must be referred to the College. It is also at that time that the employee must state in her complaint that she is being improperly laid off. In the instant situation the grievor was notified on April 1, 1996 that she was to be laid off. She filed her grievance on April 15, 1996 claiming that her impending layoff was improper. While the effective date of her layoff was March 20, 1997 (with a retraining program from December 20, 1996), she nevertheless had a complaint on April 15, 1996 that her layoff was improper.

In this board’s view the grievor was (quite properly) of the view that her employment was such that she was to be laid off at a future date. She claimed that her impending layoff was improper and filed her grievance accordingly. In this board’s view had the grievor waited until December 1996 the College would have had a viable argument that her grievance was out of time because she had received notice of her impending layoff in April 1996. So this board’s view is that the period for which her layoff rights were to be assessed was April 1996 and not December 1996.

When the grievor filed her grievance on April 15, 1996 alleging improper layoff she was obligated to look around on April 15 for a vacant position then existing, pursuant to art. 27.06 (i), or name employees who held full-time positions pursuant to art. 27.06(ii) or (iii), or name partial load part-time and sessional employees pursuant to the remaining subparagraphs of art. 27.06.

Accordingly, the answer to Question #2 is April 15, 1996.

This should end the matter but the parties asked for an interpretation of Question #3 and the board, while reluctant to do so, makes the following obiter comments in an effort to assist the parties as requested by them. It must however be stressed that the following comments are obiter only.

Question #3 - Is the employer obligated to combine lesser than full-time assignments to a regular, full-time position?

Again we refer the parties to arbitrator Swan's decision in *Lambton College*. In that case it is to be noted that on p. 1 of that decision setting out the facts the board stated as follows:

In this instance, the intention of the grievance is that the grievor would take certain teaching assignments away from each of three employees who teach less than full-time, in the process putting together a full-time job made up of pieces of teaching previously done by others. These pieces are for the most part 'relief hours', hours in a particular course which, if taught by the principal instructor, would give that instructor a teaching load beyond that permitted by the collective agreement.

It is to be noted that the grievor in that case sought to take teaching assignments away from three employees who taught less than full-time. The question for the Swan board was whether or not the employer was obligated to combine lesser than full-time assignments to a regular full-time teaching employee. The board in that case concluded that the employer was so obligated. In doing so the Swan board looked at the letter of understanding then existing in that collective agreement together with what is now art. 27.05 (iii) and concluded that the employer was obligated to give preference to the continuation of full-time positions over positions that were less than full-time.

However, the instant case involves a claim under s. 27.06 (i) which seeks a vacant full-time position. Had the grievor in the instant case filed her grievance under s. 27.06 (iv) and named the employees she sought to displace, the Swan board would have been more persuasive in our decision. It must be remembered that the board in the instant situation has decided that art. 27.08 applies to the instant situation and therefore art. 27.08 B states in its last sentence that the grievor shall be entitled to arbitrate the grievance under only one of (i) - (viii) and therefore the grievor in the instant situation was precluded from pursuing her grievance under (iv) which we must assume, but it is not so stated, was the article that was pursued in the Swan arbitration.

In the instant situation the parties agree that the matter was pursued under art. 27.06 (i). Article 27.08 B entitles the grievor to arbitrate a grievance under only one of the subparagraphs in art. 27.06. Article 27.06 (i) in this board's opinion does not allow the grievor to search and cobble a number of partial or part-time positions to make a full-time position. If the intent of the grievor is to cobble a number of positions she must pursue her grievance under art. 27.06 (iv) if she wishes to displace two partial-load employees or art. 27.06 (v) if she wishes to displace one partial-load employee and one or more part-time employees. But this is not what the grievor did in the instant situation. She sought to be reassigned to a vacant full-time position in lieu of being laid off, yet she did not mention any position being sought in her grievance.

So the answer in this board's opinion to Question #3 is no in the circumstances of this case.

For all of the foregoing reasons the grievance must be and is hereby dismissed.

Dated at Kingston, Ontario, this 12th day of August,, 1997.

C. Gordon Simmons
Chairperson

I concur/~~dissent~~

"Hugh John Cook"

Hugh John Cook
College Nominee

I ~~concur~~/dissent

"Dissent Attached"

John McManus
Union Nominee