

IN THE MATTER OF AN ARBITRATION
Pursuant to the *Colleges Collective Bargaining Act*

Between:

**ALGONQUIN COLLEGE:
COLLEGE EMPLOYER COUNCIL
FOR THE COLLEGES OF APPLIED ARTS AND TECHNOLOGY
(For Academic Employees)**
(the Employer/College)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the Union)

Re: Article 2 - Health and Community Studies; B.Sc.N., P.N. and P.S.W. Programs -
Pembroke Campus
Grievance No. 2008-0415-0047

AWARD

PAULA KNOPF - ARBITRATOR

APPEARANCES:

For the Employer: Jock Climie, Counsel
Debra Balasevicius

For the Union: Mary Mackinnon, Counsel
Pauline Edmonds
Shawn Pentecost
J.P. Lamarche
Patrick Kennedy

The hearing of this matter was held in Ottawa and Pembroke on
September 27, October 4, October 18, November 2, November 15, 2010;
January 20 -21, April 1, October 27 and November 1, 2011.

The Union has filed a grievance alleging that the College has violated Article 2 of the Collective Agreement by hiring a disproportionate number of part-time, partial-load and sessional professors instead of full-time appointments. The grievance itself covers a number of programs, however, this decision is confined to the evidence presented with regard to the Bachelor of Science in Nursing (B.Sc.N.), Practical Nursing (P.N.) and P.S.W. (Personal Support Worker) programs. The Union is seeking an order that the College hire three more full-time positions for each of the P.N. and B.Sc.N. programs, and one more full-time teacher for the P.S.W. program, or be required to create a position that covers more than one of those programs.

The College is opposing the Union's request, citing operational justification for its hiring decisions and asserting that the Union cannot meet its onus of proving a violation of the Collective Agreement or hours that amount to a "sensible and appropriate full-time workload."

The provision that governs this dispute is Article 2 of the parties' Collective Agreement:

Article 2 STAFFING

2.01 The Colleges shall not reclassify professors as instructors except through the application of Article 27, Job Security.

2.02 The College will give preference to the designation of full-time positions as regular rather than partial-load teaching positions, as defined in Article 26, Partial-Load Employees, subject to such operational requirements as the quality of the programs, attainment of the program objectives, the need for special qualifications and the market acceptability of the programs to employers, students, and the community.

2.03 A The College will give preference to the designation of full-time positions as regular continuing teaching positions rather than sessional teaching positions including, in particular, positions arising as a result of new post-secondary programs subject to such operational requirements as the quality of the programs, enrolment patterns and expectations, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students, and the community. The College will not abuse sessional appointments by failing to fill ongoing positions as soon as possible subject to such operational requirements as the quality of the programs, attainment of program

objectives, the need for special qualifications, and enrolment patterns and expectations.

2.03 B The College will not abuse the usage of sessional appointments by combining sessional with partial-load service and thereby maintaining an employment relationship with the College in order to circumvent the completion of the minimum 12 months sessional employment in a 24 month period.

2.03 C If the College continues a full-time position beyond one full academic year of staffing the position with sessional appointments, the College shall designate the position as a regular full-time bargaining unit position and shall fill the position with a member of the bargaining unit as soon as a person capable of performing the work is available for hiring on this basis.

Some background information is helpful. The Pembroke Campus of Algonquin College came into being in 1968. It has grown over the years, with increases in enrollments and the addition of new programs, and it is now in the stage of replacing its old building with a new facility, with hopes of completion in 2012. The Campus offers several programs, meets the needs of the local community, and also has several “niche” programs that are ideal for its rural and unique setting.

Ten years ago, the Nursing program consisted of a three-year Registered Nursing course and a one-year Registered Practical Nurse course. Since then, the nursing profession has evolved dramatically. The R.N. course is no longer offered, the B.Sc.N. course is four years long and the College now offers the three programs - B.Sc.N., P.N. and P.S.W. This has resulted in an increase in the number of students in the programs, however, the complement of full-time Professors has fallen from 13 to five over the decade. On the other hand, there has been an increase in the number of Instructors. The Union believes that this situation causes deficiencies in terms of consistency and oversight for the students and it places additional burdens on the full-time faculty. On the other hand, the College asserts that its hiring practices are aimed at meeting the educational needs of the students and the operational requirements of the College.

The Union’s first witness was Pauline Edmunds. She has taught for the College since 1982 and is a Professor in the Business, Technology and Outdoor Training programs. She is also the Coordinator for General Education for the Campus. She has served two

terms as the Union's Second V.P. at the College and she has been a Union Steward since 2003. Therefore, she is very knowledgeable about the Campus and its programs. She explained that since 2006 she has been trying to track enrollment and staffing patterns. From data received from other faculty members, she estimates an increase of 46.93% in enrollment overall at the Campus, yet the Union has perceived no similar increase in the number of full-time faculty. She explained that the Union filed this grievance after hearing complaints from several part-time staff about teaching for "years" without seeming to have any hope of acquiring full-time positions, while the existing full-time faculty were simultaneously complaining about difficulties in meeting all the students' needs.

The basis of the Union's claims for positions in the Nursing programs was taken from the "verified data" supplied to the Union pursuant to Article 27.12. Ms. Edmunds spent days testifying to explain the basis of each claimed position and being cross-examined on the assumptions and conclusions she had reached. Her testimony shall not be recited in detail because the case boils down to an assessment of the positions that were ultimately claimed in final argument. The proposed positions were based on the Article 27.12 data showing assignments of the following courses to non-full-time faculty. The Union's analysis includes courses taught by part-time, partial-load and sessional appointees and instructors. This "bundling of positions" was presented in final argument and does not match completely with the ones suggested in Ms. Edmunds' testimony. This was a source of frustration and concern for the Employer because its defence and evidence was predicated, to a large degree, on the package of courses presented by Ms. Edmunds. But in fairness to both parties, the case does not turn on the specific packages, and the Employer's evidence so comprehensively covered all aspects of the Union's assertions that there can be no concern that there has been any prejudice to the Employer's case. It should also be noted that the parties agreed that this case can and should be determined on the basis of the "snap-shot" of the 2009-2010 Academic year.

The Evidence respecting the claims for positions in the Practical Nursing and Bachelor of Nursing Science Programs

The parties chose to first address the Practical Nursing and Bachelor of Nursing programs together. The Union proposed the following positions for these programs:

PRACTICAL NURSING

Position One

Fall 2009

NSG 7332 Nursing II Practicum	13 hrs/wk	Sept 7-Dec 18
NSG 7331 Nursing I Lab	4 hrs/wk	Sept 7-Dec 18

Winter 2010

NSG 7322 Nursing II Practicum	13 hrs/wk	Jan 20 - April 16
NSG 7323 Nursing Research	2 hrs/wk	Jan 11 - April 30
NSG 7320 Nursing II Theory	2 hrs/wk	Jan 11 - April 30

Position Two

Fall 2009

NSG 7332 Nursing II Practicum	13 hrs/wk	Sept 7- Dec 18
NSG 7310 Nursing I Theory	6 hrs/wk	Sept 7- Dec 18

Winter 2010

NSG 7325 Health Assessment	8 hrs/wk	Jan 11 - April 30
NSG 7322 Nursing II Practicum	13 hrs/wk	Jan 18 - April 20

Position Three

Fall 2009

NSG 7332 Nursing II Practicum	13 hrs/wk	Sept 10 - Dec 12
NSG 7332 Nursing II Practicum	3 hrs/wk	Sept 10 - Dec 12
PHA 7100 Biology - Theory	3 hrs/wk	Sept 7 - Dec 18

Winter

NSG 7343 Current Issues	3 hrs/wk	Jan 11 - March 19
NSG 7342 Nursing IV Practicum	13 hrs/wk	Jan 14 - March 10
NSG 7344 Consolidation II	13 hrs/wk	March 22 - May 15

Bachelor of Science in Nursing

Position One

Fall 2009

NSG 4435 Med/Sug)	15 hr/wk	Sep 9 - Nov 27
HSS 2381 Measurement & Data Analysis	3 hrs/wk	Sept 10 - Dec 23

Winter 2010

NSG 4126 [no longer offered]	2 hrs/wk	[16 weeks]
NSG 3305 Clinical	16 hrs/wk	Jan 5 - April 2

Position Two*Fall 2009*

HSS 1101 Determinates of Health Care 6 hrs/wk Sept 10 - Dec 23

NSG 3311 Practicum 14 hrs/wk Sept 8 - Nov 30

Winter 2010

NSG 3137 Mental Health Clinical 16 hrs/wk [13 weeks]

NSG 3103 Theory in Nursing 3 hrs/wk [17 weeks]

Position Three*Fall 2009*

NSG 4435 19 hrs/wk Sept 9 - Nov 27

Winter 2010

[no suggestions made]

What this listing indicates is that there are a number of courses in the Nursing programs that are being claimed, but some do not run for a period of less than one semester. The Union is suggesting that they be combined to create a full-time teaching load, on the basis of 12-18 teaching contact hours per week, as prescribed as the full-time teaching load in the Collective Agreement. Ms. Edmunds suggested several configurations or combination of courses, essentially arguing that there are at least 39-40 hours available each semester that should be re-assigned from part-time, partial-load or sessionals to create more full-time positions. Admitting that she is not a nurse or a manager in these programs, Ms. Edmunds suggested that “any combination of these courses would be acceptable, provided that the person has the ability to deliver the course and the schedule.”

The “nursing” perspective of the Union’s evidence was presented by Michelle Osmond. She has been a full-time faculty member, teaching in the B.Sc.N. and P.N. programs since 1991 at the Pembroke Campus. She also pointed out that it is common for full-time faculty to be assigned to teach in both the B.Sc.N. and P.N. programs. Also, non-full-timers teach in both the P.N. and P.S.W. programs. Therefore it was suggested that courses could be combined from these areas to create a full-time load. Although she could not think of any examples of people being assigned to teach in the P.S.W. program as well, she feels that anyone qualified to teach in the B.Sc.N. and P.N. programs could also teach in the P.S.W. program.

Ms. Osmond's evidence made it clear that she feels strongly that the "disproportionate" number of non-full-time appointments puts a strain on the much smaller number of full-time faculty in areas such as academic advising and orientation. She also feels that the current staffing patterns affect the quality of the program's delivery. One example she gave was that in the past, a professor who taught a theory course would then follow those students into their practicum or labs. Now those practicums and labs are often assigned to the non-full-time appointments. She also decried what is perceived to be "common knowledge" of the College's practice of ensuring that the part-time teachers do not accumulate enough hours to achieve bargaining unit status. She mentioned that she has had discussion with the Chair of the Department of Health and Community Studies, Debra Balasevicius, about this issue.

Ms. Balasevicius responded to this evidence by explaining some of her challenges in scheduling classes and teaching assignments at the College. Because of the theoretical, laboratory and clinical placement requirements of the Nursing programs, scheduling has to take into consideration the size and number of labs, as well as the availability and capacities of placement agencies. Accordingly, she has to "stagger" the P.N. and B.Sc.N. students in clinics and labs. Further, the course offerings and hours are prescribed by the University of Ottawa and the Ontario College of Nurses and therefore cannot be varied. Ms. Balasevicius also cited recruitment problems, given Pembroke's rural locale. She suggested that it is sometimes difficult to find people with the proper credentials from within the community or who are willing to relocate to the area. She pointed out that the Pembroke Campus is the only campus of its size that is offering the B.Sc.N. Degree program.

Ms. Balasevicius also responded to the Union's evidence by addressing all the courses that are being claimed to be available for re-assignment to newly created full-time faculty members. Her evidence can be summarized according to the courses that were proposed by the Union and that remained as part of the mix of courses put forward in final arguments. Her responses to specific courses are indicated below. For the

courses being offered by part-time teachers, the College's general submission is that they are not available for consideration in this Article 2 grievance. That position will be explained and analyzed in more detail below. At this stage, it is sufficient to simply indicate the College's justification for the use of non-full-time teachers with respect to specific courses that the Union has targeted:

Practical Nursing

Fall 2009

Bio 7100 - An anatomy and physiology theory course, Ms. Balasevicius considers this to be a specialized "science course." She testified that the Program Coordinator, a bargaining unit position, was in "complete agreement to having a science teacher teaching this course." It is currently being taught by someone with a B.Sc. and a Bachelor of Education, with a specialization in Biology and Physical Education. While she conceded that it was taught for many years by an R.N., she says that changes in the P.N. course now require more "in depth" knowledge to properly deliver the course.

NSG 7310 Nursing I Theory - being taught by a part-timer.

NSG 7332 Clinical Placement - Assigned in the Fall of 2009 on a temporary basis as replacement for a full-time teacher who has now resumed responsibility for this course.

Winter 2010

Bio 7101 Continuation of the anatomy and physiology theory course, considered to be a specialized "science course," as above.

NSG 7323 This was taught in 2009-10 by a part-timer, but Ms. Balasevicius plans to assign this to a full-time faculty member in the future.

NSG 7342 Clinical - Does not span the full semester.

NSG 7343 Consolidation - Does not span the full semester.

Bachelor of Science in Nursing

Fall 2009

HSS 1101 - Determinants of Health Care (Theory) - This is a non nursing related, specialty course requiring Master's level credentials. It deals with health policy issues, not nursing or health content. It is being taught by a part-timer with a Ph.D. in health policy and philosophy.

HSS 2381 - Measurement and Data Analysis (Theory) - This is a non-nursing related, specialty course requiring Master's level credentials.

Winter 2010

NSG 3137 - Mental Health Clinical - This is considered as a "specialty course," because the area only has one acute mental health unit that is suitable for the clinical placement. That placement is critical of the B.Sc.N. degree. Due to the nature of the clients in the clinic and experience in the past, the Department Chair firmly believes that it is essential that the Clinical teacher is someone who is also a member of the staff at that Unit. Therefore, such a staff person is hired on a part-time basis to teach the clinical aspect of this placement. Further, the Unit demands this arrangement as a condition of the students' placement.

NSG 3103 - Assigned on a temporary basis to a part-timer to replace a full-time teacher.

NSG 4126 - This course is no longer offered.

NSG 3305 Clinical - This course does not span the full semester.

The College is a party to a Memorandum of Understanding with the University of Ottawa that is critical to the College's ability to grant the B.Sc.N. Degree. This Memorandum places certain obligations upon the College, including the type of credentials required of faculty for certain courses:

The minimum educational requirement to teach nursing theory courses is a Master's Degree (Master's Degree in Nursing preferred). A Baccalaureate Degree in Nursing is the minimum requirement to teach laboratory and clinical nursing courses.

The minimum education requirement to teach non-nursing related courses is expected to be a Master's Degree in the appropriate discipline, with a Ph.D. preferred.

Because of this Memorandum, the College has to submit all the Curriculum Vitae of all those who teach in the B.Sc.N. Degree program to the University to assure compliance. Minimum credentials are also required to maintain accreditation for degree granting

purposes with the Canadian Association of Schools of Nursing. While some exemptions have been sought and approved for specific courses and/or teachers, they remain the exception, rather than the rule. The evidence also shows that even experienced and successful professors who taught courses for the College in the B.Sc.N. program for years have been reassigned to P.N. courses because their credentials do not comply with the Memorandum's demands.

Marlene Finnegan challenged the relevance or importance of this Memorandum on the staffing issues. She is a Professor in the P.S.W. program and has taught in the P.N., B.Sc.N. and former R.N. programs as well. She has been with the College for 24 years. She pointed out that she does not hold a Master's Degree, but has successfully taught and helped to develop theory courses in the nursing courses, such as Introduction to Nursing, Adult Development and Health Assessment.

Ms. Osmond challenged the College's claim that some courses require specialized knowledge that would justify the assignment to a non-full-time teacher who possesses specific skills and knowledge to deliver the curriculum. While some of the courses she spoke about did not remain as part of the Union's proposals at the end of the case, her opinions are useful to record so that the College remains aware of the Union's opinions and concerns. For the Pharmacology course, Ms. Osmond asserted that this is a body of knowledge that is "used all the time in the field" and could easily be taught by any full-time faculty member at the Diploma P.N. level or by anyone with a M.Sc. at the B.Sc.N. level. Similarly, she feels that since "statistics" are used everyday to interpret medical information, no specialization is needed for teaching HSS Measurement and Data Analysis. She pointed out, "Nurses study statistics at the undergraduate and graduate level" and should therefore be able to teach this course. Ms. Finnegan concurred with this, saying that the Statistics course is taught at the Woodruff Campus by a nursing teacher who teaches in the B.Sc.N. program without any specialty credentials. However, she also admitted that this teacher has a Ph.D. in Psychology, which is a discipline that does require a great deal of facility with statistics. Ms. Osmond also feels that the Mental Health Nursing course does not require a specialist because she

considers it as a “basic element of nursing.” Ms. Osmond denounced the College’s determination to have the clinical hours of this course taught by the person who works in the facility where the placement occurs, saying that this “was one of the silliest things I’ve ever heard.” She feels that there is no benefit whatsoever in a teacher knowing the specific patients or the setting. Ms. Finnegan concurred, saying that the Clinical Mental Health component is taught at the Woodruff Campus by a full-time professor who also teaches the theoretical portion of the course. Ms. Osmond’s response to the claim that “Determinants of Health Care” requires specialized knowledge was, “I’d have to read the course outline, but I can’t imagine what elements couldn’t be taught by a Nurse.” She also argued that the Nursing faculty have “always” taught Biology, Anatomy and Physiology, so she feels that a specialist “would certainly not be required at the P.N. level.”

Ms. Balasevicius responded to the Union’s suggestion to “mix and match” or combine B.Sc.N. and P.N. course assignments by saying, “It would be a very complex process.” Calling the already existing scheduling problems created by the lab and clinical demands of the courses a “nightmare,” Ms. Balasevicius did not dismiss the idea of cross-appointments, but she suggested that it would make things even more complex and difficult.

Ms. Balasevicius also presented a sampling of full-time faculty Standardized Workload Forms (SWFs) to demonstrate “typical” workloads within the Nursing programs as well as other departments. Those workloads included factors such as teaching contact hours, class size and “attributed” and “complementary” functions. They were then compared to the SWFs that the College generated from the Union’s proposals for full-time hires at the Pembroke Campus, taking the Union’s case on a “best case” formulation and factoring in the functions that would be attributed beyond teaching contact hours (hereinafter referred to as the Mock SWFs.) The resulting calculations were as follows:

NURSING	Sample	Proposed
B.Sc.N.	1355.87	960.25
P.N.	1261.13	1059.70
P.N./B.Sc.N.	1372.40	
P.S.W.	- - -	1038.19

NON-NURSING

Business Accounting	1355.40
Business	1366.10
Respiratory Therapy	1323.02

While the Union complained about the use of “sample” rather than “average” SWFs, there was no challenge to the numbers that were generated from the sample SWFs.

The Employer also prepared a series of charts that plotted out the courses being claimed by the Union, their teaching contact hours, the weeks in which they are offered, whether they are being delivered by part-time appointees and any specific justifications for the assignments. The Union spent a great deal of time challenging the accuracy of the data depicted on these charts because they did not seem to coincide with the Union’s raw data taken from the Article 27.12 lists. Without reciting all that evidence, it must be said that it was apparent to all at the end that the Employer’s charts were accurate. The Union’s challenges were based on misconceptions arising from the nature and formulation of the data it receives. The Employer’s charts were very useful in offering a visual representation of the Union’s targeted courses and their placement in the academic year.

The Evidence with respect to the Personal Support Worker

The parties presented separate evidence with respect to the Personal Support Worker program. In this regard, the Union’s final submissions proposed one new full-time position on the basis of the following course load:

Fall 2009

Sept 7 - October 23	HLT 7100 Introduction to Care for PSW	6 hrs/wk
	HLT 7100 Introduction to Care for PSW	2 hrs/wk
	HLT 7101 Lab Skills	<u>8 hrs/wk</u>
		16 hrs/wk
October 26 - Nov 27	HLT 7100 (Continuation)	6 hrs/wk
	HLT 7101 (Continuation) [4 sections x 2 hrs]	8 hrs/wk
	HLT 7407 Overview of Dementia Care	<u>4 hrs/wk</u>
		18 hrs/wk
Nov 30 - Dec 12	HLT 7102 Clinical Placement	17 hrs/wk

Winter 2010

January 11 - March 5	HLT 7103 Advanced Skills for PSW	12 hrs/wk
	HLT 7105 Lab Skills for PSW	<u>3 hrs/wk</u>
		15 hrs/wk
Jan 18 - March 25 March 9 -19	HLT 7105 Lab Skills for PSW	6 hrs/wk
	Advanced Skills for PSW	<u>13 hrs/wk</u>
		19 hrs/wk
March 28 - April 10	HLT 7104 Clinical Placement for PSW	18 hrs/wk
April 12 - May 9	HLT 7103 Advanced Skills (Continuation)	6 hrs/wk
	HLT 7106 Consolidation for PSW	<u>14 hrs/wk</u>
		20 hrs/wk

The College's general response to this proposed new full-time position is to stress that it does not reflect a full-time workload because there are not enough weeks with enough course hours to amount to full-time responsibilities. It was said that the Union's proposal simply does not reflect a "sensible or appropriate workload."

The Union's case was introduced by Ms. Edmunds. Her exploration of the verified data revealed that full-time and sessional teachers are teaching all the vocational nursing courses in this program. She also pointed out that up to 2006, a full-time professor coordinated the P.S.W. program. When that person retired, the Coordinator duties were assigned to non-full-time people. The Union's proposal would involve "splitting" some

courses or clinical duties among two teachers in order to create a workload that complies with the Collective Agreement. The Union says that there is precedent for this in the way the program is already being taught, and it is not uncommon for teachers to share in the delivery of a course. Ms. Edmunds also said that this occurs to accommodate timetabling demands and/or to ensure that non-full-time appointments do not exceed the hours that would transform their status. She acknowledged that the Union's proposal could mean that a person would be teaching more than the maximum of 18 hours in some weeks, however, she suggests that this is not unprecedented.

Ms. Edmunds suggested that P.S.W. courses could also be combined with B.Sc.N. and P.N. courses because there is a history of people teaching in both the P.N. and P.S.W. programs.

Ms. Balasevicius testified that there has never been a full-time appointment in the P.S.W. program at this Campus. The former Coordinator of the program did hold full-time status, but her appointment was to the P.N. program. Her expertise had been in the surgical area, and the available P.S.W. courses did not fit together to make a workable SWF for her. So she never actually taught in the P.S.W. program. Since that person's retirement, the P.S.W. program has been delivered mainly by two non-full-time teachers who seem to vary their status, depending upon the semester and their course loads. Ms. Balasevicius leaves it up to these two to decide "who will teach what" and to create a timetable that shares the workload for certain courses. Ms. Balasevicius said, "They have been doing this for as long as I can remember and it is their choice." They also alternate Coordinator duties. Ms. Balasevicius balked at the suggestion that this is being done to avoid them attaining sessional status, asserting instead that these two teachers have "opted" for this arrangement. They also share/alternate the curriculum review, student advising, quality review, curriculum development, recruitment and course outline preparation duties, many of which are paid for separately from their teaching hours because of their status. The rest of the courses are taught by a number of non-full-time teachers who deliver the clinical programming. Ms. Balasevicius did not accept the Union's suggestion that some of the clinical courses could be "split up"

because she firmly believes that continuity is important to provide the students with the optimal educational experience. While it was put to her and later established that this is being done on other Algonquin Campuses, she did not vary her view, insisting that consistency is “best” for the students in the clinical settings.

Ms. Balasevicius testified that it might be possible to find one person who would have the qualifications and skills necessary to deliver the range of courses in the P.S.W. program. Accordingly, she tried to put together a SWF for a full-time appointment in the P.S.W. program, building in complementary functions of a Coordinator and Advisor. This appointee would be assigned HLT 7100 Introduction to Care for P.S.W. theory and labs in the Fall, and similar courses, plus Consolidation in the Winter. Even with these duties, the workload only totaled 1038.19 hours, compared to the hours cited above for other full-time faculty. Ms. Balasevicius believes that a full-time faculty should be expected to carry at least 1300 hours for their workload to be considered appropriate or to support full-time status. She said, “If I were hiring a full-time professor, I would want there to be enough hours to ‘max’ their time.” She conceded in cross-examination that it is not uncommon for full-time faculty to have fluctuating workloads, often because of some intense courses. But she stressed that the Union’s proposal could create weeks when there would be no teaching hours whatsoever for the person in the new position. Further, she was concerned about the fluctuation in hours per week because so many of the P.S.W. courses do not span the full semester. She also said that she considered the possibility of increasing hours by bringing in some courses from the B.Sc.N. or P.N. programs, but encountered difficulties because of the challenges of coordinating the timing of the theoretical courses with the clinical placements that follow. This is made even more difficult by the short duration of many of the P.S.W. course offerings. However, she did concede that one of the non-full-time teachers in the P.S.W. program also teaches in the P.N. program.

The Union called Reply evidence to attempt to rebut some of Ms. Balasevicius assertions about the delivery of the P.S.W. program. Stephanie Lee is a full-time Professor and Coordinator of the P.S.W. program at Algonquin College’s Perth

Campus. She explained that they also offer a series of clinical placements in both semesters of the program where students are supervised by College faculty members. Her duties include this direct supervision/teaching/evaluation, and can involve student contact hours of up to 17 hours per week. In order to comply with the Collective Agreement and teaching load provisions, she has had to split some of the clinical supervision with another part-time teacher. She feels that this did not diminish the students' educational experience, but instead gave them the benefit of two perspectives.

The Submissions of the Parties

The Submissions of the Union

The Union asserts that it has met its onus of establishing that there are sufficient teaching hours available to warrant the creation of more full-time positions and that the Employer has failed to establish operational justification for failing and/or refusing to do so. It was suggested that the College's position "boils down" to a simple "preference" for staffing, with partial-load, sessional and part-time appointments. Further, it was submitted that no case law establishes that shorter semesters or fluctuating workloads allow the College to overcome Article 2's requirement to give preference to full-time hiring when the overall workload can be demonstrated. Further, the Union said that there is no justification for the Employer's argument that the proposed positions would fall short of other full-time faculty members' assignments. It was stressed that nothing in the Collective Agreement prescribes a minimum number of total workload hours, nor does the Employer's evidence establish averages or norms. It was said that all the Employer was able to point to was a few examples of other, handpicked workloads. It was suggested that if the Employer's argument succeeds on the point of there being a minimum amount of hours expected of full-time faculty, the Employer would be achieving a result that it has not achieved through collective bargaining.

Turning to the case law, counsel for the Union emphasized that it did not have to demonstrate that the available hours amount to a full-time experienced teacher's load.

Instead, allowance may be made for the new hires to develop, *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, Decision #4 - General Arts and Science Program)*, Decision of Kathleen O’Neil dated March 24, 2008. Further, it was argued that the Union has met the onus of establishing that hours assigned to part-time appointments should be considered because there has been an erosion of this bargaining unit as a result of the College’s hiring patterns, *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design, [2007] 90 C.L.A.S. 62, 2007 CLB11762, (K.G. O’Neil)*. It was said that the evidence of Ms. Osmond established that when teachers’ hours reached a certain level, they would be replaced by someone else rather than being allowed to attain partial-load or sessional status. This was said to indicate that the College was improperly asserting a preference for part-time over partial-load or sessional employees. Further, since the evidence revealed that there are now only five full-time faculty in a Department that used to have 13, this should show that there has been erosion of the bargaining unit. In the alternative, it was asserted that there are sufficient partial-load and sessional hours to warrant the positions claimed by the Union. This was said to shift the onus onto the Employer to establish “operational requirements” for its hiring practices.

However, the Union submits that the evidence should lead to the conclusion that program efficiency, effectiveness and outcomes are “enhanced” by full-time faculty delivering the programs. It was stressed that full-time faculty provide greater consistency, continuity and availability that partial-load or part-time teachers cannot deliver. Further, it was said that the Department would be better served by full-time faculty who are available for staff meetings, student advising and complementary functions such as orientation, recruitment and research. It was submitted that the College’s “preferences” with regard to course assignments should not be relied upon to overcome the contractual preference for full-time hires, see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design)*, *supra*. This was also said to be applicable to the College’s “preference” for Master's level credential in the B.Sc.N. program, notwithstanding the Memorandum

of Agreement with the University of Ottawa. The Union argued that the ability to negotiate “exceptions” to the Master's credentials on a case-by-case basis is justification for giving preference to full-time hires that are capable of teaching the course, even if they lack graduate level or specialized credentials. But it was asserted that even if the courses requiring a Master's Degree are taken out of the mix, there are still sufficient hours to warrant a full-time position and/or there is insufficient evidence to show that the Employer would have difficulty finding someone with the required qualifications. Similarly, while it was acknowledged that Ms. Balasevicius expressed her view that clinical placements should be supervised by only one faculty member, this was said to be no more than a “preference,” given that the clinicals are split up on another Algonquin Campus.

Further, the Union argued that the College should be made to create a position that allows for assignment across the three Nursing programs. It was suggested that the similarity and overlaps in the three programs would allow for appropriate cross-appointments.

Turning to the actual proposals for positions, Union counsel asserted that the evidence supports the finding that there is sufficient work to support three full-time appointments to both the B.Sc.N. and P.N. programs, and one in the P.S.W. program. Taking each course and its associated hours, counsel for the Union argued that the hours assigned to part-time employees should be considered because of the erosion of this bargaining unit over the last few years. It was also argued that time attributed to replacement hours for full-time faculty should still be considered available because it could be allocated to “complementary functions” for a new hire. Further, the Union argued that the fact that some courses do not span the whole semester should not preclude their consideration because it is not uncommon for teachers to have fluctuating workloads, and such hours can be combined with other courses and/or supplemented with other complementary functions. The Union also asserted that the Employer had failed to demonstrate the need for specialized or credentialed teachers or the difficulty of finding qualified people within a full-time hiring pool. In any situation where there are available

hours, but insufficient to support one position as a whole, the Arbitrator was urged to carry them over to the related programs in order to create a full-time position.

By way of remedy, the Union asked that the College be ordered to post and fill six full-time positions in the Nursing and P.S.W. programs for the Winter 2012 semester and that the Union be compensated for lost dues since the filing of this grievance in the Winter of 2008.

The Submissions of the Employer

Counsel for the Employer described the positions and evidence of the parties as “two ships passing in the night.” It was stressed that the Union tried to prove its case based on raw data and declined the opportunity of analyzing or assessing the “mock SWFs” that the College generated to try to show the implications of the Union’s requests. It was stressed that the time spent by the Union’s unsuccessful attempts to challenge the Employer’s documentation and then failing to address those mock SWFs resulted in unnecessarily frustrating and prolonging these proceedings.

Turning to the Collective Agreement, the Employer argued that the Union has the initial onus of proving that full-time position(s) can be “cobbled together” from partial-load and sessional hours before the question of operational requirements even enters the equation. Further, it was said that when and if operational requirements are being considered, it should be remembered that it is up to the College to set the standards of program requirements and goals that are necessary to achieve those aims. It was said that once a College is able to show that there is a reasonable linkage or nexus between its standards and requirements, it has satisfied its obligations under Article 2 of the Collective Agreement.

The Employer argues that when all the evidence is taken into consideration, the Union has failed to establish that there are any “sensible and appropriate full-time workloads” to be created. The Employer began by pointing out that under the Collective

Agreement, the maximum teaching contact hours for a full-time teacher is 18 in a week. The maximum total SWF hours is 44 a week for 36 weeks or 1584 per year. That includes teaching and complementary functions. The Employer does not submit that anything less than this does not constitute a viable full-time workload. However, the Employer does point to *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design)*, wherein it was said that the proposed hours must amount to a “sensible and appropriate full-time workload.” Therefore, it was argued that the focus should be on how many teaching contact hours are required to create a full-time position over the duration of an academic year. In this context, it was stressed that many of the courses the Union is claiming as available in this case do not provide 36 weeks of consistent work and would result in the creation of positions that demand significantly less work than other full-time professors. The Employer stressed that it generated the mock SWFs based upon the “most fulsome workload available” in these programs, and they were not challenged by the Union. Yet the Mock SWFs showed that the resulting workloads would be 30% less than those expected of other full-time staff in the positions. The Employer did not seek a ruling on what figure amounts to a minimum workload, but it was argued that the Union’s proposed positions should not be deemed to be “sensible or appropriate.” While it was not suggested that a new hire should work as much as the busiest professor on the faculty, it was stressed that the College should not be required to hire to meet the “lowest common denominator” of existing workloads.

Further, while the Employer acknowledges that it could cross-appoint people to the different Nursing programs, it was stressed that the Union failed to demonstrate where or how this should/could be done. Further, it was argued that the nature and length of the “available hours” would still fail to amount to full-time positions. The Employer also criticized the Union’s actual proposals for positions, pointing out that many would result in teaching loads of over the 18-hour limit in the Collective Agreement. Further, it was said that the Union failed to demonstrate how any of these position would be SWFd and some contained factual errors regarding the length of courses. Therefore, it was said that the submissions that were offered for the proposals were “inaccurate and

unreliable.” The College also objected to the suggestion that courses be shared or divided because that would jeopardize the Department Chair’s rationale and good faith determination of the best way to deliver the programs.

Further, the College argued that where it has claimed the need for specialized knowledge or expertise to teach any of the claimed courses, it demonstrated that these decisions were made in good faith and for sound educational reasons. It was also stressed that the Pembroke Campus has more challenges in recruiting specialist teachers than a more urban setting. The Mental Health course was specifically defended as being necessary to locate in the one available setting with its demand that the teacher also be on the faculty’s staff. Further, it was said that the College has the right to demand “depth rather than breadth” for the delivery of these programs, as recognized in *Algonquin College and Ontario Public Service Employees Union (School of Advertising Program)*, Decision of Kathleen O’Neil dated May 20, 2008. The College also relied upon its Memorandum of Understanding with the University of Ottawa and the requirements of the Ontario College of Nurses that demand certain credentials from the teachers who deliver the B.Sc.N. course. It was said that this cannot and should not be ignored.

The College submitted that the part-time hours targeted by the Union should not be treated as available for consideration in this case. It was stressed that Article 2 does not require the Employer to give preference to full-time over part-time hours, as found in *Algonquin College and O.P.S.E.U.*, Decision of P. Knopf dated May 27, 2003, unless there is evidence of erosion of the bargaining unit or attempts to avoid the hiring of bargaining unit members. It was said that the only case law where part-time hours have been factored into the computation of full-time positions were where there was concrete evidence of a failure to replace full-time faculty and/or conscious attempts to limit costs, see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, Decision #4 - General Arts and Science Program)*, Dated March 24, 2008 and *Humber College of Applied Arts and Technology and Ontario Public Service Employees Union*, Decision of Robert Howe dated April 12, 1994. It was stressed that

there is no such evidence in this case. The College asserted that the evidence regarding the decline in numbers of full-time staff is inconclusive, given the periods of time involved and the changes in the programs. It was said that the evidence instead points to the use of partial-load and sessional teachers and no attempts to erode or avoid bargaining unit appointments. It was stressed that the only evidence that is of any relevance to this issue is the testimony that showed that the Department Chair legitimately avoids situations that would result in the violations or triggering of Articles 2.03 B and C. It was pointed out that there was no evidence that the College instructs Coordinators to avoid partial-load or sessional appointments because the data shows the regular use of bargaining unit positions in these programs. Therefore, it was argued that there is no basis upon which to rely upon the part-time hours as a basis for awarding full-time positions. It was said that this situation falls squarely within the parameters of the decision in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Print Media Program))*, Decision of Kathleen O'Neil dated September 14, 2007. Further, it was stressed that if part-time hours are being considered, unless there is actual evidence of erosion/circumvention of the bargaining unit, it is unnecessary to even embark upon an analysis of operational requirements, as indicated in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Theatre Arts Program))*, Decision of Kathleen O'Neil dated September 17, 2007, at p. 19. In the alternative, it was said that even when the part-time hours are factored in, there is still insufficient work to create a sensible workload.

Turning specifically to the P.S.W. programs, the Employer expressed further frustration over the fact that the Union spent considerable time, but failed to reveal any errors in the College's analysis of positions, and instead based its own projections on erroneous computations of course hours and durations. Further, the Union was criticized for basing its claim upon part-time hours rather than confining itself to partial-load or sessional ones. It was stressed that the usage of partial-load appointments in this program should be considered as evidence of no attempt to circumvent the Collective Agreement, as found by Arbitrator O'Neil in similar circumstances. It conceded that it might be theoretically possible to create a full-time position such as the one that used to

exist where the P.S.W. Coordinator was appointed and taught in the P.N. program and that this might be done by taking some hours from any of the Nursing programs. However, it was stressed that the Union has not shown how or with what courses this could properly be done, especially given the short-term duration of many of the P.S.W. courses. Therefore, it was said that the Union has failed to meet its onus of proof. The College pointed out that the evidence showed that the P.S.W. program is mainly being delivered by two individuals who “assign their own status, depending on their availability and expertise” and that this is not a case of the College trying to circumvent the Collective Agreement. Further, the potential SWFs generated by the College from all the available hours, even including the part-time ones, still only generated a workload that would be substantially less than any other full-time faculty member.

It was acknowledged that the Union was able to show that a full-time workload has been generated for a P.S.W. Coordinator at the Perth Campus and that includes the splitting of clinical placement hours in order to comply with the Collective Agreement. However, it was argued that the Chair of the Department at the Pembroke Campus has different, yet reasonable, views about wanting consistent delivery of clinical programs, and that the College ought not be obliged to follow one model of program delivery. Further, it was argued that since full-time faculty are relied upon to deliver theory, and that the Instructors' duties are confined to labs and clinical placements, the College ought not to be compelled to hire full-time teachers to supervise or oversee clinical placements as the Union proposes. While the College may choose to assign such work to full-time staff, it was said that an arbitrator ought not require it. Reliance was placed on the case of *Cambrian College and OPSEU*, Decision of Gordon Simmons dated September 7, 1994.

For all these reasons, the College urged that no full-time positions should be imposed.

The Union's Reply Submissions

Only the points that were not covered in the primary submissions shall be addressed.

Counsel for the Union strongly defended the time that was taken during the hearing to attempt to understand and test the accuracy of the Employer's documentation, arguing that the Union is "obliged" to challenge such material and has a right to ensure its reliability. Further, it was pointed out that the discrepancies between the Article 27.12 data provided to the Union under the Collective Agreement and the data provided at this hearing gave sound justification for the time spent querying the Employer's evidence.

In response to the Employer's claim that the proposed positions do not reflect a full-time workload, the Union stressed that it is making no attempt to establish a lesser workload for these positions. Instead, the Union relied upon evidence that shows that workloads often vary across the Campus. The Union challenged the Employer's assertion that it had demonstrated a "typical workload," arguing that all that was presented were examples of "some selected" workloads. In answer to the criticism that it had proposed positions where more than 18 teaching hours are generated, the Union argued that a course could be deducted from the proposal and still leave a viable workload.

The Union responded to the evidence regarding how the two teachers in the P.S.W. are relied upon to assign themselves their workload, arguing that the College cannot abdicate its responsibility to give preference to full-time positions.

The Union defended its presentation of the proposed positions during final argument, stating that they were simply a summary or "map" of the evidence that had already been presented and that they were designed to assist the arbitrator in dealing with the complexity of this case. Further, it was said that the facts of this case are distinct from the situation in *Cambrian College, supra*, where that College was not made to combine two different classifications, whereas the Union is asking this arbitrator to order the combination of courses to create several similar positions of the same status and responsibility level.

The Decision

Article 2 cases are very complex. The best way to address the analytical demands of this case is to begin with the applicable case law that has been cited by the parties.

In *George Brown College and Ontario Public Service Employees Union*, Decision of Owen Shime dated December 23, 2003, the concept of what constitutes a “position was established:

A vacant position exists where there is adequate work to justify the filling of the position and, accordingly, the Union must demonstrate that there is adequate work, that is, i.e. sufficient courses are being taught to justify the filling of the position.

The question of whether part-time hours should be factored into Article 2 arbitrations began with the decision in *Algonquin College and Ontario Public Service Employees Union (Police Foundations Grievance)*, P. Knopf, May 27, 2003. That was a situation where the Employer challenged an arbitrator’s jurisdiction to consider evidence or interfere with staffing decisions on the basis of the hours being taught by “part-time” professors. It was held:

It is presumed that the parties adopted the language of Article 2 for rational reasons. They have retained the language for many years through several rounds of collective bargaining. The parties consciously chose to give preference to full-time professors over partial-load and sessional appointments. They did not restrict the use of part-timers who are discretely defined as a status quite different than the partial-load or sessionals. Therefore, it cannot be implied or concluded that part-time appointments would encompass sessional or partial-load appointments as one group. Instead, part-timers must be viewed as a separate entity that is recognized in various parts of the collective agreement, but not factored into the staffing protections provided in Article 2.02 and 2.03A. This leads to the inevitable conclusion that an arbitrator has no jurisdiction to interfere with staffing decisions with respect to the assignment of part-time positions over full-time positions. . . .

The result of this ruling is that the arbitrator only has jurisdiction to look at the number of non-full-time hours being taught by sessional or partial-load appointments to see if those assignments have been made in compliance with Article 2. . . .

End Note

I have reached this conclusion based on the strict wording of the collective agreement. However, it must be noted that this decision was reached in the context of evidence where there is absolutely no suggestion of any intent to erode or weaken the bargaining unit. . . . If there had been any evidence that the staffing patterns had been designed or intended to erode the bargaining unit or circumvent the collective agreement, this decision would have been very different.

The question of what constitutes “erosion” of the bargaining unit then became an important factor and was ably addressed by Arbitrator O’Neil in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Theatre Arts Program))*, *supra*:

Erode means to eat or wear away, involving the movement of something from one place to another. One way that unintentional erosion of the bargaining unit might occur would be a situation where a partial-load or other bargaining unit position were divided among part-timers who are outside the bargaining unit, for reasons unrelated to the status of the positions within or outside the bargaining unit. However, where the work was not within the bargaining unit in the first place, it is difficult to deal with the issue as erosion; it is more susceptible to being analyzed as to whether the evidence indicates circumvention, undermining or avoidance of the bargaining unit.
. . . the existence of the ability to create a full-time workload by consolidating part-time assignments, in itself, does not spell a violation of the collective agreement, or even a *prima facie* case to which the employer must respond to operational requirements.

Ms. O’Neil then instructed these parties about the kinds of evidence that might demonstrate or refute the claim of “erosion” in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Print Media Program))*, *supra*:

Moreover, there is no evidence that partial-load positions have been reduced and replaced and thus no case or erosion of the bargaining unit by failure to replace partial-load bargaining unit positions. Nor is there evidence that bargaining unit positions are being systemically avoided, or that part-time hours were being used for purposes of keeping them out of the mix of full-time partial load and sessional positions which are the building blocks of the staffing preferences in Article 2. Rather, there was some evidence of instances where partial-load or sessional positions were created in semesters where circumstances resulted in the need, and a former part-timer was available to pick up extra hours.

In assessing whether there has been a misuse of part-time hours, it is appropriate to situate them in comparison to the current use of full-time hours. ... [Previous] decision . . . make clear that although the employer does not have a free hand to assign part-time hours in a manner that erodes the bargaining unit or subverts the provisions of the collective agreement, the collective agreement does not provide a free-standing preference for full-time positions over part-time ones, except on lay-off or reduction of the full-time complement. Nor does the language of the collective agreement reserve teaching work exclusively to the bargaining unit positions.

Again, Ms. O'Neil was called upon to assist these parties and she established the sensible approach to be taken in these cases, even where there is no evidence or allegations of erosion of the bargaining: see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, Decision #4 - General Arts and Science Program)*, Dated March 24, 2008. She wrote that the approach should be to first determine whether the Union had established a *prima facie* case of a violation of Article 2 by showing that there is a sufficient number of hours taught by partial load professors that could be assembled into full-time workloads which are arguably viable. Once that initial onus is met, the burden of proof then shifts to the College to put forward evidence of the operational requirements for not designating the hours as full-time rather than partial-load/sessional positions. This was said to be:

. . . essentially a question of fact, although considerable deference is afforded to the assessment made by management in this regard. The inquiry is not a comparison of the wisdom of the scenarios proposed by each of the parties. It is whether there exist operational requirements which trump the negotiated preference for full-time positions.

It is a basic principle of contract interpretation that words of the collective agreement are to be taken in their ordinary meaning. The term *operational requirements* connotes something necessary to the operations, for instance something without which the College cannot obtain its program objectives or market acceptability. . . . The wording implies more than individual preferences or considerations of a less necessary nature. As discussed in *Humber College and OPSEU*, a decision of a Board of Arbitration chaired by Arbitrator Howe dated April 12, 1994, the exceptions for operational requirements ought not to be given a definition that is so expansive that the interpretation risks virtually eliminating the negotiated general rule that preference is to be given for full-time appointments.

In *Humber College of Applied Arts and Technology and Ontario Public Service Employees Union*, Decision of Robert Howe dated April 12, 1994, cited immediately above is one where the Union had claimed that preference be given to partial-load and sessional appointments over full-time positions. It was said:

It is evident from the wording of [Article 2.02 and 2.03 A] that the lists of “operational requirements” contained in them are not meant to be exhaustive. . . . However, those examples do provide some guidance regarding the proper interpretation of the phrase “operational requirements,” as they are illustrative of the type of considerations which the College may legitimately take into account in determining whether a departure is warranted from the general requirement of giving preference to the designation of full-time positions as regular teaching positions.

The examples listed in Article 2.02 all pertain to the quality and effectiveness of College programs, rather than to fiscal matters such as the cost of providing the programs. . . . The existence of that qualitative “common thread” militates against interpreting “operational requirements” to include financial matters.

Ms. O’Neil’s jurisprudence is also helpful in pointing out what has to be proven to establish a body of work that would justify the ordering of a new full-time position, see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design, supra)*. Interestingly, that case also concerned the allegation that the staffing arrangements, including the use of part-time professors, was eroding or circumventing the bargaining unit. She advised:

The collective agreement sets a maximum for teaching contact hours in post-secondary programs of 18 hours, and teachers teaching between 6-12 hours or less are considered partial-load, which leaves the usual range of hours for a full-time position in post-secondary programs as 13-18.

.....

In any event, as the parties both acknowledge, and as the cases indicate, establishing that there exists a full-time position that the College should have posted is not a purely arithmetic exercise. It was not contested that to warrant a posting, the hours proposed must amount to a sensible and appropriate full-time workload. Otherwise, one could be looking at the equivalent of a full-time

workload comprising disparate subjects that no individual would likely be qualified to take on.

As an evidentiary matter, the touchstone for whether or not evidence about the hours assigned as part-time teaching hours is admissible, or whether information about them should be produced, is basically one of potential relevancy. Since one of the Union's arguments here is that the College is in fact eroding or circumventing the bargaining unit by its staffing practices, including its use of assignments to part-time faculty who are not part of the bargaining unit, evidence about the part-time is necessary to understand the overall situation in terms of assigning the disputed teaching work in order to evaluate the allegation. . . . The most recent case, and the one that most directly addresses the issues before me, with the benefit of the reasoned analysis of the preceding cases, is the *Fanshawe College* (Picher) case, which I cannot say that I find to be wrongly decided. Thus it is appropriate to apply its findings at pg. 35, that:

Part-time hours may be relied upon by the Union and considered by a board of arbitration in an article 2 grievance where the Union can establish a *prima-facie* case that the College has assigned hours to part-time positions in a manner that either intentionally or unintentionally functions to undermine the staffing scheme set out in the collective agreement and/or erode the bargaining unit and/or circumvent the collective agreement.

In such circumstances, the hours of part-time positions become available to the Union as part of the "body of work" from which the Union may argue a breach of the article 2 preference for regular full-time over partial-load or sessional teachers, subject to operational requirements. In seeking to demonstrate a *prima facie* case respecting an alleged misuse of part-time hours, the Union may look to and rely on the full "body of work."

In dealing with the Union's request to appoint people across programs, it was said:

. . . . although the union's evidence persuades me that the approach taken by the College is not the only reasonable approach to the matter, it does not persuade me that [the College's] view of what is necessary to attain the program objectives and the quality of the program was without reasonable or *bona fide* foundation. The College's approach to defining positions is designed to support and maintain the integrity, contours and identity of the separate programs. I find these to be legitimate considerations concerning quality and effectiveness, part of the "qualitative common thread" of the operational requirements referred to in [previous case law].

On balance, I am persuaded that either as a matter of the operational requirement of the attainment of the program objectives, separately designed, or as a matter of maintaining the quality of the programs, the College has met its burden of justifying its failure to post full-time positions across these three

programs. Since full-time positions requested are not supported numerically when the programs are considered individually, it is my conclusion that the orders requested are not warranted for this portion of the grievance.

Given that “quality of the program” is a concept that both parties relied upon in this case, it is also helpful to look at their previous award in *Algonquin College and Ontario Public Service Employees Union (School of Advertising Program)*, another decision of Kathleen O’Neil dated May 20, 2008:

In stipulating the term “quality of the program” as an operational requirement, the parties agreed to an elastic concept that is not susceptible to precise calibration. The intangible nature of the term also leads to the fact that it will often be difficult to disprove, even where there is a reasonable alternative. In fashioning the language as they did, the parties created a situation which attracts differing views on what is required to deliver a quality program, as well as the jurisprudence that has consistently held that the standard of review of management’s choices in these areas involves some deference, unless the employer’s assessment of the situation is shown to be improper in some sense as being unreasonable or in bad faith.

Accordingly, there was no interference with managerial decisions to “opt for depth rather than breadth” in certain areas and to appoint individuals currently working in a fast evolving industry. Decisions to appoint persons with those qualities on a part-time basis was not considered unreasonable.

Turning to the case at hand, the parties agree that the test of whether a College should be required to post and fill full-time positions is whether the evidence indicates that the proposed hours can amount to sensible and appropriate workloads. The starting point for this must be the number of teaching hours expected of a full-time appointment.

The Collective Agreement prescribes a maximum for a full-time professor’s teaching contact hours at 18 per week in post-secondary programs and defines those who teach between 6-12 hours or less as partial-load. Therefore, the “range” of hours for a full-time teacher is between 13-18. The evidence in this case is that full-time hours “fluctuate,” but there has been no specificity about the extent. In other cases involving

this College, this Union has acknowledged an “average” workload of 16 hours (see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design, supra*, at p.80). However, as the cases cited above point out, the determination of an Article 2 grievance is not done by adding up the available hours and dividing them by a factor between 13 -18. This is not an exercise in arithmetic; it is a process of contract interpretation and application. What has to be established is whether there is “adequate work” to justify the filling of a full-time position.

The next factor that must be taken into consideration is the semesters that the programs operate. While there are many “complementary” and other functions under the Collective Agreement that are computed into a full-time teacher’s responsibilities, it is clear that the normal expectation is to carry teaching duties throughout the whole of the academic year, or two semesters. An established full-time teacher may receive relief time for many other College related functions, such as research, course development or program design. However, for purposes of establishing that a new position ought to be created, the onus has to be on the Union to establish two semesters of full-time teaching in order to succeed in an Article 2 grievance.

A. The role of part-time teaching hours

The role of part-time teaching hours remains a vexing problem to the parties despite arbitrators’ attempts to refine and define the issue for them. However, the issue may be synthesized quite simply. Where there is a dispute between the parties about the *admissibility of evidence* of hours being taught by part-timers, the issue is determined on the basis of “relevancy.” So when and if the Union alleges that the College is eroding or circumventing the bargaining unit by its staffing practices that include the use of part-timers, evidence of that use will probably be *admissible* because it is “arguably relevant.” In the case at hand, the Employer did not object to the admission of part-time hours so the issue of admissibility was not in dispute.

The use of part-time hours and what they might signify in an Article 2 arbitration is a separate question from the issue of admissibility. Once the part-time hours become part of the evidence of the case, what do they mean and how can they be used? In the citation from Arbitrator P. Picher's *Fanshawe College* case cited above, it was said that the Union can rely upon part-time hours to establish a *prima-facie* case that the College has assigned hours to part-time positions in a manner that either intentionally or unintentionally functions to undermine the staffing scheme set out in the collective agreement and/or erodes the bargaining unit and/or circumvents the collective agreement. This proposition has been accepted and applied in the cases cited by the parties. However, this is, again, not a mathematical exercise. The Union cannot simply point to a number of part-time hours and say that this alone establishes a *prima facie* case. Evidence that a College "preferred part-time over partial-load and full-time positions on a regular basis," and that "the use of partial-load positions was regularly discouraged" was what constituted *prima facie*, "but not conclusive", evidence of erosion or circumvention of the bargaining unit in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design, supra)*. Similarly, the existence of a number of part-time hours did not establish a case of erosion of the bargaining unit where there was no evidence of systematic avoidance of bargaining unit positions, or that partial-load positions had been replaced by part-time positions, or a lack of explanation for a failure to replace bargaining unit positions, see *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Print Media Program))*, at p. 9.

With these principles guiding the issues, we can now turn to the specific areas of dispute in this case.

B. The Practical Nursing and Bachelor of Science in Nursing Programs

With the P.N. and B.Sc.N. programs at this College, there is no evidence of intentional circumvention of the bargaining unit or the Union's rights. The closest the evidence came to this was the evidence that the College seems to avoid the "roll-over" situation.

However, there were no allegations of violations of Article 2.03 or 2.03C in this case and no evidence that the Chair has instructed any Coordinators to avoid the use of bargaining unit positions. There was no evidence of hours being manipulated to avoid part-time appointment achieving bargaining unit status. Nor is there any evidence that a full-time faculty member has resigned and not been replaced during any time-frame relevant to this case. While there was evidence that the full-time faculty numbered 13 in 1991 and has now shrunk to 5, there was also evidence of significant changes in programs, course content and the increase in the number of instructors. Most significantly, there is evidence of significant use of partial-load and sessional appointments in these programs. All this leads to the conclusion that the evidence does not support a finding of any intention to erode or actual circumvention of the bargaining unit or the Union's rights in the P.N. and B.Sc.N. programs.

Therefore, taking the evidence on the whole and applying the principles in the case law cited by the parties, it must be concluded that while the part-time hours in the two programs were relevant evidence in this case, they have not been shown to establish an intentional or unintentional erosion or circumvention of the bargaining unit. This means that these hours must be viewed very differently than the sessional and partial-load hours that the Union has identified in this case. This was made very clear for these parties in Arbitrator O'Neil's decision in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, (Print Media Program))*. In that case the Union had asked that the assignment of a number of part-time hours should create an inference that the College could or should have created a full-time workload unless it could justify their use on the basis of operational requirements. However, the flaw in this argument was made clear:

The problem with this is that there is no discernible difference between that concept and a requirement for a preference of full-time over part-time positions at all times, not just on lay-off and reduction of the full-time complement. The current wording of the Collective Agreement, as interpreted in the evolving jurisprudence, does not support such a requirement. It is true that, in not assigning Print Media work identified by the union to a full-time faculty member, the College has not added a position to the bargaining unit, but that is not enough, standing alone, to make out a case for circumvention of the collective

agreement or thwarting the staffing scheme. The [case law] . . . make[s] clear that although the employer does not have a free hand to assign part-time hours in a manner that erodes the bargaining unit or subverts the provisions of the collective agreement, the collective agreement does not provide a free-standing preference for full-time positions over part-time ones, except on lay-off or reduction of full-time complement. Nor does the collective agreement reserve teaching work exclusively to the bargaining unit positions. (p, 10-11).

Therefore, since there is no evidence of erosion of the bargaining unit and the Collective Agreement does not provide a preference for full-time positions over *part-time* ones, the part-time hours identified in the evidence in this case cannot be used to establish a foundation for the College to be compelled to create full-time positions.

It must also be noted that the evidence established that two of the courses targeted by the Union as being taught by part-time teachers have been assigned on that basis temporarily as “replacements” for full-time teachers. The Union argued that these courses should remain as part of the potential pool of available hours so that complementary functions could be assigned. That is a creative suggestion. However, the fact remains that they are hours that the College intends to put back into the full-time pool and has undertaken to do so. As such they cannot be considered as part of the equation, as found in the decision in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit - School of Media and Design)*, *supra*. Finally, the evidence also established that some of the targeted hours are being claimed for courses that are no longer being offered, such as NSG 4126 and NSG 4125. Therefore, none of those hours can be properly considered as hours available for additional appointments. These considerations result in a significant number of courses and hours having to be taken out of the mix of potential workloads identified by the Union. They would be:

Practical Nursing	Position 1 - Fall	NSG 7332 -13 hrs/wk	
		Winter	NSG 7320 - 2 hrs/wk
		NSG 7323 - 2 hrs/wk	
	Position 2 - Fall	NSG 7310 - 6 hrs/wk	
	Position 3 - Fall	PHA 7100 - 3 hrs/wk	
		NSG 7332 - 3 hrs/wk	

		Winter	NSG 7343 - 3 hrs/wk
B.Sc.N.	Position 1 - Fall		NSG 4435L - 4 hrs/wk
			HSS 2381 - 3 hrs/wk
		Winter	NSG4126 - - 2 hrs/wk
	Position 2 - Fall		HSS 1101 - 3 hrs/wk
		Winter	NSG 3103 - 3 hrs/wk

Without even dealing with the issues of specialized courses, this leaves the following remaining partial-load and sessional hours that have been targeted by the Union for consideration:

Practical Nursing	Position 1 - Fall		NSG 7311 - 9 hrs/wk	
		Winter	NSG 7322 - 13 hrs/wk, for 12/16 wks	
	Position 2 - Fall		NSG 7332 - 13 hrs/wk, for 14/15 wks	
		Winter	NSG 7325 - 13 hrs/wk, for 12/16 wks	
	Position 3 - Fall		NSG 7332 - 13 hrs/wk, for 14/15 wks	
		Winter	NSG 7342 - 13 hrs/wk, for 10/16 wks	
			NSG 7344 - 5 hrs/wk, for 8/15 wks	
	B.Sc.N.	Position 1 - Fall		----
			Winter	NSG 3305 - 16 hrs/wk, for 12/16 wks
Position 2 - Fall			----	
		Winter	NSG 3317 - 16 hrs/wk, for 12/16 wks	
Position 3 - Fall			NSG4435L - 13 hrs/wk, for 13/15 wks	
		Winter	-----	

This chart illustrates the reason that the simply mathematical assessment of the available hours is so deceiving. For example, if the potential hours are added together, one can find 35 hours of teaching hours in the Fall and 44 hours in the Winter for the Practical Nursing program. Assuming an “average” workload of 15 or 16 hours for a full-time teacher, this might suggest at least two new appointments. However, if the potential positions are looked at from the perspective of the Collective Agreement, it becomes far more problematic to see how an “adequate” or “sensible and appropriate full-time workload” can be devised from these hours. First, it is apparent that some semesters in the suggested positions would have either no teaching hours or less than

the 13 hours that define full-time status. Further, many of the remaining hours do not come close to spanning the entire semester, so there would not be a full-time workload throughout the semester. While it is recognized that allowances must be made for new hires to enable them to have adequate preparation time for their new duties, it cannot be accepted that the specifically proposed positions reveal sensible and appropriate workloads for even a new hire full-time position. In order to justify the creation of a new full-time position, adequate teaching hours must be there to fill the two semesters. If the same analysis is applied to the proposed B.Sc.N. positions, even more problems are revealed. All three proposed positions are left with no teaching contact hours in one semester. The other semesters are left with no workload in several weeks.

The Union argued that it does not have to demonstrate how a workload or schedule has to be put together. All it says it needs to show is that there are sufficient hours to warrant a full-time hire and that management can then assign those courses in ways that make sense for the programs. Further, or in the alternative, the Union suggested it would be appropriate to hire someone who could teach in the P.N. and the B.Sc.N. programs because of the similarity of subject matter and the fact that many teachers have already taught in both programs. The College concedes that this would be possible. If the available hours are looked at in that light, it is still incumbent upon the Union to show viable and appropriate workloads from the teaching hours that have been identified. An arbitrator cannot hope or assume that other courses are available in the curriculum to create an appropriate schedule. Further, a College can only properly defend an Article 2 grievance by responding the targeted hours that the Union has identified. To do it any other way would be inconsistent with the proper approach which was taken by Arbitrator O'Neil with these parties in *Algonquin College and Ontario Public Service Employees Union (Academic Bargaining Unit, Decision #4 - General Arts and Science Program)*.

Nevertheless, the potential of putting together a position from the available hours in each program has been considered. For the P.N. program, one might consider assigning a new hire the 13 hours of NSG 7332 in the Fall (even though it is short one

of the semester), but the Winter term remains problematic because if any of the 13 or 14 hour courses are combined with the full term NSG 7325 8 hour theory course, the number exceeds the maximum of 18. The two clinical courses of a 13-hour duration overlap in time so they cannot be assigned without splitting them up and neither span a full semester. The issue of “splits” shall be dealt with later. It is also difficult to construct a position for the B.Sc.N. program. For the Fall, none of the available courses span the semester, even though their weekly hours are sufficient for a full-time workload. In the Winter, the same problem arises. While sufficient hours are available some weeks, such as with NSG 3305, NSG 3137, or NSG 2313, the longest any of these courses lasts is 12/15 weeks. There are no other course hours available to complete the semesters.

Therefore, the question becomes whether there are enough remaining hours in the Union proposals for a combined B.Sc.N./P.N. full-time position? For this exercise, I am prepared to take the Union’s case at its highest and again not analyze the operational requirements arguments that the Employer made to justify the assignment of the “specialty courses.” Even when all the partial-load and sessional hours are factored into the potential positions, a quick look at the remaining available hours reveals the next problem for the Union’s case. If any of the Fall hours are combined from all the potential positions, the new position(s) would have to have a 19-hour teaching load. Nineteen exceeds the limit for a full-time position. Even if one position is created with 13 hours of teaching for all but one week in the Fall for P.N.s NSG 7332, there are no remaining Winter hours from either of the programs that come close to filling the whole semester because the courses do not span the semester. While it is true that the Collective Agreement does not set a minimum number of weeks of student contact time, nor does it prescribe a minimum number of teaching contact hours over the year, the College cannot be required to make up hours to fill the workload. The onus remains of the Union to demonstrate that there is adequate work for the semesters to justify the creation of a new position. Accordingly, it seems impossible to design a full-time workload out of all the hours that are currently being assigned to sessional and partial-load teachers in these two programs.

C. The Personal Support Worker Program

With regard to the P.S.W. program, there is similar use of part-time as well as sessional and partial-load bargaining unit appointments. There is no evidence of any directions to avoid full-time positions. However, there is evidence that the former Coordinator resigned in 2006 and she was not replaced. But she was not a full-time P.S.W. appointment, nor did she even teach in the P.S.W. program. Her appointment was to the P.N. program, and there was no evidence that her position was not replaced in that program. Since then, although enrollment has increased, the Department has allowed and/or relied upon two teachers to divide up the bulk of the courses on the basis of their personal availability and preferences and to alternate the Coordinator's role. The Union is completely correct when it points out that the College cannot avoid its obligations under Article 2 by allowing these two non-full-time teachers to assign courses between themselves. Therefore, when all the circumstances are weighed together, it must be concluded that the Union has made out a *prima facie* case of erosion or circumvention of the bargaining unit. Therefore, all the available non-full-time hours can and must be examined.

The course hours that the Union has targeted do indicate enough hours to make up a full-time workload, certainly in the Fall semester. However, there are again significant problems with the Union's proposed position. First, there were errors in its attributions of hours to courses. Next, there are weeks with only six hours of teaching time identified. This occurs because many of the P.S.W. courses do not run the full semester. While the evidence did establish that it is unusual to have a full-time teacher with "fluctuating hours," there was no evidence of a hiatus with none or so few teaching hours assigned during some weeks. Further, the demonstration of a full teaching load is essential to success of an Article 2 grievance. Further, when the Employer charted out the targeted course on the academic calendar, it revealed a different and also problematic picture. It illustrated that in the Fall, a teacher would either have to be assigned a 12-hour course (HLT7100) or have it combined with (HLT101) which would take the workload up to 22

hours. Again, the latter is not permitted under the Collective Agreement. One might consider combining HLT7100 with HLT7407 for 6 hours/6 weeks to fill out the load and Clinical HLT7102 for the last two weeks of the term. However, the Winter semester, remains more problematic. The Employer's charting would allow a full workload with either with a sequence of HLT7103, HLT7104 and HLT 7106. But that would result in there being only six hours available in Weeks 13 and 14 and 12 hours available in weeks 15 and 16, no matter how the courses are combined. It must be pointed out that the Union was not able to demonstrate any errors in the Employer's charting of the courses across the semesters. Further, when the Employer took the Union's case at its highest, and included all the targeted hours, plus assigned a Coordinator's role to the position, the total SWFd hours only amount to 1038, which are significantly less than the norm for a full-time position. This alone is not enough to reject the Union's submissions, but it does shed light on the impact of what would happen if the Union's case were allowed to succeed.

D. A Combined Position?

The Union argued that even a position cannot be created out of each of the discrete programs, the evidence does support the finding that there are enough hours to warrant the creation of a position that would be assigned to teach across the two or three programs. If the totality of the hours that have been identified by the Union in the three programs are added up, there certainly are a number of hours available that exceed the numbers that would warrant a full-time appointment. However, the question is complicated by the fact that the Union did not design or suggest what the position would look like. On the other hand, the Employer did not argue that a cross-appointment would be inappropriate. No operational requirements were identified that would militate against such an appointment. Further, the College does appoint people across the programs now and the programs are sufficiently related to justify such a position. However, given the Memorandum of Agreement with the University of Ottawa, there are specialized qualifications required for the B.Sc.N. program that must be respected. The fact that exceptions may have been granted in the past because of certain

circumstances does not mean that the College can ignore the Memorandum or that an arbitrator should award a position on the assumption that credential requirements *may* be waived. In this regard, the College's evidence was convincing when it explained why and how certain courses have been assigned to individuals who possess the qualifications that are expected by the Memorandum.

Therefore, for purposes of this exercise, and given the evidence in this case, the appropriate scope of consideration should be whether sufficient hours have been demonstrated to warrant the creation of a combined B.Sc.N./P.N./P.S.W. position(s). Again, while the "math" would suggest that there could or should be great potential for positions to be created, any attempt to create a viable schedule leads to frustration. Even though it should not be the task of the arbitrator to design a schedule, there is no way that this arbitrator could find one that would provide for a 13-18 hour teaching load through both semesters without dividing up the delivery of courses or labs. Further, with the teaching hours of the P.S.W. courses declining so significantly in Weeks 13 and 14 of the Winter term and varying so much for the P.N. courses, it is impossible to design a schedule that would add other teaching hours from any other Nursing programs, even if the B.Sc.N. is included, without again jeopardizing the teaching continuity that this Campus has set as a legitimate operational requirement. The Union had suggested that the P.S.W. course schedules could be manipulated by splitting up the labs or clinical placements with another teacher to keep the total hours within the limits of the Collective Agreement. This is what is being done on the Perth Campus.

However, the evidence of the Department Chair must be given much heed. She testified that teacher continuity within a course best enhances the educational experience. Wise people may differ about the importance of this. However, Article 2 recognizes that although preference must be given to full-time appointments, this is "subject to operational requirements such as the quality of the programs [and] attainment of program objectives." The case law also recognizes that deference must be given to management's rational and good faith educational opinions about course delivery, see *Algonquin College and Ontario Public Service Employees Union*

(Academic Bargaining Unit, Decision #4 - General Arts and Science Program), supra. Although it may be possible to split up the delivery of labs or the clinical supervisions, it cannot be said that the Department Chair's rationale for declining to do that should be overridden. Further, just because it is being done differently on another campus does not mean that a pattern must be imposed on this one. The other campus' method of program delivery is relevant and does provide a viable option, but it does not necessarily override another respected educator's equally rational and good faith determination of how to deliver a quality of education that meets program objectives to the students. Taking all the evidence into consideration, it must be concluded that the College has established a legitimate reason for failing to split up the clinical and lab courses in the B.Sc.N. and P.N. programs. However, the evidence also shows that many of the P.S.W. courses are being split to accommodate the current staffing models. Therefore, the justification for declining to split those classes is less than compelling. But even with that possibility, we are still left with nothing close to a 12 hour teaching load in the last weeks of the Winter semester.

Another problem with finding/creating more full-time positions within all the available hours is the scheduling issue. If the labs or the clinical placements could be manipulated during the academic year to ensure a full-time timetable in all weeks, it would be possible to fill in the gaps in the potential positions. This arbitrator can only speculate about whether that would be possible. However, the evidence in this case is that the assignment of lab and clinical placements at the Pembroke Campus is complicated by space and availability of facilities. Further, the clinical placements are dictated by the host facilities and their own requirements. An arbitrator cannot ignore these practical problems and hope/assume that the labs or clinical placements can be moved to a different week in the academic calendar.

Therefore, it has to be concluded that although many teaching hours have been shown to be available across the programs, the Employer was able to demonstrate that it is not viable to combine them into one sensible and appropriate full-time workload. This is probably largely due to the fact that many of the courses do not span a full semester.

Before concluding, some final remarks are in order. It is hard to imagine the enormous amount of work and energy the Union has expended to present this case. Good people devoted countless hours pouring over the Article 27.12 data, extracting detailed information and analyzing it carefully along with the data from the course monographs and from program timetables. The Union's approach was understandable and formed a rational basis to present a case. However, the information often lead to misperceptions. For example, an individual's workload as reflected in the SWF might have suggested that a course may have been taught longer than it was because a part-time teacher may have been credited with extra hours to help a student complete a course. Therefore, the Union inadvertently added examination and/or "consolidation" hours onto some course calculations. However those hours cannot be counted as part of the course content *per se* and/or ought not to be added into the number of weeks that the course was being offered. Conversely, some of the Consolidation hours may not show up on the Article 27.12 lists because they might not be assigned at the time that the list is due for release. The timetables may also have been less than accurate or have suggested more offerings than actually existed. Further, many of the courses that the Union initially targeted were shown to require specialized credentials that warranted the non-full-time appointments that have been made and those hours were quite properly withdrawn from the mix once the evidence was presented. In addition, the Union would not have been able to see from the Article 27.12 data which courses were being taught by non-full-time faculty as a result of special project or "back filling" for vacation or other absences. This lead to the inadvertent inclusion of course hours that actually belong within the full-time complement and are ordinarily assigned as such. Finally, while the Union spent considerable time challenging the Employer's data and charting of the course schedules to no avail, the Union cannot be faulted for this. The challenges were clearly based on the types of honest misconceptions that are mentioned above and it is certainly the Union's right to ensure that the Employer presents accurate data. While one hopes to see relationships where there is more trust between the parties, evidence tendered by one side does not have to be accepted on faith. The arbitration hearing allows for due process where all positions are subjected to scrutiny. Therefore, one can see how and why the Union conceived and presented this case.

However, it must also be said that the arbitration process is an expensive and awkward forum to try to analyze this material. If these parties could develop the trust and communication channels that would enable the same exercise to be done internally, this kind of exercise would be done much more efficiently and effectively outside of a litigation forum, thereby freeing up a great deal of time and resources that could be diverted to far better ends. It should not take an arbitrator or the arbitration process to figure out what category of teacher is teaching certain courses, what if any non-full-time hours could be combined to create viable teaching loads and whether there are any operational requirements that would restrict such appointments. Even where there are disagreements, an arbitrator might best be left with determinations of issues, such as whether claims of erosion of the bargaining unit or operational requirements have been established.

Finally, although the Union was able to show that a great many hours are being assigned to non-full-time teachers in the Nursing programs, the evidence does not establish that there has been an intentional or unintentional erosion or circumvention of the bargaining unit or that there are enough partial-load or sessional hours to create a sensible and appropriate full-time workload in either the P.N. or B.Sc.N. programs. Nor has the evidence shown that all the available non-full-time hours in the P.S.W. program can be configured to make up a full-time workload for two full semesters. Although this arbitrator has also tried to meet the request of designing a combined appointment, this does not seem to be possible. While such an appointment would be appropriate, the evidence does not support a finding that the College's reluctance to do so in this Department is not a valid operational consideration. For all these reasons, the grievances with respect to the Nursing programs must be dismissed.

DATED at TORONTO this 3rd day of January, 2012.

"Paula Knopf"

Paula Knopf, Arbitrator