

IN THE MATTER OF AN ARBITRATION
Pursuant to the *College Collective Bargaining Act, 2008*

BETWEEN:

ST. LAWRENCE COLLEGE

("College")

- and -

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION,
And ITS LOCAL 417**

("Union")

(Grievance of Kingston-Floyd)

ARBITRATOR: Jasbir Parmar

On Behalf of the College:

Colin Youngman, Counsel, Hicks Morley Hamilton Stewart Storie LLP
Trish Appleyard, Associate Director, Workplace Relations
Deb MacKay, Associate Dean, Cornwall Campus (retired)
Nicole Donnelly, Human Resources Consultant

On Behalf of the Union:

Tim Hannigan, Counsel, Ryder Wright Blair & Holmes LLP
Carla Kingston-Floyd, Grievor
Gillian Axten, Chief Steward, Local 417
Grant Currie, President, Local 417

This matter was heard on February 15, 2018, in Kingston, ON.

I. INTRODUCTION

1. The Grievor grieves that the College has failed to recognize her as a full-time employee on the basis of her assigned workload from Winter 2014 through Fall 2015.
2. The facts of this case are largely undisputed and were presented through will-say statements. There was additional *viva voce* evidence presented by the Grievor and Nicole Donnelly.

II. COLLECTIVE AGREEMENT

3. The following are the relevant collective agreement provisions:

Article 1

RECOGNITION

1.01 The Union is recognized as the exclusive collective bargaining agency for all academic employees of the Colleges engaged as teachers, counsellors and librarians, all as more particularly set out in Article 14, Salaries, except for those listed below:

- (i) Chairs, Department Heads and Directors,
- (ii) persons above the rank of Chair, Department Head or Director,
- (iii) persons covered by the Memorandum of Agreement with the Ontario Public Service Employees Union in the support staff bargaining unit,
- (iv) other persons excluded by the legislation, and
- (v) teachers, counsellors and librarians employed on a part-time or sessional basis.

NOTE A: Part-time in this context shall include persons who teach six hours per week or less.

NOTE B: *Sessional in this context shall mean an appointment of not more than 12 months duration in any 24 month period.*

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, their economic viability, attainment of the program objectives, the need for special qualifications and the market acceptability of the programs to Colleges, 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, their economic viability, enrolment patterns and expectations, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to Colleges, 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, their economic viability, 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.

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Article 11

WORKLOAD

11.01 A Each teacher shall have a workload that adheres to the provisions of this Article.

11.01 B 1 Total workload assigned and attributed by the College to a teacher shall not exceed 44 hours in any week for up to 36 weeks in which there are teaching contact hours for teachers in post-secondary programs and for up to 38 weeks in which there are teaching contact hours in the case of teachers not in post-secondary programs.

The balance of the academic year shall be reserved for complementary functions and professional development.

Workload factors to be considered are:

- (i) teaching contact hours
- (ii) attributed hours for preparation
- (iii) attributed hours for evaluation and feedback
- (iv) attributed hours for complementary functions

11.01 B 2 ...

11.01 D 1 Weekly hours for preparation shall be attributed to the teacher in accordance with the following formula:

...

11.01 D 3 For purposes of the formula:

(ix) Hours for curriculum review or course development assigned to a teacher on an ongoing basis, in lieu of teaching or in a non-teaching period, shall be attributed on an hour for hour basis and recorded on the SWF.

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11.01 F 1 Complementary functions appropriate to the professional role of the teacher may be assigned to a teacher by the College. Hours for such functions shall be attributed on an hour for hour basis.

An allowance of a minimum of six hours of the 44 hour maximum weekly total workload shall be attributed as follows:

four hours for routine out-of-class assistance to individual students

two hours for normal administrative tasks.

The teacher shall inform his/her students of availability for out-of-class assistance in keeping with the academic needs of students.

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Guidelines

Allowances - Professors

14.03 A 3 Coordinator Allowance – *Coordinators are teachers who in addition to their teaching responsibilities are required to provide academic leadership in the coordination of courses and/or programs.* Coordinators report to the academic manager who assigns their specific duties, which shall be determined prior to the acceptance of the designation, subject to changes as circumstances require. It is understood that coordinators do not have responsibility for the supervision or for the disciplining of teachers in the bargaining unit. It is not the intention of the Colleges to require employees to accept the designation of coordinator against their wishes.

Those employees who are designated as coordinators will receive an allowance equal to one or two steps on the appropriate salary schedule. Such allowance will be in addition to the individual's annual base salary.

Article 26

PARTIAL-LOAD EMPLOYEES

26.01 A This Article contains provisions exclusively related to partial-load employees. However, this Article is not inclusive of all rights of partial-load employees under the Collective Agreement.

26.01 B *A partial-load employee is defined as a teacher who teaches more than six and up to and including 12 hours per week on a regular basis.*

26.02 A A partial-load employee shall not receive salary or vacations but shall be paid for the performance of each teaching contact hour at an hourly rate calculated in accordance with 26.04.

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APPENDIX V SESSIONAL EMPLOYEES

1 The terms of this Appendix relate to persons employed on a sessional basis. Sessional employees are excluded from the bargaining unit.

2 ***A sessional employee is defined as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period.*** Such sessional employee may be released upon two weeks' written notice and shall resign by giving two weeks' written notice.

3 In determining the employment and calendar periods under paragraph 2 of this Appendix, only the period after January 1, 1976, shall be considered and no prior employment or calendar period shall be taken into account. Also, an employee's continuous service acquired in accordance with the provisions of the previous Agreement, dated September 17, 1975, as at August 31, 1976, for the period back to January 1, 1976, shall count as continuous employment or months of non-continuous accumulated employment for the purpose of such paragraph.

A calendar month in which the employee completes 15 or more days worked shall be considered a "full month".

If an employee completes less than 15 days worked in each of the calendar months at the start and end of the employee's period of employment and such days worked, when added together, exceed 15 days worked, an additional full month shall be considered to be completed.

4 If a sessional employee is continued in employment for more than the period set out in paragraph 2 of this Appendix, such an employee will be thereafter covered by the other provisions of the Agreement. Such an employee's probationary period shall be 12 full months of continuous or non-continuous accumulated employment during the immediately following 24 calendar month period.

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CLASSIFICATION DEFINITIONS FOR POSITIONS IN THE ACADEMIC BARGAINING UNIT

(to be used in conjunction with the Job Classification Plans for positions in the Academic Bargaining Unit.)

CLASS DEFINITION

PROFESSOR

Under the direction of the senior academic officer of the College or designate, a Professor is responsible for providing academic leadership and for developing an effective learning environment for students. This includes:

- a) The design/revision/updating of courses, including:
 - consulting with program and course directors and other faculty members, advisory committees, accrediting agencies, potential Colleges and students;
 - defining course objectives and evaluating and validating these objectives;
 - specifying or approving learning approaches, necessary resources, etc.;
 - developing individualized instruction and multi-media presentations where applicable;
 - selecting or approving textbooks and learning materials.

- b) The teaching of assigned courses, including:
 - ensuring student awareness of course objectives, approach and evaluation techniques;
 - carrying out regularly scheduled instruction;
 - tutoring and academic counselling of students;
 - providing a learning environment which makes effective use of available resources, work experience and field trips;
 - evaluating student progress/achievement and assuming responsibility for the overall assessment of the student's work within assigned courses.
- c) The provision of academic leadership, including:
 - providing guidance to Instructors relative to the Instructors' teaching assignments;
 - participating in the work of curriculum and other consultative committees as requested.

In addition, the Professor may, from time to time, be called upon to contribute to other areas ancillary to the role of Professor, such as student recruitment and selection, time-tabling, facility design, professional development, student employment, and control of supplies and equipment.

III. EVIDENCE

4. The Grievor commenced employment with the College as a professor in September 2005. She currently works at the Cornwall campus. The period relevant to her grievance is Winter 2014 to Fall 2015. In each of those terms, she was assigned to teach four courses and assigned to either serve as a program coordinator or engage in course development. The following is her assignment for each specific term.

a. Winter 2014

5. The Grievor was assigned to teach four courses, totaling 12 teaching hours per week. Her salary for those courses was calculated in accordance with Article 26.02A. The contracts governing this assignment described her status as partial load.

6. In addition, she was assigned to engage in course development of three other courses. She was paid a block fee for these duties. The contracts governing the course development work are silent about her status.

b. Fall 2014

7. The Grievor was again contracted to teach four courses, again totally 12 teaching hours per week. The contract governing this assignment describes her status as partial-load, and she was paid in accordance with Article 26.02A.

8. She was also assigned to act as the program coordinator for the Supply Chain Management and Logistics Program. For this work, she was paid the same hourly rate as for her teaching assignment, calculated on the basis of 75 hours over the period from June 30, 2014 to December 19, 2014.

c. Winter 2015

9. The Grievor was again contracted to teach four courses for this term, again totaling 12 teaching hours per week. She was paid in accordance with Article 26.02A.

10. She was also assigned to act as program coordinator again, an assignment of 45 hours for the duration of the term. She was paid the same hourly rate as for teaching.

11. While the contracts for the teaching initially indicated her status as partial-load, and the contract for the program coordinator initially indicated her status as part-time, those indications were manually crossed out and 'sessional' was hand-written in.

d. Fall 2015

12. The Grievor was again assigned to teach four courses, for a total of 12 hours per week, and was paid pursuant to Article 26.02A. The contract governing this assignment indicates her status as partial-load.

13. She was also again assigned to act as program coordinator, for 48 hours over the term. The contract governing this assignment indicated her status as partial-load. That term was crossed out manually, and "partial load" was hand-written in.

14. Nicole Donnelly is the Employee Relations Consultant. She indicated that partial-load employees are eligible for benefits. She is responsible for the administration of full-time and partial-load benefit plans.

15. She stated that when the Grievor's file for Winter 2015 was processed, the Human Resources Consultant crossed out the 'partial-load' notation, and wrote in 'sessional'. As a result, the Grievor's first pay of that term was processed as a sessional. Ms. Donnelly stated that the College subsequently realized this had occurred and that it was an error. The Grievor's status was changed back to partial-load, and the appropriate salary change forms were processed.

16. Ms. Donnelly also indicated that when the Grievor's Fall 2015 contracts were received by the Human Resources Department, they were inadvertently not transferred to the Pension and Benefits Office. As a result, Ms. Donnelly was not aware the Grievor had been hired as an employee in that semester and did not process her as a returning partial-load employee. This error came to light in March 2016 when the Grievor's claim for medical benefits was denied on the basis she was a new employee in Winter 2016. Upon learning that the Grievor had in fact been employed in the Winter 2015 term, Ms. Donnelly arranged for benefit coverage to be put in place without any waiting period (which would have been applicable if the Grievor had not been a partial-load employee in the previous term).

IV. BRIEF SUMMARY OF SUBMISSIONS

b. Union's Submissions

17. In the Union's view, the Grievor was a sessional employee during Winter 2014 to Fall 2015 period. If that was the case, the Union submits that pursuant to Appendix V(4) she should be considered a full-time employee.

18. The Union's primary position is premised on the argument that the Grievor's program coordinator duties should be considered in assessing her workload for the purposes of determining her status during the relevant period. If coordinating duties are considered part

of her workload, the Union submits she would be considered a sessional employee during each these terms; certainly she was assigned more than 12 hours of work per week of work.

19. Article 26.01B defines a partial-load employee as a teacher “who teaches more than six and up to and including 12 hours per week”. The Union begins by noting that this definition does not actually refer to ‘teaching contact hours’. That phrase is only referenced in Article 26.02A where the system for payment of partial-load employees is set out. The Union notes that the Grievor spent significantly more than 12 hours performing the work involved to teach the four courses assigned to her. The Union notes that the parties are fully aware that a professor who is assigned 12 teaching hours per week will need to work more than 12 hours per week.

20. The Union submits that coordinator duties should be considered in determining the Grievor’s status because it is part of the body of work performed by professors. The Union points to Article 14.03.A3, which describes coordinators as teachers who “provide academic leadership in the coordination of courses and/or programs”. In the Union’s view, it is not coincidental that the term ‘academic leadership’ is also referenced in the collective agreement Class Definition for Professor. Therein, it is noted that a Professor “is responsible for providing academic leadership and for developing an effective learning environment for students”. The Union submits that it is clear from this that the performance of coordinating duties is the part of the work performed by professors under this collective agreement.

21. The Union notes that sessional employees, unlike part-time and partial load employees, are not defined in the collective agreement by reference to hours spent teaching. Rather they are simply defined as a “fulltime employee appointed on a sessional basis for up to 12 full months... in a 24 calendar month period”.

22. Pursuant to Article 11, a full-time bargaining unit professor’s workload may be comprised of a variety of duties, including teaching courses and complementary hours.

These complementary hours may include assignments to perform coordinating duties. The Union points out that there is no minimum required teaching hours for professors covered by the collective agreement.

23. The Union points, by way of example, to the workload assignment of Professor W, a full-time bargaining unit professor. In one term, pursuant to Article 11, Professor W was assigned to teach four courses (for a total of 13 teaching contact hours per week) and 8 hours per week for program coordinator duties. This assignment was considered a full-time workload (in fact it entitled the professor to overtime).

24. The Union notes that almost the exact same workload (except for one less teaching contact hour) was assigned to the Grievor from Winter 2014 to Fall 2015: teaching four courses and performing program coordinating duties. The Union submits that given the same circumstances, it is inappropriate to consider the Grievor's assignment as anything other than full-time. If her workload is that of a full-time employee, the Union submits it is inappropriate to treat her as though the totality of her work assignment is teaching 12 hours per week.

25. The Union submits that if the program coordinating duties are considered as part of her work assignment, then the Grievor would be considered to have been appointed on a sessional basis from Winter 2014 through Fall 2015, for a period of 14 months. Because this exceeds the 12 months in 24 month maximum permitted for sessional employees, the Union submits that pursuant to Appendix V(4) the Grievor should be "rolled over" to permanent status under the collective agreement.

26. Alternatively, in the event the Union is unsuccessful in its primary argument, the Union submits that the terms where the Grievor was a sessional employee combined with the terms where she was a partial-load employee are sufficient for her to be considered a full-time employee. For this argument, the Union points to Article 2.03B. This article prohibits the combining of partial-load assignments with sessional assignments in an effort to

prevent the employee from meeting the requirement of more than 12 months sessional employment in 24 months to become a full-time employee covered by the collective agreement.

27. The Union relies on the Grievor's status in Winter 2014 (when the Grievor was contracted to do course development work), and Winter and Fall 2015 (when the Grievor's contracts noted her status as sessional). But for the Fall 2014 partial-load assignment, the Union submits the Grievor has been considered a sessional employee continuously over two academic years. On this basis, she should be considered to a full-time employee.

28. The Union relied on the following authorities: *Algonquin College – and – OPSEU*, 2016 CarswellOnt 19306 (Jesin); *Algonquin College – and – OPSEU* (2001), 100 L.A.C. (234)(Knopf); and *Sheridan College – and – OPSEU*(unreported, November 6, 1996)(Schiff).

b. College's Submissions

29. The College submits that the Grievor is and always has been a partial-load employee.

30. The College submits that coordinator work is not teaching, and therefore should not count towards the determination of employment status for the purposes of the collective agreement. The College notes that there was no full-time professor in the logistics program, and for that reason the work was offered to the Grievor. However, the work of program coordinating is not teaching.

31. The College notes that partial-load and part-time status is defined in terms of teaching hours. The College submits that the amount of time an individual may actually spend in carrying out a teaching assignment is not relevant; status is based only on direct teaching contact hours (time spent in the classroom). The Grievor was paid in accordance with Article 26.01, how partial-load professors are paid for their teaching assignment.

32. The College submits there has never been any restriction on assigning partial-load employees other duties on top of teaching; as long as the teaching does not exceed 12 hours per week, the employee remains a partial-load employee. The College submits that to

conclude otherwise would not acknowledge Article 1.01 and Article 26.01B. The only way a partial-load employee becomes a full-time employee, according to the College, is if the employee is assigned more than 12 hours of teaching.

33. The College submits the Grievor was assigned duties in addition to teaching on a part-time basis, as a support staff employee. The College submits that it is entitled to assign coordinating duties to individuals other than full-time professors; the collective agreement does not preserve that work solely for them.

34. The College notes that Article 14.03.A3 refers describes coordinators as teachers doing work that is “in addition to [] their teaching responsibilities”. The College submits this indicates coordinating duties are not teaching. While teaching is not expressly defined in the collective agreement, the College submits that when consideration is given to the collective agreement as a whole, and the jurisprudence, it is clear that teaching refers to direct course instruction. That is not what coordinating work is.

35. With respect to the fact that there was an administrative error in how the Grievor was classified in certain semesters, the College submits that errors of this nature do not alter an employee’s status. Status can only be determined on the basis of the terms of the collective agreement. In the present case, the Grievor’s status, based on teaching 12 hours per week, is as a partial load professor.

36. The College submits the grievance should be dismissed.

37. The College relied on the following authorities: *Seneca College – and – OPSEU*, [2013] O.L.A.A. NO. 534 (Starkman); *Algonquin College – and – OPSEU*, [2015] O.L.A.A. No. 254 (Knopf); and *Algonquin College – and – OPSEU*, (unreported, June 21, 2005)(Tacon).

V. ANALYSIS

38. The issue between the parties is whether the Grievor was a sessional employee during the relevant time period, and in particular whether her program coordinator duties should be considered in determining her status under the collective agreement.

39. It is useful to begin with a consideration of the broader construct of the collective agreement. When considered as a whole, the collective agreement indicates the parties intended that only some of the people the College employed as teachers would be included in the bargaining unit. Furthermore, only some of the people the College employed as teachers would have access to all the collective agreement benefits of full-time employees (i.e. partial-load employees would not). For this reason, it is important to look closely at a teacher's employment relationship with the College to determine exactly how the parties intended to treat that particular relationship for the purposes of the collective agreement.

40. Pursuant to Article 1.01, the bargaining unit for this collective agreement is "all academic employees.....engaged as teachers, counsellors and librarians". Expressly excluded are employees in the same classifications but employed on "a part-time or sessional basis".

41. The term "sessional" is explained in Article 1.01 as meaning "an appointment of not more than 12 months duration in any 24 month period. In Appendix V, a sessional employee is defined as "a full-time employee appointed on a sessional basis", for up to 12 months in a 24 calendar month period.

42. This definition of a sessional employee, as being "a full-time employee" who is only employed on a short-term basis, is notable.

43. The other two categories of employees referenced in this collective agreement are defined differently. Part-time employees are defined by reference to the amount of teaching hours assigned (up to six hours per week): see Article 1.01. The same is true of partial-load employees, who are part of the bargaining unit but are not entitled to all the same rights and

benefits as other bargaining unit employees. They are defined as “a teacher who teaches more than six and up to and including 12 hours per week on a regular basis” (See Article 26).

44. The College submits that the Grievor clearly fits the partial-load definition, as someone who teaches not more than 12 hours per week during the relevant period.

45. There is no dispute that was the amount of teaching assigned to the Grievor during this period. However, it is also undisputed that the Grievor’s teaching assignment is not the totality of the work she performed for the College during this period. How should that work be viewed?

46. The College submits that that was simply work performed under a different contract.

47. I have some concerns about considering work as distinct simply because it is contained in a different contract. The College controls and administers the contracts. If the form of the contract was dispositive of the issue of an employee’s status, it would effectively permit the College to undermine the terms of the collective agreement through administrative action.

48. Such an outcome was rejected by Arbitrator Jesin, in *Algonquin College, supra*. In that case, the union grieved the employer’s use of an ongoing rotation of sessional teachers to fulfil its teaching needs for a particular program. The employer argued that it had not declared there to be a full-time position, and so was not required to staff the work as a full-time bargaining unit position. Arbitrator Jesin stated that the employer had the discretion to determine whether to assign work and how to assign it, but did not have the discretion to deny the existence of a full-time position on the basis of that assignment.

49. This case supports the principle that the nature of an assignment or a position should be determined with regard to the work itself and the collective agreement, and not by the College’s administrative handling of that assignment. In the instant case, while the College exercised its right to assign the Grievor a certain body of work, it does not have the right to determine how that work is to be characterized, or what the Grievor’s status will be as a

result of that assignment. The nature of the Grievor's status must be determined on the basis of the collective agreement.

50. I am in agreement with the College's submission that coordinator work does not fall within the parameters of "teaching" as contemplated under this collective agreement. In fact, the Union did not really suggest otherwise. While teaching is not defined expressly in the collective agreement, jurisprudence suggests that to determine whether certain duties constitute teaching, one should consider whether the duties involve delivering/ teaching assigned courses and responsibility for course objectives, curriculum, evaluations or imparting course content to students: see *Algonquin College, supra* (Knopf, 2015).

51. Coordinator work is different. However, there clearly is a significant relationship between teaching and coordinator duties. Article 14.03.A3 defines coordinators as "teachers who in addition to their teaching responsibilities are required to provide academic leadership in the coordination of courses and/or programs". While coordinating may not be teaching, coordinators are teachers.

52. The fact that coordinators are teachers has been recognized as significant for the purposes of determining issues related to status under the collective agreement.

53. In *Algonquin College*, (Knopf, 2001), *supra*, the union grieved the employer's failure to designate certain work as a full-time positions. Part of the union's argument relied on the fact that one individual performed less than 6 hours of teaching per week but also a number of hours as a program coordinator. The employer argued that the arbitrator had no jurisdiction because the individual was part-time in respect of her teaching work and part-time in respect of her coordinating work. The arbitrator rejected that argument, noting that she could consider whether the combination of coordinating duties and teaching could constitute a full-time position. While the arbitrator only dealt with the preliminary issue of jurisdiction, she reached this conclusion noting that while coordinators are not a distinct

classification under the collective agreement, coordinators are recognized as teachers under the collective agreement.

54. The significance of the fact that coordinators are teachers has also been recognized in the context of determining what is bargaining unit work. In *Algonquin College, supra*, Arbitrator Tacon concluded that coordinating work did not fall within the exclusive purview of the bargaining unit. In doing so, she noted that coordinators are teachers, and individuals can be employed to teach outside of the bargaining unit. She concluded that meant the work of coordinators could be performed outside of the bargaining unit.

55. *Seneca College, supra*, is also an interesting case. In that case, the union grieved the assignment of coordinating duties to partial-load employees, rather than to full-time bargaining unit employees. The Board held that coordinator duties must first be offered to full-time bargaining unit Professors who are willing to accept the assignment. However, because acceptance of such duties is voluntary, if there is no full-time professor willing, the College can then assign such duties to a partial-load professor who is willing to accept the assignment.

56. In putting forth its position, the union raised the concern that such an assignment was a circumvention of the collective agreement, because the partial-load employees were being assigned more than 12 hours of work per week, but not being provided the rights and benefits of full-time employees. As a remedy, the union sought to have the partial-load professors treated as full-time bargaining unit professors for the period in which they performed the coordinator duties. With respect to this remedial request, the Board noted the following:

This might have the result of depriving certain departments of a Coordinator, or greatly increase the cost of providing Coordinating Duties. On the other hand, if the College's proposal is accepted and can assign Coordinator Duties to Partial-Load Professors when it wishes, it would deprive full-time employees of the opportunity of performing such functions and would permit the College to assign Partial-Load Professors a mix of contact teaching hours and other duties which would require more than

twelve hours per week, should they wish to do so, and would also ignore the working of article 14.03.A3 which references remuneration for such assignments to be compensated by steps on a salary scale, which clearly a reference to Full-Time Professors.

57. The Board concluded there was an ambiguity in the collective agreement with respect to assignment of coordinator duties to partial-load professors. Noting they were trying to achieve an interpretation that best respected the language of the collective agreement and made labour relations sense, the Board concluded that payment for such duties when assigned to partial-load employees should be with reference to the partial load pay grid.

58. This case is interesting because it accepts that when partial-load employees are assigned coordinating duties, that work, just like teaching, is part of the work performed by that employee for the College. In fact, the Board concluded the coordinating work should be paid using the same collective agreement pay grid used for paying that employee for their teaching assignment. While the Board did not directly deal with the issue of the effect of such a coordinator assignment on the status of the partial-load professor, it acknowledged that assignment as part of the work being performed by the partial-load professor for the purposes of determining compensation under Article 26.

59. I turn again to the definition, in Appendix V, of a sessional employee as a “full-time employee”. A full-time employee is not expressly defined under the collective agreement. It is clear, however, that the collective agreement obviously contemplates that there are two types of full-time employees, one that is employed on a permanent basis and the other who is employed on a short-term basis, of no more than 12 months in a 24 month period. The only distinction between these two employees is on the length of their employment, not the quantum of a particular type work assigned.

60. That said, obviously the type of work is of some relevance. The work assigned should be of the nature that is assigned to full-time employees in this bargaining unit. That is why the above referenced cases, while not directly on point, are still useful. They confirm

that coordinator work is the type of work that is performed by teachers, and that it is part and parcel of the work performed by teachers for the College. While it may not be teaching itself, it is still the work of an academic employee engaged in teaching. Thus, when a teacher is performing this work, it cannot be carved out or ignored as some separate work unrelated to his or her employment by the College as a teacher, even if a separate contract is drafted in respect of it. To put it bluntly, it is not as though the Grievor was contracted to teach, and then given a separate unrelated contract to sweep the floors. She was assigned the program coordinator work for the same reason she was assigned the teaching work - because of her qualifications as a teacher.

61. To determine whether an individual is a full-time employee for the purposes of being a sessional, the most logical reference is other full-time employees. Those would be the full-time professors in the bargaining unit. Those individuals are assigned work pursuant to Article 11, which contains a complicated formula of determining the quantum of work that has been assigned. There are two key components in that Article that are relevant to the instant case. One is that there is no specified amount of teaching that must be performed by a full-time bargaining unit member. The other is that in addition to teaching (or even, as noted in Article 11.01.D3(ix), in lieu of teaching), a full-time bargaining unit member may be assigned complementary duties, which would include things like program coordinator work.

62. As such, a full-time bargaining unit employee's workload may be comprised of any combination of teaching (with no specified minimum of teaching) and complementary duties. Professor W's workload in one term was just that: teaching 4 courses and the complementary duties of a program coordinator.

63. The Grievor's assignment during the terms at issue was virtually identical, with the only difference that she was assigned 12 weekly teaching hours instead of 13. It is difficult to see any reason why she should not be considered, just like Professor W, to have been assigned the workload of a full-time employee.

64. The implicit assertion of the College's position is that an individual can only be a sessional employee if he or she is *teaching* more than 12 hours a week, thereby taking him or her out of the clear definition of partial-load. I appreciate the attractiveness of that logic, because there is a certain intellectual untidiness of someone being able to simultaneously satisfy both the definition of partial-load (because they teach no more than 12 hours a week) and the definition of sessional (because they've been assigned a full-time workload comprised of teaching and other academic complementary duties).

65. However, if the parties had intended that sessional employees must *teach* more than 12 hours a week, they could have easily defined that term in that way. After all, they did so for part-time and partial-load. Instead, they chose to define them by reference to 'full-time employees', which is what full-time bargaining unit professors are. The fact that they chose to do so must be given significance. The only reasonable conclusion is that they intended sessional status to be determined with regard to the type of assignment full-time bargaining unit professors have, which may or may not include teaching more than 12 hours per week.

66. I find that the program coordinating duties assigned to the Grievor should be considered in determining her status under the collective agreement.

67. That was really the only issue in dispute in this case. The College did not challenge the Union's assertion that if the coordinator work was considered for the purposes of determining the Grievor's status, on the facts of this specific case the Grievor would be a sessional full-time employee in the academic terms where she was assigned such duties in addition to her teaching assignment. Nor did the College challenge the Union's assertion that if she was determined to be a sessional employee on the basis of her coordinator work, the Grievor would exceed the 12 in 24 month period referenced as a maximum for sessional employees in Appendix V(2).

VI. DISPOSITION

68. The grievance is allowed. The Grievor is to be considered to have worked as a sessional employee for more than 12 months in the Winter 2014 to Fall 2015 period, and is entitled to receive all the collective agreement benefits that flow from that fact.

69. I remain seized with respect to any issues related to implementation of this award.

Dated this 26th day of March, 2018.

"Jasbir Parmar"

JASBIR PARMAR