

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE HUMBER COLLEGE INSTITUTE OF
TECHNOLOGY AND ADVANCED LEARNING

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

GRIEVANCES OF GENE RYCHLEWSKI

BOARD OF ARBITRATION:

JANE H. DEVLIN

CHAIR

ROBERT J. GALLIVAN

COLLEGE NOMINEE

RON DAVIDSON

UNION NOMINEE

WILLIAM J. HAYTER, FOR THE COLLEGE

PETER SHKLANKA, FOR THE UNION

This matter concerns two grievances filed in June, 2003 by Gene Rychlewski, a Professor at the College. The first grievance alleges that the College violated the collective agreement by assigning curriculum development work to the Grievor during a non-teaching period without recording this work on a standard workload form ("SWF"). The second grievance alleges that the College improperly threatened discipline in an effort to coerce the Grievor into agreeing to perform curriculum development work during a non-teaching period.

The relevant provisions of the collective agreement are as follows:

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 complimentary 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 D 3

- (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.

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

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

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

two hours for normal administrative tasks

11.01 G 1 Where preparation, evaluation, feedback to students and complementary functions can be appropriately performed outside the College, scheduling shall be at the discretion of the teacher, subject to the requirement to meet appropriate deadlines established by the College.

11.01 H 1 The College shall allow each teacher at least ten working days of professional development in each academic year.

11.01 K 1 Contact days (being days in which one or more teaching contact hours are assigned) shall not exceed 180 contact days per academic year for a teacher in post-secondary programs or 190 contact days per academic year for a teacher not in post-secondary programs.

11.01 M Where a Union Local and a College agree in writing on terms governing workload assignments at the College, such agreements shall be binding on the College, the Union Local and the teachers and timetables shall be established in accordance with such local agreements.

11.02 A 2 The SWF shall include all details of the total workload including teaching contact hours, accumulated contact days, accumulated teaching contact hours, number of sections, type and number of preparations, type of evaluation/feedback required by the curriculum, class size, attributed hours, contact days, language of instruction and complementary functions.

11.02 A 6(a) In the event of any difference arising from the interpretation, application, administration or alleged contravention of 11.01 or 11.02, a teacher shall discuss such difference as a complaint with the teacher's immediate supervisor.

The discussion shall take place 14 days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the teacher in order to give the immediate supervisor an opportunity of adjusting the complaint. The discussion shall be between the teacher and the immediate supervisor unless mutually agreed to have other persons in attendance. The immediate supervisor's response to the complaint shall be given within seven days after discussion with the teacher.

Failing settlement of such a complaint, a teacher may refer the complaint, in writing to the WMG within seven days of receipt of the immediate supervisor's reply. The complaint shall then follow the procedures outlined in 11.02 B and 11.02 F.

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11.02 A 6(b) Grievances arising with respect to Article 11, Workload, other than 11.01 and 11.02 shall be handled in accordance with the grievance procedure set out in Article 32, Grievance Procedures.

...

11.02 G It is recognized that speedy resolution of workload disputes is advantageous to all concerned. Therefore, the College and the Union Local committees appointed under Article 7, Union/College Committee (Local), have the authority to agree to the local application of Article 11, Workload, and such agreement may be signed by them and apply for the specific term of this Agreement as currently in effect, Also, such agreement shall not serve as a precedent for the future at that or any other College. Such agreement is subject to ratification by the Union Local membership within ten days and is subject to approval by the College President.

...

11.03 The academic year shall be ten months in duration and shall, to the extent it be feasible in the several Colleges to do so, be from September 1 to the following June 30. The academic year shall in any event permit year-round operation and where a College determines the needs of any program otherwise, then the scheduling of a teacher in one or both of the months of July and August shall be on a consent or rotational basis.

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11.06 During the period of assigned workload, teachers shall not take any employment, consulting or teaching activity outside the College except with the prior written consent of the supervisor. The consent of the supervisor shall not be unreasonably withheld.

...

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

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

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

The Grievor joined the faculty of the College in 1980 and began teaching in the School of Information Technology, Accounting & Electronics ("the IT School") in 1995. During the period prior to 1998, he taught a number of courses on programming languages, such as Visual Basic ("VB") 5. He subsequently taught courses on systems analysis and operating systems, such as Windows and Unix. In the spring of 2003, when the events giving rise to the grievances occurred, Louise Bardswich was the Dean of the IT School and Larry Konyu was the Associate Dean.

The dispute between the parties concerns the performance of curriculum development work during the non-teaching period in May and June. The work in question includes the review, revision and updating of course materials, such as outlines, texts and evaluation methods.

Dealing firstly with past practice, the evidence indicates that at one time, faculty in the IT School taught during the months of May and June. However, Dean Bardswich testified that in view of developments in the field of information technology, sometime in the mid-1990's, a decision was made to discontinue this practice and to devote much of the non-teaching period to curriculum development work in order to ensure that the quality of programs was maintained. Dean Bardswich acknowledged that

thereafter, most faculty members were expected to be available to perform this work during May and June although there were occasions when it was agreed that particular faculty members would be involved in professional development or recruitment activities.

Dean Bardswich also testified that although she was ultimately responsible for determining what work was performed, curriculum development work to be performed during the non-teaching period was identified through a collaborative process. In this regard, she explained that the work was initially identified by program co-ordinators in consultation with faculty members. However, as enrollment increased, many courses were taught in multiple sections by a number of different faculty members. As a result, course leaders were appointed, who were also members of the bargaining unit, and they then became involved in the process of identifying curriculum development work to be performed during the non-teaching period.

Once the work was identified, Dean Bardswich testified that she distributed a list of proposed tasks to faculty members and asked for additional suggestions. She also testified that faculty members typically volunteered to perform the work and if there was a critical project for which no one volunteered, she would approach a particular faculty member and ask if he or she was prepared to perform the work. In the event that no agreement could be reached, Dean Bardswich testified that she would probably hire someone to perform the work. However, she could not recall a single instance where a critical project was not carried out.

Dean Bardswich also testified that she was involved in co-ordinating curriculum development work to the extent of ensuring that faculty members were qualified to perform particular tasks and that there was an equitable distribution of work. In the event of a significant disparity, Dean Bardswich testified that she would discuss the matter with the faculty member involved and an agreement would be reached regarding the work to be performed. She also testified that prior to the events giving rise to the grievances, there had not been a serious disagreement with a faculty member regarding work to be performed during the non-teaching period. She testified, as well, that a member of the Local executive and at least one Union Steward taught in the IT School and although the issue was not specifically discussed, no objection was raised to the manner in which curriculum development work was performed.

During the course of her evidence, Dean Bardswich identified a number of memoranda which she or the Associate Dean forwarded to faculty regarding curriculum development work to be performed in May and June. Dealing firstly with memoranda forwarded to faculty prior to 2003, Dean Bardswich acknowledged that in a memorandum prepared in 1998, reference was made to "May-June assignments". She testified that the use of the word "assignments" was unfortunate and agreed that if a student was given an assignment, he or she would be expected to complete it, even if the student had a choice regarding the nature of the assignment. With respect to curriculum development work, Dean Bardswich testified that faculty members were given various options regarding the tasks to be performed or they could identify work in which they had an interest provided that it was reasonably related to a course or program. She also testified that once faculty

members volunteered to perform particular tasks, she expected them to complete the work and that it would not have been acceptable if a faculty member elected not to perform any work during the non-teaching period.

Dean Bardswich also acknowledged that the memorandum forwarded to faculty in 1998 referred to certain meetings which faculty members were expected to attend. As well, a number of memoranda referred to dates by which curriculum development work was to be completed and Dean Bardswich testified that in some cases, there were deadlines by which text books had to be ordered and, in other cases, faculty were reminded of dates on which curriculum development work was to be completed in order to ensure that there was sufficient time for professional development work prior to the vacation period. Dean Bardswich also acknowledged that in 2002, the Associate Dean took a more "directive" approach to curriculum development work to be performed during the non-teaching period and advised faculty that they would be disciplined if they did not complete the work. Dean Bardswich testified, however, that this approach was not consistent with the approach which had traditionally been taken to such work.

Dean Bardswich also testified that in contrast to curriculum development work performed during May and June, work of an ongoing nature is recorded on a SWF. By way of example, she testified that time has been allocated on a SWF for the preparation of a proposal for a new applied degree program and for the development of an online version of a course as this type of work would take a number of months to

complete. She also testified that in the event a new course was introduced in January, curriculum development work would be assigned and recorded on a SWF for the fall semester.

In describing the practice with respect to curriculum development work, Dean Bardswich also identified an excerpt from the faculty handbook which she was involved in preparing. She acknowledged that the handbook is not a document which has been agreed to by the Union. The excerpt regarding curriculum development work provides as follows:

The College uses Advisory Committees made up of industry specialists to advise on program directions, the development of new programs, and significant revisions to existing programs. Major curriculum development projects usually involve a group of faculty and program advisors.

Incremental changes in curriculum and changes to individual course outlines are typically handled by the faculty group involved. Cluster leaders have been assigned responsibility for groups of related courses. Over the year, faculty tell cluster leaders about any difficulties they are encountering in delivering the existing course curriculum. Cluster leaders also collect ideas for enhancements to curriculum. From this collection of information, cluster leaders work with the program coordinators to decide on development priorities.

The majority of course development work is done in the May/June time frame, but given that some faculty have their development periods in fall or winter, development work can be assigned in any semester.

Course outlines should not be changed without a meeting of the faculty normally involved in the course team. It is the responsibility of the cluster leader to call such a meeting and to lead the discussion. Course outlines are essentially a "contract" with the teacher and with the student. It has to "work" for all faculty who teach the course (day and/or CE). Without discussion, something that at first glance appears to make perfect sense, on implementation may have a far-reaching effect on subsequent courses.

...

Robert Mills, who has been the Chief Steward of the Local since 1989, testified that the performance of curriculum development work during the non-teaching period has been an ongoing issue between the parties for some time. In this regard, he explained that in the spring of 2001, he became aware of two memoranda to IT faculty, one from Dean Bardswich and the other from the Associate Dean, regarding curriculum development work to be performed in May and June. As these memoranda referred to assignments to faculty, Mr. Mills wrote to both the Dean and Associate Dean indicating that work was being "assigned" during non-teaching periods and that such work could only be assigned by means of a SWF. He also expressed the view that there was no contractual obligation on faculty to perform work which was not recorded on a SWF.

In late May, 2001, Dean Bardswich wrote to Mr. Mills indicating that there had been a longstanding practice of faculty in the IT School performing curriculum development work during the non-teaching period. She also indicated that faculty had been asked to advise the Associate Dean if they disagreed with the work proposed and that any disagreements were resolved by mutual consent, with the understanding that consent would not be unreasonably withheld.

In May, 2001, Mr. Mills sent a memorandum to IT faculty indicating that, in the Union's view, the memoranda prepared by the Dean and Associate Dean regarding curriculum development work to be performed during the non-teaching period violated the collective agreement. Although Mr. Mills also invited faculty to refer the issue to the Workload Monitoring Group ("WVG"), he testified that he received no response to his

memorandum. He testified, as well, that the Union did not file a grievance because it was his understanding that only an individual faculty member could file a complaint regarding workload.

However, Mr. Mills raised the issue at a meeting of the WMG, which was held in mid-June, 2001. At that meeting, he also distributed an article regarding an award of a Board of Arbitration, which included both the Chair and College Nominee in this case: see *Loyalist College of Applied Arts and Technology and Ontario Public Service Employees Union May 7, 1991* (unreported). In that case, the Board was asked to determine whether the College could require a teacher to consent to attend a scheduled curriculum review meeting during a non-teaching period under what is now Article 11.08 of the collective agreement. The majority of the Board found that as the College required teachers to participate in such meetings, curriculum review was properly described as an assigned function under Article 11.01 F (then Article 4.01(6)), rather than an activity initiated by a teacher or by the College under Article 11.08. Accordingly, the majority answered the question posed by the parties in the negative and found that a dispute regarding curriculum review was a matter of workload, which was within the jurisdiction of a Workload Resolution Arbitrator. The College Nominee, Mr. Gallivan, agreed that the issue involved a matter of workload in respect of which the Board lacked jurisdiction but disagreed with the interpretation of Article 11.01 F (then Article 4.01(6)) adopted by the majority.

In this case, it appears that although various options were discussed during the WMG meeting in mid-June, 2001, the issue between the parties relating to the performance of curriculum development work during the non-teaching period was not resolved. Moreover, although further discussions took place between the parties in the fall of 2001, again, the matter was not resolved. Mr. Mills acknowledged that the issue was not raised by the Union in bargaining.

At the hearing, Mr. Mills testified that, in the Union's view, curriculum development work to be performed during the non-teaching period must be recorded on a SWF. He also testified that as a SWF is prepared only when teaching contact hours are involved, Professors would have to be assigned at least one teaching contact hour in May and June in order to properly account for the curriculum development work performed during that period.

Turning then to the events which gave rise to the grievances, the evidence indicates that on April 10, 2003, Dean Bardswich forwarded a memorandum to faculty in the IT School together with a list of proposed curriculum development tasks for the non-teaching period in May and June, which had been identified by course leaders. Dean Bardswich indicated in her memorandum that some items had already been "assigned" - usually because a course leader had already volunteered to perform the work or, alternatively, had suggested that the work be performed by a particular faculty member. At the hearing, Dean Bardswich testified that although she used the term assigned, faculty members actually volunteered to perform the work in question. In her

memorandum, she also advised faculty to check the list for their names and advise if there was any disagreement regarding the work proposed. She also suggested that they speak to her if they were having difficulty identifying work they would like to perform. As well, she asked faculty to advise her of professional development work they intended to perform and the period of time required for that work.

Although the Grievor acknowledged that in the years prior to 2003, Dean Bardswich invited faculty to identify work to be performed during the non-teaching period, he could not recall being asked to offer suggestions regarding such work in 2003. He also testified that in prior years, he carried out curriculum development work in May and June because he understood that such work could be assigned by the College. Although the Grievor also testified that he regarded Dean Bardswich's memorandum of April 10, 2003 as a directive and believed that if he did not volunteer to perform certain work, it would be assigned, he acknowledged that he could advise the course leader if he disagreed with the work proposed and was free to offer other suggestions.

On April 21, 2003, the Grievor wrote to Dean Bardswich indicating that he was prepared to update a spreadsheet course, which was one of the tasks set out on the list which accompanied her memorandum of April 10th. He also indicated that he intended to study VB .NET. As well, he advised that during his professional development period, he intended to read Debugging Visual Basic and work on certain programs in Java by Example.

With regard to VB .NET, which the Grievor referred to in his memorandum of April 21st, the evidence indicates that this is a programming language, which is the successor to VB 6, which was taught by other Professors at the College. The Grievor testified that he intended to study VB 6 during a sabbatical he was scheduled to take in the fall of 2003. He also testified that based on a number of articles he had read, he understood that VB .NET represented a change in strategy on the part of Microsoft, which appeared to have some connection to Unix, an operating system on which he was teaching a course at the time. Although the Grievor also acknowledged that his proposal would have involved studying VB .NET prior to VB 6, he explained that he was not aware of VB .NET when he submitted the application for his sabbatical in January, 2003.

Dean Bardswich responded to the Grievor's proposal in an e-mail message dated April 21st in which she indicated that it would take less than a day to update the spreadsheet course. As a result, she asked the Grievor to review the list of tasks attached to her memorandum of April 10th. She also suggested that if he was not comfortable carrying out any of the tasks on the list, there was other work which would be useful to the School. Although Dean Bardswich made no direct reference to VB .NET in her e-mail message of April 21st, she testified that, for a number of reasons, the Grievor's proposal to study VB .NET would not have contributed to the program or improved the quality of education provided to students. In this regard, she explained that other Professors were attending courses on VB .NET, which had been paid for by the College, and there was no expectation that the Grievor would be assigned to teach VB .NET in the foreseeable future. She also testified that although the Grievor could have

been assigned to teach courses on VB 6 or VB .NET if he learned those languages, it was unlikely that he would be assigned to teach a course which resulted in the displacement of another faculty member. Dean Bardswich testified, as well, that other Professors were teaching programming languages and some faculty members had industry experience with those languages. Moreover, there were evidently a limited number of VB courses offered to students. Dean Bardswich also testified that she found it somewhat incongruous that a Professor who was teaching courses on operating systems was proposing to study a programming language and she was puzzled by his suggestion that he study VB .NET when he had not yet learned VB 6.

The Grievor testified that he did not recall receiving Dean Bardswich's memorandum of April 21st and explained that he was having a problem receiving e-mail messages at that time. He also testified that some time between April 21st and May 7th, he spoke to Chris Shaw, the Manager of Learning Services, and she indicated that Dean Bardswich wanted him to prepare a number of sample problems to be used as an instructional tool for students in CPAN 100, an introductory computer course. The Grievor testified that it was his understanding that Dean Bardswich was directing him to perform this work.

Sometime prior to May 7th, the Grievor also attended at the Union office where he was provided with a copy of a newsletter summarizing the Loyalist College award referred to previously. Based on that award, the Grievor testified that it was his understanding that he could perform work of his choice during the non-teaching period,

provided it was reasonable and that, in his view, studying VB .NET satisfied that criterion. He also testified that it was his understanding that work performed during the non-teaching period in May and June need not be of benefit to the College. Moreover, he suggested that if the College wanted him to perform particular work, it could assign the work by means of a SWF. The Grievor acknowledged that the process he was proposing was fundamentally different from the practice which had existed in the IT School since 1998 with respect to the performance of curriculum development work during the non-teaching period.

In response to the Grievor's memorandum of May 7th, Dean Bardswich sent a further e-mail message to the Grievor querying whether he was refusing to perform curriculum development work during the non-teaching period. Dean Bardswich indicated that under Article 11.08 of the collective agreement, mutual consent was required and she requested that the Grievor arrange to meet with her to discuss the matter further. Although Dean Bardswich also testified that she was prepared to consider professional development work, she could not agree to the Grievor performing work which did not contribute to course or program improvements. In any event, the Grievor testified that as Dean Bardswich would not agree to his proposal to study VB .NET, he cleaned files and boxes in his office and brushed up on operating systems.

On May 15th, a meeting took place involving Dean Bardswich, the Grievor and Mr. Mills. The Grievor testified that during that meeting, Dean Bardswich refused to permit him to study VB .NET and pressed him to prepare the problems for the CPAN 100

course which had been mentioned by Ms. Shaw. Dean Bardswich, on the other hand, testified that she was surprised by the Grievor's suggestion that he was being directed to prepare the problems, as a result of which she contacted Ms. Shaw. An e-mail message from Ms. Shaw to Dean Bardswich, which was introduced in evidence, indicates that it was Ms. Shaw's understanding that the Grievor had expressed an interest in preparing the problems and that Dean Bardswich was agreeable to his doing so. Accordingly, Ms. Shaw indicated that she would provide the Grievor with samples of the problems which were being used in the CPAN 100 course at the time.

During the meeting on May 15th, it would appear that Dean Bardswich also asked the Grievor to identify substantive work which he was prepared to perform which would be of benefit to the College and improve the quality of education provided to students. The Grievor acknowledged, however, that he was only interested in studying VB .NET and testified that when he learned that other Professors were attending courses on VB .NET, it was all the more important that he learn the language as well. The Grievor also testified that it was only after attending a course on VB 5 that he was assigned to teach that subject.

On May 20th, the Grievor wrote to Dean Bardswich indicating that any work assigned during the non-teaching period had to be recorded on a SWF pursuant to Article 11.01 D 3(ix) of the collective agreement. He also indicated that although he had performed curriculum development work during non-teaching periods in the past, he had not been aware of that Article at the time. As well, the Grievor set out the reasons for his

interest in studying VB .NET and suggested that if there was no agreement regarding the work he would perform in May and June, a stalemate had been reached. He also indicated that he was not prepared to perform work in violation of the collective agreement.

In response, Dean Bardswich advised the Grievor that she had forwarded his memorandum of May 20th to the Human Resources Department. She also indicated that she viewed his refusal to participate in curriculum development work during the non-teaching period as unreasonable given the language of Article 11.08 of the collective agreement.

There was then a further exchange of memoranda between the Grievor and Dean Bardswich in which the Grievor indicated that he had not refused to perform assigned work and was prepared to have further discussions in an effort to resolve the matter. Although Dean Bardswich indicated that she was pleased that the Grievor was prepared to discuss the matter further, she pointed out that other faculty members had been performing curriculum development work for a number of weeks. She also indicated that unless the Grievor could quickly identify tasks which would involve a substantial contribution to the School's development activities, with which she could agree, she was seriously contemplating disciplinary action. Dean Bardswich testified that she made reference to the possibility of discipline because the Grievor had categorically refused to take part in development activities and insisted on spending his time studying

VB .NET. The Grievor testified that, in his view, Dean Bardswich was attempting to intimidate him into volunteering to perform work which she regarded as substantive.

On June 5th and 6th, two further meetings took place involving the Grievor, Mr. Mills, Dean Bardswich and Christy Lihou, a member of the Human Resources Department. During the latter meeting, the Grievor suggested that he would prepare the problems for the CPAN 100 course and Dean Bardswich agreed. Following the meeting, the Grievor wrote to Dean Bardswich indicating that he would have to work on the CPAN 100 problems during the ten days allocated for professional development under the collective agreement. He also indicated that he regarded the assignment as a violation of the agreement and that he was performing the work under protest. The Grievor subsequently referred that issue to the WMG and a hearing before a Workload Resolution Arbitrator was adjourned pending the outcome of these proceedings.

With respect to the problems for the CPAN 100 course, the evidence indicates that the Grievor was provided with four sample problems and he acknowledged that he was to alter the content of the problems sufficiently so that students could not use them in completing the assignment the following year. The Grievor testified that it took him approximately 80 hours to perform this work.

Ms., Bardswich testified that the problems prepared by the Grievor were not used in the CPAN 100 course because they were not sufficiently different from the problems provided to him and they also contained numerous errors. She testified, as

well, that she understood that it had taken Ms. Shaw approximately 16 hours to prepare the problems initially and she found it hard to believe that the Grievor had spent 80 hours preparing the problems in circumstances where he had been provided with samples.

Based on the evidence, it was the submission of the Union that the College violated the collective agreement by assigning curriculum development work to the Grievor on an ongoing basis or during a non-teaching period without recording such work on a SWF as required by Article 11.01 D 3(ix) or Article 11.01 F. Moreover, as the grievances involve a violation of Article 11.01, the Union submitted that the dispute is properly within the jurisdiction of a Workload Resolution Arbitrator. In the alternative, in the event the Board were to find that the provisions of Article 11.08 apply, the Union contended that the Grievor's proposal to study VB .NET during the non-teaching period was a reasonable one and that the College improperly refused to accede to that proposal. In these circumstances, the Union requested that the Grievor be compensated for the time spent preparing the problems for the CPAN 100 course.

It was the submission of the College that to the knowledge of the Union, there has been a longstanding practice of Professors performing curriculum development work during the non-teaching period in May and June and this work has not been recorded on a SWF. It was further submitted that as this case concerns complimentary functions performed during the non-teaching period, Article 11.08 of the collective agreement applies. Moreover, the College contended that the curriculum development

work proposed by Dean Bardswich is precisely the type of work contemplated by that Article and that no assignment of work was involved as Professors were free to propose other work, provided it contributed to the quality of education and the programs offered to students. The College further submitted that Article 11.01 F has no application as that Article concerns complementary functions which are assigned during the teaching period. Similarly, it was contended that Article 11.01 D 3(ix) concerns curriculum development work which is initially assigned during the teaching period and extends into the non-teaching period. In the result, the College contended that the Grievor unreasonably refused to agree to perform curriculum development work during the non-teaching period and that, in the circumstances, his insistence on studying VB .NET was unreasonable.

By way of reply, the Union submitted that Article 11.01 F of the collective agreement is not confined to the assignment of complementary functions during the teaching period. The Union further submitted that Article 11.01 D 3(ix) applies to curriculum development which is assigned during both teaching and non-teaching periods and that there is nothing in the language of that Article to support the College's submission that it applies only to assignments made during the teaching period, which extend into the non-teaching period. Moreover, the Union contended that the evidence of past practice related to the IT School; that the College was aware of the Union's objection to the practice; and that it was not open to the Union to file a workload complaint as such complaints may only be initiated by individual Professors. The Union contended, as well, that there was clearly a practice of assigning curriculum development work to Professors during non-teaching periods and although the Grievor had a choice regarding the type of

curriculum development work he performed, an assignment of work was, nevertheless, involved. In these circumstances, the Union submitted that the College was required to record the work on a SWF under Article 11.01 F or Article 11.01 D 3(ix) of the collective agreement.

Decision

Article 11.01 B 1 of the collective agreement sets out the total workload to be assigned and attributed to a teacher during a specified number of weeks in which there are teaching contact hours. Article 11.01 B further provides that the balance of the academic year shall be reserved for complementary functions and professional development. As well, the Article sets out the workload factors to be considered, which consist of (1) teaching contact hours; (2) attributed hours for preparation; (3) attributed hours for evaluation and feedback; and (4) attributed hours for complementary functions.

Article 11.01 D 3(ix), which is one of the provisions relied on by the Union, specifies that 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 a SWF. Article 11.01 F, which is also relied on by the Union, provides that complementary functions appropriate to the professional role of a teacher may be assigned to a teacher by the College. Hours for such functions are to be attributed on an hour for hour basis in accordance with the formula set out in the Article.

Article 11.08 of the agreement, which is relied on by the College, provides that in keeping with the professional responsibility of a teacher, non-teaching periods are to be used for activities initiated by a teacher and by the College as part of the parties' mutual commitment to professionalism, the quality of education and professional development. The Article further provides that such activities will be undertaken by mutual consent and agreement will not be unreasonably withheld. As well, the Article provides that such activities will not be recorded or scheduled except in accordance with Article 11.01 G 1, which deals with work performed outside the College.

As noted by the parties, the provisions of Article 11 referred to above have been considered in a number of awards. Some of these awards were decided under prior collective agreements in which the language in Article 11 was contained in Article 4. However, to avoid confusion, reference will be made Article 11 throughout. The first award is the *Loyalist College award* referred to previously in which the majority of the Board found that the requirement to attend curriculum review meetings during a non-teaching period was properly characterized as an assigned function under Article 11.01 F of the agreement. In *Cambrian College and Ontario Public Service Employees' Union* December 18, 1991 (Brent (unreported)), the College asked a number of professors to document the condition of certain equipment in the electronic laboratories during a non-teaching period. In that case, the Board found that the work in question fell within the scope of Article 11.08 but concluded that the professors did not unreasonably withhold

their consent to perform the work as the College had failed to adequately explain the reason for its request.

In *Ontario Public Service Employees Union and Sault College* April 30, 1993 (Mitchnick (unreported)), the Board determined that in accordance with Article 11.08 of the agreement, complimentary functions carried out during the non-teaching period are not to be recorded on a SWF. The Board also found that Article 11.01 F applies only to the teaching period and that Article 11.01 D 3(ix) constitutes an exception to Article 11.08, which applies when the College unilaterally assigns curriculum review or course development work on an “ongoing basis”. In those circumstances, the work must be recorded on a SWF. In the *Sault College* case, the Board found that no assignment had been made during the non-teaching period and, accordingly, the grievances were dismissed.

The final award referred to by the parties concerned promotion, program and divisional meetings which professors were called to attend during a non-teaching period: see *Durham College of Applied Arts and Technology and Ontario Public Service Union* October 11, 1995 (Schiff (unreported)). As in the *Sault College* award, the majority of the Board in the *Durham College* case, found that 11.01 F applies only to the teaching period. The majority also found that subject to the narrow exception contained in Article 11.01 D 3(ix) of the agreement, complementary functions carried out during the non-teaching period are governed by Article 11.08. On this basis, the Board rejected the

Union's submission that meetings in question had to be recorded on a SWF and, accordingly, the grievances were dismissed.

Based on the jurisprudence, it is apparent that activities undertaken during the non-teaching period at the initiative of either the College or a Professor as part of the parties' mutual commitment to professionalism, the quality of education and professional development are generally governed by Article 11.08. In accordance with that Article, such activities are not to be recorded on a SWF. Article 11.01 D 3(ix) of the agreement constitutes an exception to this requirement, which applies when the College assigns curriculum review or course development work on an ongoing basis. As the Article refers to assignments made "in lieu of teaching or in a non-teaching period", we find that the Article applies to assignments made in either the teaching or non-teaching period and we cannot accept the submission of the College that it applies only to assignments made during the teaching period, which extend into the non-teaching period.

As to Article 11.01 F, there has been some difference of opinion regarding the application of the Article to the non-teaching period. However, for purposes of this case, it is unnecessary to specifically address that issue because, like Article 11.01 D 3 (ix), Article 11.01 F refers to complementary functions which are "assigned" to a Professor by the College. Based on the evidence, we find that in this case, there was no assignment of curriculum development work and, accordingly, Article 11.01 D 3(ix) and Article 11.01 F have no application.

In April, 2003, Dean Bardswich forwarded a memorandum to faculty together with a list of proposed curriculum development tasks for the non-teaching period in May and June. The evidence indicates that these tasks had been identified through a consultative process involving course leaders and faculty. Moreover, although Dean Bardswich indicated in her memorandum that some of the tasks had already been assigned, the term appeared in quotation marks and she explained that the tasks had been assigned in the sense that course leaders had already volunteered to perform them or suggested that they be performed by particular faculty members.

In her memorandum, Dean Bardswich invited faculty to advise her if they disagreed with the tasks proposed and to speak to her if they were having difficulty identifying work they would like to perform. The evidence also indicates that Dean Bardswich was prepared to consider faculty performing tasks other than those identified in her memorandum provided the work contributed to courses or programs offered by the IT School. This proviso, we find, is consistent with the language of Article 11.08, which refers to the parties' mutual commitment to professionalism and the "quality of education". In our view, this latter phrase refers to the education provided to students at the College.

Although the Grievor initially indicated that he was prepared to update a spreadsheet course, which was one of the tasks identified by Dean Bardswich, he did not actually perform this work. Instead, he insisted on using the bulk of the non-teaching period in May and June to study VB .NET. In view of his insistence, at one point, Dean Bardswich raised the possibility of discipline. However, she did so in circumstances where

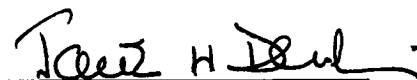
the Grievor was not prepared to identify any other type of work and suggested that if there was no agreement regarding the work to be performed, a stalemate had been reached. Clearly, it is not open to a faculty member to decline to perform any work during the non-teaching period. Moreover, although Article 11.08 also refers to professional development, the Grievor was not proposing to study VB .NET during the period allocated for professional development under Article 11.01 H of the agreement. During that period, he indicated that he intended to read Debugging Visual Basic and work on certain programs in Java by Example. In the result, based on the evidence, we find that Dean Bardswich's memorandum of April, 2003 cannot be regarded as a directive or work assignment and instead, we find that the curriculum development work proposed involved an activity initiated by the College, consistent with the provisions of Article 11.08 of the collective agreement.

With regard to the Grievor's proposal to study VB .NET, we note that at the time, he was not teaching any courses on programming languages and had not done so since 1998. He was also not familiar with VB 6, the predecessor to VB. NET, as he planned to study that language during a sabbatical he was scheduled to take in the fall of 2003. Moreover, other Professors were attending courses on VB .NET, which had been paid for by the College, and Dean Bardswich testified that there was no expectation that the Grievor would be assigned to teach a course on that subject in the foreseeable future. In these circumstances, we are of the view that the Grievor's proposal to study VB .NET would not have contributed to the quality of education provided to students at the College.

Although in the end, the Grievor agreed to prepare a number of sample problems for the CPAN 100 course, in the circumstances described, we find that Dean Bardswich did not act unreasonably in refusing to accede to the Grievor's proposal to study VB .NET during the non-teaching period. In contrast, for the reasons set out, we find that the Grievor's insistence on studying VB .NET was unreasonable. Had the Grievor been willing to perform work which would have contributed to the courses or programs offered by the IT School or otherwise enhanced the quality of education provided to students at the College, different considerations would have applied.

In view of the conclusion we have reached, it is unnecessary to consider the College's alternative argument which was based on estoppel. Accordingly, as no violation of the collective agreement has been established, the grievances of Professor Rychlewski are hereby dismissed.

DATED AT TORONTO, this 1st day of November, 2005.


Chair

"Robert J. Gallivan"
College Nominee

"Ron Davidson"
Union Nominee