

Supplemental Award

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Laurentian University

And

Laurentian University Faculty Association

(Grievance re Teaching Load Reduction Plan – School of Social Work)

Before: William Kaplan
Sole Arbitrator

Appearances

For the Employer: Jack Braithwaite
Weaver Simmons
Barristers & Solicitors

For the Association: David Wright
Ryder Wright Blair & Holmes
Barristers & Solicitors

This matter proceeded to by way of written submissions that were completed on July 27,
2006.

Introduction

On May 30, 2006, I issued an award respecting the teaching load reduction plan for the School of Social Work. In that award, I determined that the employer's plan was not fair and equitable as required by the collective agreement. While the Association had requested that I direct the hiring on an additional faculty member in both the Anglophone and Francophone programs, I declined to do so ordering instead that new plans be developed and put before the Teaching Load Review Committee.

On June 15, 2006, the Dean issued revised teaching load reduction plans for each of the programs. Those plans were reviewed and rejected by the two units. The matter was then, as required by the collective agreement, referred to the Teaching Load Review Committee which was unable to reach agreement. The matter was then, on agreement, remitted back to me.

Position of the Parties

In brief, the Association takes the position that the only solution to the problem is the hiring of an additional full-time professor in each of the programs, and it relies on its earlier submissions set out in the earlier award in support of this position. With respect to the new employer plans, the Association submits that at their heart, for both programs, is the reduction of the required number of credits needed to earn a Master's degree.

Reducing the required number of credits would, under the new employer plans, free up to 12 credits of teaching for each program. However, the Association submits that this is not a solution for the current academic year because it cannot be implemented this year.

In fact, the Association submits, the proposed curriculum changes to the Master's program are not even guaranteed, requiring as they do approval of each of the Anglophone and Francophone Program Review Committees, and then review by the Graduate Council, followed by further review of the University Senate. This would be a time-consuming and not necessarily pre-ordained process. Even if approved, the Association was dubious whether the reduction would free up more teaching hours as both Master's programs were part-time with courses cycled. Reducing the number of credits, the Association submitted, would not necessarily reduce the number of courses which would have to be annually offered. The only certain change was that the program would take less time to complete.

In the Association's submission, this part of the employer's plans, its major initiative to reduce workload, was too uncertain and too little too late. The only plan that could meet the criteria of the collective agreement was one that had a precise implementation date with a predictable impact on workload, and it had to be in place this academic year.

While the proposed employer plans do contain some transitional measures for the current academic year, those transitional arrangements are themselves, the Association submits, contrary to the collective agreement that requires implementation of the reduced teaching loads by July 1, 2006. Other aspects of the employer's plans for the two programs, the Association argued, were simply restatements of the employer's first plans that were rejected by the Association and by the arbitrator.

In that regard, the Association took particular objection to the employer's proposal to increase the number of part-time appointments in the Anglophone program, That was not a solution as, in the Association's view, additional part-timers actually meant more work for the full-time faculty in a program that was recognized by the parties, and by the Dean, to be already understaffed in full-time faculty. Likewise, the reduction in coordination credits in the Francophone program not accompanied by a reduction in coordination activities was, in the Association's estimation, completely contrary to the agreement of the parties that workload be reduced. That objective could not be achieved by increasing workload which would be the result, unintended or not, if the employer reduced coordination credits without a corresponding reduction in coordination activities. Other aspects of the transitional possibilities enumerated in the employer's plan were, in the Association's view, equally questionable and unable, in any event, to achieve the required teaching load reductions in this academic year. The only fair and equitable method to reduce the teaching loads in both programs was, the Association argued, to hire additional full-time staff.

For its part, the employer took the position that the only issue to be determined was whether its new plans were fair and equitable within the meaning of the collective agreement. The employer argued that they were because, when implemented, they would reduce the teaching load as required by the collective agreement. In that regard, it was the employer's submission that no plan could possibly be implemented in time for this academic year, and that "the timelines at best could only have been construed or be construed as guidelines and are clearly unrealistic as this stage" (para. 22). The employer

was confident that it would be successful in achieving its proposed changes to the graduate program, and it reiterated its right to make changes to the hours associated with the coordination positions. It further proposed to hire additional part-timers as appropriate, and the employer pointed out that it was specifically entitled by the collective agreement to do so. Its cycling initiatives, the employer argued, would also pick up some of the slack. What the collective agreement made clear, the employer continued, was that the arbitrator could, in any event, only make a declaration about whether the employer's proposed plan was fair and equitable. There was no collective agreement jurisdiction, the employer argued, for an arbitrator to usurp the employer's management rights and to begin managing the affairs of the University. It would be impossible in any event, the employer observed, to initiate and complete a hiring process in the time left before the start of the coming academic year.

In rebuttal, the Association took the position that the arbitrator was specifically empowered by the collective agreement to "review and render a decision on" the competing proposals. There was, the Association argued, only one possible way of meeting the required workloads and that was by hiring additional faculty in each program. The employer had now had two opportunities to suggest alternative methods, but had failed to do so. In these circumstances, a direction to hire the additional professors was, the Association submitted, the only appropriate remedy.

Decision

Having carefully considered the submissions of the parties I am of the view that the employer's plans again fail to meet the fair and equitable criteria in the collective agreement. Indeed, they are void for uncertainty. The employer's proposals makes that perfectly clear with its several references to credits that "could" be freed up if various future events occurred and optional initiatives were introduced. The employer's proposals also fail to respect the negotiated timelines for the implementation of the reduced teaching workloads. As the employer readily admits, "it is recognized that the proposed curriculum changes to the MSS and MSW are not possible in time for the 2006-07 workloads..." With respect, this is not acceptable given the requirements of the collective agreement.

Whether, with the benefit of hindsight, it was wise or not, the parties decided that the new maximum normal teaching load of 2.5 full courses (15 credits) would come into effect as of July 1, 2006. The fact is that this is what the parties negotiated and they further agreed that it would be done fairly and equitably. They also agreed that only "reasonable" changes to class sizes would be made. That is the deal of the parties and that is the deal to be enforced. As the parties are aware, the employer must find a reduction of 18 credits in the Anglophone program and 24 credits in the Francophone program. It cannot wait until its proposed changes to the graduate programs have been approved and implemented sometime in the future and it cannot rely on various possible options it sets out in its plans. It must reduce the teaching loads immediately and no faculty member, without the

consent of the Association and the member can, effective July 1, 2006, be assigned beyond the agreed-upon limits.

Accordingly, I direct, with respect to the professors in the School of Social Work, that as of July 1, 2006, unless the parties agree otherwise, that no professor be assigned a workload that exceeds the maximum. Any professor already assigned a teaching load in excess of the maximum, must, *immediately*, be given a new course load assignment that reflects the agreed-upon limits. The employer may not, in respecting the agreed-upon limits and/or in making any changes to assigned workload, make anything other than reasonable changes to class size.

While the Association urged me to take a broad view of my jurisdiction and direct the appointment of a full-time faculty member for each program, this is not a remedy I am prepared, at this time, to direct. First of all, with weeks left until the start of the academic year, it is highly questionable, given the collegial nature of hiring and the importance of making good hiring decisions, that the process could be initiated and completed in the time remaining. However, this is not to say that the Association's proposal is beyond my jurisdiction or would otherwise necessarily and by definition be inappropriate. In my view, if the employer does not immediately comply with the direction set out in the previous paragraph, the conclusion will be inescapable that the only solution is the additional full-time hiring in each program. It is extremely unfortunate that plans compliant with the collective agreement were not developed and agreed upon necessitating the order set out herein. In order to avoid any repetition of this, the parties

are further directed, at the earliest possible time after commencement of the new academic year, to begin meeting and reviewing plans for compliant teaching assignments for the next academic year.

The employer can fulfill the requirements of the collective agreement by hiring additional part-time faculty, and I reject the Association's assertion that doing so increases full-time workload. Experience in this sector indicates otherwise and, in any event, insufficient factual particulars were advanced in support of this assertion. However, the employer may not assign overloads. Moreover, as decided in the earlier award, combining campus and on-line courses seems highly questionable and cannot form part of any professors reduced workload.

As also noted in the earlier award, it is open to the employer to reduce or otherwise change coordination credits. The Association took the position that the employer could not do so without reducing coordination activities. In general, coordination appointments are voluntary and are at the discretion of the employer. Nevertheless, in the context of a workload reducing exercise, it is axiomatic that any reduction in coordination credits must involve a reduction in coordination activities. In this case, the employer takes the position that the reduction is now justified in the Francophone program given a change in duties arising from the end of the developmental phase where additional assigned hours were appropriate. Accordingly, to the extent that the coordination activities have not, as the Association asserts, been reduced, that part of the plan also fails to meet the collective agreement criteria. To the extent the change is justified there is no issue. Any dispute

about the justification for this reduction in coordination hours in that program can be brought back before me.

I continue to remain seized with respect to the implementation of this award.

DATED at Toronto this 2nd day of August 2006.

“William Kaplan”

William Kaplan, Sole Arbitrator