**College Update**

# Arbitrator Considers “Preference to Full-Time” in Support Staff CBA

**Date:** July 5, 2016

In an award released June 29, 2016, *George Brown College and OPSEU Local 557*, Arbitrator Stephen Raymond considered the obligation in Article 1.2 of the Support Staff Collective Agreement to “give preference to full-time over part-time assignments.” In this *College Update*, we discuss the award, which gives important insight into when the obligation to consider the mix of full- and part-time assignments arise and the Union’s onus in proving a breach of the provision.

## Background

George Brown College, through its Deaf Services and Hard of Hearing Services, provides Computerized Note Takers (CNTs) to deaf, deafened and hard of hearing students at all of the GTA colleges. A specific CNT is assigned to a student for a particular course. That CNT attends with the student at each class and prepares transcription notes of the class. A CNT remains assigned to the same student in the same course for the term in order to improve the quality of the notes by becoming familiar with the course material and course specific terminology. At the time the grievance was filed, the College employed two full-time CNTs and some 93 part-time CNTs. The Union filed a grievance alleging breach of Article 1.2 and claimed that 20 full-time bargaining unit CNT positions should be created from the “cobbling together” of the work assigned to the 93 part-time CNTs.

Article 1.2 of the Support Staff Collective Agreement provides, in part:

[…] the College will give preference to full-time over part-time assignments, and to convert part-time to full-time assignments where feasible, subject to such operational requirements as may be appropriate.

In November 2005, the College documented its consideration of the assignment of CNT work to full-time versus part-time employees. It concluded, through a consideration of various operational needs, that the nature of the work in issue required that it be assigned on a part-time basis rather than a full-time basis. The Arbitrator found that the College did not again consider the issue of the use of full-time employees until after the grievance was filed. The Union argued that the College’s failure to regularly consider the conversion of part-time work to full-time work was, by itself, a violation of Article 1.2.

The College argued that the Union bore an initial onus of showing that there was work that could be converted from part-time into feasible full-time assignments.

## When do Colleges Have to Consider Whether to Create Full-Time Positions?

Arbitrator Raymond first considered the Union’s submission that the College’s failure to consider the assignment of full-time work over part-time work on an ongoing basis was itself a violation of the agreement. Mr. Raymond wrote:

[…] I accept, in determining this question, that the College did not actively consider having more full-time computerized note takers between 2005 and the date of the grievance. Is that failure enough to find a violation of the Collective Agreement? I think not. I do not read the Article as obligating the College to perform a constant or regular analysis of its workforce and its use of part-time employees. While it may be ideal to do so, I do not see that as the obligation. Rather, as supported by the jurisprudence provided to me, the College does have an obligation once the question is raised to consider its “preference” and to increase its full-time complement to give effect to the “preference” (if applicable). As well, if the College does not increase its full-time complement, it may have to answer a grievance in respect of its consideration.

While the best practice remains considering the mix of full-time and part-time assignments on a regular and recurring basis, this ruling is important in that the simple failure to revisit the question of the mix on a regular basis will not, by itself, be fatal to a college's defence of a complaint under Article 1.2.

## What Does the Union Have to Show to Establish a Breach of Article 1.2?

The ruling also establishes that the Union bears the initial onus of establishing that the College could have created full-time positions from the part-time assignments. Arbitrator Raymond wrote:

The second question that I have to answer is whether the Union has met its onus of establishing that the College could have more full-time computerized note takers. In my view, it has not. The work of the computerized note taker is inextricably tied to the provision of academic content to students. Where, as here, the work in question is necessarily provided throughout the academic day and evening and follows the pattern of the academic calendar (regardless of whether one confines the inquiry to the January to April period only), it is impossible to create a schedule for a full-time position without that schedule conflicting with other parts of the Collective Agreement. The work simply does not fit within the structures already in place that define full-time work in this Collective Agreement for support staff employees. Flexibility is necessity. Both the length of the academic day as compared to the definition of a full-time day and the pattern of the academic calendar prevent the creation of additional full-time computerized notetakers.

This is a significant finding in that any support work that is exclusively tied to the provision of service directly to a student in a class may not lend itself to full-time assignment. Arbitrator Raymond found that the work in question did not exist in break weeks, exam weeks and largely in the summer. Accordingly, he found that there was no way to find nine months of full-time work which is the minimum contemplated for a full-time position under the Support Staff Collective Agreement. Similarly, he found that the work, tied to student attendance in class, often required split shifts which the Collective Agreement does not allow. In essence, there may be some direct service work which, by its very nature is incapable of being assigned to full-time employees.

The decision is significant as it is one of the few decisions dealing with Article 1.2 since it was amended in 2003. The decision finds that the assessment of claims under Article 1.2 is complaint driven as opposed to free-standing. It also sets a relatively high initial onus on the Union to establish that additional full-time positions could have been created out of the part-time assignments respecting legitimate scheduling issues.

Should you have any question regarding this decision or its impact, or any member of the College Sector practice group.

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