College Update

Two Recent Arbitration Awards Confirm Obligations of Faculty During Non-Teaching Periods

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Two recent arbitration awards dealing with issues relating to non-teaching periods of faculty will be of interest to all colleges. The first award confirms the right of a college to assign to professors, on a Standard Workload Form, curriculum review or course development work during non-teaching periods. The second award found that health and safety training can occur during non-teaching periods.

In this *College Update*, we are pleased to provide you with brief summaries of these important awards.

Curriculum review and course development can be recorded on a SWF in non-teaching periods

Arbitrator Kathleen O'Neil has issued an important award which confirms the right of a college to assign to professors, on a Standard Workload Form (SWF), curriculum review or course development work during non-teaching periods.

OPSEU filed a policy grievance against Collège La Cité, claiming that the College could not assign a SWF in respect of a non-teaching period, and that any curriculum review or course development work performed during a non-teaching period had to be included on a SWF for an adjacent teaching period. Article 11.01 D 3 (ix) provides 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 the SWF." The union argued that Article 11.08, which states that no SWF will be issued in respect of non-teaching periods, meant that every SWF had to include at least some teaching contact hours. Therefore the hours should be added to a SWF either before or after the non-teaching period even though the work was to be performed in the non teaching time.

Arbitrator O'Neil rejected the union's arguments and accepted the College's position that it could issue a SWF solely in respect of curriculum review or course development work in a non-teaching period, without any teaching contact hours. She determined that Articles 11.01 D 3 (ix) and 11.08 must be read together harmoniously. She agreed with the College that the two articles could easily be reconciled. Article 11.08 provides that, generally, work undertaken in a non-teaching period is not to be recorded on a SWF, but Article 11.01 D 3 (ix) constitutes an explicit exception to that general parameter. Arbitrator O'Neil therefore dismissed the union's argument that a SWF must necessarily include teaching contact hours. She further found that the relevant arbitral jurisprudence supported the College's position. Finally, she agreed with the College that the union's position could lead to absurd results in that it would require colleges to speculate in preparing SWFs, as they would have to try to anticipate well in advance of the relevant period what course development and curriculum review work may be necessary down the road.

The decision is very significant for colleges. It clarifies their ability to assign certain complementary functions during non-teaching periods, and to record that work assignment on a SWF which is either specific to the non-teaching period or which covers both teaching and non-teaching periods. Colleges may wish to consider how they address curriculum review and course development activities going forward.

La Cité Collégiale et Le Syndicat des Employées et Employés de la Fonction Publique de l'Ontario, Section Locale 470 (21 juillet 2016, O'Neil)

Health and safety training can occur during non-teaching periods

In a decision issued July 19, 2016, Arbitrator David Starkman has confirmed that colleges can ask faculty to complete health and safety training during non-teaching periods pursuant to Article 11.08. He concluded that the obligation for all employees to work in accordance with the *Occupational Health and Safety Act* requirement to work safely means the health and safety training should be considered as part of the parties' mutual commitment to professionalism and professional development, thereby falling within the purposes referenced in Article 11.08. This includes WHMIS training as well as other types of health and safety initiatives.

The arbitrator basically puts to an end the confusion caused by an earlier 2005 Sault College decision of Arbitrator Shime wherein he ruled that WHMIS training could not be done in the non-teaching period.

Canadore College and OPSEU (19 July 2016, Starkman)

If you have any questions about either of these two awards please contact George Vuicic (who argued *La Cité Collégiale*) or any member of the Colleges practice group.

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