

Grievance Scheduling Committee  
Report To  
Pre-Bargaining 2004

# Table of Contents

Report on Use of Expedited Arbitration .....	3
College By College Summary Of Substantial Arbitration Wins: .....	5
College By College Summary of Substantial Arbitration Losses.....	6
Problems with the Arbitration Process .....	7
Reports on Arbitrators.....	7
College By College Summary Of Substantial Workload Arbitration Wins: .....	8
College By College Summary Of Substantial Workload Arbitration Losses.....	8
Problems With the Workload Resolution Arbitration Process: .....	9
Recommendations From Survey of Locals.....	10
Expedited Process .....	10
Workload Process (11.01 11.02).....	10
General.....	10
Summaries of 2004 Arbitration Awards Recorded in the Database .....	11
Summaries of 2003 Arbitration Awards Recorded in the Database.....	13
Summaries of 2002 Arbitration Awards Recorded in the Database.....	16
Recommendations from Grievance Analysis.....	18
Job Security.....	18
Benefits .....	18
Grievance .....	18
Job Security.....	18
Class Definition .....	18
Partial-loads .....	18
Vacation .....	18
Job Security.....	18
Workload.....	19
Job Security.....	19
Other Recommendations of Legal Counsel .....	19

## **Report on Use of Expedited Arbitration**

<b><u>College</u></b>	<b><u># requests</u></b>	<b><u># held</u></b>	<b><u>Comments</u></b>
Local 110 Fanshawe	0	0	Make it Mandatory
Local 125 Lambton	32	0	require reasons for refusal
Local 138 St. Clair	0	0	
Local 237 Conestoga	0	0	
Local 240 Mohawk	0	0	
Local 242 Niagara	0	0	No real interest from Mgmt Mgt do not wish to quicken process
Local 244 Sheridan	0	0	
Local 350 Georgian	0	0	
Local 352 Fleming			
Local 354 Durham	0	0	
Local 415 Algonquin	18	0	require reasonable grounds to refuse
Local 417 St. Lawrence	0	0	Mgmt say they don't understand it
Local 420 Loyalist	0	0	

<b>College</b>	<b># requests</b>	<b># held</b>	<b>Comments</b>
Local 470 La Cite	0	0	
Local 556 George Brown			
Local 558 Centennial	0	0	
Local 560 Seneca	1	0	College refused
Local 562 Humber	4	0	College never accept Need ability to force College to accept requests. Explain in writing why Limit number of refusals
Local 613 Sault	0	0	Mgmt not interested in Expedited Process
Local 653 Northern	0	0	
Local 655 Cambrian	0	0	
Local 657 Canadore	0	0	
Local 673 Boreal			
Local 702/732 Confederation			

## **College By College Summary Of Substantial Arbitration Wins:**

### **Fanshawe**

Brown Aug 17<sup>th</sup>,2004 – Partial-load preference to Full-time – able to combine work from other partial-load to make a full-time position

Knopf Dec 16,2003 – Teachers delivering Professional Development workshops during tutorial week must have the work recorded on a SWF. They cannot be paid by other means. Even if you volunteer – it must be recorded.

### **Lambton**

Pornographic e-mail grievance – College has an obligation to protect the employees. The College was given time to implement appropriate filtering software.

### **Algonquin**

College required to fill several positions – negotiated with the arbitrator's assistance.

### **Niagara**

02C260 – Reclassification of one instructor to Professor.

### **Humber**

2001-0562-0004 Ahmad

The grievor was denied an annual increment based upon negative student feedback questionnaires. The arbitrator ruled that these cannot be used for disciplinary purposes or for the purpose of evaluating performance with respect to progression factors.

### **St. Lawrence**

Runte termination - The grievor expressed interest in a voluntary leave program. The College claimed he accepted an offer even though he had not signed anything. He was reinstated with 16 months pay.

Knopf - 27.12 Board Order – That the College is required to provide a timely and accurate list. They also have 14 days in which to provide rationale to our request.

Starkman – supervisor of my supervisor must be present at step 1 meetings for personal grievances.

## **College By College Summary of Substantial Arbitration Losses**

### **Fanshawe:**

Mitchnick – April 15, 2003

Article 11.06 – ability to keep their thumbs on us for work outside the College. We need to eliminate this article and let them deal with it under management rights.

### **Seneca:**

Flight training instructor grievance – the task force defined instructor duties back in the 70's which led to class definition describing the work as the teaching of a manipulative skill or technique should have been sufficient. Picher ignored the language – we need to tighten up the language to make it more restrictive.

### **Durham:**

Settled case – because of weak language in 27.11B – consideration for a job.

### **Algonquin:**

We need to change Article 2. Although we got one position in Police foundations, we should have been awarded 5 or 6. The absence of the word part-time was crucial in the arbitrator's reasoning.

### **Niagara:**

Standard of Union grievances is a problem.

The consideration language in 27.11 is not very effective.

Ability of College to set qualifications for postings

Instructor language – difficult to determine “instruction directed to the acquisition of a manipulative skill or technique” and “under the direction of a Professor.

### **Humber**

Staffing grievances the existing language puts no pressure on the College to hire or convert to full-time.

### **St. Lawrence**

Staffing grievances – language not strong enough – part-time ignored altogether.

Union grievance – restrictions make it almost possible to bargain individually terms and conditions outside the collective agreement. Losses on preliminaries

Starkman – Nutley, Deangelis Partial-load – employment relationship is only when under contract. This restricts their ability to be considered for postings when most of the posting activity takes place outside of the periods when other than full-time are used.

## **Problems with the Arbitration Process**

Getting Continuation dates (6)  
Last Minute Assignment (3)  
Preliminary Objections (2)  
Representation (2)  
Poor use of time at arbitration (2)  
Start time of arbitrations/adjourning early (2)  
Three strike rule – still delays (2)  
Not being able to compel the College's particulars earlier  
Expand the list of bilingual arbitrators  
Delays getting first date  
Late awards

## ***Reports on Arbitrators***

P Picher (2) ignores evidence  
Refuses to accept malice on the part of management

G. Brent (2)

R McLaren

## **College By College Summary Of Substantial Workload Arbitration Wins:**

### **Sault**

Used loyalist award for pre employment conditions and removed these from the record of two faculty. Financial compensation was also achieved.

### **Seneca:**

Rakus – taught a structural concrete course to 30 students but last year found 90. The college said preparation time and time to meet students was adequate, even though he had to revise his pedagogy, materials, and labs and provide more out-of-class assistance. The WRA class size increase caused a significant increase in prep time and out-of-class assistance and she gave him overtime beyond the 47 max. The WRA was not renewed.

### **Niagara:**

A win on recognizing travel on the SWF for travel between two campus locations on the same day.

### **St. Clair**

Additional complementary time was awarded to someone teaching in the degree-granting program because of complexities

It was confirmed by an arbitrator that coordinating duties must be recorded on the SWF on an hour for hour basis.

### **Sheridan**

A number of agreements on complementary functions such as volunteer work recognized on the SWF and travel time between campus locations and technology training and development and feedback and modifications.

## **College By College Summary Of Substantial Workload Arbitration Losses**

### **Lambton**

Years ago an arbitrator refused to provide compensation because there was no language directing him to do so.

### **Durham**

Annoying loss on 11.01D3 (viii) term “concurrent” not used in that section – arbitrator held that all instances of special B course (nursing clinical) occurring during the academic year were repeats even though they were on different SWFs.

## **Mohawk**

Numerous complaints about evaluation factors – have not yielded a win yet.  
Loss – on equitable assignment of work among various departments – some heavy – some normal. Arbitrator ruled that he could not make a determination – claimed the contract language did not allow him to do so.

## **St. Clair**

The College has the right to determine evaluation methods

## **Sheridan**

Language needed to define section  
Language needed to clarify when class sizes are reviewed.

## **Problems With the Workload Resolution Arbitration Process:**

Union not being able to refer to the WRA (4)

Algonquin – Case pending requesting SWF and timetable information for probationary teachers for Fall 2004. The College responded that the information comes to the Union in September and not before. The College will argue the George Brown Court of Appeal decision. The Union will argue it is the WMG co-chair.

Keeping WRAs

Timing for the Winter semester

Finding WRAs on short notice

## **Recommendations From Survey of Locals**

### ***Expedited Process***

That the language be modified to either make the process mandatory if the referring party requests this process or

That there be language added so that there are reasonable grounds for refusal of the request.

### ***Workload Process (11.01 11.02)***

That Language is needed to define term section.

That the type and mix of evaluation methods be determined by the faculty member teaching the course in consultation with their supervisor and the supervisor's consent will not be unreasonably withheld.

Strengthen the requirement of providing information to the workload monitoring group.

### ***General***

That the language on Union grievances be broadened to allow the Union to file grievances even though the individual(s) affected decided not to file a grievance or complaint.

That the Union be allowed to refer issues under 11.01 and 11.02 to a workload resolutions arbitrator.

That G Brent and P Picher be deleted from the list of arbitrators and that 4 more arbitrators be added to the list of approved arbitrators having regards to equity issues including women and a minimum of 2 bilingual arbitrators.

## **Summaries of 2004 Arbitration Awards Recorded in the Database**

### **2002-0417-0022 (Knopf) St. Lawrence**

This arbitration has to do with a voluntary leave agreement that used the word guarantee. The union argued that the word guarantee meant an absolute guarantee whereas the College argued that the word guarantee meant nothing other than if they decided a position existed, it existed

Held: The arbitrator ruled that the word guarantee in this context did not mean an absolute guarantee but that onus of proof as to redundant positions fell back to the College. The Board ordered the College and Union to exchange information and that the case would be argued on that exchange of information only.

### **2003-0110-0079 (Brown) Fanshawe**

This grievance dealt with an article 2 grievance alleging that they had wrongfully designated one position as partial-load rather than full-time. The College argued that the Union could not expand the grievance to include other positions other than that listed in the grievance.

Held: The arbitrator did not agree and concluded that the grievance was a staffing issue and that it must be given its broadest interpretation. The Union can include other positions in the discussion of the grievance.

### **2002-0415-0034 (Carter) Algonquin**

The grievance alleges that the grievor (Anderson) had been laid off in contravention of article 27.05 in that his lay off date was extended and therefore no longer in a position of layoff.

Held: The arbitrator did not agree and concluded that extending the notice period was advantageous to the grievor over not working at all.

### **2003-0417-0013 (McLaren) St. Lawrence – Grightmire**

The grievor claimed that he was not being reimbursed for outlays of medical equipment that were covered by the extended health care plan.

Held: The arbitrator ruled that the grievance was inarbitrable because the collective agreement only requires the College to collect the premiums. It provides no other responsibility on the College.

### **2003-0417-0053 (Knopf) St. Lawrence**

The Union claimed that the College did not provide 6 weeks notice of the SWF nor provide the timetables in the timely fashion.

Held: The arbitrator ruled that it was inarbitrable as the issue fell within article 11.01 and 11.02 and no individual had complained about the situation.

### **2003-0415-0033 (Starkman) Algonquin (Anderson)**

The grievor claimed he had been improperly laid-off and less senior employees were retained. He named two less senior employees.

Held: The arbitrator ruled that the individual did not have the skill, competence nor experience to teach the courses of the other individuals.

**2001-0242-0002 (Knopf) Niagara**

This grievance alleges that two Instructor positions created and posted in December of 2001 ought to be Professor classification computer literacy and mathematics. Two partial-load Professors hired as full-time instructors.

Held : The Math position was reclassified as a Professor. The computer literacy course in the arbitrator's conclusion seemed to be consistent with the instructor classification.

**2003-0420-0001 (Knopf) Loyalist (P.C.)**

This was a discharge grievance for cause. Subsequent to the discharge additional information came to light and the College wished to rely on this information. The College argued that either situation is cause for dismissal while the Union argued that the grievor was not adequately accommodated. The case also involved a last chance agreement that the Union was not party to.

Held: There was not a valid last chance agreement as the Union was not party to the agreement. The arbitrator ruled that his discharge was not excessive.

**2003-011-0003 (Brown) Fanshawe**

This grievance claims that the travel policy implemented by the College violates Article 25 of the Collective Agreement.

Held: The kilometric distance is the distance between centers actually driven in a personally owned vehicle on authorized College business from the official Province of Ontario map plus explained local distance in kilometers.

**2003-0417-0058 (Starkman) St. Lawrence (White)**

This grievance has to do with step 1 of the process and the requirement that the supervisor of the supervisor has to attend step 1 meetings. In this case the supervisor's supervisor is the President of the College.

Held: Upheld. The supervisor of the supervisor must attend step 1 meetings.

**96D273 (Mitchnick) George Brown (Panko)**

This grievance has to do with improper layoff in that less senior persons were kept at the College. Two courses were taught in the computer lab and the College argued that the individual had not availed himself of training opportunities.

Held: The arbitrator ruled that at the point of layoff the grievor did not have the skills, competence and experience to claim teaching of the computer courses. The case was dismissed.

**2001-0562-0004 (Brown) Humber (Abmad)**

The individual was denied a merit increase on the basis of student performance appraisals.

Held: The arbitrator ruled that the College was wrong to use the student questionnaires as a basis for discipline. The College did not have a standard for giving the step increments and the student questionnaires could not be used as the basis for withholding the increment.

**2003-0613-0008 (Brown) Sault (VanSlack)**

The grievor claimed wrongful dismissal under management rights. The College raised preliminary objections on both grievances. The first objection is that the grievor was not dismissed but laid off under Article 29. The second objection was that the grievor did not identify in a timely fashion two employees that he could bump.

Held: The arbitrator held that both of these grievances were inarbitrable.

**2002-0415-0035 (Starkman) Algonquin**

The Union argued that the College was in violation by assigning bargaining unit work to the Student Success Specialist. The College argued that the SSS was not doing bargaining unit work and was rightly classified as support staff.

Held: The arbitrator concluded that the SSS are not performing, to any significant degree, the core functions of a coordinator.

**2002-0110-0007 (Brown) Fanshawe (Durham)**

This grievance claimed that the grievor was unreasonably denied his professional development leave. The leave was approved subject to a condition that the grievor did not agree with.

Held: Grievance dismissed

**2004-0417-0026 (Mitchnick) St. Lawrence (Group)**

This grievance had to do with the use of electronic evaluation tools for students done by a third party to the College and a violation of the FOI Act..

Held: The arbitrator dismissed the grievance but did state that these evaluations cannot form the basis of discipline. He also indicated that the FOI Act exclude from its scope this type of communication

**Summaries of 2003 Arbitration Awards Recorded in the Database**

**2002-0417-0009-11 (Starkman) St. Lawrence (Deangelis, Nutley, Pranger)**

These employees were partial-load employees for some period and applied for full-time positions and subsequently grieved under Article 27.11. Deangelis was a two year employee who was not on contract the day that she applied for the posting. Nutley was a 12 year employee predominantly partial-load and carrying his benefits but not on contract the day of the application for the position. Pranger was a 12 year employee on maternity leave when she applied for the position.

Held: The arbitrator ruled that Deangelis and Nutley were not arbitrable because they were not employed on the day that they applied for the position. Pranger was settled with a full-time position being given to her with retroactive pay.

**2002-0556-0010 (Starkman) George Brown**

The Union grieved that a manager was assigned bargaining unit work during orientation.

Held: The work assigned was bargaining unit work but because it was minimal there was no violation of the Collective Agreement nor the CCBA.

**2000-0110-0006 (Burkett) Fanshawe**

The grievance claims that the College reclassified the work of Food Prep. from Professor to Instructor.

Held: Grievance dismissed

**2002-0560-0011 (McLaren) Seneca (MacBride)**

The grievance centered around the point allocation for education. The College only considered the higher degree until some period later when a transfer took place. The Union was asking for an additional step – which would have been the impact at the time of hire.

Held: Grievance dismissed.

**02A341A (Brown) Loyalist (Coughlan)**

The grievor was a full-time employee hired in 1974. In 1992 the grievor became disabled and went onto LTD. The grievor returned to work in Jan 94 but returned to disability on Dec 95. On April 2002 the grievor reached mandatory retirement. The grievor was entitled to sick leave gratuity and was paid out at the salary level in 95. The grievor did not receive sick days for the eight years of LTD. The grievance claimed 160 days of additional sick leave credits and that salary should be at current levels.

Held: No credits for LTD and salary at the date of LTD. It is a bona fide occupational requirement that faculty be at work to get sick days. Sick credits cover those scheduled to work – not on LTD.

**1994-0244-0004 (O'Neil) Sheridan (Friend)**

The grievor claimed that the College discriminated against him for not having returned him to work following a period of disability.

Held – Settlement monetary including damages and pension contributions

**2002-0415-0005 (Knopf) Algonquin**

Article 2 grievance in the Police Foundations Program.

Held: An arbitrator has no jurisdiction to interfere with staffing decisions of part-time positions over full-time positions. If there was evidence of circumventing the collective agreement or eroding the bargaining unit the decision may have been different.

**2002-0558-0001 (MacDowell) Canadore (Gear)**

The grievor claims that he has been wrongfully denied a teaching opportunity in the avionics department as he was not allowed to bump into this program. The College argued that he did not have the skills, competence or experience to bump into this program.

Held: The grievor has to show that at the time he seeks to bump, he will be able to perform the work of the other position. It is up to the grievor to show that he has the skills, competence and experience to do the job. From Transport Canada perspective there is a credential based requirement with additional current experience required. The grievor did not hold the credential required.

Held: The grievance was dismissed. The grievor did not hold the credential nor had he acquired the credential in the two years since his layoff.

**2002-0558-0010 (Carter) Centennial (Group)**

This group grievance dealt with the method now used by the College to convert annual salaried to bi-weekly payments. Until September 2002 the College based the salary on a 12 month payment period – evenly distributed. Beginning September 2002 the College's assumption became that salary is earned over the 10 month period with a 2 monthly unpaid period.

Issue of estoppel raised.

The Council of Regents on Aug 1, 2002 issued the salary allocation guidelines for disability benefits.

Held: Estoppel held until the termination of the current collective agreement. The College was ordered to pay over the 12 month period until the end of the collective agreement.

**2003-0558-0008 (Knopf) Centennial (Robertson)**

This grievance involved the termination of a probationary employee who wrote an inflammatory e-mail denouncing administration of the College. Was there bad faith in his termination?

Held: Grievance dismissed.

**2001-0556-0009 (Knopf) George Brown**

The grievance alleges improper use of partial-load and part-time employees during January 2001. The Union also asserts that the grievance encompasses 7.02 (6) requirements.

Preliminary Objections:

- Issue in front of Devlin Board
- Earlier grievance in front of Shime
- Duplicate grievance claiming same full-time positions
- Part-time beyond jurisdiction of Board
- No particulars on grievance – abuse of process
- Union withdrawal earlier precludes relief here

Held: Interim Award

Grievances are term specific therefore valid

Union withdrawal does not preclude relief. However the College did not have timetables and information available for production and as a result the Union was disadvantaged to delivering their case on the Article 2 issues. The article 7 issue remains outstanding and the Board is seized with this issue.

**2002-0560-0001 (Mitchnick) Seneca (Meaghan)**

The matter involves three grievances claiming bad faith and malicious intent in the investigation, lack of an appeal and the unjust, unwarranted and discriminatory fashion in which I have been treated by the College. The College claims that none of the grievances are matters properly under the collective agreement.

Held: Preliminary objection upheld.

**2000-0613-0004 (Mitchnick) Sault (Brannen)**

The grievance claimed a violation of settlement re early retirement , bad faith and article 3.02. A settlement was reached between the parties but the grievor was not in agreement. Held: Parties came to agreement, the Board is terminated.

**02D052, 02D054, 02A322 (MCLaren) Loyalist (Sorge)**

This grievance dealt with an employee who was laid off and dealt with the vacation payment entitlement.

Held: That the grievor is entitled to a different factor calculations for periods in which he was working and periods when he was not working (1/261 vs 1/216)

**Summaries of 2002 Arbitration Awards Recorded in the Database**

**01C046 (Shime) Fanshawe**

Interim order for the production of information

**1999-0110-0014 (Brown) Fanshawe**

The grievance claims to designate full-time positions in the Multimedia Design and Implementation Program – full-time certificate program. The Union raised the issue of whether this program is rightly designated as continuing education. The College argued that the Program is under continuing education and therefore exempt from the bargaining unit.

Held: The Board ruled the grievance was arbitrable. The Board dismissed the College's estoppel argument. The Board finds that the College was in violation of 2.02 and 2.03.

**98C292 (Howe) George Brown**

The grievance claims that the College assigned unreasonable workloads to sessionals in violation of 6.02 and 11.05.

Held: In assessing workloads consideration must not only be given to time spent in the classroom but also to time spent outside of class hours performing tasks such as preparation and marking. Class size must be taken into consideration as well as counseling , reading e-mails, etc. A prima facie case established based upon hypothetical SWFs for five sessionals. The arbitrator concluded that the Union had not made it's case for a violation of 11.05.

**2001-0556-0015 (P Picher) George Brown**

This grievance had to do with the involuntary transfer of the grievor from counselor to Professor. The Union argued thye transfer was disciplinary and motivated by bad faith.

Held: Grievance dismissed

**2000-0556-0009 (Shime) George Brown**

Article 2 grievance. The Union was provided with names of 21 persons who had retired – 15 vacancies had not been posted. Two preliminary issues arose – what evidence required? And the production of documents.

Held: The Union must establish that full-time faculty have retired and there is a vacant position which requires the College to post. Once the Union has established its prime facie case the College bears the onus of proof of preference based upon operational requirements. The College must produce SWFs of retired faculty and any documents which indicate whether these courses similar or relevant are being taught by others who are wither full-time, part-time, sessional or partial-load.

**990C045 (G Brent) George Brown (Richmond)**

The grievance dealt with particulars of benefit plans. The Board ruled it was inarbitrable unless the challenge was to whether the plan for premiums was the plan referred to in the collective agreement.

Held: The grievance was dismissed as inarbitrable.

**00D327 (Schiff) Loyalist (Bergman)**

This grievance dealt with a dismissal on not fulfilling a hiring qualification in her letter of appointment.

Held: Grievance allowed.

**00D315 (Burkett) Mohawk (Bonomo)**

The grievance deals with the entitlement of sick days for a period of professional development.

Held: The grievor is not entitled to accumulate sick days for professional development leave periods.

**98C037 (Devlin) George Brown**

This issue alleges that the College violated 11.03 by altering the collective agreement in requiring faculty to return prior to September 1.

Held: Grievance dismissed.

## **Recommendations from Grievance Analysis**

### ***Job Security***

- Amend Article 2 to include preference of full-time over part-time positions or modify the article in such a way that part-time positions are considered in the overall total number of available hours for preference to full-time  
Fanshawe, St. Lawrence, Niagara, Algonquin, Durham, Humber

### ***Benefits***

- Amend the benefits Articles to at minimum to describe the terms of the contracts.
- Establish a Joint Union/Management with an independent chair to review and decide contentious claims and with the authority to bind the insurance carrier.  
St. Lawrence

### ***Grievance***

- Amend the collective agreement to allow the Union access to the WRA process or arbitration with regards to issues falling in 11.01 and 11.02  
St. Lawrence, George Brown,

### ***Job Security***

- Amend article 27.06 to clarify the definitions of skills, competence and experience and provide adequate requirements on the College to retrain individuals affected in a layoff situation.  
Algonquin, George Brown, Canadore

### ***Class Definition***

- Tighten up the Instructor classification to restrict its use  
Niagara, Fanshawe, Seneca

### ***Partial-loads***

- Modify 27.11 to strengthen the language on “consideration”  
St. Lawrence College, Niagara,

### ***Vacation***

- Make the Vacation a paid vacation period and clarify the denominator in the calculations of payment.  
Centennial, Loyalist, St. Lawrence

### ***Job Security***

- Reduce the probationary period  
Centennial

### ***Workload***

- Clarify the issue of unreasonable workloads in Article 11.05  
George Brown
- Eliminate 11.06  
Fanshawe

### ***Job Security***

- Define continuing education in Article 27.16  
Fanshawe, St. Lawrence

### ***Other Recommendations of Legal Counsel***

- The language is too restrictive on the filing of Union grievances.
- The language is restrictive with regards to the Union challenging either at an arbitration or in front of a WRA issues under article(s) 11.01 and 11.02
- Preference language in Article 2 does not recognize part-time employees
- Vacation issue – needs to be sorted out