

Brief submitted to the Postsecondary Education Review (the Rae review)

By the

Ontario Public Services Employee Union (OPSEU)

Regarding

Collective Bargaining Rights For Community College Part-timers

November 15, 2004

Part time employees are excluded from collective bargaining under the *Colleges Collective Bargaining Act, R.S.O. 1990, c. C. 15* ("CCBA"). This is unproductive, unjust and antiquated. Part-timers should have full collective bargaining rights.

Under the CCBA, only "employees" can participate in collective bargaining. (See the statutory references set out below.) "Employees" are those persons that are in two statutorily prescribed units. The academic unit excludes

- "teachers who teach for six hours or less per week,
- counsellors and librarians employed on a part-time basis,
- teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than twelve months in any twenty-four month period,"

The support staff unit excludes

- "persons regularly employed for not more than twenty-four hours a week". (CCBA s. 2(1), s. 1 and Schedules 1 and 2).

As a result, part-time employees do not have the right to participate in collective bargaining under the CCBA.

In addition, those employees cannot unionize under the *Labour Relations Act* as that *Act* does not apply to community colleges (*LRA*, s. 4(1)(b)).

This part-timer exclusion is an antiquated hold over from the introduction of the CCBA in 1975. In the 1960s and early 1970s, it was not unusual to have bargaining units restricted to full-time employees, and no part-time units. That was the situation in the community colleges. Then, the CCBA statutorily fixed the existing full time bargaining units and their bargaining unit descriptions (Hon. J.A. C. Auld, Minister of Colleges and Universities, Hansard, July 17, 1975, p. 4133) At the same time, the CCBA effectively barred any union attempt to organize part-timer units. The result was that full-timer units, and an exclusion of part-timers, were statutorily frozen into place. That situation remains unchanged almost 30 years later.

Part-time employees are a particularly vulnerable class of worker. They have an ongoing employment relationship but are treated as second-class workplace citizens in respect of salaries, working conditions and job security. That is the current state of community college part-timers. Yet, "Colleges, as leading educational institutions and as publicly-funded organizations, have a responsibility to be a model employer. They must recognize the changing social conditions regarding part-time employment, and acknowledge that part-timers are vulnerable unless they have some form of collective representation,

particularly when there is a union actively working to protect the rights and security of full-time employees. Disqualifying them from seeking the certification option is simply to perpetuate this disadvantage." (*The Report of the Colleges Collective Bargaining Commission*, Jeffrey Gandz, Commissioner, January 1988, [*Collective Bargaining Commission*], p. 239)

Part-Time Faculty Workloads

The definition of a part-time teacher in a community college is that they teach six hours or less per week on a regular basis. When this definition was created in the 1970's, this teaching load was approximately 1/4 of the teaching load of a full-time teacher. This definition was not changed when the workload formula was introduced in the 1980's and the maximum teaching load for full-time post-secondary teachers was capped at 18 hours per week.

The maximum workload of a full-time teacher, without overtime, is 44 workload hours per week. A teacher's workload includes the hours for teaching, plus preparation, evaluation and other professional functions. Thus, 1/4 of a full-time teacher's workload is 11 workload hours. The absolute cap on workload hours including overtime is 47 hours per week. The most recent survey of faculty workload indicates that teachers are actually assigned an average of 41 workload hours per week.

Since the definition of a part-time teacher only takes into account teaching hours, the union suspected that the colleges had used their ability to increase class sizes without limits in order to exploit these workers by increasing their workloads well beyond 1/4 the workload of a full-time professor.

In 2002, the union studied the workload of part-time teachers. The union examined the workload of 41 part-time teachers in 13 colleges. The data was analyzed by applying the same formula that is used to establish total workload hours for full-time teachers. The union found that the average workload of part-time teachers was 26.1 workload hours with a minimum of 11.9 workload hours and a maximum of 71.3 workload hours.

All the teachers in the sample had workloads that exceeded 1/4 of a full-time teacher's workload. In fact, 19.5% had workloads that exceeded the average workload hours of full-time college teachers. Twelve percent of the total had workloads greater than the maximum workload hours of a full-time teacher. Moreover, 7% had a workload that could not be assigned to a full-time teacher because it exceeded the cap on full-time workload plus overtime.

The maximum rate paid to part-time teachers tends to be \$40 per hour and they are only paid for teaching hours. This compares to the maximum hourly rate of pay for partial-load teachers. Partial-load teachers are not full-time employees

who are paid on an hourly basis based on the number of teaching hours. They are not denied the right to unionize.

Part-time Support staff employees

- **Stories from the front- line**

Carrie is an early childhood education worker at a community college. She works from 6 to 8:30 a.m., goes home, and then comes back to work from 3:30 to 6:30 p.m. When a full-time job became available, Carrie applied but was not hired. “My supervisor said that she would have difficulty finding another person to work the split shift.”

Paul was hired as a caretaker to replace a union worker on sick leave. After two years, the College determined that the permanent worker would not be returning, and laid Paul off in order to fill the position with a displaced worker. Six months later, another caretaker position at that same campus became vacant. Paul was not told of this position despite calling regularly to ask if positions were available. He also had made it known to his former supervisor and Employee Relations that he wished to return to work as soon as possible. The son of another caretaker under the same supervisor was hired to fill the new vacancy.

Sara was a youth job consultant. After almost one year in a temporary position, Sara had to take a leave to have a baby. She made it clear that she wished to return, but was told she had no right to return, as it was a contract position. Another temporary worker was hired to replace her. The job was posted as a permanent position, but nobody contacted Sara to offer her a chance to apply.

Rosa is a clerical worker. She has worked for almost every department at the College, and in many departments she has been called back several times. She fills in for vacations, sick leaves, etc. She is always available at short notice to help wherever she is needed. She has been working this way for more than five years. Every time Rosa applies for a full-time position, she is told that she does not have the required skills.

Sayyid is a computer technician. He was hired to assist in the computer lab at one campus in the mornings, and at another campus in the afternoons. The Union claimed that, because he was working 35 hours a week, this should be a full-time bargaining unit position. The supervisors checked their budgets and then told Sayyid he was no longer needed at the second campus. His hours (and wages) were cut in half.

Paula works part-time on paper, but in reality, she works a surplus of 40 hours per week. She has been doing so for almost ten years in different capacities, the last five in her current position. Paula is now pregnant. She asked her supervisor about making her position permanent and was told to forget it, because the

budget wasn't there. When Paula asked more questions she was told, by her supervisor, that if she fought it, they would have to layoff one of her co-workers.

On a notice informing all campus staff of a year-end Holiday Party, workers were told that, because of budget constraints, part-time employees would not be invited. However, they could come if they paid for their own meal.

- **Part-time employees working full-time hours**

The Colleges Collective Bargaining Act (CCBA) Schedule II is clear that

*“The Support staff bargaining unit ... does not include,
(vi) persons regularly employed for not more than twenty-four hours per week,”*

OPSEU locals have historically monitored the situation regarding hours worked by part-time employees. In so-called “peak periods” of work (e.g. at Registration time in September), certain OPSEU locals have allowed the colleges to extend part-timers' hours beyond the maximum 24 – usually for only three weeks or so. At the present time, most colleges give the locals a copy of the list of part-time employees and the hours they have worked, usually on a bi-weekly basis.

From the discussion with one group of employees, it is clear that the college is abusing this practice. There were reports of people working 35 hours for up to four or five months at a time. In one example, a part-time employee said she would have applied for the job if she had known it would be full-time hours.

Another tactic is to “fudge” the hours on the list of hours worked. In one instance (reported to us by another employee) an employee was working 35 hours but was told to put down 24 – and then at the end of the contract s/he was given days off with full pay.

There were reports of four people in the receiving area working longer hours on a regular basis – for a much longer period than they should

- **The rate of pay for part-time employees**

According to the one College policy, part-time employees get the same rate of pay as full-time workers, “as if covered by the Collective Agreement”.

However, even here, it seems the college is getting around this language. One employee, employed as an Electrical Technologist is working side by side with a full-time person doing the same job but at a higher rate of pay. The part-time employee has worked there for two years and is only getting about 60% of what the full-time employee is being paid.

- **Contracts signed with the college**

Some part-time employees have a written contract they signed with the college when they started. Others do not have any contract. In one college, Library workers, for example, have signed contracts, but the Electrical Technologist said he does not have a contract (“I’m just here – until they lay me off!”)

- **Posting of part-time jobs**

At one College, any job of more than 20 hours a week on an ongoing basis has to be posted. The OPSEU local won this right after the Chief Financial Officer’s wife was suddenly hired without the knowledge of the Human Resources Department. The Union took this example to the Union-College Committee and convinced them they should post “ongoing” jobs.

- **Payroll deductions**

Recently, one college changed its policy on payroll deductions, especially for parking privileges. Now, in a recent letter to an employee, the college stated, “Payroll deduction is available for full-time permanent employees only”.

This means part-time employees either have to pay the whole yearly amount of \$448.00 by cash, Visa, MasterCard or cheque (which would not be refunded if the person works only part of the year), or, they can come into the office every month to pay \$64.00 per month by cash, cheque, MasterCard or Visa. This is the last year that part-timers have the option of giving four post-dated cheques in the amount of \$112.00 each quarter.

Similarly, when a college offered payroll deduction as an option for purchasing a personal computer through the college, it was clearly only for permanent employees. One woman who had been there five years, was told that part-time employees were not considered to be in “stable” employment and she was refused.

- **Some comparisons between colleges**

In some colleges, part-time employees get benefits; At Durham College, the college reimburses the cost of university or college fees for employees’ children, once the student has successfully completed the year of study.

In most colleges, the category of “persons engaged in a project of a non-recurring kind” is a major problem.

Although part-time support staff, “persons regularly employed for not more than twenty-four hours week”, cannot bargain collectively, OPSEU has been able to fight for some rights in the workplace for these employees.

- Part-time employees are now permitted to join the Colleges Pension Plan. On July 1, 2002, the Plan’s Board eliminated the earnings and hour criteria and expanded the eligibility for those who have complete 24 months of “continuous eligibility service”.

Why discriminate against college part-time employees?

The vast majority of Ontario’s part-time workforce has some opportunity to address their working conditions by participating in collective bargaining. Part-timers at universities, public schools and high schools, at hospitals and the broader public sector, can all form part of combined units or certify part-time units. There is no good justification for treating community college part-timers differently.

One claim in opposition to permitting college part-time employees to engage in collective bargaining is the assertion that certification would increase the cost of part-time labour. Yet, “Much of this economic argument against permitting part-time employees to participate in collective bargaining appears to ignore the possibility of negotiating fair and reasonable collective agreements with such groups of employees which would provide acceptable labour costs and retain reasonable management flexibility. Given that many programs would be discontinued if costs increased substantially, reasonable people ought to be able to negotiate reasonable terms and conditions of employment.” (*Collective Bargaining Commission*, pp. 227-228)

OPSEU is committed to the negotiation of reasonable terms and conditions of employment for part-timers. Any additional costs arising from collective bargaining for part-timers must be manageable and phased in. In any case, it is not socially acceptable for college management to say that community colleges are the only Ontario public sector institution that cannot afford to collectively bargain with its part-time workforce.

The need to have differential terms and conditions of employment for part-timers may have implications for bargaining unit structure, and certainly raises the question of whether the part-timers should be included in existing units or in separate new units. There is also the question of ensuring that collective bargaining for part-timers is appropriately phased into current community college bargaining. OPSEU suggests that the Review should recommend clearly that part-timers be included in college collective bargaining, but also recommend that there be further consultation between the colleges, OPSEU and the relevant

Ministries (Labour and Colleges and Universities) on all of the details of that inclusion, with one exception.

This Review should recommend that the community college labour relations treatment of part-timers be province-wide. The *Colleges Collective Bargaining Act* sensibly establishes the province-wide bargaining units appropriate for a province-wide community college system. While individual colleges should be able to independently develop areas of focused excellence, there also needs to be a consistency of labour relations standards. Such consistency fosters economies of scale in the settlement of disputes, avoids competitive compensation races to either “the top” or “the bottom” and encourages inter-college labour mobility. For these reasons, the Review should specify that collective bargaining for part-timers should occur on the province-wide basis contemplated by the *CCBA*. “While requiring certification ... on a province wide basis will make it very difficult for a union to organize [part-timers], it is consistent with the province wide nature of collective bargaining currently in the college system ... To allow local certification of such groups would result in excessive fragmentation and high costs for certification fights and negotiations for both union(s) and colleges.” (*Collective Bargaining Commission*, p. 243)

The mandate of the Postsecondary Review includes recommendations on how to design a system that fosters quality and that allows Ontario society to “build a sense of justice”. It does not reflect well on the community college system that it involves the antiquated and unusual exclusion of part-timers from collective bargaining. The current employment situation for part-timers is poorly designed, and fosters exploitative use of part-time staff. The Review should recognize the justice of permitting college part-timers to participate fully in the College system to which they contribute so much. The Review should recognize the wisdom of coordinated and rational attention to the terms and conditions of employment of part-timers. The Review should recommend that the *Colleges Collective Bargaining Act* be amended to include part-time employees.

Statutory References

Colleges Collective Bargaining Act

R.S.O. 1990, CHAPTER C.15

1. In this Act and in the Schedules,
"employee" means a person employed by a board of governors of a college of applied arts and technology in a position or classification that is within the academic staff bargaining unit or the support staff bargaining unit set out in Schedules 1 and 2; ("employé")
2. (1) This Act applies to all collective negotiations concerning terms and conditions of employment of employees.

(2) No such collective negotiations shall be carried on except in accordance with this Act.

SCHEDULE 1

The academic staff bargaining unit includes the employees of all boards of governors of colleges of applied arts and technology who are employed as teachers, counsellors or librarians but does not include,

- (vi) teachers who teach for six hours or less per week,
- (vii) counsellors and librarians employed on a part-time basis,
- (viii) teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than twelve months in any twenty-four month period,

SCHEDULE 2

The support staff bargaining unit includes the employees of all boards of governors of colleges of applied arts and technology employed in positions or classifications in the office, clerical, technical, health care, maintenance, building service, shipping, transportation, cafeteria and nursery staff but does not include,

- (vi) persons regularly employed for not more than twenty-four hours a week,

Labour Relations Act, 1995

S.O. 1995, CHAPTER 1

Schedule A

- s.4 (1) This Act binds agencies of the Crown other than,
 - (b) those that are designated under clause 29.1 (1) (a) of the *Public Service Act*.

(2) Except as provided in subsection (1), this Act does not bind the Crown.

Public Service Act
R.S.O. 1990, CHAPTER P.47

s. 29.1 (1) The Lieutenant Governor in Council may make regulations,

(a) designating agencies of the Crown for the purpose of the definition of "Crown employee";

Public Service Act, Regulation 57/95

1. The following are designated agencies of the Crown for the purposes of the definition of "Crown employee" in section 1 of the Act:

1. Colleges of applied arts and technology established under the *Ministry of Colleges and Universities Act*.