



TENTH ITEM ON THE AGENDA

**343rd Report of the Committee
on Freedom of Association**

Contents

Case No. 2430 (Canada): Definitive report

Complaint against the Government of Canada concerning
the Province of Ontario

presented by

– the National Union of Public and General Employees (NUPGE)
on behalf of

– the Ontario Public Service Employees' Union (OPSEU/NUPGE)

supported by

– the Canadian Labour Congress (CLC) and

– Public Services International (PSI)

Paragraphs 339-363

CASE NO. 2430

DEFINITIVE REPORT

Allegations: The complainant organizations challenge the provisions of a statute (Colleges Collective Bargaining Act, R.S.O. 1990, c.15) that denies all public college part-time employees the right to join a union and engage in collective bargaining

339. The complaint is contained in a communication dated 7 June 2005 from the National Union of Public and General Employees (NUPGE), on behalf of the Ontario Public Service Employees' Union (OPSEU). Public Services International (PSI) and the Canadian Labour Congress (CLC) expressed their support to the complaint in communications dated 17 June and 8 November 2005, respectively,

340. In a communication of 10 April 2006, the Government of Canada transmitted the replies of the Government of Ontario dated 12 December 2005 and 31 March 2006.

341. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, [949 (No. 98). nor the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

342. In its communication of 7 June 2005, the complainant organization alleges that the Colleges Collective Bargaining Act ("the CCBA") violates the ILO Constitution and Conventions Nos. 87 and 98. Under the CCBA, only "employees" can participate in collective bargaining, and "employees" are those persons who are in two statutorily prescribed bargaining Units.

343. The academic bargaining 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 a twenty-four month period". The support staff bargaining unit excludes "persons regularly employed for not more than twenty-four hours a week". As a result, part-time employees do not have the right to participate in collective bargaining under the CCBA (see Annex I).

344. In addition, those employees cannot unionize under the Ontario Labour Relations Act (OLRA) as that Act does not apply to community colleges, under section 4 and section 29 of the OLRA, as well as section 1 of the Ontario Public Service Act (Annex I).

345. The complainant organization explains that this part-timer exclusion is an antiquated holdover 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 unit and their bargaining unit descriptions. At the same, the CCBA effectively barred any union attempt to organize part-time employees. The result was that full-timer units, and an exclusion of part-timers, were statutorily frozen into place. The situation remains unchanged almost 30 years later.

346. Part-time employees are a particularly vulnerable class of workers. They have an ongoing employment relationship but are treated as second-class workplace citizens in respect of salaries, working conditions and job security.

Part-time faculty workloads

347. The definition of a part-time teacher in a community college is a teacher who teaches six hours or less per week on a regular basis. When this definition was created in the 1970s, this teaching workload was approximately one-fourth of the teaching workload of a full-time teacher. This definition was not changed when the workload formula was introduced in the 1980s and the maximum teaching workload 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, one-fourth of a full-time teacher's workload is 11 workload hours. The absolute 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 Ontario Public Service Employees' Union (OPSEU) suspects the colleges had used their ability to increase class sizes without limits in order to exploit these workers by increasing their workload well beyond one-fourth the workload of a full-time professor. 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 paid on an hourly basis based on the number of teaching hours. They are not denied the right to unionize.

Part-time support staff working full-time hours

348. Schedule II of the CCBA states that: "The support staff bargaining unit ... does not include, (vi) persons regularly employed for not more than twenty-four hours per week." The OPSEU has historically monitored the situation regarding hours worked by part-time support 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 biweekly 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. According to 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 per cent of what the full-time employee is being paid.

349. The complainant organization points out that 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. The complainant organization refers to the long-established principles of the Committee: as regards the rights of workers to establish and join trade unions and to bargain collectively, in particular Case No. 1900 (Ontario) where the Committee reached similar conclusions, and states that the exclusion of part-time employees of community colleges is equally unjust.

350. The complainant organization requests that the Committee recommend the Government to amend the CCBA so that all employees of the public colleges system are able to exercise their freedom of association rights in a meaningful way.

B. The Government's reply

351. In its communication of 12 December 2005, the Government transmitted the observations of the Ontario Government which state that the College Collective Bargaining Act is a statute under the authority of the Ontario Ministry of Training, Colleges and Universities (MTCU) whose advice has been sought. The MTCU emphasizes that an understanding of the complex and diverse role of Ontario's 24 active colleges of applied arts and technology is crucial to understanding the exclusion of certain part-time academic and support staff from the bargaining regime under the Act.

352. The Ontario Colleges of Applied Arts and Technology Act, 2000 (the OCAAT Act), the legislation governing colleges, provides that:

The objects of the colleges are: to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment; to meet the needs of employers and the changing work environment; and to support the economic and social development of their local and diverse communities.

In carrying out these objects, colleges offer a broad range of degree, diploma and certificate postsecondary education programmes, which are directed at providing state-of-the art knowledge and skills that will enable their graduates to be

employed in increasingly complex and rapidly changing workplaces. Additionally, they enter into partnerships with business, industry and other educational institutions, provide adult vocational education and training, basic skills and literacy training, apprenticeship in-school training and applied research (section 2(3) of the OCAAT Act). Programmes are offered on a full-time and part-time basis. Adult continuing education is a significant and vital element of college services to their communities. One of the indices of the scope of the college system and its importance to Ontario, is reflected in the provinces' transfer payments to the system: \$1,076 billion in 2005-06.

353. The central collective bargaining regime established by the Act is unique in Ontario's public sector. There is a single bargaining agent which acts on behalf of all college employers, a single collective agreement for each of the two designated bargaining units (academic and support), and one "one strike, all strike" provision. The diversity in, and scope of, college activities and the centralized bargaining structure are important factors leading to the employment of college part-time staff.

354. College programmes and activities are required to be responsive to the immediate, and frequently changing needs of employers and workforce. Additionally, colleges offer a multitude of sophisticated, specialized, state-of-the-art educational programmes other services that require unique or scarce expertise that is in high demand in the private sector. People with such skills are often working full time in their field of expertise and work for the college sector on a part-time basis only. These individuals usually have a limited community of interest with full-time staff and the MTCU understands that a substantial proportion of these individuals whether because they have other employment or for professional reasons are unwilling or reluctant to accept college employment if they are required to or could potentially become part of a bargaining unit.

355. An analogous situation is found in the context of college continuing education courses, e.g. general interest courses offered usually in the evening. A significant proportion of these courses are delivered by instructors, often for limited time periods, with the express intent of supplementing their other interests or out of general interest in teaching a unique or specialized subject. The ability of colleges to offer the current number and range of the courses would be jeopardized without access to a pool of individuals willing to provide such part-time services to colleges.

356. Ontario has a vital interest in maintaining not only a viable college system but one which has the capacity to provide the highest standards in teaching, research and student learning experience and thereby contributes to the economic well-being of Ontario and, arguably, Canada. It is for this reason that the Government is increasing the operating funding provided to the colleges by \$133.5 million from 2004-05 levels. for the specific purpose of increasing access to the system by underrepresented groups and increasing the quality of the system.

357. The MTCU is confident that colleges have always been committed to ensuring that they have high-quality employees, dedicated to the success of the

colleges and their students and that achieving this is in large part dependent t) a fair, robust and relevant collective bargaining regime. At the same time, the: MTCU recognizes the connection between the current college bargaining unit definitions and the ability of the colleges to attract and retain the part-time academic and support staff who ensure that the colleges can fully meet their mandate. The MTCU believes that it must give priority to the needs of the province and to take all reasonable steps to provide the support that will facilitate the continuance of a viable, high-quality college system that can meet its complex mandate.

358. In its communication of 31 March 2006, in view of the concern expressed by the Committee in the context of Case No. 2305 (see 338th Report, para. 37), the Government points out that the differences between the present case, on the one hand, and Cases Nos. 2025 and 2305, on the other. The Government points out in this respect that the education partnership tables in these two latter cases, facilitating an atmosphere of engaged dialogue between unions and the Government, are a tailored response to issues bringing together teachers, unions, parents, local school boards and the Government in the primary and secondary education sectors. In this sector, a full collective bargaining regime exists with the nexus of collective bargaining being at the local school board level. The collective bargaining legislation impugned in the present case, on the other hand, does not cover employees in primary or secondary schools, or for that matter, universities in Ontario. Moreover, the Act applies exclusively to community colleges in the province and establishes a centralized province-wide collective bargaining regime that is unique in Ontario's public sector.

C. The Committee's conclusions

359. The Committee notes that this case concerns the denial of collective bargaining to part-time academic and support staff of colleges of applied arts and technology in Ontario listed in Annex 1

*360. While taking due note of the explanations given by the Government on the specific circumstances of college programmes and activities, on the particular expertise required from these instructors, and on their limited community of interests with full-time staff, the Committee recalls that all workers, without distinction whatsoever, with the sole possible exception of police and armed forces, should have the right to establish and join organizations of their own choosing to further and defend the interests of their members (**Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, paras. 205-206). The Committee further recalls that all workers, with distinction whatsoever, whether they are employed on a permanent basis, for a fixed-term or as contract employees, should have the right to establish and join organizations of their own choosing (**Digest**, op. cit., para. 236)*

361. *The Committee also points out that all public service workers, other than those engaged in the administration of the State, should enjoy collective bargaining rights (Digest, op. cit., para. 793) and that no provision of Convention No. 98 authorizes the exclusion of staff having the status of contract employee from its scope (Digest, op. cit. para. 802)*

362. *While the particular circumstances of the part-time employees concerned here may call for differentiated treatment and adjustments as regards the definition of bargaining units, the rules for certification, etc., as well as specific negotiations taking their status and work requirements into account, the Committee fails to see any reason why the principles above on the basic rights of association and collective bargaining afforded to all workers should not also apply to part-time employees. The Committee therefore requests the Government rapidly to take legislative measures, in consultation with the social partners, to ensure that academic and support part-time staff in colleges of applied arts and technology full enjoy the rights to organize and to bargain collectively, as any other workers. The Committee requests the Government to keep it informed of developments in this respect.*

The Committee's recommendations

363. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government rapidly to take legislative measures, in consultation with the social partners, to ensure that academic and part-time support staff in colleges of applied arts and technology in Ontario fully enjoy the rights to organize and bargain collectively, as any other workers. The Committee requests the Government to keep it informed of developments in this respect.