

**IN THE MATTER OF THE COLLEGES OF APPLIED ARTS AND TECHNOLOGY
LABOUR DISPUTE RESOLUTION ACT, 2017**

AND IN THE MATTER OF AN INTEREST MEDIATION-ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

- and -

COLLEGE EMPLOYER COUNCIL

Before: William Kaplan
Sole Arbitrator

Appearances:

For the College Employer Council:

Wallace M. Kenny, Alan S. Freedman
Hicks Morley Hamilton Stewart Storie LLP

For Ontario Public Service Employees Union:

Don Eady, Nini Jones, Lauren Pearce
Paliare Roland Rosenberg Rothstein LLP

The matters in dispute proceeded to a mediation-arbitration held in Toronto on December 14, 15, and 16, 2017, with a hearing on December 16, 2017.

Introduction

This interest mediation-arbitration was convened to settle the terms and conditions of the collective agreement between the parties, in accordance with the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017*. The Ontario Public Service Employees Union (hereafter “OPSEU”) is the union representing over 12,000 professors, counselors, and librarians employed at the 24 independent post-secondary colleges (“Colleges”). The College Employer Council (hereafter “Council”) represents the Colleges and has the exclusive responsibility for all collective bargaining on behalf of the employer Colleges.

The matters in dispute proceeded to a mediation-arbitration process, conducted pursuant to the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017*, which was held over three days, on December 14, 15, and 16, 2017.

In deciding the outstanding issues, I have carefully considered the detailed written briefs. Also carefully considered were the submissions made at the hearing along with the appropriate criteria, both statutory and otherwise, most notably replication of free collective bargaining. The new collective agreement will, therefore, consist of the terms of the previous collective agreement, as amended by this award, which includes those

terms agreed upon on November 16, 2017, along with any previously agreed upon and signed off items.

I also note that over the course of the mediation-arbitration, the parties agreed that they would extend their previously agreed-upon obligation to meet in respect of the *Fair Workplaces, Better Jobs Act, 2017* to January 15, 2018, which is hereby ordered.

Any OPSEU or Council issue not addressed in this award is deemed dismissed.

Award

Duration and Retroactive Wage Increases

The collective agreement will have a four-year term, from October 1, 2017 until September 30, 2021. The wage increases shall be as follows:

- October 1, 2017 1.75% (retroactive)
- October 1, 2018 2.00%
- October 1, 2019 2.00%
- October 1, 2020 2.00%

The retroactive amounts owing shall be paid by January 31, 2018.

Article 36 shall be amended as follows:

ARTICLE 36 – DURATION

36.01 This Agreement shall take effect commencing on October 1, 2017 and shall have no retroactive effect or application, except salary schedules in Article 14 and 26, and shall continue in full force and effect until September 30, 2021, and shall continue automatically for annual periods of one year unless either party notifies the other party in writing within the period of 90 days before the agreement expires that it desires to amend this Agreement.

Article 2

Article 2 of the Collective Agreement shall be amended to add the following language:

2.03 D Grievances alleging a violation of Article 2.02 and Article 2.03 A cannot rely on staffing which occurred from September 1, 2014 to December 20, 2017 to assist in establishing a breach of either of those Articles.

The following Letter of Understanding, dated September 23, 2014, and now exhausted, will be deleted:

Re: 2014-2017 Collective Agreement

For the duration of the existing Collective Agreement, the parties agree to:

- (i) No full-time bargaining unit member who has completed the probationary period will be released from the College's employ as a direct result of the College contracting out his or her work.
- (ii) No grievances alleging a violation of Article 2.02 and 2.03 A shall be filed on or after September 1, 2014.

Article 11

Article 11 of the Collective Agreement shall be amended as follows:

11.01 B 2 A "teaching contact hour" is a College scheduled teaching hour assigned to the teacher by the College. **Regardless of the delivery mode, courses shall be deemed to have the same number of teaching contact hours as they would if taught entirely in the classroom or laboratory.**

11.02 C 2 The WMG shall in its consideration have regard to such variables affecting assignments as:

(...)

- (x) students ~~with special needs~~ **requiring accommodation;**

(...)

Article 13

Article 13 of the Collective Agreement shall be amended with a new title: "Copyright and Academic Freedom." The following language shall be added after the existing language in article 13.01:

13.02 Academic freedom is fundamental to the realization and preservation of the Colleges' commitment to academic excellence. The purpose of this article is to define the rights and obligations related to academic freedom.

13.03 All members of the College community shall support and protect the fundamental principle of academic freedom.

13.04 Every faculty member is able to exercise academic freedom in the performance of his/her duties. Academic freedom at the College includes the right to enquire about, investigate, pursue, teach and speak freely about academic issues without fear of impairment to position or other reprisal.

13.05 The exercise of academic freedom is subject to the following responsibilities:

- (i) In exercising academic freedom, employees shall be responsible for adhering to legal parameters (such as but not limited to The Human Rights Code, Criminal Code of Canada, civil liability, collective agreement obligations), institutional regulations, Ministry Directives,

requirements of accrediting bodies, and program and curriculum requirements.

- (ii) Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. In exercising such freedom, faculty have a responsibility to respect the academic freedom and rights of other members of the college community.
- (iii) The College affirms that faculty shall be free to act and speak in their capacity as public citizens provided they indicate they are speaking as individuals and not acting as representatives of the College.

Article 19

Article 19 of the Collective Agreement shall be amended as follows:

OTHER INSURANCE PLANS

ARTICLE 19 – OTHER INSURANCE PLANS

Extended Health Plan

- 19.01 A** The College shall pay 100% of the billed premium of the Extended Health Plan for employees covered thereby and subject to the eligibility requirements of the Plan. The Extended Health Plan shall provide for a combined maximum annual coverage for all covered paramedical services of \$1,500. **Effective February 1, 2018, the Extended Health Plan shall provide for a combined maximum annual coverage for all covered paramedical services of \$2,000.**

ADDITIONAL COVERAGE

[Effective **February 1, 2018** amend the extended health plan to include Social Workers and Psychotherapists to the list of paramedical providers.]

Article 26

Article 26 of the Collective Agreement shall be amended as follows:

- 26.03 B** **The College shall endeavour to issue all contracts prior to the start of the contract.** The College shall, upon the initial hiring of a partial-load teacher in the

bargaining unit, forward a copy of the initial step placement calculation to the Union Local President.

26.10 Job Security

26.10 C On-the-job experience will be calculated as follows: a partial-load teacher will be entitled to credit for service from September 1, 1971 (but not earlier) on the basis of ½ month's credit for each full month of service up to January 1, 1977 and thereafter on the basis of ½ month's credit for each calendar month in which the employee teaches 30 hours or more **and from October 1, 2017 (but not earlier) on the basis of one month credit for each calendar month in which the employee teaches 30 hours or more.**

[NEW – Renumber subsequent article]

26.10 D In addition to maintaining a record of a partial-load employee's job experience, the college will keep a record of the courses that the employee has taught and the departments/schools where the partial-load employee has taught such courses.

By October 30th in each calendar year, a currently or previously employed partial-load employee must register their interest in being employed as a partial-load employee in the following calendar year. This individual will be considered a registered partial-load employee for the purpose of 26.10 E.

All partial-load employees employed for all or part of the period from September 1 to December 31, 2017 will be deemed to have registered for the 2018-2019 academic year.

26.10 E Subject to the application of Articles 2.02 and 27.06 A, **commencing in the 2018-2019 academic year**, where the **school or department within** a college determines that there is a need to hire a partial-load employee **to teach a course that has previously been taught by that registered partial-load employee in the department/school**, it will give priority in hiring to **such partial-load employee if: current partial load employees whose contracts will expire prior to the start of the assignment, and partial load employees whose contracts have ended within six months of the start of the assignment if the following conditions are met**

- (i) **They are currently employed, or if they** ~~the partial load employee must~~ have previously been employed as a partial-load employee for at least **eight (8)** months of service as defined in 26.10 C within the last **four (4)** academic years, and
- (ii) **The assignment of such course will not cause the employee to exceed the maximum teaching contact hours for partial-load employees.**

(ii) ~~The partial load employee must have previously taught the courses that form the new partial load assignment.~~

The offer of partial-load employment is conditional on the college subsequently determining there is sufficient enrolment to warrant the assignment being offered.

Where two (2) or more partial-load employees would be entitled to be offered the course assignment, the employee with the most service will be offered the first opportunity.

Article 27

Article 27 of the Collective Agreement shall be amended as follows:

27.11 B Where a vacancy of a full-time position in the bargaining unit occurs **consideration shall first be given to full-time and current partial-load employees or persons who have been partial-load employees within four (4) months prior to the posting. These applicants shall be considered internal applicants.**

~~and~~ **If the vacancy** is not filled internally, the College will give consideration to applications received from academic employees laid off at other Colleges before giving consideration to other external applicants. ~~For the purposes of this article, full time and current partial load employees or persons who have been partial-load employees within four months prior to the posting shall be considered internal applicants.~~ Such consideration shall be given for up to and including ten working days from the date of posting as described in 27.11 A.

Consideration will include review of the competence, skill and experience of the applicants in relation to the requirements of the vacant position.

Article 32

Article 32.03 B of the Collective Agreement shall be amended to add M. Flaherty, and E.

Gedalof, and to delete J. Devlin.

Job Classification Plans

The Job Classification Plan for Professors and Counsellors and Librarians, as well as the Job Classification Plan for Instructors, will be amended as follows:

[Same changes will be made to the Classification Plan for Instructors]

COLLEGES OF APPLIED ARTS AND TECHNOLOGY

JOB CLASSIFICATION PLANS FOR POSITIONS IN THE ACADEMIC BARGAINING UNIT

(to be used in determining salaries for Professors and Counsellors and Librarians and Instructors)

SECTION I

CLASSIFICATION PLAN FOR PROFESSORS AND COUNSELLORS AND LIBRARIANS FACTORS

1. APPOINTMENT FACTORS

(...)

B) Relevant Formal Qualifications

Formal qualifications are those which constitute the norm in institutions of post-secondary education in the Province of Ontario. Only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree, are recognized. For example, a graduate of a three-year technology program in a College would be given 1½ points for each of the three years, regardless of the length of time actually spent by the individual in obtaining the diploma.

No credit is to be given for a year of study in which there was significant duplication of other studies. Therefore only the highest qualification will be used in computation unless the subject areas are from different disciplines and all relevant to the appointment.

- CAAT Diploma or Post-Secondary Certificate -
per year (level) completed: 1½ points
(Maximum of 4 years)
- University Degree - per year (level)

- completed: 1½ points
(Maximum of 6 years)
- Formal integrated work/study program such as
P.Eng., CA, CGA, CMA (formerly RIA),
Certified Journeyperson -
per year (level) completed: 1½ points
(Maximum of 5 years)

The maximum credit for formal qualifications shall be six (6) years. For employees hired after October 1, 2017, the maximum credit for formal qualifications will be seven (7) years.

(Note that years included herein are not also to be included under Factor A)

(...)

Special Note to Raters:

If a given individual's qualifications and experience are such that the College concerned considers that person to be particularly important to its program but the salary as established by the plan is inadequate, the College may grant up to **five (5)** additional steps on appointment provided the resultant rate does not place the individual above the maximum salary.

Should the College consider that a higher starting salary is required, for those employees hired after December 20, 2017, the College shall seek the consent of the Union, which shall not be unreasonably withheld.

New Letters of Understanding

The following new Letters of Understanding shall be added to the Collective

Agreement:

[NEW LETTER OF UNDERSTANDING]

December 20, 2017

RE: ONTARIO PUBLIC COLLEGES: THE NEXT 50 YEARS

The Parties agree to request the government to establish a Province-wide Task Force, facilitated by the Ministry of Advanced Education and Skills Development (MAESD), to review and explore effective means of ensuring that colleges thrive as quality academic institutions going forward, so that people in every community and occupation have the knowledge and skills that help to build a strong and successful province.

The Task Force shall include representation from key stakeholders (MAESD, the Council, CAAT Academic Faculty, CAAT Support Staff, students and employers) and will consult broadly with colleges, students, parents, faculty, support staff, employers, communities and other stakeholders to examine major issues facing the college sector in its mission to provide high quality post-secondary education and training.

Without limiting the ability of the Task Force to explore key relevant issues, the Task Force specifically will consider and develop recommendations on the following matters in relation to:

- Appropriate staffing models, including, but not limited to, faculty complement, and the issue of precarious work
- The necessary funding requirements to support the delivery of quality education and training in the Ontario college system to ensure that it is innovative, relevant and responsive
- Accessibility and student success, including student mental health and labour-market readiness
- Academic governance structures and intellectual property issues that will promote excellence in college education, research, and training

The Ministry agrees to accept and endorse this initiative, accepting signatory status as facilitator for the Task Force, entitled, Ontario's Public Colleges: The Next 50 Years.

The Ministry, by accepting and endorsing this agreement, also commits that all recommendations of the Task Force will be considered for funding by cabinet.

The government will work together with the Parties to establish the Task Force, including its terms of reference and membership, so that its work can get underway by no later than January 1, 2018. The Task Force should seek input and undertake consultations in all major regions of the province. It will report to the Minister of Advanced Education and Skills Development with interim findings no later than May 18, 2018 and a final report that will be received by the Minister by the Fall of 2018. The Minister will acknowledge receipt of the Task Force report.

The Council will agree attendance at Task Force activities as a paid duty assignment for OPSEU CAAT Academic representatives.

Letter of Understanding [NEW]

December 20, 2017

Re: Fair Workplaces, Better Jobs Act, 2017 (Bill 148 Issues)

Within 30 days of Bill 148 becoming law, the parties will meet to negotiate consequential adjustments to the Collective Agreement language.

Should the parties fail to agree on the adjustments within one year of Bill 148 becoming law, either party can request that any outstanding issues be submitted to an arbitration board composed of a neutral Chair and a nominee for each party. Failing agreement on a Chair, the parties will request that the Ministry of Labour appoint the Chair.

[New Letter of Understanding]

December 20, 2017

Re: Counsellor Class Definition

The parties agree to strike a Committee to review the class definition of Counsellors under the Collective Agreement and report back to the parties prior to the expiry of the Collective Agreement commencing October 2017.

Funding for the Committee, including costs associated with research and consultation as may be mutually agreed, shall be shared equally by the parties.

This Committee shall be composed of three representatives of the Union and the Council respectively.

The College will be reimbursed for time spent by the Union representatives on the Committee in accordance with Article 8.02.

[New Letter of Understanding]

December 20, 2017

Re: Signing of the Collective Agreement

The parties agree that the collective agreement will be signed within 30 days of the interest arbitration award of Arbitrator William Kaplan, dated December 20, 2017, in accordance with the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017*.

Letters of Understanding

The following existing Letters of Understanding in the Collective Agreement shall be revised as follows:

~~September 23, 2014~~ **December 20, 2017**

Original: November 18, 2009

Re: Drug Card

The parties agree to maintain a pay-direct, point-of-sale drug card for Academic employees.

The drug card will not affect the definition of eligible drugs nor any other terms of the Extended Health Care plan. It will strictly provide an alternate payment method for drug claims. The drug card may be used for the purchase of insulin where the necessary documentation from the patient's physician has been submitted. ~~The drug card may be used for~~ **Where** the purchase of over-the-counter medications **is permitted by the plan,** the patient **must submit the claim manually has submitted along with** the necessary documentation from their physician to substantiate the need for the medication in dealing with a chronic condition.

The drug card will provide automatic coordination with a spousal drug card (with a potential outcome of 100% payment through the combined cards).

Any costs associated with maintaining the drug card for Academic Full-Time and Partial-Load employees will be treated as a cost to the employer.

~~September 23, 2014~~ **December 20, 2017**

Original: September 23, 2014

Re: Intellectual Property

The parties agree to discuss intellectual property at EERC. This discussion will commence within one year of the ~~ratification of this Collective Agreement~~ **interest arbitration award of Arbitrator William Kaplan, dated December 20, 2017.**

~~September 23, 2014~~ December 20, 2017

Original: September 23, 2014

Re: Short-Term Disability Plan (Joint Task Force)

The parties agree to strike a joint task force to study the operation, utilization and costs of the Short-Term Disability Plan contained in Article 17 of the Collective Agreement with the intent of developing recommendations as to how to reduce the ongoing liability associated with the plan. The Task Force will forward to the parties by September 30, ~~2015~~ 2018 any joint recommendations for changes to the STD plan which will then be considered for inclusion into the next Collective Agreement.

The parties will each select three (3) individuals to sit on the Task Force. The Task Force will establish its own terms of reference. Available relevant information requested by the Task Force will be provided.

The expenses of the Union members of the Task Force will be treated in accordance with 8.02 and 9.02 D.

~~September 23, 2014~~ December 20, 2017

Original: September 21, 1985

Re: Long-Term Disability Plan

This will confirm that as soon as reasonably possible after the revised Collective Agreement takes effect, the Council shall secure an ad hoc adjustment for existing claimants to bring their benefit level to 60% of current salary. This will be accomplished through an adjustment in the premiums or through utilization of surplus and the change in the benefit level will be retroactive to ~~September 1, 2014~~ December 20, 2017, notwithstanding 36.01.

Return to Work Protocol

In addition, I have ordered the following Return to Work Protocol:

1. The College shall provide, by January 31, 2018, the following lump sum payment to each member of the bargaining unit who was actively employed as of the commencement of the strike and who returned to active employment upon the end of the strike:

(i) \$900, less deductions required by law, to each full-time bargaining unit member

(ii) \$450, less deductions required by law, to each partial-load teacher

These amounts are non-pensionable.

This payment is in full and final satisfaction of all claims, grievances or other complaints related to workload arising from the return to work from the strike.

For example, no party or bargaining unit member may advance a claim that asserts, where the only change to the instructional assignment as described on the SWF in force when the work stoppage commenced is the change in the dates of the SWF period and any resultant changes to the total hours, days, and weeks, such change and resultant changes constitute a change in circumstances requiring an amended SWF as indicated in 11.02 A 1 (b). By way of further example, no party or bargaining unit member may advance a claim that asserts that the circumstances arising as a result of the work stoppage are atypical under Article 11.01 G 2.

Finally, and for clarity, and without limitation, any and all claims, grievances or other complaints that have been filed to date related to workload arising from the return to work from the strike are deemed withdrawn and no such further claims, grievances or complaints shall be filed.

2. Nothing in paragraph 1 above prevents teachers from filing workload complaints in accordance with and subject to the collective agreement where the complaint does not relate to workload arising from the return to work from the strike. Where a teacher's SWF for the Winter 2018 semester is revised and where that change is not related to workload arising from the return to work from the strike, and the teacher disagrees with the revised total workload, such disagreement shall be indicated in accordance with Article 11.02 A 4.
3. The reduction in the annual salary for a full-time bargaining unit member will be 1/261 of the annual salary for each working day of the work stoppage. Time specified on a SWF covering the work stoppage period shall not be treated as having been worked for the purpose of Article 11.
4. During the 2017/2018 academic year, to the extent required by the College, any teaching time lost as a result of the work stoppage may be made up at the expense of time reserved for complementary functions and professional development. For clarity, this means that teachers may not be required to perform this type of work ordinarily done during non-teaching periods to the extent that such time will now be used for teaching.

5. For the 2017/2018 academic year, the total professional development days referred to in Articles 11.01 H 1 and 11.04 B 1 shall be reduced to nine (9). The College may require that less be utilized, but any not utilized shall be carried over to the year 2018/2019, and may be utilized in addition to the normal allocation for that year. The College may use its best efforts to avoid this occurring.
6. Any new SWF issued as a result of the work stoppage shall not require notice contained in 11.02 A 1 (a) or 11.02 A 5.
7. SWF's for the Fall 2017 semester shall not be adjusted under Article 11.01 E 4 because of student withdrawals that have occurred following the commencement of the strike.
8. The notice requirement in 11.02 A 1 (a) is waived for the winter 2018 semester SWF's. Colleges will attempt to provide as much notice as is feasible.
9. No work specified on a SWF for the period of the work stoppage shall be applied to any of the workload limits in Article 11.
10. For the purposes of Article 2.03 B (Sessional), Article 27 (Job Security), Article 32 (Grievance and Arbitration Procedures) and Appendix V (Sessional Employees), the period of the work stoppage will not be considered in determining any of the time requirements. For clarity and without limitation, any employees who were on probation as at the commencement of the strike shall have their probationary periods extended by the period of the work stoppage.
11. The four-week notification period for vacation will be waived for two weeks following the end of the work stoppage.
12. The resumption of salary and benefits is effective on the official return to work date.
13. No grievances will be filed and no unfair labour practice complaints of any kind will be continued or initiated by either party or bargaining unit member in any way arising out of any activities during the negotiations, the strike or related to the return to work.
14. For clarity, nothing in this Return-to-Work Protocol in any way affects any proceedings (including at the Ontario Labour Relations Board or pursuant to the

collective agreement) related to the suspensions of the four bargaining unit members at La Cite' College that occurred after the return to work from the strike.

15. There shall be no reprisals or discipline by either party arising from strike activities, including pre-strike activities.
16. Continuous service and seniority shall not be interrupted, subject to paragraph 10 of this Return-to-Work Protocol.
17. If permitted by the CAAT pension plan and applicable legislation, employees who wish to do so may buy back pension credits and earnings lost during the strike provided they pay both the employer and employee share. The employee shall have the option of spreading the buy back over a six (6) month period, if permitted by the CAAT pension plan and applicable legislation. All provisions in this paragraph shall be in accordance with and subject to the CAAT pension plan and applicable legislation.
18. Any sick leave credits which an employee accrued prior to October 16, 2017 shall remain available to the returning employee.
19. Time spent by an employee on strike shall not affect the calculation of qualification for Long Term Disability benefits under Article 18.
20. Eligibility for sick leave and sick leave pay shall commence upon the official return to work date.
21. It is agreed that any outstanding obligations with regard to the continuation of benefits payable by the Union to the colleges will be discharged as agreed to by the letter dated and signed by the parties on October 12, 2017.
22. As soon as possible, but no later than 20 working days following the issuance of the award, the colleges will return to OPSEU, a prorated portion of the premiums that had been placed on deposit with the colleges based on the number of calendar days of the strike during the months of October 16, 2017 and the month in which the strike was concluded.
23. This Return-to-Work Protocol shall be retroactive to the official return to work date of November 20, 2017.

24. William Kaplan shall be seized with any issues concerning the interpretation, application, administration or alleged violation of any of the terms of this Return-to-Work Protocol, including whether a claim, grievance or complaint is resolved or otherwise captured by the terms of paragraph 1 above.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of this award.

DATED at Toronto this 20th day of December 2017.

“William Kaplan”

William Kaplan, Sole Arbitrator