

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

OPSEU

(On behalf of the College Academic Employees)

and

The College Employer Council

Before: William Kaplan
Sole Arbitrator

Appearances

For the CEC: Tim Liznick
Hicks Morley
Barristers & Solicitors

For OPSEU: Steven Barrett
Colleen Bauman
Christine Davies
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded to a mediation on September 7 & 8, 2022 and to a hearing on September 9, 2022.

Introduction

This interest arbitration was convened to resolve outstanding issues in dispute between the College Employer Council (the CEC) and the Colleges of Applied Arts and Technology – Academic (CAAT-A) bargaining unit (the union). The union represents approximately 14,000 full-time and partial-load professors, instructors, counsellors, librarians at 24 independent public colleges throughout Ontario. The previous collective agreement expired on September 30, 2021. The parties then engaged in collective bargaining. Efforts at reaching a renewal collective agreement were, unfortunately, unsuccessful, and it was ultimately agreed to refer all outstanding issues in dispute to mediation/arbitration. Meetings were held with the parties in the summer of 2022. Both parties then filed detailed mediation/arbitration briefs. A mediation took place in Toronto on September 7 & 8, 2022, and an arbitration on September 9, 2022.

In determining the outstanding issues in dispute, careful attention has been paid to both the statutory and normative interest arbitration criteria, most particularly replication: the replication of free collective bargaining. Mention must also be made of the fact that this is a Bill 124 case and that accordingly determines compensation. As noted below, both the determination of the remainder, and its allocation, has been remitted to the parties. At their request, I have not just

remained seized with the implementation of this award but also any unresolved remainder issues.

In reviewing the outstanding non-monetary issues, the CEC observed that it is well-accepted in the authorities, which it reviewed, that gradualism should govern and breakthroughs must be avoided. Notwithstanding these governing principles, the CEC asserted that many of the union's proposals were breakthroughs – particularly those dealing with workload and would never be agreed to in free collective bargaining (and were also – almost certainly – offside of Bill 124).

Other proposals, even some of those that were Bill 124 compliant, were likewise, in the CEC's submission, completely inconsistent with the replication of free collective bargaining. The CEC also urged that attention be paid to some of its proposals directed, among other things, at responding to operational and other issues that had long cried out for attention.

For its part, the union pointed out that workload was the number one priority of its membership, and that meaningfully addressing it was supported by the principle of demonstrated need: meaningful consideration of the union's legitimate and established workload concerns was long overdue. As well, the union submitted that its workload proposals were in no way contrary to Bill 124. The union also sought

substantive changes in other areas such as, for example, contracting out and the intellectual property provisions.

Notably, both the Union and the CEC presented proposals to update the Counsellor class definition. In fact, the parties were largely agreed on the need to update that definition, which has been done.

In other areas – such as EDI, and the need to address anti-Black racism and anti-Indigenous racism, to give just two examples, the parties shared values and what has been awarded attempts to reflect those values.

Along those lines, while the change to the bereavement leave provision was characterized by the CEC as a breakthrough, it is one, in my view, that is fully justified reflecting, as it does, the reality of modern Canadian life.

The collective agreement settled by this award shall consist of the expired but unamended provisions of the predecessor collective agreement and the terms of this award. It should be noted that for the most part, the changes to the collective agreement provided for in this award amend existing provisions but have been set

out in such a manner as to show those changes in context. Any CEC or union proposal not specifically addressed in this award is deemed dismissed.

Award

Wages

October 1, 2021: 1%

October 1, 2022: 1%

October 1, 2023: 1%

Retroactivity to current and former employees to be paid within thirty days of issue of this award. I note that the Colleges did implement the October 1, 2021 wage increase retroactive to that date in December, 2021.

Remainder

Both the calculation and allocation of the remainder is remitted to the parties. At the request of the parties, I remain seized to assist them as mediator/arbitrator should there be any disputes.

NEW: Bill 124 Letter of Understanding

Should Bill 124 - *Protecting a Sustainable Public Sector for Future Generations Act, 2019* be found unconstitutional by a court of competent jurisdiction or the legislation is either repealed or amended in such a way as to shorten the moderation period or increase the 1 percent restraint measures prior to the expiry

of the Collective Agreement, the parties shall meet within 60 days of the decision to negotiate a remedy, if any, for bargaining unit employees impacted by the legislative restraints. Further, the parties agree to invite Gerry Lee, Mediator to assist the parties

EDI

Article 4:03

The parties recognize a shared commitment to achieving employment equity within the college system. This, therefore, will confirm the understanding reached at negotiations between the parties that:

1. At the local level, the parties will work together to facilitate:
 - the implementation of employment systems, policies and practices, including matters relating to child care, that are non-discriminatory in nature and effect, and with specific attention to addressing anti-Black racism and anti-Indigenous racism; and
 - the implementation of practices and policies to enhance the hiring of, and transfer, promotion, training and developmental opportunities of, persons from designated groups; and
 - generating data as to the current representation and distribution of the designated groups; and
 - examination of recruitment and practices of hiring into the bargaining unit of persons from designated groups; and
 - the removal of any barriers that may exist in employment policies and the monitoring of data relative to employment equity; and
 - the attainment of appropriate representation of targeted groups identified by the Province of Ontario.
2. At the provincial level, the parties will work together to ensure that all provisions of the Agreement are non-discriminatory in nature and effect.

3. At both the provincial and local level, the parties will work together to enhance the participation of individuals from populations identified below in the day-to-day administration of the Agreement. This could include, but not be limited to, the administration of Articles 7, 9, 11, 32, 33, Appendix II and IV.

The designated groups referred to above are considered to be, for the purpose of this letter:

- Women
- Racialized People
- People with disabilities
- Indigenous People (First Nations, Inuit and Métis)
- Lesbian, Gay, Bi-Sexual, Trans, Queer and 2-Spirit (LGBTQ2S*) People
- Francophones

Article 11.02 B 2

Each WMG will be composed of eight members, with four to be appointed by the College and four appointed by the Union Local unless the College and the Union Local otherwise agree. The term of office of each member of the WMG shall be two years, commencing on April 1 in each year with four members of the WMG, two College appointees and two Union appointees, retiring on March 31 of each year. A quorum shall be comprised of four, six or eight members with equal representation from the College and Union Local.

Alternative arrangements may be made at the local level upon agreement of the Union Local and the College.

A teacher who identifies as Indigenous shall be able to bring an Indigenous Elder/Traditional Knowledge Keeper to WMG as an advisor and/or support person for the teacher.

LOU re: Costs of Attendance for Indigenous Support Person at WMG or

Grievance Meeting

The Colleges agree to bear the reasonable costs of the attendance of an Indigenous Elder / Traditional Knowledge Keeper at a WMG meeting pursuant to article 11.02

B 2 and at a grievance meeting pursuant to article 32.02.

Article 11.02 C2

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

- (i) nature of subjects to be taught, including type of program (e.g. apprenticeship, certificate, diploma, advanced diploma, degree);
- (ii) level of teaching and experience of the teacher and availability of technical support and other resource assistance;
- (iii) size and amenity of classroom, laboratory or other teaching/learning facility;
- (iv) numbers of students in class;
- (v) instructional modes, including requirements for alternate delivery;
- (vi) availability of time for the teacher's professional development;
- (vii) previously assigned schedules;
- (viii) lead time for preparation of new and/or changed schedules;
- (ix) availability of current curriculum;
- (x) students requiring accommodation;
- (xi) introduction of new technology;
- (xii) the timetabling of workload, including changes to the length of the course;
- (xiii) level of complexity and rate of change in curriculum;
- (xiv) requirements for applied research;
- (xv) required translation of materials;

(xvi) Indigenous land-based learning and/or traditional practices/customs.

Article 32.02

Failing settlement of a complaint, it shall be taken up as a grievance (if it falls within the definition under 32.11 C) in the following manner and sequence provided it is presented within seven days of the immediate supervisor's reply to the complaint.

Grievance Meeting

An employee shall present a signed grievance in writing to the College President or his/her designee setting forth the nature of the grievance, the surrounding circumstances and the remedy sought. The College President or his/her designee shall arrange a meeting within 15 days of the receipt of the grievance at which the employee, a Union Steward, and an additional representative designated by the Union Local shall be present if requested by the employee, the Union Local or the College. The College President or his/her designee may have such persons or counsel attend as the College President or his/her designee deems necessary.

An employee who identifies as Indigenous shall be able to bring an Indigenous Elder/Traditional Knowledge Keeper to the grievance meeting as an advisor and/or support person for the employee.

Response

The College President or his/her designee shall give the grievor and a Union Steward designated by the Union Local a decision in writing containing reasons supporting the decision within 15 days following the Grievance Meeting.

Article 32.03 B

Add two Indigenous arbitrators.

LOU re: Indigenous Arbitrators

The CEC and the Union shall, under the auspices of the Employee/Employer Relations Committee, jointly prepare and communicate an invitation to Indigenous arbitrators to submit their curriculum vitae for the consideration of the Parties as potential Indigenous arbitrators contemplated in the 2022 Kaplan Award. Should this undertaking produce no candidates, the parties will meet to discuss next steps and may, if either party wishes, ask William Kaplan to facilitate these discussions.

Job Classification Plans

SECTION I

CLASSIFICATION PLAN FOR PROFESSORS AND COUNSELLORS AND LIBRARIANS

FACTORS

1. APPOINTMENT FACTORS

A) Experience: Relevant Teaching/Relevant Occupational

Relevant occupational experience generally means full years of experience in a field of work related to the material to be taught or the job to be done, or to some allied aspect of it. In determining the number of years to be counted, the College hiring must avoid the extremes of counting either "years of time passed" or "years of entirely non-repetitive experience", and must make a fair assessment of an applicant's experience.

For example, an applicant who had spent some years as a sales clerk before qualifying as an engineer should not expect that sales experience to count as relevant experience if the person is being hired to teach engineering.

Part-time experience should be totalled only if it forms part of a regular program of development such as a co-operative educational program.

Double counting must be avoided. For example, if an applicant worked as a graduate assistant while pursuing an advanced degree, the person shall not be given full credit for both experience and educational time.

Similarly, relevant teaching experience means full years of teaching experience at a level comparable with the level required of the applicant. Again, double counting must be avoided for teaching experience as, for example, a graduate assistant while pursuing advanced qualifications.

The values to be given for experience are:

- First 5 years: 1 point per year
- Next 9 years: $\frac{2}{3}$ point per year
- Next 12 years: $\frac{1}{2}$ point per year

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 $1\frac{1}{2}$ 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: $1\frac{1}{2}$ points (Maximum of 4 years)
- University Degree - per year (level) completed: $1\frac{1}{2}$ 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: $1\frac{1}{2}$ 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)

C) Indigenous Knowledge

There is no single definition of “Indigenous knowledge”. For the purposes of this Classification Plan, Indigenous knowledge refers to a set of complex knowledge systems based on the worldviews of Indigenous peoples. Indigenous knowledge reflects the unique cultures, languages, governance systems, and histories of Indigenous peoples from a particular location. Indigenous knowledge is dynamic and evolves over time. It builds on the experiences of earlier generations and adapts to present conditions. First Nations, Inuit and Métis each have a distinct way of describing their knowledge. Knowledge-holders are the only people who can truly define Indigenous knowledge for their communities. [Subject to New Letter of Understanding]

The College may grant up to 10 points in recognition for Indigenous Knowledge on hiring of an applicant who is Indigenous and whose teaching and/or other assigned duties are partially or entirely related to Indigenous Ways of Knowing, Being, and Doing.

D) Computing Initial Placement

i) The minimum qualifications requirement is a count of 8 points based upon the appointment factors. Since this is the minimum requirement, a total of 8 points corresponds to the minimum rate. (This is not intended to preclude a College from hiring an individual whose qualifications and experience total less than 8 points. In such cases, however, the individual would be hired at the minimum of the scale.)

ii) Computation of the initial salary is, therefore, $A + B + C - 8$. The product is rounded to the next higher number, e.g.

A = 8 points
B = $4\frac{1}{2}$ points
C = 0

$A + B + C = 12\frac{1}{2}$ points $12\frac{1}{2} - 8 = 4\frac{1}{2} = 5$

The starting position is the corresponding step (Step 5) on the scale.

iii) No individual will have a starting salary of less than the minimum on the salary scale.

[rest of Classification Plan for Professors and Counsellors and Librarians remains unchanged]

Job Classification Plans

SECTION II

CLASSIFICATION PLAN FOR INSTRUCTORS

FACTORS

1. APPOINTMENT FACTORS

A) Experience: Relevant Teaching/Relevant Occupational

Relevant occupational experience generally means full years of experience in a field of work related to the material to be taught, or to some allied aspect of it. In determining the number of years to be counted the College hiring must avoid the extremes of counting either "years of time passed" or "years of entirely non-repetitive experience", and must make a fair assessment of an applicant's experience.

For example, an applicant who has spent some years as a sales clerk before qualifying as an engineer should not expect that sales experience to count as relevant experience if the person is being hired to teach engineering.

Part-time experience should only be totalled if it forms part of a regular program of development such as a co-operative educational program.

Double counting must be avoided. For example, if an applicant worked as a graduate assistant while pursuing an advanced degree, the person shall not be given full credit for both experience and educational time.

Similarly, relevant teaching experience means full years of teaching experience at a level comparable with the level required of the applicant. Again, double counting must be avoided for teaching experience as, for example, a graduate assistant while pursuing advanced qualifications.

The values to be given for experience are:

- First 5 years: 1 point per year
- Next 9 years: 2/3 point per year
- Next 12 years: 1/2 point per year

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)

C) Indigenous Knowledge

There is no single definition of “Indigenous knowledge”. For the purposes of this Classification Plan, Indigenous knowledge refers to a set of complex knowledge systems based on the worldviews of Indigenous peoples. Indigenous knowledge reflects the unique cultures, languages, governance systems, and histories of Indigenous peoples from a particular location. Indigenous knowledge is dynamic and evolves over time. It builds on the experiences of earlier generations and adapts to present conditions. First Nations, Inuit and Métis each have a distinct way of describing their knowledge. Knowledge-holders are the only people who can truly define Indigenous knowledge for their communities. [Subject to New Letter of Understanding]

The College may grant up to 10 points in recognition for Indigenous Knowledge on hiring of an applicant who is Indigenous and whose teaching and/or other assigned duties are partially or entirely related to Indigenous Ways of Knowing, Being, and Doing.

D) Computing Initial Placement

i) The minimum qualifications requirement is a count of 6 points based upon the appointment factors. Since this is the minimum requirement, a total of 6 points corresponds to the minimum rate. (This is not intended to preclude a College from hiring an individual whose qualifications and experience total less than 6 points. In such cases, however, the individual would be hired at the minimum of the scale.)

ii) Computation of the initial salary is, therefore, $A + B + C - 8$. The product is rounded to the next higher number, e.g.

A = 8 points
B = $4\frac{1}{2}$ points
C = 0

$A + B + C = 12\frac{1}{2}$ points $12\frac{1}{2} - 8 = 4\frac{1}{2} = 5$

The starting position is the corresponding step (Step 5) on the scale.

iii) No individual will have a starting salary of less than the minimum on the salary scale.

[rest of Classification Plan for Instructors remains unchanged]

LOU re: Indigenous Knowledge Definition

The parties recognize that the Indigenous Knowledge definition for the purposes of appointment factors in the Job Classification Plans requires respectful consultation with Indigenous Elders. The parties therefore agree to jointly identify Indigenous Elders. Either party can request the assistance of a Facilitator.

This work shall be completed within 6 months after the signing of the collective agreement. The parties also agree that whatever definition is agreed to by them will be applied retroactively to the date of hire, provided that the date of hire is on or after October 1, 2021, and will be incorporated into the collective agreement. Current faculty who are Indigenous and whose teaching and/or other assigned duties, on their hiring, were partially or entirely related to Indigenous Ways of Knowing, Being, and Doing shall have their current step re-calculated as of October 1, 2021 as outlined in Part C of the Classification Plan.

Bereavement Leave

Article 21.04

On the death of an employee's spouse as defined in the benefit booklet, parent, step-parent, child, step-child, sibling, parent-in-law, sibling-in-law, chosen family, grandparent or grandchild, an employee shall be granted leave of absence of three or more days without loss of regular salary, the duration of the leave to be at the discretion of the College.

Note: For the purposes of Article 21.04, chosen family refers to important and established non-biological kinship bonds.

It is understood that 21.02 is applicable to employees seeking bereavement leave related to the death of persons not identified in 21.04.

Article 26.06 D – Bridging Benefits

If upon termination of a contract, there is:

- 1) A written contract of future partial-load employment; or
- 2) a commitment in writing by the College and the partial-load employee to future partial-load employment, not more than 5 months after the termination of the contract, which will be confirmed in a future contract,

the employee, by paying 100% of the premiums for the benefits, may continue participation throughout the period between contracts in any group insurance plan in which that employee was participating.

Where the College is anticipating re-employment of a partial-load employee within 5 months, the College shall provide a written contract or written offer of future employment upon termination.

Any written contract or written offer from the College of future partial-load employment is conditional on the College subsequently determining there is sufficient enrolment to warrant the assignment being offered.

If an employee is re-employed within 6 months of the end of any contract, waiting periods for group insurance plans will be waived.

Article 26.09 – Statutory and College Holidays

Partial-load employees who are under contract on the last working day prior and the working day subsequent to a holiday as defined in Article 16, Holidays, shall be paid for these if they are regularly scheduled teaching days and shall have such day counted for the purposes of service pursuant to Article 26.10 C. Under contract means there is a written contract between the College and the employee. Details regarding participation, eligibility, waiting period and benefit level are as follows:

[remainder of 26.09 to be unchanged]

*[*Clarity note: The change from the 2017 to 2021 version of this article to the above versio shall become effective January 3, 2022.]*

Article 26.10 C, D, E, F, G – Partial Load

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 up to the day before the release of the 2022 Kaplan Award, and from the date of release of the 2022 Kaplan Award (but not earlier) on the basis of one month credit for each calendar month in which the professor or instructor is teaching 28 hours or more.

26.10 D

In addition to maintaining a record of a partial-load employee's job experience, the college shall keep a record of the courses that the employee has taught on or after December 20, 2017, in a part-time, partial-load or sessional capacity and the departments/schools where the partial-load employee has taught such courses. An employee may provide the college with evidence of courses that the employee has taught in a part-time, partial-load, or sessional capacity prior to December 20, 2017.

By April 30th in each year, a currently or previously employed partial-load employee must register their interest in being employed as a partial-load employee in the following academic year and the maximum number of teaching contact hours that they are prepared to teach (to a maximum of 12). This individual will be considered a registered partial-load employee for the purpose of 26.10 E. For the Fall, Winter, Spring and Summer terms of the 2021-2022 academic year and the Fall 2022 semester, partial-load employees must register no later than October 30, 2021.

Upon request, the College will make available to the Union, 4 weeks after April 30th in each year, a list of the partial-load employees who have registered in accordance with this article and the courses which the partial-load employee has taught on or after December 20, 2017, in a part-time, partial-load or sessional capacity.

26.10 E

Subject to the application of Articles 2.02 and 27.06 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, pursuant to 26.10 D in the department/school, it shall give priority in hiring to such partial-load employee if:

- (i) They are currently employed, or if they 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.

Where a school or department determines that there is a need to assign a course on a partial-load basis and a partial-load employee has priority over such a course, the school or department shall offer such employee the maximum number of teaching contact hours from amongst the courses for which they have priority but not exceeding the number of teaching contact hours that the partial load employee has indicated their preparedness to teach. Where the assignment of one or more courses is cancelled the school or department shall not be required to reassign or redistribute courses.

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.

The College shall not circumvent the priority established pursuant to this article by assigning a new course code or name to a course unless there has been a major revision of the course or curriculum.

NEW: 26.10 F

Where a partial-load employee advises the College that the employee has:

- (i) given birth to a child and has not worked for a period of up to 78 weeks from the date of birth; or

- (ii) has become a parent, not by giving birth, and has not worked for a period of up to 63 weeks from the date that the child has come into the custody, care and control of the employee for the first time;

The College will extend the period in 26.10 E i) by such period that the employee has not worked.

NEW: 26.10 G

It is understood that a partial-load employee's priority in hiring provided for in article 26.10 E shall cease to apply where the partial load employee is terminated from employment for cause, which termination is not reversed pursuant to the grievance and arbitration procedure in article 32.

Class Definition Counsellor

A Counsellor is responsible for assisting students and potential students to function effectively as learners and as individuals by helping them understand, prevent or overcome personal, social or educational problems that may hinder learning or their ability to cope with everyday living.

The Counsellor's duties may include:

- a) Developing and providing appropriate counselling programs through various modes of delivery including one-on-one and group counselling (as a non-instructional activity), to support students with mental health, personal, and/or academic issues, including:
 - developing and providing person-centred counselling support and treatment plans, both in-person and virtually;
 - providing traditional and culturally-specific counselling support and advising to Indigenous students, and building community connections with Indigenous partners;
 - maintaining clinical records in adherence to relevant legal and privacy standards;

- referring students to appropriate internal and external supports as appropriate;
 - identifying and assisting with student problems, and relationship problems among students;
- b) Interviewing individuals to explore personal or social difficulties or vocational/educational development, including:
- providing one-on-one counselling and complex case management support for students experiencing significant mental health issues;
 - providing educational/vocational information to individuals or directing them to available sources;
 - referring individuals to both internal and external service providers;
 - conducting assessments and interventions;
 - facilitating discussion/dialogue between students, faculty and administration;
 - assisting students in developing self-advocacy skills;
 - participating in pre-admission interviewing and testing, as required;
 - assisting new students in their transition to the College;
- c) Assessing and evaluating individuals to assist them in their personal, educational/vocational development;
- d) Assisting administration, faculty and staff, in a consultative role in identifying student problems, dealing with student problems, and relationship problems among students;
- e) Providing educational/vocational counselling to students or directing them to available sources;
- f) Developing and promoting student accommodation plans after assessing disabilities/abilities including:

- reviewing documentation and providing assessments and screenings when necessary;
 - referring to external partners for additional medical documentation to secure accommodation support, as appropriate;
 - working to help College employees support and understand the needs of accommodated students and to adhere to relevant legislation and College policies;
 - evaluating documentation provided in the accommodation assessment process to make recommendations to benefit students, including accommodation and access to funding options;
- g) Responding appropriately to crisis situations affecting either the mental health or academic performance of students or the broader College community;
- h) Promoting positive mental health wellness in the college and beyond;
- i) Supervising interns from postsecondary institutions on field placement/practicum;
- j) Engaging in applied research related to counselling as required by the College;
- k) Teaching as assigned.

In addition, the Counsellor may, from time to time, be called upon to contribute to other areas ancillary to the Counsellor's role, such as student recruitment and selection, student employment, liaison with community service programs and agencies, professional development and control of supplies and equipment.

Coordinator Allowance

14.03 A 3 Coordinator Allowance – Coordinators are teachers who in addition to their teaching responsibilities are required to provide academic leadership in the

coordination of courses and/or programs. Coordinators report to the academic manager who assigns their specific duties, which shall be reduced to writing prior to the acceptance of the designation, subject to changes as circumstances require. It is understood that coordinators do not have responsibility for the supervision or for the disciplining of teachers in the bargaining unit. It is not the intention of the Colleges to require employees to accept the designation of coordinator against their wishes.

Those employees who are designated as coordinators will receive an allowance equal to one or two steps on the appropriate salary schedule. Such allowance will be in addition to the individual's annual base salary.

LOU re: Workload Task Force

The parties will establish, no later than 90 days of the signing of the collective agreement a neutrally-chaired Task Force on Workload comprised of 3 members from the Union and 3 members from the Employer. The CEC will provide the 3 Union appointees with 24 workload hours per month each of release time for the period of time that the Task Force is operating. The parties will attempt to agree on a Chair within 30 days of signing the collective agreement. If the parties are unable to agree upon a Chair, William Kaplan will select a Chair by a process he directs. The Task Force is to complete its work, including a report with recommendations, by February 1, 2024. The Task Force shall discuss and examine the following issues relating to the assignment of work to full-time faculty under Article 11 and Partial-Load faculty under Article 26:

- The impact, if any, of mode of delivery on preparation, evaluation and feedback, and complementary functions
- Whether and to what extent there has been an increase in the amount of time normally spent on “normal administrative tasks”
- The impact of AODA compliance and student accommodation requirements
- The impact of language of instruction and/or student proficiency with the language of instruction
- The application of Article 11.04 to, and issues related to the workload of,

Counsellors and Librarians

- A review of the factors associated with different evaluation methods
- A review of the attributed time for preparation, for courses with a “Special A” and “Special B” designation
- A review of the workload formula and of Modified Workload Arrangements, including their application to various program and course types
- and any other matters deemed appropriate by the Neutral Chair of the Task Force.

The Task Force may engage, upon majority agreement, third party assistance respecting stakeholder surveys and statistical analysis. The costs of any third-party assistance shall be paid by the CEC. The Neutral Chair shall be paid by the CEC and OPSEU/SEFPO in equal shares.

LOU re: Multi-Mode Adaptation

Where a College directs that a section of a course be adapted for simultaneous delivery in multiple modes to the same section of students, the academic manager and the employee shall discuss the allotment of complementary function time for development either prior to, or concurrent with, the multi-modal (e.g. HyFlex) delivery. Their agreement regarding the allotment shall be recorded on the employee’s SWF.

This letter is a temporary measure pending the report of the Workload Task Force and is entirely without prejudice or precedent to the work and considerations of the Workload Task Force and neither party can rely on this LoU at negotiations (and arbitration, if any) for the renewal terms and conditions of the following collective agreement. This letter is effective for assignments commencing on and after the Winter 2023 semester.

Any issues regarding the application, interpretation or alleged violation of this Letter of Understanding, after exhausting the WMG process, shall be referred to Arbitrator Michelle Flaherty sitting as a Workload Resolution Arbitrator.

Nothing in this LoU abridges any existing rights under Article 11.

LOU re: Intellectual Property

Renew and amend as follows: The parties agree to discuss intellectual property at the EERC. This discussion will commence within thirty days following issue of this award.

LOU re: Integrity of Bargaining Unit

The parties agree to discuss the integrity of the bargaining unit at the EERC. This discussion will commence within thirty days following the issue of this award.

Housekeeping

- Remove Counsellor Class Definition LOU.
- Remove Employment Equity LOU.
- Remove Short-term Disability Plan (Joint Task Force) LOU.
- Update ad hoc adjustment in Long-Term Disability Plan LOU.
- Council to be referred to as “CEC”.
- Changes from the 2017 Kaplan awards to be implemented.
- Gender neutral language throughout.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of this award including determining and allocating the remainder should that issue not be consensually resolved.

DATED at Toronto this 23rd day of September 2022.

“William Kaplan”

William Kaplan, Sole Arbitrator

IN THE MATTER OF AN IMPLEMENTATION DISPUTE

BETWEEN:

The College Employer Counsel

and

OPSEU

Before: William Kaplan
Sole Arbitrator

Appearances

For the CEC: Tim Liznick
Hicks Morley
Barristers & Solicitors

For OPSEU: Colleen Bauman
Christine Davies
Goldblatt Partners
Barristers & Solicitors

The matter in dispute proceeded to a hearing held by Zoom on November 18, 2022.

Award

On September 23, 2022 – following a mediation/arbitration that took place on September 7, 8 & 9, 2022, I issued an award settling the terms of the collective agreement between The College Employer Council and OPSEU. The award contained the following term:

Remainder

Both the calculation and allocation of the remainder is remitted to the parties. At the request of the parties, I remain seized to assist them as mediator/arbitrator should there be any disputes.

Unfortunately, the parties were unable to agree upon the calculation of the remainder. In the result, and given the specific reservation of jurisdiction, the parties filed written submissions and the dispute then proceeded to a hearing held by Zoom on November 18, 2022. Given the passage of time, and the term of the collective agreement, there is some urgency in finalizing the calculation formula so that the available monies can be allocated to the benefit of the bargaining unit. The written submissions filed in advance, together with those made at the hearing, were sufficiently fulsome that there is no need for a full hearing on the issue; a conclusion that is, in any event, buttressed by the fact that the governing law is fully settled.

Without doubt, the leading case – correctly decided in my view – is *St. Luke's Place & ONA 2022* CanLII 51864 (Sheehan). Following a full view of the authorities (and none are to the contrary), Arbitrator Sheehan concluded that statutory benefits such as CPP, EI, WSIB – the statutory benefits at issue here – are to be included in the calculation of the remainder. Arbitrator Sheehan observed that, “such costs fall within the definition of compensation under Bill 124 ... [and this] is self-evident and without dispute.” Other cases, and there are many, not to mention well-established practices across the province, confirm this conclusion.

Accordingly, I direct the parties to include the statutory benefits in dispute– CPP, EI and WSIB for full-time employees in the calculation of the remainder – and to do so forthwith applying generally accepted methodologies so that the remainder funds can be allocated with no further delay.

Conclusion

At the request of the parties, I continue to remain seized with respect to the implementation of my initial award and this matter.

DATED at Toronto this 21st day of November 2022.

“William Kaplan”

William Kaplan, Sole Arbitrator