

ARBITRAGE en vertu de la Loi de 1995 sur les relations de travail, L. O. 1995, chap. 1

Entre

**L'ASSOCIATION DES ENSEIGNANTES ET ENSEIGNANTS
FRANCO-ONTARIENS**

ET

LE CONSEIL DES ÉCOLES PUBLIQUES DE L'EST DE L'ONTARIO

Grief individuel G16625 – Alex Ducharme Dotation: Affectation

Devant : Geneviève Debané, Arbitre

L'audience a eu lieu par Zoom le 27 mars 2026

Comparutions

L'Association des enseignantes et enseignants franco-ontariens

Me Jean-Michel Corbeil, Procureur du Syndicat

Mélanie Génier, Cadre en relations de travail;

Diana Nkenglack, Agente d'unité;

Alex Ducharme, Plaignant

Conseil des écoles publiques de l'Est de l'Ontario

Me Sophie Gagnier, Procureure de l'Employeur

Me Marie-Ève Caissy, Procureure de L'Employeur

Noémie Castonguay, Gestionnaire en ressources humaines – santé et sécurité et relations de travail, Service des ressources humaines

Fanny Courchaine, Gestionnaire en ressources humaines – dotation Service des ressources humaines

Contexte

1. Alex Ducharme, le Plaignant, est un enseignant qui a agi à titre de représentant syndical de l'École Mille Îles (« l'École ») auprès du Conseil des écoles publiques de l'Est de l'Ontario (le « Conseil »), qui est également son employeur.
2. Le 12 septembre 2025, l'Association des enseignantes et enseignants franco-ontariens (l'« AEFO ») ou le « Syndicat ») a déposé un grief au nom du Plaignant demandant qu'il soit immédiatement affecté à ses cours habituels.
3. En réponse à une demande de précision, le Syndicat allègue que l'Employeur n'a pas affecté le Plaignant à trois cours périphériques en représailles de son exercice de ses fonctions syndicales.
4. Le grief a été soumis à un arbitrage accéléré, conformément à l'article 49 de la Loi sur les relations de travail de 1995. Aucune partie ne s'est opposée à ma compétence pour trancher cette affaire. Conformément à l'entente des parties, l'audience s'est tenue en mode virtuel via Zoom.
5. Cette décision porte sur la question de savoir s'il faut fournir un avis aux tierces parties.

Demande Préliminaire

6. Au début du printemps de chaque année, les enseignants indiquent leurs préférences pédagogiques pour l'année scolaire suivante, y compris s'ils sont disposés à enseigner des cours ou tâches périphériques. Les parties conviennent que ces cours ou tâches périphériques sont convoités par les enseignants et qu'ils bénéficient d'un temps additionnel pendant la journée de travail pour se consacrer à ces tâches.
7. L'Employeur examine ensuite les choix professionnels de l'enseignant, son horaire scolaire, y compris le financement de ces postes, et affecte ces cours et tâches périphériques conformément à l'article 4.3 de la convention collective.
8. L'Employeur demande que l'avis soit donné à l'ensemble des 23 enseignants qui enseignent actuellement au palier secondaire à l'École. Selon l'Employeur, si le grief est accordé, jusqu'à trois enseignants pourraient perdre leur poste ou leurs tâches

périphériques. L'Employeur ne peut pas identifier spécifiquement les enseignants affectés, car il ignore qui sera en poste au moment où sera rendue ma décision finale dans cette affaire.

9. Le Syndicat s'oppose à la demande de l'Employeur. Il soutient que la jurisprudence ne justifie pas qu'un tiers ait le droit à un avis. Il souligne que les 23 enseignants ne sont pas directement concernés par le grief, comme en témoigne l'incapacité de l'Employeur à identifier un enseignant spécifique.

La Loi

10. L'Employeur s'appuie sur les décisions suivantes: *R. v. Ottawa (City)*, 1967 CarswellOnt 116; *Hoogendoorn v. Greening Metal Products & Screening Equipment Co.*, 1967 CarswellOnt 79; *Orillia Soldiers Memorial Hospital v. O.N.A.*, 1993 CarswellOnt 1244; *Windsor-Essex County Health Unit v. C.U.P.E., Local 543.3*, 2005 CarswellOnt 8453 and *Freeport Hospital v. O.N.A.*, 1993 CarswellOnt 5647.
11. Dans l'affaire *Orillia Soldiers Memorial Hospital c. O.N.A.* (« Orillia Soldiers »), 1993 CarswellOnt 1244, le Conseil d'arbitrage a examiné la jurisprudence aux paragraphes 9 à 14 :

9. In the majority's reasons the Supreme Court of Canada stated as follows: The doctrine can be said to begin with the decision of the Ontario Court of Appeal in *Re Bradley et al. and Ottawa Professional Firefighters Association et al.*, [1967] 2 O.R. 311. The unanimous decision of the Court was written by Laskin J.A., who upheld a decision of Hartt J., who had quashed the decision of an arbitrator who upheld promotion grievances and ordered that the successful grievors be promoted in place of a group of incumbents who had been successful in the original competition. The grounds for quashing the award were simply that none of the incumbents had been given notice and standing before the arbitrator.

10 What is particularly important for present purposes is the reasoning of Laskin J.A., which is set out on pp. 316-17 of the judgment:

The Association would be the first to contend that salary, job security and other benefits of its members rest on the collective agreement which binds the city, as well as the Association and its members, to its terms. Certain initiatives are given to the city which, although open to challenge under the grievance procedure because of allegedly

wrongful exercise, may result in gains in monetary or other benefits to some employees rather than others. It is to me ex post facto reasoning to contend that because in the end it may turn out that the city was wrong, the employees benefited by its exercise of initiative have not been adversely affected in a direct way by withdrawal of the benefits. This is the situation with respect to promotions of jobs for which there are more applicants than vacancies; this is so with respect to resistance to lay-offs where there are fewer jobs than there are employees coveting them. In such cases, just as the city must make a choice in administering the collective agreement, so must the Association decide whether it will challenge the city decision and thus range itself in fact with a different group of employees. It is my view that it is not an answer to a challenge to the city's action to say that it alone must be left to protect the position of the employees whom it has selected for preferment. A collective agreement is a unique legal institution because, despite the generality of its terms as part of a bargain made between a representative union and an employer, its existence and application result in personal benefits to employees

who are covered by it. Once it is accepted, as it must be, that the benefits running to employees may differ according to job classification or seniority ranking (to take two illustrations), and that the representative union is put to a choice between employees who competed for the same preferment as to which it will support against a different choice made by the employer, substantive employment benefits of particular employees are put in issue and they are entitled to protect them if the union will not.

It follows that they are entitled to notice of arbitration proceedings taken to test their right to continued enjoyment of the benefits. The fact that particular provision for notice is not made either in the statute or in the collective agreement is of no moment. There is a large silence in both -- and this is not limited to collective bargaining relations in fire fighting -- so far as concerns the procedure to be followed in an arbitration. The common law has been specially sensitive to deprivation of property or contractual advantages in proceedings of an adjudicative character without previous notice thereof to persons likely to be directly affected, unless there is clear statutory exclusion of such notice. In the present case, there is none.

11 In coming to this conclusion, the Court of Appeal distinguished its own earlier decision in *Re Hoogendoorn and Greening Metal Products & Screening Equipment Co. et al.*, [1967] 1 O.R. 712. In that case, the Court of Appeal decided that, since the issue before the arbitrator was merely one of the interpretation of a collective agreement which would not have a direct affect on the employee concerned, although it would ultimately lead to his discharge by the employer, the employee was not entitled to notice. The Hoogendoorn decision was appealed to the

Supreme Court of Canada, whose decision is reported at (1967) 65 D.L.R. (2d) 641. By a majority of 3 - 2, the Supreme Court allowed the appeal from the Ontario Court of Appeal, and quashed the award of the arbitrator. The majority's decision, which was written by Hall J., concludes in the following terms:

I think [the Court of Appeal] was right in the Ottawa case and wrong in Hoogendoorn's. In both cases the issue was whether an employee whose status was being affected by the hearing was entitled to be represented in his own right as distinct from being represented by the union which was taking a position adverse to his interests.

12 These decisions have received considerable acceptance among arbitrators, possibly because both Laskin J.A. and Hall J. are eminent jurists with personal knowledge of and experience in labour relations, but most likely because the decisions of both courts are related to the central question of natural justice, and the obligation of an arbitrator to apply the principles of that somewhat elastic concept to the circumstances of an adjudicative hearing between a union and an employer bound by a collective agreement. When courts purport to pronounce on the "correct" interpretation of a collective agreement, arbitrators may cheerfully ignore them. When courts pronounce on how arbitrators should carry out their quasi-judicial functions, arbitrators are bound to pay attention and comply; if they do not do so, they risk losing their jurisdiction to provide a final and binding determination of the dispute before them, thus causing the parties to waste time and resources effectively for nothing.

13 Moreover, it should be observed that both of these courts have more recently renewed their injunctions to arbitrators not to proceed to hear a grievance in the absence of notice to persons concerned, even where those persons are not covered by the collective agreement which is the subject of the arbitration: see *Canadian Union of Public Employees v. Canadian Broadcasting Corp. et al.* (1990) 38 O.A.C. 231 (Ont. C.A.); [1992] 2 S.C.R. 7 (S.C.C.).

14 While those experienced in the arbitration process will know that it is a very common practice for parties to give notice to persons arguably affected by a particular arbitration hearing, for those persons to attend at such hearings on occasion, and even for such persons to take an active part in the hearing, the reported cases are surprisingly sparse.

Décision

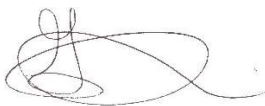
15. J'ai examiné les arguments des parties et la jurisprudence. À mon avis, la question qui se pose à moi est de savoir si la décision de l'Employeur de ne pas attribuer des cours ou tâches périphériques au Plaignant est une forme de représailles liée au fait qu'il était représentant syndical. S'il est établi que c'est bien le cas, alors les enseignants ayant bénéficié de ces affectations n'auraient jamais dû y avoir droit et auraient profité d'un comportement fautif de la part de l'Employeur. En effet, quel renseignement le titulaire pourrait-il détenir sur la question à savoir si le Plaignant a été victime de représailles de la part de l'employeur ?
16. C'est pour cette même raison que, lors d'un licenciement disciplinaire, le titulaire d'un poste n'est pas informé de l'audience et n'a pas le droit de participer. À mon avis, la situation dans cette affaire est semblable à celle des paragraphes 18 de *Orillia Soldiers* :

The place to start is *Re National Arts Centre Corporation and Public Service Alliance of Canada* (1981), 30 L.A.C. (2d) 431 (Shime). In that award, the arbitrator found that, where an employee had been demoted for disciplinary reasons and a second employee had been promoted into the position thus vacated, the second employee had no right to standing in an arbitration dealing with the grievance of the first employee alleging the discipline was not for just cause. The arbitrator disposes of the issue at page 435 in the following way:

The employer also suggested that if the union were claiming reinstatement to the job that the incumbent should be notified of the hearing. However, any person in the bargaining unit promoted as a result of the grievor's wrongful demotion would only have a contingent right to the job. That right is subject to the grievor's overriding right to claim his job in the grievance arbitration process and the acceptance of a promotion, in those circumstances, is conditional on the employer's actions being sustained at arbitration. This is not a seniority promotion case where at one point in time the grievor(s) and the incumbent(s) may have stood on equal footing with equivalent rights to have the collective agreement interpreted and applied - the rights here were never equivalent because the incumbent's rights and the promotion were subject to the overriding right of the grievor to have this matter determined by arbitration.

17. Dans cette situation, si le Plaignant est rétabli dans ses postes ou tâches périphériques, cela sera dû à la preuve apportée par le Syndicat démontrant que l'Employeur a exercé des représailles à son encontre. Tout enseignant déplacé ne disposera d'aucun droit à ces postes. En réalité, ils ont tiré profit de la mauvaise conduite de l'Employeur et auront bénéficié des avantages liés à l'occupation de ces postes pendant le déroulement du litige.
18. Lors de l'audience, l'Employeur a dit que je ne traitais que de la question de l'avis aux enseignants concernés. La participation de ces derniers ne devrait être décidée que si certains d'entre eux décident de participer à l'audience.
19. Je suis d'accord pour dire qu'un comité d'arbitrage devrait faire preuve de prudence lorsqu'il s'agit de déterminer si un avis doit être donné à une partie intéressée. Toutefois, dans cette affaire, je suis persuadé que la jurisprudence ne permettrait à aucun des 23 enseignants de participer à cette audience. Comme je l'ai indiqué plus tôt, tout titulaire à un poste n'aurait pas eu le droit d'y être. De plus, déterminer si l'une de ces personnes occupe un poste au moment où la décision finale sera rendue est une question incertaine et hypothétique.
20. En conséquence, la demande de l'Employeur est rejetée.
21. Je suis saisie.

DATÉ à Toronto ce 27 avril 2026,



Geneviève Debané,
Arbitre