

IN THE MATTER OF A WORKLOAD RESOLUTION ARBITRATION

BETWEEN

**CONFEDERATION COLLEGE
(Herein after referred to as “the College”)**

AND

**THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 732
(Herein after referred to as “OPSEU”)**

WORKLOAD COMPLAINT OF KIM DUCHARME

ARBITRATOR:

Tanja Wacyk

APPEARANCES:

FOR MS. DUCHARME:

**Ms. Ducharme; Bert Dube, Chief Steward
and Rebecca Ward, Local Vice President and
Workload Monitoring Group Member**

FOR THE COLLEGE:

**Jeannine Verdenik, Director of Human
Resources; Joe Cordeiro, Executive Dean,
Shane Strickland, Associate Dean of School of
Health and Community Services**

LOCATION OF HEARING:

Thunder Bay

DECISION

1. This decision deals with the workload complaint of Ms. Ducharme, pursuant to Article 11 of the Collective Agreement. Ms. Ducharme is one of the three faculty members teaching in Child and Youth Program.
2. The issue in this workload grievance is whether Ms. Ducharme ought to have received credit on her Winter 2015 SWF for “Program Renewal” as a complementary function.
3. Ms. Ducharme had requested the credit in order to fulfill her responsibilities pursuant to the Program Renewal undertaken by the College to meet the new Ministry of Colleges’ and Universities’ Vocational Learning Outcomes (“VLOs”). Instead, she was instructed to complete after the Winter teaching period.
4. Ms. Ducharme and OPSEU maintain she is entitled to have the work credited pursuant to Article 11.01 D 3 (ix) which states:

Hours for curriculum review or course development assigned to a teacher on an ongoing basis in lieu of teaching or in a non-teaching period, shall be attributed on an hour for hour basis and recorded on the SWF.
5. Both parties relied on a document titled “Limited Program Review” to describe the Program Review process triggered by the Program Renewal. There was no dispute Stage 1 of the Review Process includes establishing the proposed timelines and personnel. This process began in November 2014, and the two other faculty members (other than Ms. Ducharme) were assigned “Comprehensive Program Review” on their Winter SWFs. Mr. Strickland testified this involved work that “could conceivably be completed in May/June, 2015, making the work “ongoing” as referred to in 11.01 D 3 (ix). As a result, they were attributed time as complementary functions on their Winter SWFs for this work.
6. The first step undertaken by these two faculty members was the “mapping” of the VLOs and their elements of performance. This commenced in February, 2015. Mr. Strickland maintained that only after that was done would the affected faculty be in a position to complete their new Course Outline Development, which was based on this mapping.

7. This appears consistent with the document referred to above, which describes Stage 2 of the Review Process as starting with completion of the “Program Map” (Program Learning Outcomes and their Elements of the Performance) followed by the readying of the other program components, including curriculum and budget.
8. That having been said, in this instance, the Program Review will take three years to complete. While it is clear the mapping must occur first, it was not disputed that, as Ms. Ward indicated, the mapping does not all occur at once, and some elements of it can be acted upon earlier than others. Indeed, Mr. Strickland testified the mapping did not have to be completed before course outline development commenced, but that it had to be “sufficiently done”.
9. The College described the work assigned to Ms. Ducharme as Course Outline Development, and maintained it could not be assigned in the Winter Session as the mapping on which it was to be based was in the course of being completed.
10. The College further indicated it was therefore necessary for Ms. Ducharme to complete her the Course Outline Development work following the teaching period, in order for it to be in place for the Fall teaching semester.
11. The College relied on four earlier SWFs of other faculty, to demonstrate they were first assigned time for Program Renewal as complementary functions in their Winter SWFs, rather than Course Outline Development work. The College submitted they then would have performed their Course Outline Development work in the May/June period, in order to be ready for the Fall teaching semester.
12. Finally, the College maintained that because Ms. Ducharme was not assigned the work in the Winter semester, and there were no deliverables within that period, this did not constitute “ongoing work” as referenced in Article 11.01 D 3 (ix).
13. Rather, the College maintained performing the work was in keeping with Ms. Ducharme’s professional responsibilities during non-teaching periods, as referenced in Article 11.08. The College pointed out Article 11.08 required Ms. Ducharme not unreasonably withhold her consent to perform the work. Article 11.08 states:

In keeping with the professional responsibility of the teacher, non-teaching periods are used for activities initiated by the teacher and by the College as part of the parties' mutual commitment to professionalism, the quality of education and professional development.

Such activities will be undertaken by mutual consent and agreement will not be unreasonably withheld.

No SWF will be issued but such activities may be documented. Where mutually agreed activities can be appropriately performed outside the College, scheduling shall be at the discretion of the teacher, subject to the requirement to meet appropriate deadlines.

14. There is no dispute that if the College is correct, and the applicable Article is 11.08, then Articles 11.02 A 6 (a) and (b) are clear I have no jurisdiction to determine any dispute pursuant to Article 11.08.
15. Article 11.02 A 6 (a) sets out the first step of the process regarding challenges to teachers' individual workload assignments, and expressly limits challenges to differences arising from the interpretation, application, administration or alleged contravention of Articles 11.01, 11.02, or 11.09. It makes no reference to Article 11.08. [see my decisions in *Sault College*, dated September 24, 2014].
16. Further, Article 11.02 A 6 (b) provides:

Grievances arising with respect to Article 11, Workload, other than 11.01, 11.02, and 11.09 shall be handled in accordance with the grievance procedure set out in Article 32, Grievance Procedures.
17. Accordingly, the issue of whether Ms. Decharme could reasonably have withheld her consent in this instance would have to be determined in the context of the grievance procedure set out in Article 32, Grievance Procedures. I understand such a grievance has been brought in this instance.
18. That having been said, Ms. Ducharme completed the work during the non-teaching period, and now seeks to establish the work ought to have been credited on her Winter 2015 SWF.

ANALYSIS:

19. As I indicated in my decision in *Sault Ste. Marie, supra*, there is an important distinction between complementary functions performed during teaching periods and those performed in non-teaching periods. Specifically, I stated at paragraph 55:

55. The Shime Decision [May 12, 2005, Sault College], at page 5, summarized the scheme designed by the parties as set out in Article 11. He noted the teaching and non-teaching periods are “segregated”. During the teaching period, both College assignments and detailed duties and responsibilities are contemplated and recorded on the SWFs. In contrast, during the non-teaching period, mutually agreeable activities of a general educational nature are contemplated, but not recorded on SWFs.

56. Further, while both teaching and non-teaching periods contemplate complementary functions, those assigned during the teaching period are addressed in Article 11.01 F 1.

57. The complementary functions contemplated during non-teaching periods are addressed in Article 11.08. In this instance, the Union and Teachers submit Article 11.08 is not applicable, as they did not have the opportunity to consent to the work, as required by Article 11.08. However, even if some sort of express consent is required, (and I make no such finding) the absence of that consent, or an outright refusal does not preclude the applicability of the Article. The clear language of that Article focuses on work performed, or intended to be performed during the non-teaching period. ...

20. It remains my view that in most instances, complementary functions contemplated during the non-teaching periods are addressed in Article 11.08, and any disputes in that regard must be addressed pursuant to Article 32. This is, however, subject to specific language to the contrary. The issue is then, whether Article 11.01 D 3 (ix), provides specific language to the contrary.

21. In making that determination, I find the following e-mail exchange illuminating.

22. On April 8, 2015, Michelle Kostick, the Program Coordinator and Ms. Ducharme’s superior, wrote to Mr. Strickland, indicating it was becoming increasingly clear Ms. Ducharme’s input and participation in the mapping “is necessary”. She also pointed out the Department would be preparing for Course Outline Development soon and Ms. Ducharme had received no time on her Winter SWF for this process, which Ms. Kostick indicated should have occurred. Ms. Kostick concludes, “I am not sure how to rectify this but am wondering whether there is a plan to manage this oversight? (sic)”.

23. Mr. Strickland responded that given the required amount of teaching for the Program it is very difficult to download all faculty in a program for curriculum development. He indicates that given the current program teaching requirements, he does not see any alternative to having the courses revised during the spring period.

24. Ms. Kostick responded she was not asking Mr. Strickland to reopen Ms. Ducharme's SWF, but points out she is referring to the spring/summer period, as the work related to program renewal /new courses outline etc. would have needed to be captured on Ms. Ducharme's Winter SWF, but was not, "even though it was requested". Ms. Kostick points out that she and Ms. Ward, who were conducting the mapping, have time on their SWFs "which covers the May/June period and Kim does not but Kim has significant changes happening." Ms. Kostick suggests a meeting to "sort this out".

25. Following further communications with Ms. Ducharme, which need not be set out, Mr. Strickland, in an e-mail on May 20, 2015, advised her that having failed to reach agreement regarding the activities she would undertake as a part of their "mutual commitment to professionalism, the quality of education and professional development", he was directing Ms. Ducharme as follows:

I am now directing that you engage in the necessary activities required to meet the new MTCU program standards to ensure the CYC program continues to provide a high standard of quality education. Please forward the completed activities to me prior to the start of your vacation block.

26. Ms. Ducharme subsequently provided an outline of activities she maintained she was undertaking as they were associated with her professional responsibilities during non-teaching periods.

27. Mr. Strickland responded on May 22, 2015:

Thank you for your response and I am in mutual agreement that many of your proposed activities are the professional responsibility of the teacher in non-teaching periods. I see that some of the activities you have identified have particular synergies for program renewal relating to the new MTCU standards in the CYC program. These proposed activities should be focused on the program renewal process and include:

- Researching new content, best practices
- Meeting with community partners regarding best practices, collaboration opportunities, curriculum content
- Connecting with publishers
- Reviewing textbooks for consideration
- Ordering textbooks
- Comprehensive review of selected new textbooks
- Meeting with library staff regarding resources
- Updating existing courses and weekly syllabus for fall and winter courses
- Making changes to existing course outlines
- Ongoing syllabus work
- Annual program review team work, planning, discussions

In addition to your identified activities I will need you to engage in the following activities that relate to the new MTCU program standards for the CYC program. In

collaboration with the CYC coordinator and faculty:

- Review the new MTCU program standards
- Review and revise the program map to the new MTCU program standards
- Identify which CYC courses need to be revised, modified, or have new courses developed to align with the new MTCU program standards for the appropriate semester in which they should occur
- Update those course outlines that need to be revised or modified in relation to the new MTCU program standards
- Create those course outlines for new courses that may be required to meet the new MTCU program standards
- Coordinate with the Teaching and Learning Centre as necessary to seek support in program renewal process as it relates to the new MTCU program standards
- Once revisions and new course outlines have been completed place all of your fall 2015 course outlines into the COMMS system

I also mutually agree that there are some activities that may require your attention during this period for current CYC students including:

- Evaluation and review of recently completed academic year assignments/test
- Meeting with students regarding failed classes
- Marking work that has staggered in from Negahneewin students
- Creating rewrite exams for special circumstances students i.e. WSIB, Maternity leave, etc.
- Marking incoming assignments for IN students, changing grades in Banner

There are some activities that you have listed that will be important to complete as you progress through the program renewal process to avoid duplication or repetition of work including:

- Cleaning organizing and purging resources
- Cleaning up Blackboard

Please note that the CYC program coordinator and faculty will have already made progress with some of these items so it will be important to collaborate with them to ensure no duplication of activities occurs and to ensure that the correct MTCU program standards are being implemented in the correct courses. Additionally, the Teaching and Learning Centre will be an excellent resource for you as you progress through these activities and are willing to work with you. The Teaching and Learning Centre will also be able to provide you with the necessary professional development skills to use the COMMS system.

Finally, as today is May 22, 2015 some of your proposed activities may have already been or are near completion. I recommend that you organize your work in a way that recognizes what has already been completed and enables you to focus on what needs to be accomplished and submitted before your vacation block begins.

28. I have set out Mr. Strickland's response and direction in its entirety because it too, is illuminating, in that I find it demonstrates the work assigned to Ms. Ducharme goes beyond the Course Outline Development suggested by the College. Rather, I find that, as argued by OPSEU on behalf of Ms. Ducharme, the work is substantial, and clearly encompasses Program Review components. i.e. "review and **revise** the program map to the new MTCU program standards". [emphasis

added] This is consistent with Ms. Kostick's comments that Ms. Ducharme's input in the mapping was "necessary".

29. However, I find the College's approach in assigning this work to Ms. Ducharme differed not only from that taken with her colleagues within the Child and Youth Program, who received credit on their Winter 2015 SWF for Program Review work, but also from the circumstances of those Faculty members whose SWFs the College relied upon.
30. In those instances, those Faculty were also credited with time for Program Review on their Winter SWFs, although clearly some of the work was performed and carried through to the non-teaching period, in order to prepare for the Fall semester.
31. However, Ms. Ducharme was required to perform all of her Program Review work in the non-teaching period. It appears Ms. Ducharme was not assigned that work on her Winter SWF because the College felt it could not lessen her teaching load.
32. That then brings us back to whether assigning that work to Ms. Ducharme during the non-teaching period was consistent with it being a complementary function pursuant to Article 11.08. As indicated above, unless there is express language to the contrary, complementary duties contemplated during the non-teaching periods are addressed in Article 11.08
33. In this instance, I find there is such express language to the contrary.
34. Specifically, I find the parties have, in Article 11.01 D3 ix expressly addressed the circumstance in which Ms. Ducharme has found herself. Specifically, that provision refers to "curriculum review or course development assigned to a teacher on an ongoing basis in a non-teaching period. I find the phrase "on an ongoing basis" was intended to address more than the annual fine tuning and updating of courses which occurs as a complementary function. Rather, in this instance, I find it captures the curriculum review and course development Ms. Ducharme was assigned as part of the core work of the Program Review the College was obligated to undertake. I further find that work constituted an ongoing project to be completed during the non-teaching period.
35. Accordingly, the grievance is allowed.

36. In keeping with Article 11.01 D3 ix, that work shall be attributed on an hour for hour basis and recorded on Ms. Ducharme's SWF.
37. Ms. Ducharme testified she spent 10 of her vacation days performing the work. While she indicated she has kept a log, she failed to bring it to the hearing of her grievance. The College is entitled to examine that log and I make no finding at this time in that regard.
38. Rather, I refer the matter back to the parties to arrive at an appropriate remedy. If they are unable to do so, I remain seized of this matter for that purpose.

DATED AT TORONTO, THIS 28TH DAY OF OCTOBER 2015.

"Tanja Wacyk"

Workload Resolution Arbitrator