

IN THE MATTER OF AN ARBITRATION

BETWEEN:

COLLEGE OF THE ROCKIES
("the College" or "the Employer")

AND:

COLLEGE OF THE ROCKIES FACULTY ASSOCIATION
("CORFA" or "the Association")

ARBITRATOR: Vincent L. Ready and
Peter Cameron

COUNSEL: Peter Csiszar for
the Employer

Lee Whyte for
the Association

HEARING: May 1, 27 and 28, 2005
Vancouver, BC

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INTRODUCTION

This is an award to resolve a dispute between the College of the Rockies and the College of the Rockies Faculty Association about certain proposed amendments to their Collective Agreement.

The College of the Rockies is a post-secondary institution with a number of campuses in the East Kootenay. The main campus is located in Cranbrook, with regional campuses at Creston, Fernie, Golden, Invermere, Kimberley and Sparwood. Its faculty members are unionized, and belong to the College of the Rockies Faculty Association (CORFA). The Employer is a member of the Post Secondary Employers' Association (PSEA), an accredited employers' association.

The last Collective Agreement between the parties was for a term of 36 months, from April 1, 2001 to March 31, 2004. For a number of reasons, bargaining didn't start in earnest until after the expiry of the agreement.

Collective bargaining for the College takes place in two "tiers". At one level, the parties negotiate certain provisions jointly with other institutions and faculty associations. Those negotiations are referred to as Multi Institutional Discussions (MID), and the outcome is referred to as "the common agreement". The other level deals with matters deemed by the MID parties to be local

issues, and the outcome of those negotiations is known (not surprisingly) as “the local agreement”.

The MID process is governed by a protocol agreement which, in this round, was signed on May 27, 2004. The MID protocol also defines which items are to be negotiated at the MID table and which at the local tables. Sections 10 to 15 of the May 27 Protocol Agreement are relevant to the present dispute:

10. Subject to Section 12 below, the following topics are subject to negotiation only at the MID table:
 - 10.1 Salary
 - 10.2 Health & Welfare Benefits
 - 10.3 Other Compensation
 - 10.4 Topics of the Articles of 2001 Common Agreement
11. Any subjects not identified in Section 10 shall be deemed to be local issues and may be talked at local bargaining tables by either of the local parties pursuant to the provisions of the BC Labour Relations Code.
12. Notwithstanding Section 10 above, local parties may bargain compensation cost reductions or savings as an offset against compensation increases, subject to the following conditions:
 - 12.1 The result does not exceed net zero increase in the employer’s total compensation cost;
 - 12.2 The compensation increase is not applied to the Provincial Salary Grid;

- 12.3 Such compensation changes do not alter any provision of the MID Agreement
13. Any subject identified for negotiations in Section 10 shall not form any part of local bargaining between an employer and a local bargaining unit, except that the Parties may agree in writing to refer a subject identified in Section 10, in whole or in part, to local bargaining. Any subject that is excluded from MID table bargaining pursuant to Sections 10 and 11 above may be bargained locally. The principle here is that, if an issue cannot be bargained at the MID table, a local party should be able to table that issue in its local bargaining, and that an issue cannot be bargained at both the MID table and at a local table.
14. Unless otherwise agreed to by both Parties, local employers and local bargaining units shall table any local subject not identified in Section 10 on or after the date of commencement of these negotiations pursuant to Section 15.
15. Where there is a dispute between an employer and a local bargaining unit over whether a subject tabled between them is a subject within Section 10 of this Protocol, the employer or the local bargaining unit shall refer the matter to the MID Negotiating Committees before the conclusion of a tentative Agreement, for a decision that is binding upon the employer and the local bargaining unit. If the Negotiating Committees are unable to reach agreement, then the question as to whether the locally tabled subject falls within Section 10 of this Protocol will be referred to a third party that is mutually agreed to by the local parties. The decision of the third party will be final and binding. Any matter not so referred shall be deemed a local issue.

In this round of bargaining (the first since PSEA accreditation), PSEA delegated its authority for negotiations of the local agreement to the College, subject to ratification of the result by the employers' association.

The MID negotiations resulted in a memorandum on March 18, 2005. The memorandum was subject to ratification by each local employer and faculty association (and by the PSEA). The College and CORFA each ratified it. Included in the memorandum was a section entitled Implementation and Transition Matters:

Where the parties at an institution fail to reach agreement on local matters, either party may refer the difference within 40 days of ratification by the parties to Vince Ready and Peter Cameron who will have the authority to render a binding decision. If the decision supports a change to the collective agreement, the parties must incorporate the change into the agreement.

In resolving any difference referred to them under this provision, Vince Ready and Peter Cameron shall have all the authority of arbitrators under the Labour Relations Code and all the authority expressed or implied by this provision. They may determine their practice and procedure, which may be different from institution to institution.

The parties brought the differences, set out and adjudicated below, to us pursuant to this provision of the MID agreement.

The description of the issues and the positions of the parties include excerpts, in some cases lengthy, from the submissions of the parties. For reasons of length, this award does not include the entire written text (nor a detailed recitation of the oral evidence at the hearing). All submissions, exhibits and supplementary material were considered in rendering the award.

ISSUE 1 – ASSOCIATION MEMBERSHIP (CORFA PROPOSAL)

Issue

CORFA proposes to amend Article 3.1, with the effect of including in the bargaining unit (a) “the E-Learning Specialist and Educational Advisors”, and (b) “the Fire Fighter Training Program Coordinator or similar position”. The College agrees that the “E-Learning Specialist and Educational Advisors” should be included, but objects to the inclusion of the “Fire Fighter Training Program Coordinator or similar position” on the basis that “no such position exists within the College”.

Article 3.1 currently reads:

3.1 Association Membership

The College recognizes the Association as the exclusive bargaining agent for all Instructors, Librarians, Counsellors, First Nations Coordinator, Coordinator Learning Resources, Learning Specialist, and Disability Services Coordinator employed by the College except those specifically excluded from the bargaining unit as per clause 2.2.6.

Submission of CORFU

The Union submits:

The addition of 'Fire Fighting Training Program Coordinator or similar position' is intended to address a longstanding dispute regarding the Employer's failure to include the Coordinator of the Fire Fighting Training Program in the Association's bargaining unit.

In March 2004 the College posted, as a contract position, a part-time (17.5 hours per week), term certain (March 23 to August 27, 2004) Fire Services Program Coordinator, Fire Services Training Program (Tab 2). In our submission the Coordinator of the Fire Services Training Program should be a bargaining unit position, not an exempt contract position.

CORFA submits a copy of an award by Stephen Kelleher (College of the Rockies and College of the Rockies Faculty Association, unreported, June 22, 1998). In the cited portion of the award, the arbitrator sets out the Employer's testimony about the distinction between courses that are part of the "program profile" (and thus bargaining unit work), and contract courses. The latter are not regarded by the Employer as part of the work of bargaining unit employees.

The Association also refers to a Letter of Understanding (Re: Courses Offered Through Institutes or Community Development), which reads in part:

The parties agree that if College of the Rockies credit is granted to a student of a contract training course,

during that course, or within two (2) months of the completion of the course, the instructional assignment for that contract training course will be considered bargaining unit work.

Finally, CORFA submits various documents that describe or refer to the Fire Training Certificate Program, and submits that “these documents support our submission that the duties and responsibilities of employees working in the Fire Training Certificate Program fall within the scope of the Association’s bargaining unit”.

Submission of the College

The Employer describes the Fire Training Certificate Program as follows:

This is a 22 week certificate program which prepares graduates for entry level emergency services work (including firefighting).

The fire training certificate program is delivered through contract between the College and the City of Cranbrook ... The current contract runs through to August 2009. The College pays a flat fee to the City of Cranbrook to provide fire fighting specialists who are employed by the City to provide the required facilities, equipment and necessary staffing (instructors and coordinator).

This is a cost recovery program where the tuition paid by students funds and supports the program. Of the tuition paid, 70% is paid to the City of Cranbrook to provide the necessary facilities, equipment and staffing. The balance is used by the College for accreditation purposes, quality assurance, marketing and general administration ... The City of Cranbrook employs a Coordinator who coordinates the provision

of the facilities, equipment and instruction by other City employees.

The College argues that “it is critical that the City continue to employ not only the instructors within the program (not being claimed by CORFA) but also the Coordinator” because:

The City’s risk management plan requires that their employees be responsible for City equipment used in the program;

The City would not agree to have a College employed Coordinator to oversee the work of its employees;

The Coordinator employed by the City hires and evaluates the instructors utilized in the program (this is not a function within the parameters of College Faculty Coordinators); [and]

The program would not be effective, nor viable, without a City employed Coordinator.

In conclusion, the Employer says that inclusion of the “Fire Fighting Training Program Coordinator or similar position” would be “inconsistent with the way in which such partnered cost recovery programs have been offered and delivered in the past”.

DECISION RE ISSUE 1 – ASSOCIATION MEMBERSHIP (CORFA PROPOSAL)

Article 3.1 should be amended to include “E-Learning Specialist and Educational Advisors”, and it is so awarded.

The evidence discloses that the College does not employ a Fire Fighting Training Program Coordinator or an employee in a similar position. As the program is now delivered, it will not employ a person in such a position until at least August or September, 2009. Consequently, Article 3.1 should not be amended to include a reference to that position. We therefore decline to award that change.

ISSUE 2 – DUTY WEEK FOR TRADES (CORFA PROPOSAL)

Issue

CORFA proposes to amend Article 5.2.2.2 to provide a four-day duty week for employees in the Trades department. The College opposes this.

Article 5.2.2.2 currently reads:

This duty week normally consists of five (5) consecutive duty days, each of which shall constitute an average of seven (7) hours of duty (exclusive of meal breaks). For a regular employee, the duty week will normally be Monday to Friday. A regular instructor may be assigned duties on either a Saturday or a Sunday, but not on both. Unless mutually agreed, a regular employee shall not be assigned duties to either a Saturday or Sunday if another qualified employee is available.

As proposed by CORFA, it would read:

The normal duty week consists of five (5) consecutive duty days, Monday to Friday, and an average of seven (7) hours of duty each day (exclusive of meal breaks). For employees in Trades programs (except for indentured Apprenticeship Programs and Culinary Arts Program) the normal duty week consists of four (4) consecutive duty days, either Monday to Thursday or Tuesday to Friday, and an average of eight and three-quarter (8-3/4) hours of duty each day (exclusive of meal breaks).

A regular instructor may be assigned duties on either a Saturday or a Sunday, but not on both. Unless mutually agreed, a regular employee shall not be assigned duties on either a Saturday or Sunday if another qualified employee is available.

Submission of CORFU

CORFA says that some employees in the Trades Department are currently on a four day week, while others are on a five day week. The Association says that this is unfair, and that “inequitable treatment leads to employee discontent and potential grievances”.

The Association provides the following background:

Prior to 2001 instructors in the trades programs worked a four (4) day week. All trades went back to a five (5) day work week in September 2001. Now, some of the trades programs (mechanics & heavy duty mechanics) are working a four (4) day week (one program runs Monday to Thursday, one program runs Tuesday to Friday). Most of the evening shift programs are currently running on a four (4) day work week.

Some trades programs run on a four day work week now, while other programs do not. Mechanics /Heavy

Duty are currently on a four day work week while Welding and Autobody have not been allowed to follow the same pattern.

In addition to its primary concern about fairness, CORFA's arguments in favour of the proposed change are as follows:

The College has limited equipment and space. A four day work week would allow each program to have one (1) day with the shops to themselves. If two programs overlap then students would be visible in the shops five days a week.

Trades programs in other post-secondary institutions operate on a four (4) day work week. For example, the trades instructors at Selkirk College and University College of the Cariboo have a four-day duty week. The Port Alberni campus of North Island College run their 27 hours of contact time over 4 days to better accommodate student needs.

Industry and students prefer a four (4) day work week; it resembles the standard work week in industry – four 12-hour days.

Students and employers like the extra day that allows students to be available for employment and to work part-time to afford the program.

Submission of the College

The college rejects the proposal for the change to a four day 'normal duty week' for trades: "The College must be able to meet the educational and operational needs that arise from time to time in the trades' area. There may

be times when a 4 day duty week may be appropriate and manageable and other times such a duty week arrangement may not be appropriate.”

The College provides the following background:

There are nine trades program areas within the College ...Approximately eight or nine years ago, Collision Repair, Automotive, Heavy Duty Mechanics, Welding and Carpentry/Joinery went on a four consecutive day duty week. Approximately four years ago, a review was done on the program areas which were on a four day duty week as the College had been hearing a number of concerns related to those areas. One of the consequences of a four day duty week was that the students who missed one day of the program missed more instruction than on a five day week. In addition, the four day duty week was difficult to administer.

Effective September 2001, all of the day trades program areas reverted to a five consecutive day duty week. The welding trades program area had a night program at that time which remained on the four day duty week. The automotive night trades program also remained on a four day duty week for the last two years. The automotive nights program is not being offered in the 2005/2006 year.

In 2004/2005, the Pre-apprenticeship Training Programs in the automotive area (day and nights), and the heavy duty mechanics day program went to a four day duty week for reasons related to the availability of facilities. Since there were multiple apprenticeship and entry level classes being provided at the same time, and given that there was only one shop available, space needed to be freed up to be able to effectively utilize the facilities available for these programs. For 2005/2006 these programs are reverting to a five day duty week as a new scheduling process has been developed which enables the College to create a more equitable scheduling system which better utilizes the available facilities. This new scheduling system brings

greater order to scheduling in the trades area. It also enables the College to better utilize the facilities available for these programs.

In the future, a new building is being built which will include facilities for the automotive and heavy duty mechanics programs. The availability of this new facility will enable the College to even better utilize its facilities within a five day duty week schedule.

The College's argument against changing the normal duty week for trades is as follows:

The College submits that the right to determine the duty week required of instructors is a fundamental management right, and would not, under any circumstances, be bargained away by the College. This fundamental management right needs to be maintained to enable the College to meet student needs and educational outcomes that may arise from time to time. Further, the College must be able to determine the appropriate duty week for trades programs that may arise from time to time to best utilize its available facilities as well as to meet the educational needs and outcomes related to each of the programs. It is essential that the College have the flexibility to meet new and future circumstances and opportunities that may arise in the trades area.

In addition to all of the above, having trades instructors on a five day duty week gives the College a greater ability to have them fully participate in College affairs, given that they are on campus for the full normal duty week. Additionally, the College is able to better distribute the duties of trades instructors in a five duty day week system.

DECISION RE ISSUE 2 – DUTY WEEK FOR TRADES (CORFA PROPOSAL)

It is obvious from the fact of the Association's proposal that the four day week is preferred by most of the faculty in the trades programs. The Colleges' most persuasive objections are practical ones – including operational concerns and educational needs. We believe that the best accommodation of the two perspectives would be to add the following language to Article 5.2.2.2:

Where practical with respect to facility utilization, administration, and educational needs and outcomes, the College will consider requests from employees in trades programs for a four day duty week.

It is so awarded.

ISSUE 3 – NON-INSTRUCTIONAL DAYS (CORFA PROPOSAL)Issue

CORFA proposes increasing the number of non-instructional days from 10 to 15, by amending Articles 5.2.3.1. The Association also proposes amending Article 5.7.6 to decrease the number of contact hours from 986 to 958, which the Association says is consequential to the increase in non-instructional days. The Employer opposes both changes.

Articles 5.2.3.1 and 5.7.6 currently read:

5.2.3.1 Regular Employees

Regular employees in all programs, including Vocational programs, shall be entitled to at least ten (10) non-instructional duty days per year.

5.7.6 Upon consultation by the employee with his/her supervisor, and consistent with the duties and responsibilities as per Article 5.1, assigned instruction for vocational program instructors shall not exceed 986 (nine hundred and eighty-six) contact hours per duty year.

Submission of CORFA

CORFA says “instructors in University Studies and Career Technical Programs (whose workloads are based on 15 week semesters) already receive at least 15 non-instructional (duty) days. The proposed increase largely affects instructors in vocational programs”. CORFA sets out the reasons for seeking the increase for those employees in some detail by program area for English Language Training, Applied Business Technology, Culinary Arts, Trades, Child Youth and Family Studies, Practical Nursing, and Resident Care/Home Support Attendant.

CORFA concludes with a summary of cost implications as follows:

Based on our analysis of the Yearly Leave Plans and consultation with a number of faculty in the different programs, our proposal to increase non-instructional

duty days will involve minimal cost to the Employer. It will involve no additional cost for instructors in the English Language Training Program. Faculty in the Culinary Arts and Applied Business Technology Programs believe that within the program, it is possible to implement the increase without any cost. For example: in ABT start on-line classes a few days later; when BUAD students are taking exams etc., classes can combine. Other options can be worked out in program meetings. The cook training instructors can be creative as well, to allow one instructor at a time to do what needs to be done.

At most, we estimate that the maximum cost of having five more non-instructional days would be just over \$ 3,000.00, which is astoundingly less than the \$76,000.00 suggested by the Employer on May 1st. This is using the \$250.85 per day figure that the Employer provided. There could be 12 days that might require a regular person to be backfilled; however, if the individuals in those areas worked together like other areas plan to do, this number could be less.

Submission of the College

The College begins by pointing out that instructors are entitled under the collective agreement to 4 weeks of professional development time, 8.8 weeks of vacation and 2 weeks of non-instructional duty. The College says that, “when these entitlements are taken off a 52 week year, 37.2 weeks remain in which an instructor can be assigned duty”.

The College then goes on to describe a number of programs that, the College says, “require an instructor to be available for the full 37.2 duty weeks”. The list includes Licensed Practical Nursing; English Language Training; Applied Business Technology; Early Childhood Education; Human

Service Worker; Adult Basic Education (Self Paced); Dental Assistant; Adventure Tourism – Business Operations; and Mountain Activities and Skills Training. The College also specifically mentions the requirement for replacement costs in the Trades Area, and comments that:

All of the above programs where instructors teach a full 37.2 week duty year would result in a significant expense to the College if an additional week of non-instructional duty time was required to be given to instructors....

The College concludes by contending that the financial cost is “outside the mandate of the College to agree to, and outside the ability of this Arbitration Board to award”.

DECISION RE ISSUE 3 – NON-INSTRUCTIONAL DAYS (CORFA PROPOSAL)

The Protocol Agreement, quoted above, is binding on both parties and therefore on this arbitration board. It provides, in Section 10, that salary, health and welfare benefits, and “other compensation” matters are “subject to negotiation only at the MID table” (although another provision permits, subject to certain conditions, local parties to make “net zero” changes within the compensation package). For even greater clarity, Section 13 of the Protocol Agreement provides that “an issue cannot be bargained at both the MID table and at a local table”.

The position of CORFA, in effect, is that the \$3,000 cost is so marginal that the predominant characteristic of the proposal is non-compensational. (As noted in the above quote from the College's submission, the employer contends that the cost would be significant.). Assuming – without deciding – that a relatively minimal increase in compensation does not preclude this board from making an award in favour of CORFA's position, we still need to be persuaded that value of the proposed decrease in instructional time is in fact a relatively minimal amount. CORFA's approach has been to show how the College could grant the additional days of non-instructional time without incurring the cost of replacing the faculty member. However, whether or not the faculty member is replaced, there would be an increase in the cost per unit of instructional time because the same cost of total compensation is spread over a smaller number of instructional hours. In order to agree with CORFA's position, we would need to be confident, based on the evidence, that those instructional hours had no instructional value. We do not believe that we are in a position to reach that conclusion.

That does not mean we have reached a conclusion on the merits of the Faculty Association's position in any other context. We have concluded only that the change sought by CORFA is not a local bargaining matter under the MID Protocol. Accordingly, we do not award it.

ISSUE 4 – ENGLISH LANGUAGE TRAINING LECTURE HOURS (CORFA PROPOSAL)

Issue

CORFA proposes reducing the maximum hours of assigned lecture time in ESL from 22.5 hours to 20 hours. The College opposes the reduction.

Article 5.7.3 currently reads:

English Language Training Instructors will not be assigned more than twenty-two and a half (22.5) hours of lecture time as defined in Article 5.7.2 (a) per week averaged over the assigned duty period. Other Vocational Instructors will not be assigned more than eighteen (18) hours of lecture time as defined in Article 5.7.2 (a) per week over the assigned duty period.

As proposed, the language would be revised to replace “twenty-two and a half (22.5) hours” with “twenty (20) hours”.

Submission of CORFA

CORFA says that, since the negotiation of the 2001/04 Collective Agreement, there have been changes in the ELT program, in the courses that are delivered and in the amount of hours that a full time instructor teaches:

In April 2002, at the time that Article 5.7.3 became part of the collective agreement, the 25 contact hours for ELT instructors (Article 5.7.4(c)) consisted of 22.5 hours of lecture time (5.7.2(a)) and 2.5 hours in an office setting dealing with individual students

(5.7.2(e)). Assigned instruction in an office setting does not now occur.

The proposed change from “22.5 hours of lecture time” to “20 hours” is intended to address the changes in the mode of delivering courses in the ELT program. This is not a cost item, as instructors will continue to work 25 contact hours. The norm for all other vocational instructors is 18 hours of lecture time – 2 hours less than what is being proposed for ELT instructors. The proposed change is consistent with current practice and will limit the Employer to assigning 20 hours of lecture-type instruction. Other modes of student instruction that do not require as much preparation or marking, such as lab work or tutorials, can be used instead of lecture-type instruction. Schedules for ELT instructors will continue to show 25 hours of student contact, but the breakdown in work will show 20 hours of lecture time and 5 hours of other student instruction.

CORFA provided the actual schedules for the two regular full-time instructors in the ELT Program and the ELT timetable for Spring 2005. These indicate that the ELT instructors are already working a schedule consistent with the Association’s proposal.

Submission of the College

The College says that it was only in collective bargaining that it the College discovered that the ESL instructors “had taken upon themselves to provide less than 22.5 lecture hours to the students out of the 25 contact hours”. The College contends that:

...it is inappropriate to support a bargaining proposal of this nature by reference to a practice engaged in by the instructors in this program which was self-imposed, unknown to the Employer, and contrary to the expectations of the Employer for these instructors. It is the College's further position that it is imperative that these instructors provide 22.5 lecture hours to these students. These students look to the College to provide them the full available lecture hours that the College can provide. The importance of this is indicated by the fact that student satisfaction has eroded over the last two years by approximately 25 percent ... Anecdotal statements provided by students in the evaluation of the instruction provided included concerns that they were not getting enough contact time with the instructor. The College is entitled to expect instructors to provide 22.5 lecture hours of instruction in this program and not any less...

We submit that this is a significant cost item, notwithstanding the Union's argument presented to the College on February 27, 2005 that this was not a cost item as the instructors were already providing only 20 hours of lecture time to students.

The English language training instruction has become more and more competitive between institutions. The College does not want to erode or lose market share in this competitive environment. Therefore the College must maintain the flexibility to be able to have these instructors provide 22.5 hours of lecture time within this program.

DECISION RE ISSUE 4 – ENGLISH LANGUAGE TRAINING LECTURE HOURS (CORFA PROPOSAL)

The proposed change in the Collective Agreement language does not appear to be a compensation increase, as it doesn't reduce the contact hours (which are, unambiguously, working hours). The actual impact of the proposed change, therefore, would be to endorse a pedagogical judgement of the faculty

to reduce lecture time and to provide student support in another contact setting.

The College says it was unaware the practice and disapproves of it. Whether or not the faculty is correct in its judgment, there are established channels within the collegial model to determine such matters. This arbitration board does not believe that the present process is the appropriate vehicle to confirm (or not) the judgment of the ESL faculty.

ISSUE 5 – PROPOSAL FOR A NEW LETTER OF UNDERSTANDING – ADULT BASIC EDUCATION SEMESTERIZED INSTRUCTION (CORFA PROPOSAL)

Issue

CORFA proposes to add a Letter of Understanding that would read:

The parties agree to jointly seek the approval of EDCO [the College's Educational Council] to increase by two (2) hours per week, the instructional hours for all semestered ABE courses at the first EDCO meeting after the ratification of this collective agreement. Following approval of the increased hours, a full teaching load for a semestered instructor shall be three (3) eight (8) hour courses or two (2) eight (8) hour courses plus additional lab sections for a total of up to 24 contact hours. Depending on the course timetables for each semester, the 24 contact hours may be averaged over the duty year.

Submission of CORFA

In its submission, CORFA set out various reasons why its proposal would be beneficial to the students and the college. CORFA says that:

Access Education (ABE) students typically require more support than other college students. It is well documented that ABE students tend to have been unsuccessful in past educational experiences, lack confidence in their ability to learn, require strategies for learning success, and face a myriad of personal challenges (including learning disabilities).

If ABE students are not successful, the impact of their failure is felt throughout the college. ABE students make up a significant proportion of the College's FTE's and most enter ABE with the hope of continuing on to other programs at the College...

ABE instructors consistently report that the current structure makes courses rushed. There is constant pressure to keep the course moving along in order to meet the articulated outcomes, and many students get left behind. Instructors favour increasing the hours per course to 120 (8 hours per week x 15 weeks). This will give them the option to offer additional support to the entire class, small groups, or individuals. They believe that additional instructional time will enable more students to be more successful.

Currently, most ABE instructors are assigned to a combination of semestered courses and directed study responsibilities that total 25 hours of contact. Semestered students have no designated opportunities to access their instructors beyond their 6 hours/week of class time. Semestered students regularly express their need for additional opportunities to work with their instructors. Some access their instructors during Directed Studies time, thus disadvantaging the registered Directed Studies students who are forced to share their instructor with the semestered students.

The Directed Study program is often the first stop for ABE students, and in general, students in the program require high levels of support. They benefit from the opportunity to develop a rapport with their instructor. Six instructors were assigned to the Directed Study program in the winter of 2005, each on a part time basis (some for 3, 7, 10 hours per week). Students are exposed to a steady stream of instructors and it is almost impossible for a rapport to develop. Because of the varied backgrounds of the assigned instructors, it is quite possible that no English instructor will be available for days in the Directed Studies program. (This problem may become critical in the Winter of 2006 unless careful thought is given to teaching assignments). (See Tab 8, Staffing and Costing Calculations.)

The faculty proposal will improve the quality of our ABE programs. Increased semestered ABE course hours will enable more students to successfully complete their courses. They will have the expanded instructor support and access that they deserve. In Directed Study ABE, having fewer instructors with a more consistent presence will allow instructors to get to know students better and to assist them with their challenges. Students will have better chances for success in their courses

CORFA also presented evidence indicating that ABE students at COTR get less instruction time than those in many other institutions.

CORFA deals with the cost implications of its proposal as follows:

Should EDCO approve increasing the instructional hours in ABE semestered classes by two hours/week, our proposal could be implemented at very little if any cost if the College committed to restoring their ABE staffing levels (as indicated by Faculty contact hours assigned to instruction of ABE programming in

Cranbrook) to 2001-2002 levels (taking into account the changes that were required because of IBT cuts in 2002.)

Until 2004-05, the Directed Studies classroom in Cranbrook offered 25 hours/week of programming (5 mornings and 3 afternoons). In 2004-05 this was increased to over 38 hours/week (5 mornings, 4 afternoons and 3 evenings). We propose to offer either 36 hr/wk (5 mornings, 4 afternoons and 3 evenings) or 30 hours (5 mornings, 3 afternoons, and 2 evenings) of Directed Study programming in conjunction with additional semestered class time.

Faculty have provided examples of possible staffing loads based on 2004-05 offerings, known commitments of current ABE program instructors who work in other areas of the College, and the commitment of the College to offer 1 BCCampus course from Cranbrook each semester. (Tab 8, Staffing and Costing Calculations). We believe these demonstrate, when considered with evidence of erosion of ABE offerings, that our proposal can be implemented at minimal or no cost should EDCO approve a change in the length of semestered ABE courses.

Submission of the College

The submission of the College is:

Currently the maximum student contact hours for instructors in the semesterized Adult Basic Education area is 25 hours in accordance with the provisions of Article 5.7.4 c). The maximum number of lecture time for vocational instructors is 18 hours as provided for in Article 5.7.3. Therefore, a vocational instructor can be assigned 25 hours of student contact time, 18 of which can be lecture time.

The current semesterized Adult Basic Education courses consist of 6 hours per week which enables a

vocational instructor in this area to be assigned three 6 hour courses per week, given that the maximum lecture hours is 18 hours per week.

Article 5.7.2 defines vocational student contact hours. This means that instructors can be assigned a further 7 hours per week to perform any of the types of duties identified in Article 5.7.2. The most common duty for semesterized Adult Basic Education vocational instructors is to provide self-paced or directive student instruction to students as contemplated in Article 5.7.2 d).

The Union seeks in this proposal something that is not a proper topic for collective bargaining. CORFA seeks to have the College seek approval from the Educational Council to increase the hours of the semesterized Adult Basic Education courses from 6 hours per week to 8 hours per week and have such instructors teach three such courses per week, and to reduce the total number of student contact hours from 25 to 24.

The College strongly opposes this proposal on a number of bases. Firstly, the College submits that this is not an appropriate collective bargaining issue. It is up to the College to decide the nature of the programs that it wishes to deliver. It is not appropriate to submit to collective bargaining the hour duration of any particular course. That is a fundamental management right which must be retained by any institution if it is to provide the educational services it has been created to provide.

In any event, the College does not feel that there is any need to increase the number of hours for the semesterized Adult Basic Education courses from 6 to 8 hours.

This proposal would have a significant cost impact on the College and is thus outside the mandate of the College to agree to and outside the mandate of this Arbitration Board to award.

The cost implications flow from the following. CORFA's position would reduce the number of student contact hours from 25 to 24. This would mean that the

additional hours of student contact time that was available to be assigned to all vocational instructors would thus be lost and would need to be replaced where necessary. Secondly, as there is no need to have 8 hour semesterized Adult Basic Education courses, the two additional hours would be superfluous to the needs for these courses as determined by the College. Therefore, an additional 6 hours per instructor would not be available for the type of duties identified in Article 5.7.2. These hours would have to be replaced, which would amount to a significant cost to the College and once again, outside the College's mandate to agree to.

It is submitted that it is inappropriate for CORFA to attempt to force the College to run a program a particular way. It is one thing to put forward a proposal on workload and what a workload should be for a particular category of instructor, but it is most unusual to try to change the nature and scope of a course(s) or a semester. We submit that this is especially the case in a situation where the College strongly feels that 6 hour courses in semesterized Adult Basic Education is sufficient for the purposes of the educational program desired to be delivered by the College.

The College is willing to consider a proposal which contemplates 24 hours of instruction where the instructor would provide four 6 hour courses per week in the semesterized Adult Basic Education area. The total student contact hours would be reduced from 25 to 24.

DECISION RE ISSUE 5 – PROPOSAL FOR A NEW LETTER OF UNDERSTANDING – ADULT BASIC EDUCATION SEMESTERIZED INSTRUCTION (CORFA PROPOSAL)

It is not inappropriate for either party to raise an issue in collective bargaining that could also be the subject of a decision by the Educational Council. However, it is not at all clear that that it is appropriate to take the

same issue to impasse. The effect of the award sought by CORFA would be to bind a party (in this case the College) to take a position at the Educational Council contrary to its own educational judgement. The board declines to make such an award.

ISSUE 6 – UNIVERSITY STUDIES AND CAREER TECHNICAL PREPARATION HOURS PER WEEK (COLLEGE PROPOSAL)

Issue

The College proposes making a “pilot letter of understanding” into an “ongoing letter of understanding”. The letter of understanding would continue an alternate workload model:

The parties agree to a voluntary alternative to the five section, three preparation workload model for University Studies/Career Technical instructors. Upon mutual agreement between the Instructor and the Dean/delegate, an Instructor will be considered to have a full teaching load if s/he either:

1. prepares up to twelve (12) distinctly different lecture-form contact hours of instruction per week for University Studies and/or Career Technology lecture courses in any one semester, to a maximum weekly contact of 15 hours.

Or

2. prepares up to twelve (12) distinctly different contact hours per week, to a maximum weekly contact of 12 hours.

The following conditions must apply:

- The Instructor must have at least three (3) years of post-secondary teaching experience;
- The Instructor must have had less than one hundred (100) students in the previous semester and is anticipated to have less than one hundred (100) students in the current semester;
- The Instructor's workload in the current semester must contain no more than three (3) distinctly different lecture-form contact hours of instruction per week in courses s/he has not previously taught.

CORFA opposes the proposal, at least with respect to the inclusion of option 1.

Submission of the College

The College submits:

The College submits that the pilot Letter of Understanding worked in an acceptable manner. The fundamental essential element embodied in the Letter of Understanding is that the alternative to the five section, three preparation workload model is completely voluntary and not mandatory in any way. Not only is the alternative to the five section, three preparation workload model voluntary, there are a number of conditions which must apply for the implementation of the alternative. The three conditions are set out at the bottom of the Letter of Understanding.

It is the view of the College that this proposal imposes no mandatory obligations on any instructor. However, its implementation can result in significant benefits to individual instructors. The potential benefits to

instructors stem from the fact that the current limitations in the Collective Agreement (without the Letter of Understanding) limits instructors to a five section, three preparation workload model as opposed to a potential five section/four preparation or four section/four preparation alternative model under the Letter of Understanding. Individual instructors have the qualifications to teach certain courses. There are a limited number of courses available within the institution for instructors to teach. The availability of the potential alternatives in the Letter of Understanding may enable certain instructors to have a greater FTE assignment than he/she would in a five section/three preparation workload model. This in fact has happened in the application of the pilot Letter of Understanding. There have been instructors who have been able to have an increased FTE assignment by taking advantage of the alternative that was available in the pilot Letter of Understanding...

The College's position is that CORFA either accepts the Letter of Understanding as written and had existed in the pilot Letter of Understanding with both alternative models intact, or the College will withdraw this proposal in its entirety.

Submission of CORFA

The submission of CORFA:

Article 5.6.4.1 currently provides for "nine (9) distinctly different lecture-form contact hours of instruction per week for University Studies and/or Career/Technology lecture courses." The Association is opposed to a variation that provides for "twelve (12) distinctly different lecture-form contact hours", i.e., four different "preps", within a maximum of 15 contact hours per week. Such a variation would increase an existing workload, for which faculty members were seeking a reduction in this round of bargaining but which the Association was unable to pursue because

of the compensation mandate prescribed by the Provincial Government.

Harry Keller, an instructor in the Business Administration Program, participated in the original pilot project, testing a workload involving 5 sections and 4 “preps” (“5x4”). He had over thirty years experience and the courses he taught were not new to him. He found the 5x4 alternative to be an onerous workload.

The 5x4 workload is not in the best interest of the students or the instructors who are doing it. Notwithstanding the provision for “mutual agreement”, instructors when asked to do it would feel pressured by a Dean to assume an excessive workload to keep a full-time position, if it was suggested that the only other alternative was a reduction to an 80% part-time employee.

The option of 4 sections, 4 “preps”, as an alternative to 5 sections and 3 “preps”, is still high when compared to the workload in other colleges, but would be acceptable.

DECISION RE ISSUE 6 – UNIVERSITY STUDIES AND CAREER TECHNICAL PREPARATION HOURS PER WEEK (COLLEGE PROPOSAL)

There is validity in the Association’s concern that there could be pressure on an individual faculty member to accept a workload model despite personal misgivings. At the same time, there may be other circumstances where the Instructor had a truly voluntary preference for the “5x4” model. We believe that the Association’s concerns can be addressed by adding another bullet under the other conditions that must apply, and the following is awarded:

Option 1 is subject to CORFA’s agreement, which must be obtained before seeking agreement of the

Instructor, but CORFA's agreement must not be withheld unreasonably.

ISSUE 7 – SALARY SCALE FOR AUXILIARY FACULTY

Issue

The parties do not agree on what increase, if any, should be applied to the Auxiliary Faculty salary. In their written submissions and at the hearing, the parties did not engage extensively on the issue. However, the nature of the difference between them is familiar, and it has arisen at a number of institutions in the sector. There is a detailed discussion of the general background of the issue in Malaspina University College and the Malaspina Faculty Association (citation needed). The following sets out the bare bones of the issue.

The problem arises as a result of a change to the structure of the Provincial Salary Scale agreed to at the MID table – adding a new top step, effective April 1, 2006. Because the top of the scale is designated as increment 1, this change required “relabelling” all the other steps. A problem then arises where any salary-related provision of the agreement (here, the Auxiliary Faculty salary scale) is tied to the Provincial Salary Scale. What is the impact of the relabelling on the tied provision? On the one hand, if the steps referred to in the tied provision are also relabelled, the employees could end up with no salary increase. On the other hand, if the steps are not relabelled, the affected employees could end up with a windfall relative to faculty who are actually on

the Provincial Salary Scale. In our view, this situation is an anomaly created by the fact that the MID table parties did not specifically address this issue with respect to employees such as Auxiliary Faculty at College of the Rockies.

The salary provisions of the MID agreements are complicated. For purposes of the present dispute, the following element is important: the Unions (albeit reluctantly) accepted the constraint of the PSEC mandate of 1.5% for the third year of the agreement. The parties interpreted the 1.5% PSEC-mandated constraint as a limit to the increase in the weighted average of salaries and salary-impacted benefits. The distribution of that increase was up to the parties. The parties at the MID table chose to create a new top rate in the third year.

Article 7.2.1.1 of the expired Collective Agreement provides as follows:

Auxiliary faculty placement on the salary scale shall be per:

| | | |
|--------|--|---|
| Step 9 | Probationary/Inexperienced | Qualified for position and has less than 180 hours of teaching experience. |
| Step 8 | Experienced with formal Teaching Methodology | Qualified for position and has 180 hours or more of teaching experience or has completed a Teaching Methodology Program approved by the Senior Instructional Officer. |

Auxiliary Faculty are hired at either step 8 or 9, and those on step 9 progress to step 8 upon achieving 180 hours teaching experience. The current hourly base rate for Step 9 is \$27.96 and for Step 8 it is \$29.27.

The references to Steps 9 and 8 are references to the steps in the Provincial Salary Schedule. As a result of the MID table negotiations, those steps as they apply to regular academic faculty will be relabelled. Regular faculty on those steps will not get an increase on April 1, 2006 (because, as noted above, the average increase to the scale of 1.5% was all applied to create an additional salary step).

However, on April 1, 2006, auxiliary faculty at institutions where they are not tied to the main Salary Schedule will receive an increase of 1.5%. That increase will be the product of the FPSE and BCGEU MID settlements as they relate to those on a secondary scale. Clause 12.2 of both Memoranda of Settlement reads as follows:

- 12.2.1 Effective April 1, 2006, all steps on secondary scales will be increased by one and one-half percent (1½%) or by the April 1, 2006 to March 31, 2007 total salary increase of any faculty agreement that includes the Provincial Salary Scale, whichever is greater.

- 12.2.2 Despite 12.2.1 above, local parties may elect to revise secondary scales to the extent possible within a weighted average of the salary increases specified in Article 12.2.1.

DECISION RE ISSUE 7 – SALARY SCALE FOR AUXILIARY FACULTY

In reaching a decision on this issue, we are guided by the following general considerations:

- The award should respect the fiscal mandate accepted by the parties at the MID table negotiations;
- Auxiliary Faculty should not be denied the benefit of the negotiated salary settlement at the MID table as it applies to them, given the nature of their employment;
- The structure of the salary scale for Auxiliary Faculty should be respected where possible, subject to modifications that may be necessary in light of the two above considerations.

With this in mind, we have attempted to fashion a solution that is fair, and equitable to both parties.

One option would be to apply an across the board 1.5% increase to the Auxiliary Faculty rates, treating the Auxiliary Faculty scale as a “secondary scale” (ref. clause 12.2.1), despite its tie to the Provincial Salary Schedule. A

second option would be to take the equivalent of a 1.5% average increase, and apply the entire amount to by creating a new third step. We adopt the second option as being fairer, more reasonable, and more consistent with the FPSE MID table Memorandum of Agreement.

As a result of the above approach, new Articles 7.2.1 and 7.2.1.1 will need to be created. The steps will be relabelled, in accordance with the main Salary Schedule (i.e., step 8 becomes 9, and 9 becomes 10). The newly created salary step can't be tied directly to a step in the Provincial Salary Schedule, because it is not the same as any step in the schedule. We will refer to the new step as 9+.

Therefore, we award that the new Article 7.2.1, effective April 1, 2006 will be as follows:

7.2.1 Salary Schedule for Auxiliary Faculty

| Step | Hour (Base) | +4% Vacation Pay | +4% Benefits | =Hour Total |
|------|-------------|---------------------|-----------------|----------------|
| 10 | \$27.96 | 1.12 | 1.12 | \$30.20 |
| 9 | \$29.27 | 1.17 | 1.17 | \$31.61 |
| 9+ | \$29.95 | 1.20 | 1.20 | \$32.35 |

7.2.1.1 Auxiliary Faculty Placement on Salary Schedule shall be per:

| | | |
|---------|--|---|
| Step 10 | Probationary/Inexperienced | Qualified for position and has less than 90 hours of teaching experience. |
| Step 9 | Experienced with formal Teaching Methodology | Qualified for position and has 90 hours or more of teaching experience or has completed a Teaching Methodology Program approved by the Senior Instructional Officer. |
| Step 9+ | Experienced with formal Teaching Methodology | Qualified for position and has 180 hours or more of teaching experience or has completed a Teaching Methodology Program approved by the senior Instructional Officer. |

The \$29.95 rate was calculated by determining the cost impact of a 1.5% general increase to employees on the existing steps 9 and 8, and then applying the total impact of such an increase to create a new third step. The Employer supplied demographic information about the current distribution as between the current steps 9 and 8 (64 and 110 employees respectively). Demographics, of course, change from year to year, and no breakdown is likely to be sophisticated enough to deal with changes in criteria for step advancement. Consequently, the awarded rate and criteria are the arbitrators' best estimate of the result that is most consistent with the guidelines identified above.

ISSUE 8 – DEPARTMENT HEADS (COLLEGE PROPOSAL)

Subsequent to the referral to the mediation/arbitration, the parties were able to resolve this difference through direct negotiations. This issue is one of the most difficult and significant ones arising from local bargaining, and the parties are to be commended for resolving it.

ISSUE 9 – ROLE OF CONTRACT EMPLOYEES (COLLEGE PROPOSAL)Issue

The College seeks to add new language that would define the role of contract employees (who are excluded from the bargaining unit). It also proposes deleting a letter of understanding. According to the College, the proposed changes reflect the current practice, and purpose of the proposals is greater clarity and certainty. The College's proposal as presented for arbitration eliminated a provision from its earlier proposal, which sought to exclude continuing education courses.

CORFA was particularly concerned with the continuing education exclusion, but does not concede that current version of the proposals reflects current practice. CORFA contends that the proposals are still concessionary.

The proposed new language would add 2.2.6.1 after the current 2.2.6, to read as follows:

To secure the long-term viability of College of the Rockies and the bargaining unit, and to ensure the College's competitiveness, the parties agree that the work performed by contract instructors will include instruction, program development, curriculum development, or educational services within:

- (1) public/private or public/public partnerships where the partner is delivering some or all of the training
- (2) new cost recovery programs that need an incubation period of a minimum of three program deliveries in order to determine program sustainability
- (3) training that is provided under a written partnership agreement in a public/private or public/public partnership
- (4) training that is purchased in whole or in significant part (at least 50%) by a public or private partner
- (5) training that is delivered at a partner's location using the partner's equipment.

The Employer also proposes deleting the Letter of Understanding Re Courses Offered Through Institutes Or Community Development, which currently reads:

The parties agree that if College of the Rockies credit is granted to a student of a contract training course, during that course, or within two (2) months of the completion of the course, the instructional assignment for that contract training course will be considered bargaining unit work. If the Instructor of the course has not already been compensated at bargaining unit rates or greater, s/he will be entitled to compensation at her/his applicable bargaining unit rate.

Submission of the College

The Employer says that it needs to clarify what constitutes contract instruction (and what therefore is not covered by the Collective Agreement) in order that:

- The College is able to respond quickly in securing and attracting work of this nature.
- The College is able to know with certainty how it can price the partnership arrangement or contracted training opportunity.
- The College is able to make decisions on the viability of initiatives of the types enumerated in the new Article 2.2.6.1.
- The College will be able to attract more such training opportunities.

In support of its position, the College gave extensive examples of what it says is the current practice related to each of the types of contract instruction enumerated in its proposed language.

Although contract instruction is often described in the sector as a “cost recovery” activity, in fact it is relied on as a source of profit which can be used to support base programming. Profits from contract and partnership training initiatives help to fund programs that are taught by bargaining unit members.

The College provided a number of such examples from 2004/05 and examples of areas expected to benefit in 2005/06.

The College proposes deleting the Letter of Understanding “for the purposes of clarity, given the comprehensive definition of what amounts to contract instruction in this proposal”.

Submission of CORFA

CORFA’s written submission was based on the College’s position at the time of writing, when continuing education was still part of the College’s proposal. Despite the College’s modification of its position, CORFA remains sceptical of the explanation that clarification is College’s sole motive for the proposed changes. Although the following quote is from its submission, it expresses CORFA’s continued scepticism:

The proposal does not provide clarification at all. It provides a different definition of “contract instructors” that would expand the work that is outside the bargaining unit and would give rise to new interpretive problems.

The Employer’s proposal represents a significant and radical departure from the meaning of “contract instructors” that is described in the Kelleher award. In the briefing notes provided on January 15, 2005, the Employer said that it needed “to change the definition of bargaining unit work from government-driven policy or legislation to internal, college-determined variables.” In our submission, this is merely another way of saying that the Employer wants a definition that will give it unilateral and absolute discretion in

determining what is bargaining unit work. In the past the College has cancelled base-funded programs and replaced them with cost-recovery programs. The new definition would allow the College greater flexibility to do this...

CORFA also provided membership data and lists of contract instructors, which showed a decline in the number of auxiliary employees and an increase in the number of contract instructors. The point of this information was to support its contention that the employer has been transferring work from bargaining unit employees to contract instructors who are outside the bargaining unit. CORFA sees the College's proposal as an attempt to facilitate the on-going transfer of work outside the unit.

CORFA questions the legality of the proposal, because it believes that the College's proposal is an attempt to alter the scope of the bargaining unit. The Faculty Association believes that the relevant legal principles are those set out in Vancouver Symphony Society et al., IRC No. C3/93. In that case the Council summarized the applicable law as follows:

...[T]he matter of a trade union's representational rights may properly be made the subject of collective bargaining. This applies to both union demands for extensions to its authority and employer demands for exclusions from the bargaining unit...However, while all of these proposals may be tabled and discussed, they may not be taken to impasse. In the absence of agreement between the parties, economic sanctions may not be used to resolve disputes over representational rights. A party which attempts to do

so contravenes the duty to bargain in good faith contained in Section 6 of the Act [now Section 11 of the Code]... In other words, a party may not take to impasse proposals which are inconsistent with the certification provisions of the Act. It is the statute, and only the statute, which provides the appropriate mechanisms for acquiring and altering bargaining rights in the absence of mutual agreement. At the same time, there is no exact equation between bargaining rights and work jurisdiction. Demands over work assignment may be taken to impasse and made the subject of economic leverage – provided they do not amount to an attempt to alter the scope of the bargaining unit.

CORFA says that the College’s proposal “is an illegal proposal that cannot be taken to impasse...notwithstanding the prohibition on strike or lockout action and the provision for resolving local differences set out in the Common Agreement Memorandum”.

CORFA also disagrees with the proposal to delete the LOU Re Courses Offered Through Institutes or Community Development.

DECISION RE ISSUE 9 – ROLE OF CONTRACT EMPLOYEES (COLLEGE PROPOSAL)

The College argues that it is merely seeking to clarify existing practice, rather than altering CORFA’s bargaining unit. The examples given by the College appear to support that contention (now that the reference to continuing education has been deleted). The arbitration board accepting that clarity is desirable, particularly in the circumstances, for the reasons set out in the

College's submission. However, we do not believe that it is necessary to insert a clarification into the body of the collective agreement. The board therefore awards the inclusion of the language from the proposed 2.2.6.1, but as a Letter of Understanding rather than as part of Article 2.

The board does not agree to delete the Letter of Understanding Re Courses Offered Through Institutes Or Community Development.

ISSUE 10 – ABE SEMESTERIZED FACULTY (COLLEGE PROPOSAL)

Issue

The College proposes a Letter of Understanding to read as follows:

The parties agree to pilot a voluntary alternative to the 25 hour mixed delivery workload model for ABE semesterized instructors.

Upon mutual agreement between the Instructor and the Dean/delegate, an Instructor will be considered to have a full teaching load if s/he prepares up to twenty-four (24) lecture-form contact hours of instruction per week for ABE semesterized courses in any one semester, to a maximum weekly contact of 24 hours.

The following conditions must apply:

- The Instructor must have at least three (3) years of post-secondary teaching experience;
- The Instructor must have had less than one hundred (100) students in the previous semester and is anticipated to have less than one hundred (100) students in the current semester;

Submission of the College

The College says that an alternative workload model for ABE Semesterized Instruction on a voluntary basis addresses “a jointly shared interest”. It emphasizes that this is proposed as a pilot project (or projects), and would be conducted without prejudice to either party.

Submission of CORFA

CORFA submits that the current workload of ABE instructors is onerous, and that the pilot project would make it worse for anyone who participated. CORFA says that the College’s proposal has the following problems:

- It would allow the Employer to assign faculty members to teach 4 distinctly different ABE courses. This has not happened at the College since 1989-1990. It was unsuccessful then, and should never be repeated, but faculty would have little protection from being pressured to do so. The provision for mutual agreement does not provide adequate protection because of the power imbalance between the Dean and an individual instructor.
- There is no guarantee under the Employer’s proposal that faculty members would not be teaching courses they had never taught before.

Faculty members could be expected to teach 4 courses, any or all of which were new to them under College proposal.

- The suggestion that the “voluntary alternative” would apply only to faculty with at least three years of post-secondary experience excludes no Regular Faculty as all Regular ABE semestered Faculty have at least 9 years of seniority.
- The suggestion that the “voluntary alternative” would apply only to faculty with less than 100 students would exclude no ABE semestered faculty because no one in ABE has had over 100 students in any one semester...

CORFA concludes that “the Employer’s proposal is a clear attempt to reverse progressive language negotiated as part of the 2001/04 Local Agreement and is concessionary in nature”.

DECISION RE ISSUE 10 – ABE SEMESTERIZED FACULTY (COLLEGE PROPOSAL)

Successful pilot projects require some degree of ‘buy-in’ from all parties who are expected to take part in them. The arbitration board accepts CORFA’s contention that, as proposed, there is potential for participation not to be entirely voluntary. It is clear from CORFA’s submission that the proposed pilot

project, in its present form, does not have the necessary element of faculty support to make it viable. The arbitration board therefore declines to award it.

ISSUE 11 – EFFECT OF “BILL 28” (COLLEGE PROPOSAL)

Issue

The College proposes deleting three provisions that it says are contrary to Bill 28. The first of these provisions is the second bullet in a Letter of Understanding about distributed learning, which provides that “faculty participation is voluntary”.

The second impugned provision is Article 5.6.5.1, which specifies a maximum number of students per week (averaged over the duty year) in University Studies/Career Technology courses. The third provision, Article 5.6.5.2, proscribes the maximum number of students in the institution’s English Composition courses.

CORFA opposes deleting any of the three provisions.

“Bill 28” refers to *Public Education Flexibility and Choice Act* [SBC 2002] Chapter 3. Section 2 of the Act reads in part:

Despite any other Act or a collective agreement, an institution has the right to

- (a) establish the size of its classes, the number of students who may be enrolled in or assigned to a class and the total number of students who may be assigned to a faculty member in a semester, a term or an academic year, [and]
- (b) assign faculty members to instruct courses using distributed learning...

“Distributed learning” is defined in the Act as “a method of instruction that, in whole or in part, uses information technology, teleconferencing, or correspondence as a means of instruction”.

Subsection 2 of Section 4 of the Act reads as follows:

A provision in a collective agreement entered into before or after the coming into force of this section that is inconsistent with or that limits, restricts or interferes with an institution's exercise of the rights established in this Part is void to the extent of the inconsistency, limitation, restriction or interference.

Submission of the College

The College argues that the Act gives college employers relief with respect to certain constraints in collective agreements, and asks us to amend the agreement accordingly.

Submission of CORFA

The Association points out that the Act is currently the subject of legal proceedings alleging that it “violates the Canadian Charter of Rights and Freedoms and other rights”. CORFA also contends that deletion of the three provisions would serve no purpose because Section 4 of the Act gives employers rights despite the existence of such provisions.

DECISION RE ISSUE 11 – EFFECT OF “BILL 28” (COLLEGE PROPOSAL)

The three provisions are apparently vitiated by the operation of the Act. We therefore see no reason to delete them.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 20th day of September, 2005.

Vincent L. Ready

Peter Cameron

Vincent L. Ready

Peter Cameron