

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

- and -

IN THE MATTER OF AN ARBITRATION

BETWEEN:

REGIONAL MUNICIPALITY OF WATERLOO
- the Employer

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1883
- the Union

AND IN THE MATTER of a grievance of Terry Caul

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Michael D. Failes	- Counsel
Heather Larmour	- Manager, Labour Relations
and others	

On behalf of the Union:

James K. McDonald	- Counsel
Siraj Wagley	- President Local 1883
Heather Grassick	- Chair, Grievance Committee
Terry Caul	- Grievor
and others	

Hearing held December 2, 2002, January 30 and 31, and March 7, 2003, in Kitchener, Ontario.

AWARD

I. INTRODUCTION

This award deals with the grievance of Terry Caul. When Mr. Caul's position was abolished in 2002, he sought to "bump" into the position of Employment Coordinator in the Employment Options Program. The parties disagreed as to whether Mr. Caul was already able to do the work, as was required under the bumping provisions of the collective agreement.

II. THE EVIDENCE

Three grievances were originally referred to arbitration under the expedited arbitration provisions of the *Labour Relations Act, 1995* but only this grievance was pursued by the Union.

Terry Caul worked in the Enhanced Job Placement Program as Coordinator when that program ended. Mr. Caul sought to avoid layoff by bumping into another position. He identified several positions into which he believed he was entitled to bump under the agreement. The parties considered his first two job choices but decided Mr. Caul was unable to bump into either of them; no issue was taken with the decisions regarding either of those two positions.

Mr. Caul's third choice was the position of Employment Coordinator in the Employment Options Program. However, as the process by which the parties had jointly considered Mr. Caul's first two choices broke down, it was left to the Employer to decide whether Mr. Caul was entitled to bump into that position. The Employer made no formal decision regarding Mr. Caul bumping into this position because Mr. Caul was hesitant to go through another

evaluation and was then absent on sick leave.

While Mr. Caul's bumping options were being considered, two vacancies arose for the position of Employment Coordinator in the Employment Options Program - one temporary and one permanent. The Employer conducted a competition to fill the vacant positions. Mr. Caul applied for both positions but was unsuccessful.

At the end of July 2002 when his layoff was scheduled to occur, Mr. Caul was on sick leave. The Employer neither allowed him to bump into the position he sought, nor did it lay off Mr. Caul. Instead Mr. Caul was placed in the position of Employment Development Worker and, while that was normally a lower paid position, the Employer agreed to maintain Mr. Caul's current pay rate for one year.

The Union led full evidence at the hearing as to Mr. Caul's "skills, qualifications, abilities and competence" in relation to the position of Employment Coordinator in the Employment Options Program. However the Employer ultimately disputed this matter on a narrow basis such that it is unnecessary to detail all the evidence presented at the hearing.

By way of summary, Employment Coordinators in the Employment Options Program occupy a teaching position. These Employment Coordinators teach job skills to job seekers whose attendance at the sessions is mandatory. These are interactive group sessions in which the Employment Coordinators and job seekers engage in discussion on an ongoing basis. The teaching involves many case studies and exercises. In addition, the Employment Coordinators, working collaboratively, regularly revise their teaching materials.

Mr. Caul has been employed by the Employer since 1990 in the Employment and Income Support Division of the Social Services Department, the same area as the Employment Coordinators in the Employment Options Program. Much of his work has been with clients

similar to the clients in the courses taught by Employment Coordinators. Mr. Caul has had extensive experience counselling people regarding employment issues and services available to them both from the Employer and through other levels of government. He has delivered many sessions to groups of similar clients and has helped to revise the teaching materials used in those information sessions and is familiar with and comfortable with the use of computers. He has the education required for the position of Employment Coordinator in the Employment Options Program.

As the Employer submitted that Mr. Caul did not have the "skills, qualifications, abilities and competence" to do the interactive group teaching required as an Employment Coordinator in the Employment Options Program, nor to make the revisions to the teaching materials, I consider evidence on these issues in greater detail.

In 1992 Mr. Caul spent some eight months as an Employment Coordinator in the Training for the Future Program. In that position Mr. Caul and a colleague were responsible for running a life skills and employment skills program with both an educational component and a job placement component. Mr. Caul had greater responsibility for the educational portion. During Mr. Caul's time in that position he was involved in one 21 week course - 14 weeks of class and seven weeks of job placement. Although Mr. Caul did some of the teaching, there was no evaluation of his work in that position. He left this position due to what he called a variance with his supervisor. The variance was over report writing and sheds no light on the issues here.

Mr. Caul also worked briefly as an Employment Coordinator in Employment Service. In that position he conducted resume writing sessions called "Beyond Words." He and a colleague ran several two week sessions. There was disagreement as to the extent of Mr. Caul's role; he testified he was a co-facilitator. Whatever his formal role had been, the other employee

was experienced in the course and took primary responsibility for it.

More recently Mr. Caul had been an Employment Coordinator in the Enhanced Job Placement program where he helped to run programs such as a vending machine operator training program. In that program Mr. Caul helped with the organization and with the placement of students but the teaching was done by others.

In addition, Mr. Caul testified that while working for the John Howard Society in the 1970's he had run group training sessions for juveniles.

Mr. Caul testified that he could do the work of an Employment Coordinator in the Employment Options Program. He felt he had done similar work in the past and had the skills and abilities needed to do the job.

Several other witnesses testified but none directly addressed Mr. Caul's ability to do the type of teaching required in this position.

III. COLLECTIVE AGREEMENT PROVISIONS

The following are the key provisions of the parties' 1999-2001 collective agreement:

Article 8 - Seniority

...
8.03 ...

- d) i) In the event of layoff, a layoff shall occur in reverse order of seniority by position. . . .
- ii) An employee subject to layoff shall be permitted to bump into the position

of any employee who has lesser bargaining unit seniority and who is the least senior employee in the position, the laid off employee is seeking to bump into.

The bumping employee must already possess the necessary skills, qualifications, abilities and competence to perform the work available without training other than a familiarization period of no longer than **ten (10)** working days.

...

IV. UNION POSITION

It was the Union position that this was an unusual case as I had to make the decision as to whether the grievor had the "necessary skills, qualifications, abilities and competence" without considering a management decision. There was no issue of deferring to an Employer decision as the Employer had made no decision.

As for teaching experience and skills, the Union noted that Mr. Caul had run sessions for juveniles while working for the John Howard Society. With his present Employer he had worked in the Training for the Future program in 1992. More recently he ran four sessions of the Beyond Words program. Finally, he had worked in the Enhanced Job Placement Program.

Although there was little in the way of evaluation of Mr. Caul's work in these areas, some of his supervisors had testified and there was no evidence he was deficient in his work. Mr. Caul testified he had the necessary skills, qualifications, abilities and competence for the position. While he may not be the best person for the position, that was not the test under the agreement. He need not be the best person for the job but he was able to do the job and the Union asked that he be awarded the position.

The Union referred to the following: *Re St. Catharines General Hospital and Service Employees Union, Local 204* (1984), 13 L.A.C. (3d) 378 (Teplitsky); *Re Canada Forgings Inc. and Canadian Automobile Workers, Local 275* (1992), 29 L.A.C. (4th) 438 (Harris); *Re Hospital Employees' Union and Hospital Employees' Staff Union* (2001), 99 L.A.C. (4th) 240 (Taylor); and *Re International Union of Electrical, Radio and Machine Workers, Local 542, and RCA Victor Co. Ltd.* (1971), 22 L.A.C. 329 (Simmons).

V. EMPLOYER POSITION

The Employer said the onus was on the Union to prove that Mr. Caul was entitled to bump into this position. Under the agreement he must already be able to do this job with only a ten day familiarization period.

Mr. Caul had never done this job, nor had he done a similar job. He had experience working on a one-on-one basis but less experience working with groups. His teaching had primarily been lecture style where he delivered information from a prepared script. His teaching at the John Howard Society was many years ago and it did not demonstrate a present ability. His only similar teaching was on a temporary basis with another, more experienced, person and Mr. Caul had only a secondary role.

Finally, the Employer asked that I assess Mr. Caul's testimony with care. While his testimony always had an element of truth, on many points the Employer said Mr. Caul had exaggerated his role and his testimony was therefore embellished and should be reviewed with caution. In addition, the Employer asked that I consider Mr. Caul's performance as a witness in the hearing and suggested that if I were unable to understand parts of his testimony I should consider how his students would manage.

The Employer referred to the following: *Re Atomic Energy of Canada Ltd. and Energy & Chemical Workers Union, Local 785* (1986), 26 L.A.C. (3d) 234 (MacDougall); *Re Reynolds Aluminum Co. of Canada Ltd. and International Molders and Allied Workers Union, Local 28* (1980), 26 L.A.C. (2d) 266 (Shime); *Re Campbellford Memorial Hospital and Canadian Union of Public Employees, Local 2247* (1998), 75 L.A.C. (4th) 434 (Kennedy); *Re Peterborough Hospitals Shared Services and Ontario Public Service Employees Union, Local 343* (1998), 77 L.A.C. (4th) 113 (Dissanayake); *Re York University and York University Staff Association* (1992), 27 L.A.C. (4th) 403 (Dissanayake); and *Re Children's Aid Society of Metropolitan Toronto and Canadian Union of Public Employees, Local 2316* (1990), 14 L.A.C. (4th) 403 (Foisy).

VI. CONCLUSIONS

The Employer raised two concerns about Mr. Caul working as an Employment Coordinator in the Employment Options Program. The Employer was of the view that Mr. Caul could not do the revisions needed to the teaching materials and that he could not do the interactive teaching.

Revisions are made to the teaching materials on a collaborative basis by the various teachers in this position. Mr. Caul has been involved in revising other teaching materials which he has used and he has engaged in many instances of collaborative work with the Employer. Based on that, I conclude Mr. Caul has the skills and ability to effectively participate in revising the materials used by the Employment Coordinators in the Employment Options Program once he has taught using those materials.

The main difference between the parties was whether Mr. Caul could do the actual teaching required in this position. The language of this agreement is straight forward. Mr. Caul can

bump into the position if he "already" has the "necessary skills, qualifications, abilities and competence" to do the "available" work "without training." He would be allowed a familiarization period.

In this context the ten day familiarization period would be available to allow for review of the entire course and to plan its delivery. The time would be too short to allow Mr. Caul to develop any teaching skills that he currently lacks and is not intended for that purpose. The question is whether, allowing him ten days to familiarize himself with the materials for the course, Mr. Caul could step in and deliver the course.

Mr. Caul has taught but it has largely been what I would describe as lecture style teaching where he has provided information from a prepared script. Obviously he has had to answer questions but those questions would normally have been points of clarification about the information provided.

This teaching by the Employment Coordinators in the Employment Options Program is interactive. It requires a particular skill by the teacher in moving the students through the material. The teacher has certain points which he or she would want to address but those points would not necessarily be covered in the same order in successive sessions of the course. The class sessions are more difficult to control as the students are a much more important part of each others' learning and are involved in teaching one another. The teacher has to work with the comments of the students and shape the discussion so that the key learning points are made.

This style of teaching requires different skills from those skills needed in the lecture format which Mr. Caul has used many times. The collective agreement requires that Mr. Caul be able to do this work now in order for him to bump into the position. The onus is on the

Union to demonstrate that Mr. Caul can do the work with only the familiarization period and, of course, one way of demonstrating that Mr. Caul can do the work is to show that he has already done this work or done very similar work.

I now consider the teaching experiences upon which the Union relied as demonstrating that Mr. Caul can do this work. I note that I agree with the Employer as to Mr. Caul's tendency during his testimony to put forward his experiences in the best light possible, no doubt a reflection of his keen desire for this position, and on many points the impression given by Mr. Caul was much more favourable than that by other witnesses' testimony.

Mr. Caul testified that he had taught sessions while employed by the John Howard Society. Those sessions were in the 1970's and it was unclear as to the style of teaching used. No other person testified about Mr. Caul's experiences at the John Howard Society but, given the length of time since he had done that teaching and his tendency as a witness to describe his experience so positively, I am hesitant to place much reliance on this as demonstrating that he currently possesses the "skills, qualifications, abilities and competence" to do this work.

I now return to the teaching Mr. Caul has done in the last 12 years or so while working for the Employer. He participated briefly in the Training for the Future program in 1992 and left it after one 21 week session due to a variance with his supervisor. There was no evaluation of his work and Mr. Caul's evidence does not persuade me that he can do this job. His later work on the "Beyond Words" program was with a more experienced person who took the lead role and does not demonstrate a current ability to teach interactively. Nor does his recent work in the Enhanced Job Placement Program show he can step into this job under the terms required in the agreement. It is my decision that none of Mr. Caul's teaching experiences demonstrate that he already has the "skills, qualifications, abilities and competence" to do this work.

The Union must show that Mr. Caul can do this work in order for it to prove that the Employer violated the agreement in refusing Mr. Caul's request to bump. Although Mr. Caul's teaching experiences do not show that he has the current skills to perform the teaching required in this position, Mr. Caul need not have taught this course nor one like it in order for the Union to demonstrate that he can do the available work. It is possible for the Union to show that some other blend of Mr. Caul's experiences demonstrate that he has the required skills and abilities. For example, if Mr. Caul had experience in facilitating group discussions outside a formal teaching context, that experience together with his experience as a lecture style teacher might demonstrate that he had the necessary skills to do this interactive teaching. However, in this case there was insufficient evidence of this kind to persuade me that Mr. Caul can now do this work.

Based on the evidence before me, I conclude that Mr. Caul does not already have the skills, qualifications, abilities and competence to do the work available in the position of Employment Coordinator in the Employment Options Program. Under the collective agreement he is not entitled to bump into that position. His grievance is therefore dismissed.

Dated in London, Ontario this 7th day of April, 2003.

Howard Snow, Arbitrator