

IN THE MATTER OF AN ARBITRATION

BETWEEN

***ONTARIO PUBLIC SERVICE EMPLOYEES UNION,
AND ITS LOCAL 353 (SUPPORT)***

-and

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

AND IN THE MATTER OF A CONTRACTING OUT GRIEVANCE

Kevin Whitaker, Chair
Sherril Murray, Union Nominee
David Guptill, College Nominee

Appearances for the Union
J. Alick Ryder, Counsel and others

Appearances for the College
Peter J. Thorup, Counsel and others

Hearings were held in Oshawa on October 7, 2009 and January 7, 2010

On June 27, 2002, the University of Ontario Institute of Technology (the "University") was established pursuant to the *University of Ontario Institute of Technology Act 2002* (the UOITA). Amongst other things, the UOITA required the University and the College to enter into an agreement for the sharing of services and property.

The College and University entered into such an agreement and from the time of the University's opening, administrative services were performed for both entities by employees of the College, covered by the collective agreement between the parties.

In 2008, the University advised the College that it wished to provide some of its own administrative services and therefore alter the shared services arrangements.

The College gave five employees notice that their work would be "moving" to the University and that their positions would be declared redundant. All employees were given the option to take a position with the University or to exercise their seniority and job security rights under the collective agreement to remain employees of the College. All chose to take a severance payment and accept the offers of employment with the University.

The offered positions with the university are not covered by a collective agreement. None of the affected employees filed grievances contesting their termination of employment with the College. All five were provided with notice of the present proceedings. None elected to participate.

The union grieves that the College has contracted out work contrary to the provisions of the collective agreement. The College takes the position that it has not contracted out the work. The parties were without objection, directed to first litigate the issue of whether the College has in fact contracted work out.

For reasons which follow, we find that there has been no contracting out. The grievance is dismissed.

II

The employer is a community college located in Oshawa. The union represents full time support employees.

In 2002, the Ontario government passed the UOITA which established the new University. The University came into being on June 27, 2002 and opened to students in September 2003.

The UOITA contemplates an ongoing formal arrangement between the College and the University. Section 17 of the UOITA is as follows:

17.(1) The university and the college shall enter into an agreement for the sharing of their real and personal property and for the sharing of their administrative staff and services. 2002, c. 8, Sched. O, s. 17 (1).

Same

(2) If the university and the college fail to enter into an agreement as provided in subsection (1), the Minister of Training, Colleges and Universities may by order provide for the sharing or real and personal property and for the sharing of administrative staff and services by the university and the college. 2002, c. 8, Sched. O, s. (18(1)).

On September 23, 2004, the University and the College entered into the agreement contemplated by section 17 of the UOITA. Sections 29 to 32 deal with the use and assignment of administrative staff:

Administrative Staff

29. For the purposes of this Agreement, the term "administrative staff" used herein means (a) in relation to the College, its administrative staff and support staff, as those terms are defined in Ontario Regulation 34/03; and (b) in relation to the University, all its employees who do not hold an academic appointment in the University.

30. The College is and will continue to be the employer of certain administrative staff employed in carrying out the mission and objects and conducting and managing the affairs and activities of the University and the College, in accordance with applicable collective agreements and terms and conditions of employment. Without altering or affecting any employment relationships, it is acknowledged by the parties that:

(a) the performance and supply of the shared services referred to in clause 33 hereof is intended to be carried out in order to meet the respective needs of the parties;

(b) both parties will encourage and reinforce the need for their respective administrative staffs to observe the mission, values and guiding principles set out in clause 1 hereof; and

(c) all administrative staff will be treated with respect and collegiality by the University and the College and their respective governors, officers, teaching staff and students.

31. Despite clause 30 hereof, the University may employ administrative staff for its own purposes or to be shared with the College. In the latter event, the second sentence of clause 30 hereof, including sub-clauses (a), (b) and (c) shall apply thereto.

32. Each party shall be kept informed and advised by the other with respect to any issues which may pertain to the provision of services by its administrative staff, including the status of any applicable collective bargaining process.

In late 2007, the University decided that it wished to perform certain administrative services, particularly those relating to finance and fund raising, using its own employees rather than have those services provided by employees of the College. The University advised the College of its intentions.

In order to facilitate the University's wishes in this regard, the College provided five employees with a letter indicating that their work would be "moved" to the University. Although College employees, each employee was engaged in work which was exclusively to the benefit of the University. Each employee was advised that they could accept new offers of employment with the University or they could exercise their bumping rights under the collective agreement for purposes of remaining with the College.

All five accepted severance packages with the College and took new employment with the University. These new positions with the University are not covered by a collective agreement. The terms and conditions of employment are not the same as those provided for in the collective agreement between the College and the union.

The five employees did not file grievances to contest their treatment in this regard. All have been given notice of their right to participate in this hearing. None exercised these rights.

The union argues that the employer has contracted out the work of the five employees, contrary to the collective agreement. It is apparent that more of this type of movement of work will occur in the future.

Without objection from the parties, we directed them to litigate as a preliminary issue, whether the College's conduct amounted to contracting out.

III

Section 17 of the UOITA obliges the College and the University to enter in an agreement for the sharing of administrative staff services and real and personal property. The section does not in any way constrain these two entities from structuring the manner in which this sharing will occur, nor does it direct that one or the other of the two entities must be the employer of the persons who provide the administrative services.

Section 17 of the UOITA does not preclude the two entities from changing or altering the way in which services or property are shared over time.

Sections 29 to 32 of the shared services agreement between the College and the University do not preclude the University from hiring its own employees to provide administrative staff services. Indeed, sections 31 and 32 contemplate that the University will retain the right to do so and must in the course of this, keep the College apprised as to how this will be done.

Sections 29 to 32 of the shared services agreement are consistent with section 17 of the UOITA.

The work which the five employees of the College were performing for the University is after the “move”, now being provided by the same persons, working as employees for the University.

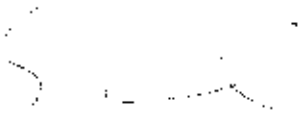
What has occurred in this case is that the University has merely taken back its own work, formerly performed by employees of the College. This is akin to a customer “taking back” its own work from another entity.

No contracting out has occurred. The parties have acted in accordance with the UOITA and the shared services agreement entered into under the legislation.

IV

The grievance is dismissed.

Dated this 13th day of January 2010



Kevin Whitaker

"David Guptill"

David Guptill, College Nominee

I concur

"Sherril Murray"

Sherril Murray, Union Nominee

I concur