IN THE MATTER OF AN ARBITRATION
UNDER *THE LABOUR RELATIONS ACT, 1995*

B E T W E E N :

CARLETON UNIVERSITY

- and -

CARELTON UNIVERSITY ACADEMIC STAFF ASSOCIATION

Re: Policy Grievance under Article 2.5

MARTIN TEPLITSKY, Q.C.
Arbitrator

APPEARANCES

On behalf of the University:	**Stephen Bird**
On behalf of the Association:	**James McDonald**

Hearing held in Ottawa, on Saturday, January 29, 2011

The grievance alleges a breach of Article 2.5 of the Collective Agreement and specifically names 5 persons, only 3 of whom remain as claimants (Hugh Reid, Rosemary Hoey and Kevin Gildea).

They were members of the CUPE Collective Bargaining Unit and employed as contract instructors. Each asserts that for the academic year 2006-2007, they taught more than 2 full credit courses in the Fall and Winter terms thereby triggering Article 2.5. It provides:

> *"2.5 Persons engaged in instructional duties will be included in the bargaining unit if they teach more than two (2) full-credit course in the Fall and Winter terms, or if they teach more than three (3) full-credit courses in any academic year ending August 31. (Repeated sections will count as if they were other courses)."*

There is no dispute about the fact that each taught 2 full courses "live" and one course was presented on "video" (CUTV). The parties differ on whether the CUTV course counts for purposes of Article 2.5. If it is assigned a value of ½ as the Association contends, then the provision is triggered. If it assigned no value as the University asserts, then the Article is not triggered.

The essence of the Association's submission is that the CUTV course has a value of ½ as provided by Appendix 1, paragraph 4. It provides:

> *4. Workload*

The workload credit for teaching on CUTV (whether a half of full credit course) during an academic year shall be one half credit extra. Variation from this shall be by mutual written agreement. (Information on workload credit shall be transmitted to CUASA).

(a) The workload applies YES/NO

(b) If no, the following workload credit is given:
_____"

On the other hand, the University contends that it should be assigned no value for at least two reasons. First, the video course under the CUPE Collective Agreement attracts no additional credit. In its view, the CUPE Collective Agreement governs. Second, Appendix I, were it applicable, requires an agreement between the parties. Because no agreement was made, the provision is inapplicable.

Analysis:

Article 2.05 is a provision which was intended to protect bargaining unit scope by requiring inclusion into the bargaining unit of persons who teach more than 2 full courses in the Fall/Winter terms, or more than 3 in a full year. In practice, however, all that is accomplished is the dispersal of available teaching amongst a larger group. Nevertheless, it seems clear to me that Article 2.05 must be applied utilizing the provisions of the Collective Agreement in which it is found, not a different Collective Agreement In the absence of express reference to a different Agreement, the expectation of the parties in collective bargaining is that their Collective Agreement will be administered or applied according to its own terms. The parties cannot control how another Collective Agreement defines terms. For example, the CUPE Collective

Agreement could assign less than full-credit to a course which receives full credit under the faculty agreement. Accordingly, the teaching for purposes of Article 2.5 must be measured against the terms of the Faculty agreement. One of these terms is found in Appendix I.

My reading of Appendix I is that unless there is an Agreement to the contrary, ½ credit is given for a CUTV course. This is the default position. In this case, there was no agreement. Therefore, a ½ credit is appropriate.

In the result, for each of the named persons, Article 2.05 should have been triggered. The University was in breach of the Article.

The parties asked me to assess the damages. I fix these at $13,000.00 for each person plus interest.

The average pre-judgment interest rate under the Courts of Justice Act in 2006 was 4.03%. It was 4.58% in 2007, 3.93% in 2009 and 1.20% for 2010. Taking these facts into account and assuming payment by March 1, 2011, I fix the interest at $1,850.00 for each person.

I will remain seized pending implementation.

DATED the 31st day of January, 2011.

MARTIN TEPLITSKY, Q.C.
Arbitrator