

Moving Forward

Significant gains were made in our last collective agreement, but there is still much more work to be done to improve working conditions for precarious workers throughout the college system and at Niagara College in particular



*by Ravi Ramkissoonsingh
Local 242 Vice President
and Bargaining Team member*

The issue of precarious work, justifiably, received much attention during our recent round of bargaining and strike last fall. The abuse of contract faculty, which had been the Ontario college system's 'dirty little secret' for many years, is an issue that the general public is now widely aware of and that, in itself, is a large gain. We were able to make other significant gains around seniority rights in our new collective agreement (CA). Seniority will now be calculated on a month for month basis instead of, as was formerly the case, a half month's credit for a full month worked. Instead of requiring 8 months of service over the past 4 years in order to have any seniority rights, as was the case in the previous CA, **any currently employed partial-load faculty member will now have seniority rights to courses that they have previously taught.** Although Niagara College and other colleges are signaling that they will attempt to circumvent the new language in our CA, seniority is now supposed to go by course instead of by the entire course load, **and the union is prepared to vigorously defend that language in cases where partial-load faculty assert their seniority rights.**

While these are all significant gains, there remains much work to be done to improve the lot of partial-load members and contract faculty. Full-time academic jobs continue to be scarce, and the new Doug Ford-led provincial government is not expected to be an ally for precarious workers. It will be increasingly important, before our next round of bargaining, in three years, that we use the tools in our CA to force the college to create full-time positions and to protect the rights of partial-load members. Until OPSEU is able to certify part-time and sessional faculty—which we hope will happen within the next year or so despite the College Employer Council's continuing efforts to fight this—there will be challenges in preventing the mistreatment of these workers.

We have published this special edition of our *InSol* newsletter for partial-load members to keep you informed about the rapid changes occurring within our system that affect you. Please be assured that your issues will remain key priorities for both our local and the OPSEU CAAT-A division at large. We hope that you will find the following articles to be informative and useful.

Could 'rollovers' become a game changer?

A recent college arbitration award could be a pathway to full-time for more contract faculty

*by Ravi Ramkissoonsingh
Local 242 Vice President
and Bargaining Team member*

There was a recent arbitration award at St. Lawrence College which may have significant implications for partial-load faculty across the province. The College Employer Council's legal counsel, Wallace Kenney, has summarized this decision and refers to it as 'problematic' from the colleges' perspective, as this would require them to create more full-time faculty positions (see <https://hicksmorley.com/2018/04/23/arbitrator-finds-co-ordinator-duties-should-be-considered-in-assessing-whether-a-professor-has-sessional-status/>).

In particular, this award deals with what is referred to as 'rollovers'. A rollover occurs when a contract faculty member has worked as a sessional employee (traditionally considered to be someone who teaches more than 12 hours per week) for more than 12 months (working a minimum of 15 days/month) out of 24; that position subsequently becomes a full-time one. As Niagara College has been quite adept at moving sessional employees down to part-time status before the '12 in 24' takes effect, we have seen no rollovers in recent years here.

The St. Lawrence arbitration award is a game-changer, though. Arbitrator Parmar ruled that it is not just teaching work that should be taken into account in determining whether someone is a sessional employee or not but that additional contracts should also be taken into account (in this particular instance, it was a separate contract for coordinating). This establishes an important precedent for the Ontario college system around the 'stacking of contracts' for partial-load members. For example, if a member has taught 16 of the past 24 months as a partial-load employee (7 to 12 hours of teaching per week) and, in addition, has advised students in that department for 12 hours per week during those 16 weeks, Arbitrator Parmar's award would suggest that individual was really a sessional employee for 16 out of the 24 months, which should result in that position being rolled over into a full-time one.

If you have been a partial-load faculty member who has also had additional contracts for academic work, such as student advising, coordinating, or curriculum development, and believe that you may qualify for a rollover, we strongly urge you to contact the faculty union office at opseu242@opseu242.com to discuss your situation in confidence.

Partial-Load registry

Adapted from an article by Pat Kennedy, President, OPSEU Local 415, Algonquin College which appeared in Local Lines, Vol. 29, Issue 3

One of the major gains from this round of bargaining is the Partial Load Registry that serves to prioritize the hiring of partial load employees who have registered their interest in being employed as a partial-load employee in the following calendar year, detailed in the following excerpts from our new collective agreement.

26.10 D—In addition to maintaining a record of a partial-load employee’s job experience, the college will keep a record of the courses that the employee has taught and the departments/schools where the partial-load employee has taught such courses.

By 30 October in each calendar year, a currently or previously employed partial-load employee must register their interest in being employed as a partial-load employee in the following calendar year. This individual will be considered a registered partial-load employee for the purpose of 26.10 E.

All partial-load employees employed for all or part of the period from 1 September to 31 December 2017 will be deemed to have registered for the 2018–19 academic year.

26.10 E—Subject to the application of Articles 2.02 and 27.06 A, commencing in the 2018–19 academic year, where the school or department within a college determines that there is a need to hire a partial-load employee to teach a course that has previously been taught by that registered partial-load

employee in the department/school, it will give priority in hiring to such partial-load employee if:

(i) They are currently employed, or if they have previously been employed as a partial-load employee for at least eight (8) months of service as defined in 26.10 C within the last four (4) academic years, and

(ii) The assignment of such course will not cause the employee to exceed the maximum teaching contact hours for partial-load employees.

The offer of partial-load employment is conditional on the college subsequently determining there is sufficient enrollment to warrant the assignment being offered. Where two (2) or more partial-load employees would be entitled to be offered the course assignment, the employee with the most service will be offered the first opportunity.

Our college has provided emails for partial-load employees who were ‘deemed registered’ indicating your registered status until 31 December 2019. Therefore, partial-load faculty will still need to submit their intent to be registered for the 2020 calendar year by 30 October 2019. You can either email your manager with your intentions so that you have a written record or Human Resources at Humres@niagaracollege.ca. Don’t forget to retain a copy of all correspondence. We also encourage you to contact your manager to determine if partial-load work exists in your area for this fall term and see if you receive a response in the spirit of the new wording of the collective agreement.

Who We Are:

**InSOL the Newsletter of
OPSEU Local 242**

contact information:

ext 7506

905-735-2211 (Welland)

905-641-2252 (St. Catharines)

905-374-7454 (Fort Erie)

905-563-3254 (Grimsby)

Executive Officers

PRESIDENT

Martin Devitt / W307 / 7506

VICE-PRESIDENT

Ravi Ramkissoonsingh / S105 / 7744

CHIEF STEWARD

Terry Poirier / M103E / 7709

TREASURER

Shannon MacRae / M206I / 7759

SECRETARY

Laura Bruni / 7506

opseu242@opseu242.com

Welland Campus,

Black Walnut B1

STEWARDS

Kristen Buscaglia / S105 / 7862

Cosimo Girolamo / W311 / 4128

Lois Johnson / TC35 / 7887

Amy Proulx / HT035 / 4647

Greg Smith / S331A / 7611

Dave Thomson / W311 / 4129

Erden Ertorer / TC01

Partial-Load Representative

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What is Equal Pay for Equal Work?

As of April 1, 2018*, employers are required to pay the same rate of pay to:

- Part-time, contract, casual, temporary and seasonal employees, who are doing substantially the same work as their full-time/permanent counterparts.
- Temporary agency workers who are doing substantially the same work as directly hired employees in a client company

**If you are unionized, your contract must comply with equal pay laws by January 2020.*

How does Equal Pay apply?

3 steps:

1. Is there a difference in pay between jobs or job classes?
2. Are the jobs comparable?
 - Do employees perform **substantially the same kind of work** in the **same establishment**; and, does the work require **substantially the same skill, effort and responsibility**?
3. Do employer exceptions apply?

How does Equal Pay apply?

Step 1)

Is there a difference in pay between jobs or job classes?

- What is the hourly wage for full-time faculty, partial load faculty, sessional faculty and part-time faculty?

How does Equal Pay apply?

Step 2)

Are the jobs comparable?

- Do employees perform **substantially the same kind of work** in the **same establishment**; and, does the work require **substantially the same skill, effort and responsibility**?

How does Equal Pay apply?

The jobs have to be **substantially the same kind of work**

- The core duties must be the same
- The jobs do not have to be identical (there can be some differences in the job content or tasks; not all of the duties have to be exactly the same or interchangeable).
- What matters is the actual work done by employees not the job description or job offer

How does Equal Pay apply?

Do the jobs require **substantially the same skill, effort and responsibility?**

- The jobs require substantially the same education, training and/or experience
- The jobs require substantially the same levels of responsibility (e.g., comparable authority for decision making)

How does Equal Pay apply?

Are the jobs in the **same establishment?**

There can be two or more locations if:

- They are in the same municipality (different campuses), or
- There are common “bumping rights” or transfers between locations of employer (eg., one college’s campuses in different municipalities)

How does Equal Pay apply?

Step 3) There are some exceptions. Even if employees are doing equal work, they can be paid different rates of pay, due to:

Seniority system

- Any seniority system must comply with equal pay (e.g., no separate seniority systems for part-time and full-time employees)
- Employees receiving equal pay for equal work can be on different steps in the seniority system

Merit system

- Piece rate pay system
- Quantifiable or measureable merit pay (e.g., sales target)

Other factors

- For reasons other than sex or employment status

Unionized Contract Faculty Issues

Faculty Category	Definition	How to complain
Full-time Faculty (unionized, permanent)	Teach any number of hours and other duties as assigned	
Partial Load Faculty (unionized, non-permanent)	Teach between 7-12 hours per week	Individual grievance
Sessional Faculty (non-unionized)	<p>“A sessional employee is defined as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period.” <i>2017-2021 Collective Agreement</i></p> <p>If they work more than 12 months as a sessional in 24 months they are rolled over into a full-time, permanent position.</p>	Ministry of Labour (MoL) complaint
Part-time Faculty (non-unionized)	Teach 6 or fewer hours per week	Ministry of Labour (MoL) complaint

Fighting for Partial Load Faculty

- Most unionized employers don't have to be compliant with the equal pay provisions till January 2020. Our bargaining team negotiated an earlier compliance date of November 2018.
- The CAAT-A Executive has presented proposals for equal pay for partial load faculty to the College Employer Council. If they don't agree, it will go to arbitration.
- We are arguing that the proper comparator group for all contract faculty is full-time faculty!

Non-unionized Contract Faculty Issues

What is a Sessional Faculty?

“A sessional employee is defined as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period.”

2017-2021 Collective Agreement, P. 91

Enforcing Equal Pay

Individuals or groups of employees have job protected right to request equal pay for equal work from employers.

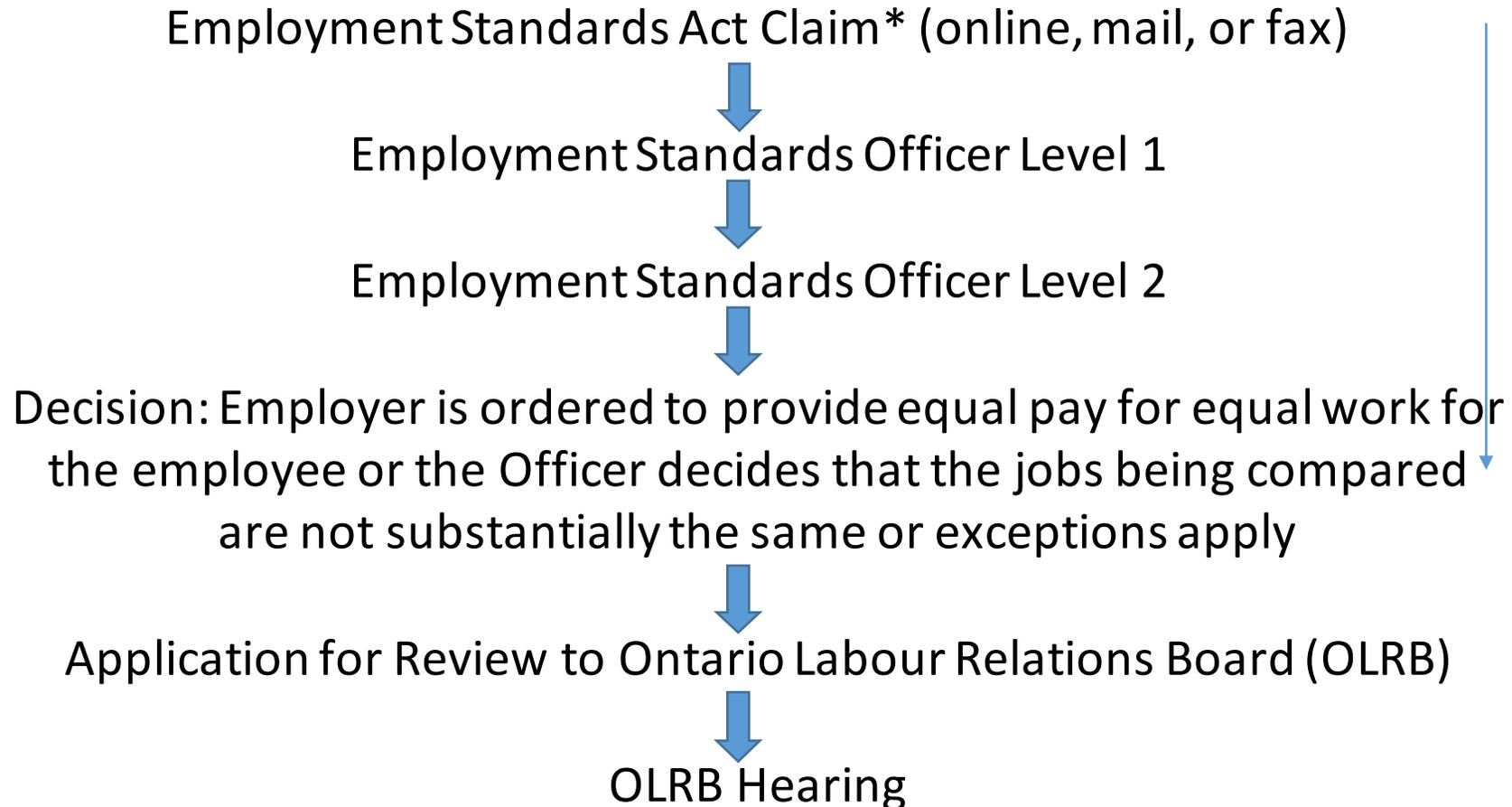
Request should include:

- The name of an employee or classification of employees that you believe are doing equal work to you but are paid more
- Why you think the work is equal (**substantially the same kind of work** in the **same establishment**; and requires **substantially the same skill, effort and responsibility**)

The employer is required to provide a written response to all requests. Either the employer agrees and provides equal pay or disagrees or disagrees. They should provide reasons

Enforcing Equal Pay

How to file individual claims for equal pay



Enforcing Equal Pay

Protection from Reprisals

No employer or person acting on behalf of an employer shall intimidate, dismiss or penalize an employee or threaten to do so because the employee:

- inquires about or asserts his or her *ESA* rights
- files a complaint with the Ministry of Labour

That means for equal pay, a worker cannot be penalized for:

- Requesting equal pay for equal work
- Asking coworkers about their rates of pay
- Telling coworkers about your rates of pay
- Filing a claim at the Ministry of Labour for equal pay for equal work

You can file a claim for reprisals. If successful, you can be reinstated in your job or get damages from the employer (money for job loss, finding a new job etc)

