

**COMMISSION DES RELATIONS DU TRAVAIL
(Labour Relations Division)**

File: AM-1002-2407

Case: CM-2008-1779

Reference: 2008 QCCRT 0179

Montréal, April 23, 2008

BEFORE THE COMMISSIONER: Pierre Cloutier

**Association des étudiant-e-s diplômé-e-s employé-e-s de McGill/
Association of Graduate Students Employed at McGill**

Applicant

v.

McGill University

Respondent

PROVISIONAL ORDER

[1] On April 17, 2008, the Association des étudiant-e-s diplômé-e-s employé-e-s de McGill / Association of Graduate Students Employed at McGill (the Association) filed a complaint under Section 109.1 of the *Labour Code* (the Code), to which is appended an application for a provisional order under Section 118 of the Code.

[2] The Association is certified since January 11, 1993 to represent, at McGill University, the following group of employees:

“All the employees within the meaning of the Labour Code, who are graduate students of McGill University, Downtown Campus and McDonald Campus, teaching assistants and demonstrators of McGill University, except for graduate students remunerated from special grants.”

[3] The purpose of the order sought by the Association is that the University cease to use or abstain from using at any time in its institution the services of persons, particularly professors and technicians, to perform, in whole or in part and in any manner whatsoever, the work of the employees covered by the bargaining unit on strike.

[4] The application for a provision order was scheduled for hearing on April 19, 2008. On that date, a labour relations officer met the parties and an understanding was reached. The Association requested that the understanding be put in writing. The parties agreed to transmit the understanding to the Commission on April 22, 2008 for the Commission to give effect to it.

[5] Following the understanding, the University drafted a proposed order, which was transmitted to the Association on April 21, 2008. According to Mtre André Baril, counsel for the University, Mtre Éric Lévesque, counsel for the Association confirmed to him that the draft transmitted clearly reflects the understanding entered into between the parties. However, Mtre Lévesque informed him that the Association refused to sign the understanding.

[6] Given this refusal, the University informed the Association that it would appear before the Commission on April 22 at 2:00 p.m. to ask it to render the agreed order.

[7] Around 1:50 p.m. on April 22, the Association filed a discontinuance of its complaint and its application for a provisional order. Following this discontinuance, it informed the Commission that it had no other representations to make in the file.

[8] The Commission heard the University regarding the application for a provisional order. According to the document drafted by the University, the understanding made between the parties is as follows:

CONSIDERING that a labour conflict exists between the parties;

CONSIDERING the application under Sections 109.1 Q.L.C. and 118 Q.L.C. filed by the Union (AM-1002-2407);

CONSIDERING the consent of the parties to this order concerning the modalities applicable to the correction of assignments and exams, recording of students' grades and any other activities performed or which may have been performed by anyone before and after the strike was called;

THE COMMISSION ORDERS AS FOLLOWS:

[1] That in respect of the correction of assignments and exams and the recording of grades for the Winter 2008 Term, and respect of all tasks related to Summer

Session 2008, the employer can use the services of the following persons, in connection with courses to which a teaching assistant (TA) or TAs are attached:

- i) The Course supervisor as defined in article 2.06 of the Collective Agreement, to carry out all tasks related or necessary to carry out for the course, irrespective of whom has carried out these functions in the past;
- ii) To an employee (“salarié”) other than a member of the bargaining unit on strike, a professor or lecturer (except as described above for the Course Supervisor), hired in the normal course of business, both parties acknowledging that certain functions are not exclusive and are sometimes carried out by TAs. Without limiting the generality of the foregoing, it is understood that the employer agrees that graders, markers, invigilators and other employees (except for those mentioned at paragraph 1 above) will be asked to carry out their functions in the measure in which they would have in similar circumstances in the normal course of business. (For example, as they would have in respect of the same course, taught in the same way in the past, to a similar number of students, where the number of assignments and exams is similar, etc.);
- iii) A person who is not an employee (“salarié”) pursuant to the Labour Code of Quebec.

[2] Any alleged disagreement concerning the implementation of this order will first be brought to the attention of the General Counsel of McGill by Counsel for the Union, with a view to resolve the matter by consent;

[3] The Union’s application of April 18, 2008 for a temporary order is suspended sine die.

[4] This order is in force until May 22, 2008 and may subsequently be renewed by consent or by default. The Union’s initial application of April 16, 2008 then may be debated before a Labour Commissioner.

Consequently, the Commission des relations du travail orders the execution of this order according to the terms described above.

[9] At the hearing, the University agreed, following a question by the Commission, that there is an error in paragraph 4 of the agreement and that May 22, 2008 must be replaced with May 21, 2008.

FOUNDATIONS

[10] The transaction is not subject to any special formalities. It may be written or oral. When there is consent or agreement on the essential elements of the understanding, there is a transaction. The writing is only the proof of it.

[11] In the case at bar, the document drafted by the University at the Association's request recognizes the transaction entered into between the parties.

[12] The understanding provides not only for modalities in respect of the correction of students' work, but also that the Commission will order its execution.

[13] The subsequent discontinuance of the complaint and the application for a provisional order has no effect on the understanding entered into at the stage of the application for a provisional order.

THEREFORE, the Commission des relations du travail

GRANTS

the application;

ORDERS AS FOLLOWS:

That in respect of the correction of assignments and exams and the recording of grades for the Winter 2008 Term, and respect of all tasks related to Summer Session 2008, the employer can use the services of the following persons, in connection with courses to which a TA or TAs are attached:

i) The Course supervisor as defined in article 2.06 of the Collective Agreement, to carry out all tasks related or necessary to carry out for the course, irrespective of whom has carried out these functions in the past;

ii) To an employee ("salarié") other than a member of the bargaining unit on strike, a professor or lecturer (except as described above for the Course Supervisor), hired in the normal course of business, both parties acknowledging that certain functions are not exclusive and are sometimes carried out by TAs. Without limiting the generality of the foregoing, it is understood that the employer agrees that graders, markers, invigilators and other employees (except for those mentioned at paragraph 1 above) will be asked to carry out their functions in the measure in which they would have in similar circumstances in the normal course of business. (For example, as they would have in respect of the same course, taught in the same way in the past, to a similar number of students, where the number of assignments and exams is similar, etc.);

iv) A person who is not an employee ("salarié") pursuant to the Labour Code of Quebec.

FURTHER ORDERS THAT: Any alleged disagreement concerning the implementation of this order will first be brought to the attention of the General Counsel of McGill by Counsel for the Union, with a view to resolve the matter by consent;

DECLARES THAT: This order comes into force immediately and remains in force until May 21, 2008;

SUSPENDS The Union's application for a temporary order sine die.

Pierre Cloutier

Mtre Éric Lévesque
PEPIN ET ROY
Representative of the Applicant

Mtre André Baril
MCCARTHY TÉTREAULT LLP
Representative of the Respondent

Date of the last hearing: April 22, 2008