



News & Views

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Bulletin #7

UGFA Certification - At the Labour Board

This is an update report for UGFA on our union certification process. We are currently waiting for a decision from the Ontario Labour Relations Board panel on the matters raised at the hearing described below. While the resolution of the outstanding issues is now entirely in the hands of the OLRB panel, it is instructive to consider some arguments presented by the Administration lawyer and the UGFA lawyer in establishing their/our positions on various issues. If you have questions or comments, please contact the UGFA office or the President, David Josephy.

On June 26 and 27, UGFA and the Administration of the University attended a hearing at the Ontario Labour Relations Board (OLRB) offices in Toronto. The major business of the hearing was to present information concerning areas of disagreement between UGFA and the Administration on the **description of the bargaining unit** that UGFA represents. The Administration has contested the inclusion of staff veterinarians of the Veterinary Teaching Hospital and the Animal Health Laboratory, and maintained that Departmental Chairs should be excluded. In addition, the Administration (a) wished the Labour Board to exclude any members of *non-unionized* groups (e.g. Professional Staff Association (PSA), the College Academic Research Group (CARG), and the Exempt Group, and (b) proposed a generic exclusion for a potentially flexible group of individuals who received "more than 50% of their salaries for administrative functions".

A panel of three OLRB members heard the arguments, presented as written documents and verbal testimony from witnesses. Both UGFA and the Administration brought several potential witnesses to the hearing. Ultimately, information from questioning and cross-examining three people called by the Administration appeared to cover the ground adequately – mercifully for the length of proceedings. Documents presented as evidence included the Special Plan Agreement, excerpts from Faculty Policies (e.g. Section N., on the role of Chairs), and copies of several previous OLRB decisions, that, for example, had ruled that departmental chairs should be *included* in faculty unions, and that diverse occupations *could* be included in the same bargaining unit.

The OLRB panel will eventually provide a written decision on the issues presented to it in this hearing – this may take a short time, or a long time, so we wait. **But resolution of these issues does not alter the fact established by the May 16th vote - that UGFA is a union!** However, it is clearly a matter of some substance that we know just who the union represents when we begin negotiating our first collective agreement.

c On including Veterinarians in the Animal Health Laboratory: The Administration argued that “*the vets at AHL are not faculty*” – that is, they weren’t appointed as faculty, were not covered by the Special Plan Agreement, were not in the Faculty Association, and have no requirement that they must teach or do research. The Administration lawyer questioned the Director of AHL, in an effort to establish that AHL was really a business, dependent on fee-paying clients, without whom AHL would not exist. Specific job “fact-sheets” were presented, and the OLRB panel were duly treated to a description of what one can do with a dead cow, in terms of clinical pathology, toxicology, histopathology, bacteriology, virology, parasitology, haematology, and more. The UGFA lawyer’s cross-examination established that the AHL veterinarians *did* do service, teaching and research as faculty members did, just with a different weighting. Proposals on record that the staff veterinarians *should* be treated as faculty were introduced, including from the American Association of Veterinary Diagnostic Laboratories (the group that accredits AHL), from the University of Guelph’s 21st Century Professoriate report, and from the veterinarians themselves.

c Staff Veterinarians in the Veterinary Teaching Hospital: The Administration made similar arguments for excluding the VTH veterinarians, although they were prepared to allow that they did do more teaching, with clinical students. From questions asked of the OVC Dean, the Administration’s lawyer appeared to be defining “faculty” by the answers to such questions as: “give lectures?”, “being in charge of a course?”, having an academic rank?”, having sabbaticals?”, “eligible for tenure?”, “eligible for promotion?”, original research required?”. For both the VTH and AHL groups, the Administration’s lawyer asked if they were currently represented by UGFA – and attempted to portray the “no” answer as evidence that UGFA had spurned the veterinarians. (In fact, it was the Administration’s decision not to allow them to be represented along with faculty and librarians.)

The term “**Community of Interest**” comes up in discussing whether the veterinarians should be part of UGFA because, at one time, the concept was used in Ontario to establish whether a group of people should be considered members of a particular union. However, other OLRB decisions (e.g. Sick Kids Hospital) established that the real test was whether a union could **effectively represent** people in diverse occupations. Thus, an employer needs to show that serious labour difficulties would occur in negotiating with a union with diverse members. The Administration lawyer suggested that this was an *extreme* case, which would include people (vets) who have “absolutely nothing to do with University of Guelph faculty” and would require different sets of negotiations.

c Chairs are Managers? The Administration argued that Departmental Chairs should be excluded from UGFA because of their role as managers. *The formal labour relations definition of “management” is: people who have sufficient individual discretion and powers to deal with key employment areas: hiring, firing, promotion and dismissal.* A precedent OLRB case, *The Carleton University* case [1975], had determined that a faculty chair “did not exercise managerial functions, notwithstanding his significant duties and responsibilities”. The Administration lawyer contrasted the role of a chair at Carleton in 1975 with that of a modern chair at research-intensive Guelph, suggesting they were “light-years away”. A departmental chair who joined the University in the past year was the witness called by the Administration. The Administration lawyer asked the chair to place a number of the functions of a chair on a spectrum from “Collegial” to “Managerial Decision” – functions such as hiring, salary determination, promotion and tenure decisions, TAPSI decisions, submission of grant proposals, teaching assignments, teaching schedules, etc. Other questions asked were: “How big is your budget?” and “How do you see your function in the department?” (Answer: “Managerial”). In cross-examination by the UGFA lawyer, the chair agreed that action on a hiring recommendation from a department search committee, and negotiation of salary and research needs for new faculty, was largely in the hands of the Dean. The significant roles of departmental committees in Tenure and Promotion and TAPSI decisions, as per Faculty Policies, were also noted. The large budget that this chair

manages includes 35% from the university (largely locked into salaries for faculty and staff) and the rest being research grants awarded to faculty members.

The UGFA lawyer argued that the picture that emerged was that of an important role for a chair as an advocate, leader and the person bearing a significant administrative burden – but short of the “managerial” role and powers that fall to deans and vice-presidents. In contrast, the Administration lawyer claimed that “the decisions [the chair] is called upon to make and makes, in the interests of the department, means that [the chair] will be in a position of conflict with colleagues [when making] decisions adverse to the interests and wishes of particular faculty members”. Faculty are assumed to operate in self-interested competition for scarce resources (money, space, GTAs, preferred teaching assignments, etc.), while only the department chair will impartially manage things for the good of the department and in the best interests of students.

Some matters of potential concern to UGFA members arose in these discussions, perhaps because of inexperience of the witness with Faculty Policies procedures.

1. Sabbatical applications: Departmental T&P committees make the decision to grant a sabbatical leave. A chair can ask that the leave be *delayed* by one year (e.g. to fit teaching schedules). It may be sensible, useful, and polite for faculty to discuss their plans to apply for sabbatical with the chair, but a chair should not discourage people from *applying*, even if they will be asked to delay taking the leave, as it has impact on counting time to the *next* sabbatical leave.

2. Informal discipline: It was suggested (by the Administration’s lawyer) that departmental chairs have a significant role in disciplinary proceedings – including meting out “informal discipline”. He argued that inviting a faculty member to have a quiet “fatherly chat” (*sic*) in the chair’s office might be “as significant in the professional environment as a day’s suspension would be in an industrial setting”. ***Faculty should clearly understand that “informal discipline” is NOT part of the disciplinary policies defined in Faculty Policies.*** Also, if a chair suggests that a letter be placed in the faculty member’s file with respect to an informal resolution of an issue, it cannot go in without the agreement of the faculty member. Should you encounter such a situation, **we recommend you immediately contact UGFA**, in confidence.

3. On the Origins of Faculty Policies: The Faculty Policies document was developed – and modified – by faculty and administrators who have been on the Joint Faculty Policies Committee (JFPC) or the parallel Joint Librarian Policies Committee.) The key word is “**Joint**” ... Faculty Policies were *not* handed down from the Administration mountaintop.

It is essential that faculty inform themselves about the powers that a chair and a dean has (or has not!) under Faculty Policies and be confident in that knowledge. And ditto for faculty, librarians, veterinarians *and* chairs under the **collective agreement** that is to be negotiated.

Other issues: The OLRB panel will also rule on a number of other “differences of opinion” between UGFA and the Administration with respect to the description of the bargaining unit, including:

1. Geographical scope: The Administration lists each place where UGFA members work (e.g. Guelph, Humber, Kemptville, Vineland, Ridgetown) while UGFA requests a broader “University of Guelph in Ontario” designation.

2. “50% administrative salary”: The Administration wants a generic formula to exclude the Directors of the Arboretum and of Teaching Support Services from UGFA – oh, and anyone else who might ever fit the definition.
3. Retirees: are excluded, unless of course they come back and start teaching or doing research all over again, when they become – what?
4. Acting Administrators: How long can someone serve as a temporary chair or dean, without losing UGFA membership protection? UGFA would like a specific “more than two months” definition before someone is excluded.
5. *All ranks: The Administration lists the ranks of those included in the union while UGFA just says “all faculty and all librarians”, to cover any new ranks that might be created (e.g. “Teaching Fellows, Research Fellows”).*
6. Members of the Board of Governors: UGFA needs to ensure members serving in this role are adequately protected under a collective agreement.
7. Other non-union bargaining groups: The Administration wants the Labour Board to “recognize” non-union groups such as PSA, so that UGFA could not represent their members (including the staff vets!). An earlier Labour Board ruling held that the non-union University of Toronto Faculty Association had no protected rights to represent contract faculty if the unionized CUPE was prepared to do so.

General comments: The Administration’s lawyer claimed that the UGFA counsel had “wrapped himself in the flag of jurisprudence”. However, the UGFA lawyer had pointed out that the Administration had not gone through any of the previous legal decisions in presenting his case – as none of it was in his favour. The Administration lawyer seemed disappointed that UGFA had not called any witnesses for him to cross-examine. While UGFA did bring potential witnesses to Toronto, our counsel elected not to call them, as going over much of the same ground would potentially divert focus from the clear legal precedents and labour law questions. UGFA appreciates the time our potential witnesses took to come to Toronto – to be sequestered in a waiting room! – and for the fact that they were willing to stand up for their rights to representation by UGFA. Thank you all!

Now what? Well, we wait – and we plan! When we receive formal Certification, UGFA will give the University written notice of its desire to bargain a first Collective Agreement. As this agreement will encompass not only things covered in our usual Salary and Benefits negotiations, but also matters currently dealt with by the Special Plan Agreement and Faculty Policies, it will be a complex task. We will be asking for your input and help.

