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Disputes, Grievances, and Arbitrations...Oh My!

When a dispute arises between a UGFA member and the University, the UGFA has the responsibility to represent the Members' interests by facilitating a resolution. Many different issues may be the basis for a dispute between a Member and some part of the University's administration. These are not our everyday grumbles, but rather matters that arise, for example, when there are violations of the Collective Agreement, when there are discipline matters, and in cases of denial of Tenure or Continuing Appointment.

Informal resolution

Whenever possible, both the University and UGFA attempt to resolve disputes using the informal process. If an individual member (or a group of members) come to the UGFA with a complaint or dispute that may give rise to a grievance, the member and a designate from UGFA will meet with the appropriate dean (or Provost if from multiple colleges) to discuss the matter. This meeting should occur within 20 days of the incident or circumstance giving rise to the member's complaint. The dean will then have 10 days to respond to the complaint in writing. If the response is satisfactory to the Member, then the dispute is considered resolved. Occasionally this is not the case and the UGFA, on behalf of the member, will launch a formal grievance.

Detailed information regarding grievances and arbitration can be found in Articles 40 and 39 respectively, of the Collective Agreement.

Formal grievance procedure

After the UGFA launches a grievance in a written letter to the Provost that states which articles have been violated and the proposed resolution, the Provost will meet with the UGFA to discuss the matter. After this meeting the Provost will respond in writing to the Association. At this point, if the proposed resolution is satisfactory then the grievance is considered resolved. If it is decided that the proposed resolution is still unacceptable, there is one final avenue - Arbitration.

The UGFA works closely with our lawyers during the grievance, appeal and arbitration process.

Policy Grievances

Occasionally, there is a difference arising between the Association and the University as to the interpretation, general application or alleged violation of a specified provision of the contract.

When this occurs, the UGFA and management meet to try to come to an agreement as to the appropriate interpretation or application. If agreement cannot be reached, then the Association has the right to request arbitration.

Grievance Arbitration

When the Association and the University cannot agree on a resolution, either party may request an arbitrator. Arbitration is the dispute resolution process of which an impartial arbitrator (or arbitration board) passes a decision that is binding on both parties. Ontario law requires that all collective agreements provide a stipulation for final and binding grievance arbitration.

Should a case proceed to grievance arbitration the structure of the proceedings is similar to that of a hearing

in a court of law.

The cost of arbitration is significant, generally in the tens of thousands of dollars. It can take months from requesting arbitration before the actual arbitration proceeds, and arbitrations themselves can last anywhere from one to several days.

The role of grievances in collective bargaining

Grievances also help play a key role in determining what issues we bring forward to the bargaining table. In “young” collective agreements (such as ours) there are often articles that may be open to multiple interpretations. When members come forward with disputes we take note of these as areas in which we can improve our collective agreement.

2010/2011 Disputes	# Current Cases	# Resolved Cases	Total Cases
Appointment	3	1	4
Intellectual Property	1	1	2
Discipline	4	4	8
Leaves/Accomodation	2	0	2
Promotion & Tenure	4	7	11
Salary & Benefits	2	1	3
Workload/DOE	4	2	6
Discrimination/Human Rights	5	2	7
Process	3	3	6
Miscellaneous	6	6	12
Total (2010-2011)	34	27	61

Lakehead University goes to Arbitration

University Told to Pay Up
Mikael Swayze/The
Guardian/CALM



On April 24, 2009, Lakehead University in Thunder Bay, Ontario, announced there would be a four-day shutdown in December 2009 that would result in reduced pay for all non-essential employees.

The faculty association grieved and an arbitrator has recently ordered the university to repay the lost faculty wages.

The association brought evidence from faculty members about the kind of work they do. It was clear that faculty members receive an annual salary and are expected to teach, conduct research and fulfill administrative responsibilities. Faculty members are not paid on an hourly basis and have a great degree of control over scheduling of their working lives.

The consistent evidence was that they received their salaries for the duties expected of them and their duties were, with rare exceptions (teaching schedule), not tied to attendance at their workplace on specific days. Faculty members also testified that December is a busy month because of the requirements for grade submission and course preparation for courses starting in January.

The university's position was that it was in a state of crisis and that the executive committee made a decision that a four-day shutdown in December "would satisfy the

In 2009, in the face of a financial crisis, Lakehead University announced a four-day shutdown to reduce costs (including salaries). Their faculty association grieved this response, and after going to arbitration it was concluded that faculty members manage responsibilities on an annual basis as opposed to daily. The university was therefore barred from reducing faculty salaries as a result of shut-down.

“faculty members often work at times the employer is closed and often work off-site”

requirement for a balanced budget and have the least impact on operations.” The contract set out a process for lay-offs in the event that a bona fide crisis exists. The university’s evidence was that this was not a bona fide financial crisis affecting the long-term well-being of the university. Hence, those provisions in the contract were not followed.

The faculty association grieved the shutdown and met with their employer to explore alternatives. During these discussions, the employer admitted that an enrolment increase of merely 100 students would prevent the necessity for a shutdown.

The arbitrator concluded that “the collective agreement provides for the payment of annual salary and...makes no reference to regular daily or weekly hours for faculty members.” The arbitrator acknowledged that faculty members often work at times that the employer is closed and often work off-site as well. Faculty members receive no extra compensation for any of this additional work.

“Faculty members are expected to manage their

time, to fulfill the responsibilities set out in the collective agreement and to record their activities in a report which they file annually with the dean in return for which an annual salary is paid.”

The arbitrator concluded by finding that the university was barred from reducing the salary of faculty members during the shutdown. Her analysis entirely turned on the fact that faculty members are paid an annual salary for annual duties. While the university clearly can determine when the doors are open and closed, this cannot have the effect of reducing a faculty member’s pay.

This is a significant decision in the academic sphere. Industrial facilities frequently use shutdowns to impose reductions in annual wages and salaries. However, for faculty members, a shutdown cannot result in a loss of income.

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“for faculty members, a shutdown cannot result in a loss of income”

Restructuring the Office of Open Learning and Teaching Support Services

Update Around Campus

We recently received news that Teaching Support Services is merging with the Office of Open Learning. While at this point we cannot determine of what consequence this may be to UGFA members, we will be following the development of the merge and would be happy to receive any feedback from Members on this topic.

A memorandum was forwarded to the University community in November 2010 highlighting the decision to merge these two units. In addition, the UGFA recently received an update, from the Associate Vice-President Academic, Serge Desmarais, on the process.

The letter indicated the rationale as follows:

“...we now live in a world

where technology is part and parcel of our daily activities. As a result, the way we develop courses has also changed and technology is now part of most courses, whether offered online or face-to-face. Similarly, educational development practices have changed and expanded and we must ensure appropriate usage of technology within the development of all our courses.”

A copy of the full letter is available for viewing on the UGFA website www.caut.ca/ugfa. For your information, we have also included on our website a copy of the initial memorandum sent to members of the University.

We will keep you informed as we receive more information.

For more information visit the UGFA website at www.caut.ca/ugfa or the Teaching Support Services website at www.tss.uoguelph.ca



Ontario Confederation of University Faculty Associations
Union des Associations des Professeurs des Universités de l'Ontario

CALL FOR SUBMISSIONS
For the 38th Annual OCUFA
Teaching and Academic
Librarianship Awards

UGFA Updates and Events:

1. Call for Nominations: OCUFA Teaching and Academic Librarianship Awards

Each year OCUFA recognizes outstanding teachers and academic librarians in Ontario universities. Approximately 5 to 7 awards are presented each year.

The deadline for nominations is May 20, 2011. Guidelines for nominations are available on the OCUFA website (www.ocufa.on.ca).

2. Congratulations to winners of CSA Teaching Excellence Awards

Bettina Kalisch and Ruediger Mueller are the winners of this years' Teaching Excellence Award, with honourable mention going to Jacqueline Murray.

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