

AT A GLANCE

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Dear Colleagues,

It is close to a year since I took over from Bob O'Rourke as your Chief Grievance Officer, and an even longer time has passed since our last *Grievances-At-A-Glance Bulletin*. During this time, the business of defending Members' rights has continued. To facilitate this, the Executive has eliminated the Grievance Committee, and replaced it with a system of multiple Grievance Officers (GOs), each one with the authority to investigate complaints and carry the grievance process forward. As Chief Grievance Officer (CGO), I have the additional responsibility of coordinating the GOs, being the official contact person with the Employer, and being the liaison for GOs with the Executive and the Membership.

Currently the Grievance Officers are myself and Philip Smith (Psychology). We would like to have at least one or two more Grievance Officers, with representation to be as diverse as possible (we particularly feel the need for a GO from AVC). As a GO you would evaluate/investigate complaints, determine if there is language in the CA to support a grievance, and present grievances at meetings with the Employer. This would all have to be done objectively, and putting aside any biases or personal opinions. If this appeals to you, please consider providing your service to the FA as a GO.

The Grievance Officers have been quite busy this past year. Elsewhere in this *Bulletin* we report on some of the ongoing and resolved grievances. Besides these, we have dealt with, or are dealing with, a number of Member complaints.

Article F-2 of both Collective Agreements contains the language regarding grievance, but the FA has developed some internal processes as well. If a Member initiates a complaint, here is the general process that is followed.

(1) The CGO does a brief preliminary investigation to see if there is a *prima facie* violation of the CA, and if so, considers which Grievance Officer should be assigned to the case (considering issues like current workload of GOs, areas of expertise, and possible conflicts of interest).

(2) The Grievance Officers meet and the file is assigned to a GO.

(3) The GO assigned meets with the Member to discuss the Grievance and possible redress, conducts a more in-depth investigation, and reports back to the Grievance Officers.

(4) The Grievance Officers decide whether a violation of the CA has occurred. If so, the process continues.

(5) If it is the judgement of the Grievance Officers that the violation is such that informal resolution might be possible, we may, with the agreement of the Employer, agree to suspension of time lines to allow this informal process time to achieve a resolution. These informal processes would typically involve the GO assigned to the file, and one other GO, meeting with the administrators involved and discussing positions, interpretations, and possible settlements.

(6) If no resolution is possible through informal channels, the GO meets with the Member and they complete the "Member Grievance Form" which would contain the specifics of the case, including redress. Both the Member and GO sign the form.

(7) The CGO drafts a letter to the Employer, based upon the information in the "Member Grievance Form". This letter contains the specifics of the grievance, a listing of the Articles violated by the Employer, and the redress required to settle the grievance. This letter is hand-delivered to the President's office.

DID YOU KNOW?

- There are two types of grievances - a *Member grievance* filed on behalf of an individual Member or a group of Members and an *Association grievance* filed on behalf of the Association.
- All grievances must be filed by the Association; Members cannot file grievances directly.
- Grievances must be filed within 20 working days of the date of the events giving rise to the grievance or within 20 working days of the date when the events giving rise to the grievance ought reasonably to have been known, whichever is later; **act quickly and don't delay.**
- If the Association is not satisfied with the Employer's response to a grievance, it has the right to refer it to a hearing in front of an independent arbitration board.
- **Contact the Chief Grievance Officer if you are concerned that your rights have been violated.**
- For more info, see Article F-2 of your Collective Agreement.

(8) Within ten days, the FA receives a written "Step One decision" from a person designated by the President to hear the Grievance. If they agree with the FA on all points we have a settlement. If not, the FA must notify the Employer if we intend to proceed to "Step Two".

(9) The "Step Two" meeting must be held within ten days of FA notification to proceed. The Employer assigns a designated representative to consider the grievance (almost always this is VP Research & Development Katherine Schultz). Usually Peggy Leahey (Human Resources) represents the Employer, and often one other administrator attends. The GO assigned to the case represents the FA and usually one other GO attends to take notes. Both sides present their case to the designated representative and within ten days the designated representative provides a written decision upholding or denying the grievance.

(10) If the Grievance is denied at Step Two, the Grievance Officers meet and decide whether they will recommend to the Executive to proceed to Arbitration. Only the Executive can authorize proceeding to Arbitration. Arbitration is an official legal proceeding under the Labour Relations Act where both sides present their case to an independent Arbitrator or Arbitration Board. The Arbitration decision is legally binding. At this stage both sides use lawyers to present their cases, and the GO's role is to provide information and background to our lawyer and possibly testify.

I would request that, whenever you think your CA rights are being violated, you contact myself or

Philip. We will do our best to protect your rights. As a Member, you also have a right to confidentiality during the Grievance process. You should be aware, however, that Arbitrations are public hearings and so if a Member agrees to have their grievance carried to that stage, there is no longer any confidentiality rights.

In closing, let me mention one last important role of the Grievance Officers. We are required to report to Executive regarding issues arising from Member complaints that may require revisions to the CA in future collective bargaining rounds. It has happened that a Member has come to the Grievance Officers with a valid complaint, but the articles in the CA covering the situation were either too vague, or didn't cover the particular circumstances giving rise to the complaint. In those cases we have tried to work with the Employer to reach a satisfactory outcome for the Member and Employer, but if the Employer is not interested we have little recourse. However, we can note the issue and Article(s) in question and relay our concerns to the Executive. So, if you feel the Employer is being unfair, but you cannot identify a particular article in the CA which addresses the issue, we would ask you to still come forward with your concerns. We may be able to identify some language to support a grievance, but, even if we can't, you can still assist the FA by helping us identify articles in the CA that may need to be strengthened.

Sincerely,

Gordon MacDonald

Chief Grievance Officer

- **Intellectual property rights (Update/Resolved)**

It had been previously reported to you that this 2005 Association grievance was settled by the Parties immediately prior to a scheduled arbitration hearing in April 2007. The Settlement identified the Association as the *sole and exclusive* bargaining agent for its Members and confirmed that the title to any intellectual property developed in the project is to be vested in the Member and UPEI in accordance with their respective interests under the Collective Agreement. Unfortunately, in the opinion of the Association, the Employer failed to fulfill its obligations in respect to the Settlement, and in September of 2007 we asked that the Arbitration Board reconvene in order to hear the matter.

It was the Association's position that the April 2007 settlement was binding on both parties and should be enforced by the Arbitration Board. The matter was finally heard in May of 2008. During this process the Chair of the Arbitration Board offered the parties the opportunity to resolve the issues through a Board-mediated process. The Arbitration Award which arose out of this process confirmed the Association's right to represent its Members' interests on intellectual property issues.

Since the beginning, the Union has maintained that the Employer does not have the right to engage Members directly to require them to agree to alterations of their own intellectual property rights when it enters into research funding agreements with third-parties. It has been the Union's position that it is the sole and exclusive bargaining agent for its Members on intellectual property rights and other issues covered by the Collective Agreement. The Union has contended that the Employer must deal with the Union when its Members' rights are being affected by third-party research funding agreements. This arbitration ruling confirms these principles with the Employer's agreement and orders the Parties to comply with its terms.

The Union has never sought to restrict what its Members can do with their own intellectual property. It has only fought to ensure that it is able to protect its Members' rights and that it is able to advise Members about any implications for their rights from any third-party agreement. This ruling provides the Union with these abilities and puts in place a process with the Employer to deal with third-party funding agreements while ensuring that there are no delays to the research work.

Accordingly, once the Office of Research and Development receives a third-party funding agreement which it is willing to accept and which seeks to alter the rights of the Member(s) involved, it must provide it to the Union for consideration before seeking any approval from the Member(s) involved or executing it with the third-party funder. The Union then has 10 working days to consult with the Member(s) involved and to advise the Office of Research and Development if the third-party funding agreement may be executed.

It is very important to note that if a Member wants the contract to be executed, the Union will not arbitrarily decide otherwise. Normally, the only time that the Union would advise the Office of Research and Development that an agreement must not be executed would be if that is the direction provided to it by its Member(s) after being fully advised by the Union of their rights under the collective agreement. The Employer has agreed that in any instances where intellectual property is assigned to the University for commercialization purposes and commercialization does not occur, the University will release its assignment back to the Member(s) involved.

A further aspect of this ruling dealt with those members who met with the Union during May/June 2007 and indicated their desire to have the Employer re-visit their third-party research funding agreements. Meetings were scheduled between the Member(s) involved, the Union, and the Office of Research and Development to provide an opportunity to resolve the outstanding issues. This process is near completion.

- **Health and Safety Policy and discipline (Update/Resolved)**

This Association grievance was filed in January, 2007, in response to the Employer's adoption of a campus Health and Safety Policy which contained a disciplinary process that could be applied to Members outside of the disciplinary process contained in the Collective Agreement. The Association maintains that its Members can only be disciplined in accordance with the procedures in Article F-6 of its Agreement and that this parallel and conflicting process would seriously hinder the Association's ability to protect its Members' rights to a fair disciplinary process.

The Association's concerns were addressed in a September 2008 version of the Policy.

- **Individuals with bargaining unit appointments while in *excluded* positions**

(Update/Resolved)

A January 2007 arbitration ruling declared that the Employer violated the Recognition Article A-3 of the Collective Agreement when it appointed a faculty member to a position, specifically excluded from the Union's bargaining unit, while allowing the individual to simultaneously continue their duties as a bargaining unit member.

This ruling was especially important because it established that these *dual-status* appointments are clear violations of the Collective Agreement and its Certification Order.

During the arbitration hearing the Employer identified other *excluded* positions which were or had been occupied by individuals who held bargaining unit appointments as Sessional Instructors at the same time. Therefore, it was necessary for two additional Association grievances to be filed in response to essentially the same violation by the Employer as with the original grievance. These two grievances were resolved when the Employer's Designated Representative ruled in favour of the Association.

In the previous *Grievances-At-A-Glance Bulletin* we reported that we had learned of a further violation for which a third additional grievance would have to be filed. Note that this third violation was executed by the Employer at a time when: 1) it was fully aware of the original grievance arbitration ruling, 2) the Association had made its objections clearly known, and 3) the Association had two additional rulings in its favour on the issue since the original arbitration ruling. Yet a fourth violation occurred in January of 2008. The Association was not able to resolve the grievance with the Employer until December -- one day before the scheduled Arbitration Hearing.

The resolution was registered with the Arbitrator and the Consent Award acknowledges that: 1) the Employer breached the Collective Agreement in this instance; 2) the Employer recognizes that the breach occurred in January of 2008 subsequent to an arbitral ruling between the parties dated January 24, 2007, the filing of three subsequent similar grievances in 2007, two of which proceeded to a Step 2 hearing and ruling in favour of the Association in December of 2007; 3) the Employer acknowledges that the Association advised the Employer that it would seek punitive and or aggravated damages in the event of

further similar breaches of the Collective Agreement by the Employer; 4) the breach was remedied in mid-January of 2008 by the work in dispute being re-assigned to a Member of BU #1 by the Employer; and 5) the Employer shall comply with Schedule "A" of the parties' Certification Order. The Arbitrator ordered that "The Employer shall...only permit persons in excluded positions to contribute in a limited, informal capacity to aspects of a degree course, provided such contributions are incidental to their assigned duties and responsibilities."

- **Hiring individuals outside the bargaining unit to do bargaining unit work**

(Update/Resolved)

An Association grievance was originally filed in July of 2007 in response to the Employer's actions to employ two individuals, who are outside the Association's Bargaining Unit #1 and whose positions at the University exclude them from belonging to Bargaining Unit #1, to teach a credit course in the Faculty of Veterinary Medicine. This is the classic union grievance in which the Employer gives *union work* to *non-union* people, an activity typically referred to as *outsourcing*.

In this case, the issue was somewhat more complicated as the two individuals being used to do Bargaining Unit #1 work belong to the Association's Bargaining Unit #2, the *clinical veterinary professionals* group in the AVC. While the principal duties and responsibilities of individuals in Bargaining Unit #2 is the provision of professional services in the support of the University and its clinical programs in the AVC, their duties and responsibilities may also include *clinical teaching*.

The Bargaining Unit #2 Collective Agreement defines *clinical teaching* to include participation in clinical rotations, laboratories, continuing education, occasional didactic lectures and undergraduate and post-graduate training as determined by their position. The Association maintained that the duties and responsibilities given to these two individuals of Bargaining Unit #2, which included full responsibility for a credit course, went well beyond those just described and therefore was a violation of the Bargaining Unit #1 Collective Agreement.

After considerable discussion, the Employer offered the Association a Memorandum of Agreement to resolve the issue. The MOA asked the Parties to agree that the teaching duties and responsibilities assigned to Bargaining Unit #2 Members in this case represent an *exception* to the long-standing custom and collective agreement provisions by which these individuals are permitted to participate in teaching. The MOA then asked the Parties to agree that Members of Bargaining Unit #2 can be assigned these duties, essentially asking the Association to agree to violate its Bargaining Unit #1 Collective Agreement. The Association was not able to agree to this.

Unfortunately, the Employer subsequently chose to employ yet another individual from Bargaining Unit #2 to do the same work in September of 2007. This was the third instance of the same violation. This action was carried out by the Employer knowing the Association's objections and having already received a grievance for two instances of the same violation. The Association was forced to file a second grievance in October of 2007. In December of 2007 the Employer's Designated Representative found in favour of the Association but directed the Parties to resolve the issue in a manner which would allow the Employer to continue to use these individuals to teach credit courses. Because of this ruling the Association notified the Employer in January of 2008 that it intended to proceed to arbitration.

In May of 2008 the Employer again proceeded to have individuals, who are outside the Association's Bargaining Unit #1 and whose positions at the University exclude them from belonging to Bargaining Unit #1, teach a credit course in the Faculty of Veterinary Medicine. This action resulted in a third Association Grievance being filed. Again there was little movement until days before the scheduled arbitration date in December.

An agreement was then reached between the Parties which covered all three grievances and this was presented to the Arbitrator. The Consent Award from the Arbitration Board included the recognition that: 1) the Employer breached the Collective Agreement for Bargaining Unit #1 by assigning individuals to teach a credit course, who are outside the Faculty Association's Bargaining Unit #1 and whose position at the University exclude them from belonging to BU #1; 2) the Employer acknowledges and agrees that this breach first occurred prior to July 9, 2007 and continued subsequent to an arbitral ruling between the parties dated January 24, 2007 and the filing of

two further grievances, one on October 5, 2007 and one on July 4, 2008, and continued after the Employer's acknowledgement at the Step 2 meetings that the Employer was breaching the terms of the Collective Agreement, and continued after the Employer's advice that it would not continue; 3) the Employer acknowledges that the UPEI Faculty Association advised the Employer on October 5, 2007 that it would seek punitive or aggravated damages as the result of the Employer's continuing breach; and 4) the Employer acknowledges and agrees that the breach shall be remedied by the work in dispute being forthwith assigned to individuals hired in accordance with the provisions of the Bargaining Unit #1 Collective Agreement and Certification Order. The Arbitration Board ordered that the Employer shall comply with all provisions of the Collective Agreement with respect to these appointments and in particular with respect to the hiring and workload provisions. The Arbitration Board also ordered that "The Employer shall comply with Schedule "A" of the parties' Certification Order and in particular shall only permit persons in excluded positions to contribute in a limited, informal capacity to aspects of a degree course, provided such contributions are incidental to their assigned duties."

●AVC teaching evaluation process (New/Active)

This Association Grievance was filed in October of 2007 when the Employer permitted students in the Faculty of Veterinary Medicine to complete Student Opinion of Teaching Surveys after the completion of a course contrary to Article E1.3 of the Collective Agreement. The Association was concerned that improperly collected survey results could be used in a manner not permitted under the Collective Agreement for tenure and promotion purposes. After a Step 2 hearing the Employer's Designated Representative found in favour of the Association in December of 2007. Since that time the Association has been negotiating with the Employer to ensure that the issues associated with this grievance are resolved.

●Hiring individuals outside the bargaining unit to do bargaining unit work II (New/Active)

An Association grievance was filed in November of 2007 in response to the Employer's actions to employ an individual, who was outside the Association's Bargaining Unit #1 and whose position at the University excludes them from belonging to Bargaining Unit # 1, to teach in a credit course in the place of a Faculty Member in the Faculty of Veterinary Medicine. This grievance is related to the previous group of grievances which were resolved in the Association's favour and the issues are similar, except in this instance the individual was involved in teaching in a third year course. The Employer's Designated Representative found in favour of the Employer. Due to the significance of this issue the Association advised the Employer in May of 2008 that it will take this grievance to arbitration. We are still waiting for the hearing to be scheduled.

●Allotment of Sessional Instructor Positions in the Faculty of Arts (New/Active)

This Association Grievance was filed in March of 2008 when the Employer adopted a process for the allotment of sessional instructor positions in the Faculty of Arts which is inconsistent with the Sessional Instructor hiring process and the Chair's duties as provided for in the Association's Bargaining Unit #1 Collective Agreement. Despite the fact that in the early stages of the Grievance the Association offered a means by which this dispute could be settled, this grievance will now go to arbitration.

●Cancellation of Credit Courses (New/Active)

An Association Grievance was first filed in September of 2007 when it became apparent that the Employer had cancelled credit courses in a manner contradictory to the Chair's duties and responsibilities as defined in Article B 3.4. A second grievance on the same issue was filed in January of 2008 when the Employer again cancelled credit courses for the Winter Semester of 2008. The Employer's Designated Representative upheld the Employer's actions stating that the Collective Agreement had not been contravened. It is the Association's position that the Collective Agreement is clear that only the Chair in consultation

with the Department may determine which courses will be offered. As a result, in May of 2008 the Association advised the Employer that it was proceeding to arbitration on this issue. Since that time the Association has been advised of a similar violation of the Collective Agreement (Winter 2009) for which a third grievance has been filed. We are currently waiting for an arbitration date for these three grievances.

● Failure to Follow Sessional Hiring Process (New/Resolved)

The implications of the Arbitration Report in this instance are significant and should be noted by all Members, especially Sessional Instructors. A Member who was verbally offered a course was subsequently told that they could not teach the course. The Association's position in this matter was that once a Department had decided that a Faculty Member is not available to teach the course, and the Dean, in consultation with the Chair, determines that a Sessional Instructor is required, then Article G 1.3 must be followed in its entirety. Further, the Association contended that verbal offers are a part of the hiring process and once a course is offered to a Sessional Instructor the offer can not be rescinded except according to the provisions laid out within the Collective Agreement. In the Step 1 and 2 decisions the Employer's Designated Representatives rejected the Association's position and found in favour of the Employer. In January of 2008 the Association informed the Employer that it would take the grievance to arbitration. The Arbitration Hearing was held in November, 2008.

During the closing arguments the Employer's counsel suggested that: 1) the decision not to offer the course to the Member was taken at the Department level and since the Employer was not present the issue was not arbitrable; 2) that Section G 1.3 of the Collective Agreement imposes no time limits as to when an employment decision must be made and that the commitment of the Employer does not arise until the Dean of the Faculty forwards the recommendation to the President; 3) that a verbal offer from a Chair is not enforceable; and 4) that nothing in the Collective agreement prevents the Employer who, having posted a course for sessional instructors, from subsequently assigning it to an available Faculty Member. The Association argued that in essence Section G 1.3 creates a process whereby once the course is posted, a Sessional Instructor must be recommended, should (s)he meet the qualifying criteria.

In his decision the Arbitrator commented that "As the meaningful decision for the assignment of a sessional is made by the Department, the obligation must therefore be said to arise at that point and not, as the employer argued, when the Dean recommends the applicant to the President, nor when a formal contract is issued shortly before or just after the commencement of classes." Further the Arbitrator rejected the notion that the issue was not arbitrable and found in favour of the Association and directed that the Member be: 1) compensated for the loss of the stipend appropriate to sessional instructors in the Department, and 2) credited with the appropriate number of hours on the relevant seniority list.

● **Early Tenure** (New/Resolved)

A Member applied for tenure one year ahead of schedule. The CA allows for this in extraordinary circumstances (with the Dean's permission). The DRC interpreted the CA to mean that the person's teaching, research and service had to be extraordinary, and the URC signalled that it would also use this interpretation in its deliberations. Rather than immediately file a Grievance, the Grievance Officers decided to attempt informal resolution. After discussions with the Chair of the URC, the URC agreed to revisit the issue, and reversed its earlier decision. It was agreed that once the Dean involved agrees to the "extraordinary circumstances" provision, the application for early tenure would proceed like any other tenure file.

● **Overload for Chairs** (New/Active)

An Association Grievance was filed when it came to the Association's attention that the University was following a policy which denied Department Chairs the opportunity to do overload teaching. The Grievance Officers decided that the Employer position, based on an interpretation of Article H1.6, could not be supported. The Employer's Designated Representative ruled in favour of the Employer at Step 2. The Association has notified the Employer that it intends to proceed to arbitration.

For more
information on
grievance and
arbitration
procedures, see
"Standing Up For
Your Rights" on the
UPEIFA website.

The University of
Prince Edward Island



Faculty Association

Contact the Chief Grievance Officer if you are concerned that your rights have been violated.

**UPEIFA Chief Grievance Officer
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