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MEMO

To: All Members of the Faculty Association
Date: November 6, 2013
Subject: Arbitrator declares Board’s decision-making process to be “clearly misguided and flawed”

As reported to you at the General Meetings in April and October, two sabbaticals which were to have begun July 1, 2013, were denied by the Board of Governors. In an award issued a few days ago, an arbitrator declared the Board’s decision-making process to be “clearly misguided and flawed”, and agreed with the Union that there were no legitimate reasons for these two sabbaticals to be denied.

This was the first time that the Board had not accepted the recommendation of the appropriate administrator regarding approval or denial of sabbatical. The two Members denied sabbatical had filed unrelated complaints with the PEI Human Rights Commission. Applicants for 2013/14 sabbaticals were notified in February (not December, as has been normal practice). At that time, these two Members received correspondence from the Chair of the Board of Governors, Tom Cullen, asking for further information.

In Case #1, in February the Board questioned the feasibility of the proposal – a proposal supported by the Dean and the Interim Vice-President Academic. The Member provided further information, but then the Board proceeded in April to deny the sabbatical on the basis that the Member had requested a four-month sabbatical and four-month sabbaticals are not available under the Collective Agreement. What did they use to justify this? Well, the Member had written at the beginning of the application: “Thereby I qualify for a half-year sabbatical leave. I would like to take such leave for the Fall semester of 2013.” Of course, any academic would understand what this means. The Dean understood, the Interim Vice-President Academic understood. In fact, Dr. Lacroix had explained this to the Human Resources Committee of the Board in December. The Arbitrator understood, writing: “ ... one would be hard pressed to conclude [the Member] was applying for a four month sabbatical.” The Arbitrator concluded that the Member’s “sabbatical application was a proper one and described a sabbatical leave available... under the terms of the Agreement. The reason[s] for denying the application, put forward by the Board, are not legitimate reasons under the terms of the Agreement.”

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In Case #2, in April the Board denied the sabbatical on the basis that the Member was not eligible to apply as she did not have the requisite years of service. While the understanding at the time of hire was that she had a year's credit towards her first sabbatical, the letter of appointment had erroneously not stated that. In the words of the arbitrator, "Clearly, there was a failure on the University's part to reduce the proposed terms ... into a proper letter of appointment." A male colleague was hired the previous year with the same understanding that he was receiving a year's credit, and with a similar letter of appointment. The Board had no problem approving the sabbatical when he applied. Correspondence introduced by Counsel for the Employer was very useful in showing that the University President at the time of the appointment was of the opinion that a deal had been struck between the Dean and the Member. The Arbitrator recognized that "There was a promise made by the employer, relied on by the employee and acted on by both parties for several years," and went on to state "This is as clear and simple a case of estoppel as you can find." The Arbitrator determined that "there is a striking similarity to the [other sabbatical denial] case. The Board simply mis-characterized, or at the very least narrowly characterized, the applicant's case in order to turn it down."

The members of the Human Resources Committee of the Board that recommended denial of both sabbaticals? Tom Cullen, Linnell Edwards, Scott Harper, Neb Kujundzic, Alicia Bremner, Liz Maynard, and Lynn Murray. Cullen and Murray had also been on the committee who handled a complaint made to the Board from the Member in Case #2, and Cullen and Murray were on the committee appointed by the Board to coordinate the University's response to the eventual Human Rights complaint.