

# **Management Bargaining Team Chair's September 10 Response to U7, U8 and U9 submissions – Joint Committee Work, Outside Work and Coordinators Proposals**

## **Opening**

We want to start by thanking the Union for the feedback provided to us yesterday and the work the Union has done on the Counsellor class definition. Today we intend to respond to some of the general comments the Union provided to us at the end of the day yesterday, and provide our responses, questions, and preliminary proposals as they relate to the Union's U7, U8, and U9 proposals. As indicated yesterday, we will address the EDI component of U10 and the Union's Indigenous related proposals on Sept 14<sup>th</sup>. We will also be reviewing the U11 submission provided to us yesterday with a view to responding once that work has been completed.

## **With respect to the Union's comments from yesterday:**

*The Union bargaining team stated that over the past few dates at the table, we have frequently referred to the notion of a strike this round, as well as to binding arbitration and back-to-work legislation.*

*The Union also stated that the faculty team has not raised the specter or threat of a strike. The Union further stated that the goal from the very beginning has been to negotiate a collective agreement that satisfies the demands of Union members.*

We want to start by pointing out that the Colleges cannot threaten or call a strike. Furthermore, the Colleges have no intention to lock out academic employees.

As we have said, and we believe that the Union bargaining team knows, many of the proposals as the Union has drafted them are proposals that will lead to an impasse. The Colleges thoroughly considered and conclusively rejected these proposals for valid fiscal, operational, and legislative reasons. The reason we keep referring to the specter of a strike in relation to these specific proposals, is because we committed to being frank with the Union bargaining team. We want to be very clear with everyone so that there is no misunderstanding. Continued discussion and a strike mandate on these particular issues will not result in an agreement.

Notwithstanding those issues, we have shared with the Union that there are a number of broad areas the Union has raised for which we may share common concerns. This is why we have asked questions. We want to understand the Union's interests more fully so that we can engage in productive dialogue in order to work toward common ground where possible.

We agree with the Union that the collective bargaining process is an iterative one. However, we do not understand how one could expect a different result when putting forward demands that were resolutely rejected in previous rounds and were catalysts to a labour dispute.

In order to secure stability for our students and staff, we want to come to an agreement by September 30th. In order to conclude a collective agreement, removing the non-starters from the table in order to foster discussions around a set of modest revisions which could lead to a quick resolution, appears to be the most constructive way forward.

*The Union bargaining team also stated that we have yet to table any significant or detailed proposals or counter-proposals to address our areas of concern.*

We have identified areas of interest without committing to positional language proposals. As we have stated, we want to have a discussion to explore the Union's interests and ours. That could lead to draft language to address our respective interests. We've asked the Union questions in order to try and better understand the Union's interests. The Union has yet to answer most of them, and rather have left us with stark positions. Strict positional bargaining contributed to a strained relationship and created conflict in the last round. Receiving the outstanding answers to our questions would help us in our goal of developing shared understanding.

Notwithstanding that, we have tabled some proposed language and will be doing so again today.

I am now going to move to our responses to the Union's submissions.

**With respect to the U7 Joint Committee Work proposals:**

- 1. In the preamble to the U7 submission, it states that "Whether or not a manager attributes time on a SWF for joint committees is probably the most unambiguous statement of whether management believes that they and the Union are engaged in a common purpose (and that these joint committees are fundamentally valuable things), or on the contrary, whether they believe that the relationship is fundamentally antagonistic and undesirable."*

**Our response is that:**

- Article 8 provides the Union with a mechanism to purchase time for activities that they deem to be of value. There is nothing preventing the Union from purchasing time for these committees. When the Union purchases time, it only pays for 25% of the cost of the first 15 hours per week, 50% of the next 15 hours per week, and only reimburses at a 100% for hours over 30 per week. As a result, the Colleges do contribute significantly to Union participation in the various committees.
- The Colleges cannot designate the individuals who sit on these committees, they are chosen by the Union to represent Union interests. The SWF is meant to capture those duties assigned by the College to individual faculty members. While the work that is undertaken is of value, it is not work that is being performed by the individual in their capacity of employee, but rather it is Union business being performed on behalf of the Union in their capacity of Union representative.
- The issue of time for joint committees was conclusively addressed by Arbitrator Kaplan in a decision at Sault College dated December 12, 2014.

- The arbitration involved a complaint by the union that 5 faculty assigned to the UCC and CESC did not have time recorded on their SWFs by the College.
- Kaplan noted that Article 8 provides for a certain amount of release time for Union activity and the opportunity of the Union to purchase additional time for its members to engage in work on behalf of the Union. Kaplan's reasoning in that case was as follows:

Both parties filed a number of authorities, and they have been carefully reviewed. These cases make it clear that only work assigned by a college appears on a SWF. (...)

In my view, Article 8, considered as a whole and in context, makes this conclusion manifest. It provides for a regime for the release and payment of faculty members participating in the administration of the union and the collective agreement, both internally to the College and externally to the colleges system. ...

The terms of reference for both the UCC and CESC as set out in the collective agreement make it very clear that these are local joint committees with the union representatives appointed by the union to represent its interests at the College as part of the representation of employees and the administration of the collective agreement. There is no way to understand these activities other than as union business. To be sure, faculty members who participate in union business through membership in local committees such as those at issue in this case are rendering valuable service to the entire college community. However, they are doing so in their capacity as union representatives not in their capacity as faculty where their work would be appropriately recognized on their individual SWFs. The fact that some joint work, such as participation on joint occupational health and safety committees – where the participation and remuneration are mandated by statute – appears on a SWF cannot affect the determination of the matters in dispute.

Quite clearly, Article 8 applies to a wide ambit of union activity – including participation on the UCC and CESC committees – as assigned by the union to its members. Although these committees are joint, the fact is that the faculty members who serve on them – while making an important, indeed, indispensable contribution to the operation of the institution – have been assigned by and represent the union. This is not work that would come within the ambit of the SWF. Obviously, there is nothing in this award that would preclude any college from making whatever mutually acceptable arrangements it wished for release from work under Article 8.04A. Article 8.04B only comes into play absent local resolution.

2. *In the Union's submission, it also addresses article 24.01 A and propose that the Colleges take all reasonable precautions to protect worker safety and health by including "...psychosocial health and safety, by conforming with the provisions of the Occupational Health and Safety Act and Regulations".*

- It is our view that this does not make sense as the *OHS*A and its Regulations do not deal with "psychosocial health and safety".
- In the context of this proposal, a discussion of psychosocial health and safety does not logically flow. Should the *OHS*A be amended someday to deal with psychosocial health and safety we would be pleased to have a discussion in light of the provisions of the *Act*.
- In the meantime, matters of bullying and harassment, which are at the heart of psychosocial health and safety are already dealt with robustly in the existing article 4.
- That said, the Union will note that we have submitted a proposed language change to article 4.01 A to reinforce the importance of respect and civility in the workplace. Our goal with this proposal is to broaden the language in Article 4 to identify the mutual interest to have a respectful workplace where everyone treats each other with respect. We provided the Union with a copy of that proposed language change prior to this session. The proposed change would see the addition of the words "...or by any other employee..." resulting in a 4.01 A clause which would read as follows:

The parties agree that, in accordance with the provisions of the Ontario *Human Rights Code*, there shall be no discrimination or harassment against any employee by the Union or the Colleges, **or by any other employee**, by reason of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

3. *With respect to Article 24.02, the Union proposes that all members of the Joint Occupational Health and Safety Committee ("JOHSC") be included on "...all College committees related to health and safety planning, including ad hoc or other committees related to public health emergencies..."*

**Our response is that:**

- The JOHSC is a committee established by statute. Its function is specifically provided for in subsection 9 (18) of the *OHS*A. That subsection reads as follows:

It is the function of a committee and it has power to,

- (a) identify situations that may be a source of danger or hazard to workers;
- (b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;
- (c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of

programs, measures and procedures respecting the health or safety of workers;

(d) obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge;

(e) obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety; and

(f) be consulted about, and have a designated member representing workers be present at the beginning of, testing referred to in clause (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid. R.S.O. 1990, c. O.1, s. 9 (18).

- The role of the JOHSC is advisory and consultative such that it may pass resolutions to provide advice to management in the functioning of the Colleges. That does not mean that all JOHSC members must be at every table where every decision is taken.
- We believe that the JOHSCs functioned appropriately through the pandemic and see no compelling reason to depart from its statutorily established function.

4. *Finally, with respect to Article 24.02 B, the Union proposes adding safety equipment "as directed by Public Health" to the provision.*

**Our response is that:**

In an established bargaining relationship, language should only be changed where there is a demonstrated need. We are unaware of any circumstance in the system where PPE, as directed by Public Health Ontario, was not made available as necessary. If there were actual problems, we would appreciate hearing about the particulars so that we may inquire into the circumstance.

At this time, we would also like to provide the Union bargaining team with an overview of our proposed language to address an area of concern that the Colleges have in alignment

with the theme of the Work of Joint Committees. This draft proposed language was provided to the Union electronically prior to this session.

Our concern is that the June 1 deadline for the Union to identify its release time purchase for the year may be overly restrictive and may not align with the normal staffing processes of the Colleges. Our goal would be to ensure that the Union Local has advised the College of the faculty who require union release time prior to workload being assigned to other faculty. This would ensure that other faculty members are not inconvenienced by their assignments having to be changed to accommodate the Union release.

We are prepared to discuss establishing two deadlines to provide the Union with greater flexibility and to better align with the staffing cycle for Colleges: April 1 for releases commencing September 1; and October 1 for releases commencing January 1.

Our proposed language for Article 8.05 A reads as follows:

The Union Local President shall advise the College President by ~~June~~ **April 1 and October 1** of each year of the employee(s) to have a reduced teaching or work assignment pursuant to the provisions of 8.04 and the College shall arrange the reductions effective for the academic year commencing September 1 **for requests made by April 1, and January 1 for requests made after April 1 and by October 1**, subject to the availability of a suitable replacement or substitute for the employee(s) concerned and the efficient operation of the College.

### **I will now move on to the U8 submission related to the theme of Outside Work:**

- 1. In the U8 preamble, the Union states that "Faculty should no longer ask permission but instead, be encouraged to stay connected to their professional practices through employment outside their teaching role."*

#### **Our response is that:**

- Article 11.06 only requires that faculty seek permission for outside work during the period of assigned workload.
- Article 11.06 further provides that permission "shall not be unreasonably denied".
- We are unaware of any circumstance where permission to engage in outside work was unreasonably denied.
- If there are specific circumstances where the Union asserts that article 11.06 has unreasonably restricted a faculty member from engaging in outside work, we invite the Union to provide relevant details so that we may consider the circumstances.
- Beyond that collective agreement provision, many Colleges have promulgated conflict of interest policies. These policies typically prohibit outside activities that are in conflict with the Colleges' interests. In fact, over the years there have been instances in which faculty have been terminated for engaging in outside activities in conflict with their

employers (like personally delivering college developed programming for personal gain). 11.06, when followed by faculty, can act as a safety check to ensure that faculty do not engage in conflict which might result in discipline or termination.

More broadly, we are unaware of any circumstances grounding a need for a change to article 11.06. If there are circumstances that the Union is aware of, we invite the Union to provide us with the particulars so that we can look into the matter and consider it.

We also consider the proposal to be inconsistent with the Union's assertion that faculty are over worked under the existing workload formula. If that is the case, we would expect full-time faculty to be prioritizing their work for the Colleges.

**With respect to the U9 submission under the theme of Coordinators:**

As with some of the Union's other submissions, we do have a few questions designed to help us gain a shared understanding of the issues the Union are raising:

1. *In the preamble to the U9 submission the Union states that "In some colleges, the Union was alarmed to learn that this academic leadership responsibility is being assigned to non-academic staff."*

**Our questions are:**

- Can the Union clarify for us which "academic leadership responsibilities" the Union are referring to in this statement?
- What "non-academic" staff are these responsibilities being assigned to?
- Does the Union have data that provides a sense of how widespread this phenomenon is in the system? Will the Union share this data with us?

2. *The Union also states that "Faculty are frustrated by the lack of clarity around roles and responsibilities, hours allotted and compensation for coordinator duties. This frustration and lack of clarity have led to high rates of turnover."*

**Our questions are:**

- Does the Union have data that provides insight into the current rate of turnover among coordinators? Will the Union share that data with us?
- If the Union is suggesting that the rate of turn-over has increased because of increased frustration, will the Union share with us the data that demonstrates that?
- On what evidence is the Union basing the assertion that frustration has led to high rates of turnover? Does this evidence provide insights into specific reasons for any high rates of turnover?

3. *The Union further states that "Many colleges struggle to find faculty members willing to coordinate because of the lack of transparency and increasing hidden workload demands when it comes to coordinator appointments and duties."*

**Our questions are:**

- What objective information or data is the Union able to share with us in order that we can develop a shared understanding of the difficulty in finding faculty willing to act as coordinators?
- What information can the Union share with us illustrating that the difficulty in getting faculty to act as coordinators is because of a “lack of transparency”?
- Can the Union provide us with more detail regarding what it means when it refers to “hidden work demands”?
- What information can the Union share with us illustrating that the difficulty in getting faculty to act as coordinators is because of “increasing hidden work demands”?

**In advance of receiving the answers to these questions, our preliminary response to the Union’s submission is as follows:**

The coordinator role is not uniform across the system or across programs within a College, rather the coordinator role is unique in each program. We are open to discussion regarding the possibility of recording the specific duties and responsibilities assigned to an individual coordinator for a specific semester. When the College determines what the level of release and compensation will be for that particular assignment, the faculty member will have the opportunity to accept that assignment or decline it.

Prior to this session we did provide the Union with draft proposed language that could be used as a starting place for such a discussion. It reads as follows:

Coordinator Allowance – Coordinators are teachers who in addition to their teaching responsibilities are required to provide academic leadership in the coordination of courses and/or programs. Coordinators report to the academic manager who assigns their specific duties, which shall be determined **and reduced to writing** prior to the acceptance of the designation, subject to changes as circumstances require. It is understood that coordinators do not have responsibility for the supervision or for the disciplining of teachers in the bargaining unit. **The acceptance of the designation of coordinator and the assignment of coordinators duties is voluntary.** ~~It is not the intention of the Colleges to require employees to accept the designation of coordinator against their wishes.~~

Those employees who are designated as coordinators will receive an allowance equal to one or two steps on the appropriate salary schedule. **The academic manager will advise the coordinator of the allowance and release time associated with the assigned duties and the coordinator may accept or reject the coordinator assignment offered.** Such allowance will be in addition to the individual's annual base salary.

With respect to the Union’s proposal related to Article 15, this is not a housekeeping matter. Partial-load employees do not access vacation as full-time faculty do. We’ve proposed that all

the Union's workload demands be deferred to a joint task force for consideration during the next collective agreement period. We see no need for a change to this provision.

With respect to the Letters of Understanding section of the U9 submission, we will address those next week following our response to the U10 submission as it relates to EDI, and our feedback on the Union's Indigenous related proposals.

### **Closing**

That concludes our presentations for today. As previously indicated, it is our intent to provide a response to U10 and the Union's Indigenous related proposals on September 14<sup>th</sup> and we are hopeful that the Union will be able to respond to our questions at our next meeting.