

Management Bargaining Team Chair's September 9 Response to U4 and U6 submissions – Class Definitions and Staffing Proposals

We will begin today by responding to the questions that the Union asked of us at the end of our last bargaining day in August. As indicated when we requested them, we then plan to use these additional days to provide the Union with our responses, our list of questions, and our preliminary proposals as they relate to our analysis of the Union's U4, U6, U7, U8, and U9 proposals. We will focus on U4 and U6 today, and U7, 8, and 9 tomorrow.

Once we are done, we would like to receive the Union's answers to the outstanding questions which we submitted to the Union bargaining team in August as part of our response to the Union U1, U2, U3, and U5 proposals. Having the Union's responses to those outstanding questions, including any data underpinning the Union's positions, will better equip us to continue our work and keep things moving forward while the Union bargaining team are considering what we will have shared with the Union today and tomorrow. Next week we intend to provide our response to the Union's U10 submission as it relates to EDI, and our feedback with respect to the Indigenous related proposals the Union have submitted to us.

With respect to the questions that the Union asked of us at the end of our last bargaining day in August:

- 1. The Union bargaining team stated that our proposed Counsellor Class definition appears to limit the work of counsellors to strictly issues of mental health and referrals. The Union also asked how we account for the remaining work not identified in our proposal that is currently being done by Indigenous counsellors, disabilities/abilities counsellors, learning strategists, and counsellors.*

Our response is that what we are proposing is a class definition and not an enumeration of all tasks performed by counsellors. The current class definition fails to reflect the centrality of mental health counselling activity being done at many colleges. This emphasis does not exclude other duties. The elements previously included in the counsellor class definition remain.

- 2. The Union bargaining team also stated that our proposal appears to allow managers to assign counsellor work to non-faculty. The Union then asked what we see as the limits of what counts as counsellors work; and what work currently performed by any kind of counsellor would or could not be assigned to non-faculty. The Union further stated that it disagrees with our position that "[a]s a general rule, there is no ownership in any bundle of duties"; and suggested that in workplaces with bargaining units, there is usually a clear definition of work that may be assigned to members of that bargaining unit, and of work that may be assigned exclusively to members of that bargaining unit.*

Our response is that the CCBA and our collective agreement are not based on exclusive jurisdiction over work or tasks. Unlike employers with craft or trade bargaining units, the Colleges do not have units that are delineated based on discrete tasks that are performed. The division of bargaining units in our system is based on the core duties of the employee in

question. Arbitrators in the College sector have been consistent in basing any decision about the placement of an employee into a particular bargaining unit on a determination of the core duties of a position. As Arbitrator Swan described it: “[T]he distinction drawn in the arbitral jurisprudence is based not on the mere fact of the assignment of some academic bargaining unit duties to someone who would otherwise be in the support staff bargaining unit, but on the quantity of that assignment.” There is constant overlap among duties in the Colleges. As Arbitrator Mitchnick observed “The Colleges' Support unit, ... is not simply an administrative and/or clerical one, and is not without other examples of highly skilled individuals contributing in a key way to students' success at the College.” Where the majority of the duties are academic in nature, arbitrators have consistently concluded those individuals should be in the academic bargaining unit. Our proposed class definition in no way alters that balance.

3. *Finally, the Union asserted that the blurring of work between bargaining units undermines the principles of bargaining units in the first place, creates unnecessary tension between bargaining units and confusion for managers, and is not supported by our governing legislation. The Union further suggested that such ambiguity creates conflict rather than balance.*

Our response is that Colleges support students with a team approach to education. The Colleges intend to continue that approach. College students are ably assisted by academic counsellors, support staff student advisors, managers of student services and a host of other employees. If there is a need to resolve any issues that arise as to the core duties of a position and the appropriate bargaining unit, that can be done via the grievance process or through the OLRB. We disagree with the Union’s assertion that this team approach creates tension, confusion, and conflict. Furthermore, numerous arbitrators have considered the issue of bargaining unit work and none of them have ever found any tension with or violation of our governing legislation, the CCBA.

With respect to the Union’s U4 preamble and proposals:

We had previously provided a response to U4 as it relates to the Counsellor Class Definition. The remaining content under this theme to which we are responding today relates to the Union’s proposal to delete the words “Under the direction of the senior academic officer of the College or designate...” within the Professor Class Definition.

We note that this is the same proposal that was among those in 2017 that precipitated that lengthy and bitter strike.

The strike was ended by return-to-work legislation with Arbitrator Kaplan empaneled to impose a new collective agreement.

The Union put this issue to Arbitrator Kaplan. In its Arbitration Brief, the Union claimed that:

- “26. The Professor class definition describes a broad range of responsibilities with respect to course content, delivery, and academic leadership. However, College Faculty's discretion is restricted by the fact that these responsibilities are to be carried out “[u]nder the direction of the senior academic officer of the College or designate”. This

language suggests that management has complete control over faculty's academic activities.

They also claimed that:

- 27. This language cannot be reconciled with meaningful protection and respect for academic freedom at the Colleges. Indeed, it appears that this language was inserted specifically to undermine any assertion of academic freedom by College faculty. None of the other class definitions — Counsellor, Instructor, and Librarian — contain language to this effect”.

We note that Arbitrator Kaplan declined to award the language change sought by the Union, effectively recognizing that the exercise of academic leadership and the development of an effective learning environment for students by professors is subject to the direction of the senior academic officer of the College or their designate. We view the Union’s proposal in this respect as being about academic control, not academic freedom.

As with the Union’s proposal regarding Academic Freedom, Academic Councils, and Intellectual Property, this is a proposal that was largely responsible for precipitating the last strike and it was not awarded at arbitration.

Maintaining this demand is not a path to a negotiated settlement.

A strike over this proposal will not be ended by an agreement which contains this change to the class definition of Professor.

The only way that a strike will be ended with this demand still on the table is return-to-work legislation (we note that OPSEU is institutionally opposed to back-to-work legislation and has current litigation against previous back-to-work legislation introduced by the government).

The best predictor of the future is the past – Arbitrator Kaplan did not award this demand in the last arbitration and given the lack of demonstrated need for this proposal it is highly unlikely that any arbitrator would now award it.

At this time, we would also like to address a statement that the Union bargaining team made during the U10 presentation. The Union stated that it welcomes further discussion “...as to why the CEC is opposed to structures that enshrine meaningful faculty input into academic decision making”. We wish to point out once again our position that the current collective agreement, existing legislation, and existing governance structures within the College system already provide mechanisms which ensure meaningful faculty input into academic decision making. More detail regarding our position in this regard can be found in an article entitled *College Senates Are Not Permitted but Input from Faculty, Students, and Community Has Always Been a Must* that was published by the CEC last spring and is available on their website.

Additionally, as laid out in the *Minister’s Binding Policy Directive – Governance and Accountability Framework*, advice to the Board of Governors regarding strategic direction, programming, and other matters of importance is meant to be provided by a broad range of

stakeholders, including industry, faculty, students, administrative staff, and support staff. One of the ways in which this is made evident is in the legislative requirements for the creation of an Advisory College Council, and program level Program Advisory Committees.

Within the College system, the Senior Academic Officer is responsible for providing direction to members of diverse and inter-disciplinary teams which generally include faculty, support staff, and administrators working together to provide a holistic teaching and learning environment. All are critical to the success of our programs and services, and that is why the voice of all (including students) are included in the advisory component of our legislated governance framework.

Our final submission for today is in response to the Union's U6 preamble and proposals:

The Union will note that, as with some of the other submissions, we do have a few questions related to this one. We would like to reiterate once again that the goal of these questions is to help us gain a sense of what data may be jointly available to us in order that we can engage in effective dialogue and the exploration of mutually agreed upon changes to the collective agreement.

1. *In the Union's preamble to the U6 submission, it states that "Currently, approximately 75% of faculty at Ontario colleges are precarious workers employed on short-term contracts – this is not a sustainable system".*

Our question addresses the data set that the Union have used to calculate this %. What data set did the Union use, and will the Union provide us with a copy of the data set?

2. *The Union also states that "...in post-secondary institutions across Canada, faculty complement language is included in faculty collective agreements, and the trend is toward less precarity being built into collective agreements".*

Our questions are: Which agreements are the Union referring to? And can the Union provide us with complement language from those agreements?

With respect to the Union's proposals related to the establishment of FT to PL staffing ratios, we offer the following feedback:

- All colleges are different. The notion of ratios presumes a one size fits all approach which is not something we can agree to.
- There is no demonstrated need for this proposed change because article 2 provides for a method of case-by-case assessment of colleges' staffing models.
- Colleges maintain staffing models which support full-time employment subject to operational requirements such as quality of programs, their economic viability, and the attainment of program objectives, amongst other considerations. During the term of the last collective agreement (2017-2020) the full-time faculty complement in the college system grew by a net increase of 4.2%.
- If we implemented the Union's staffing proposal it would result in:

- Arbitrary staffing decisions that are not based on operational requirements;
 - A net reduction of non-full-time positions of approximately 3300 faculty; and
 - A financial impact to the system, for this proposal alone, in the approximate order of over \$630,000,000 if calculated over a 3-year collective agreement. To be clear, when the other staffing and workload changes that the Union have proposed are compounded with this proposal, the financial impact would be significantly greater.
- Requiring 70% full-time staffing would lead to the closure of many programs across the system as the program would not be economically viable leading to both full-time and other than full-time job loss.

In addition to this feedback on the Union submission, we would also like to take this opportunity to respond to another question that was posed to us during our last bargaining session, and to review the management staffing related proposal that we sent to the Union electronically prior to this session:

With respect to the Union question: As part of our initial response to the Union's U2 Workload proposal, we indicated that, based on our preliminary calculations, the proposed changes to the SWF factors within the collective agreement would result in increased costs of delivery in the order of 40 to 50%. The Union asked us to detail how we arrived at that costing.

Our answer is that those initial estimates were based on preliminary calculations and small sample sets. Since our last meeting in August, we have dug more deeply into the Union's proposals. We completed a review of 226 SWFs across multiple programs at two different colleges. We implemented the most conservative of the proposed factors (in person, single mode) and substituted the new Essay/Project factor of .055 where the existing .03 factor was used. All other prep/eval factors remained status-quo and no complementary functions were changed. The result was an obligation that the colleges reassign 34.4% of TCH across the entire sample set. The average full-time teaching load for this sample was reduced to fewer than 8 hours/week.

Implementation of the other modality-based factors or of the proposed broadening of the essay/project factor would lead to an even greater reduction of full-time teaching capacity. Given the variables presented by those additional prep factors, it is not unreasonable to anticipate the need to reassign 40-50% of TCH across the system if all factors were implemented as proposed.

And finally, we do want to draw the Union's attention to the staffing proposal that we submitted to the Union bargaining team prior to this session:

As the Union is aware, the COVID-19 Pandemic has caused the Colleges to experience higher than normal usage of partial load faculty because of the need for physical distancing and the

limits imposed on section sizes in in-person settings. As a result, we want to discuss the unreliability of the staffing data during the period from March 2020 to at least May 2022 for the purposes of article 2 of the collective agreement.

Our proposed change would be to amend article 2.03 D to read as follows:

2.03 D Grievances alleging a violation of Article 2.02 and Article 2.03 A cannot rely on staffing which occurred from September 1, 2014 to December 20, 2017, or from March 23, 2020 to April 30, 2022 to assist in establishing a breach of either of those Articles.

That concludes our presentations for today. As previously indicated, tomorrow our intention is to provide our feedback on the Union's U7, U8, and U9 submissions.