

IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNIVERSITY OF PEI FACULTY ASSOCIATION

(The Association)

- and -

UNIVERSITY OF PEI

(The Employer)

**Re: Grievance FA-21-02-A
Student Opinion of Teaching Surveys**

ARBITRATION BOARD:

**Bruce Outhouse, Q.C.
Kerri Carpenter
Neil Tudiver**

FOR THE ASSOCIATION:

Jillian Houlihan

FOR THE EMPLOYER:

Murray Murphy

DATE OF PRELIMINARY DECISION: January 5, 2022.

PRELIMINARY DECISION

This decision deals with two matters - the Employer's objection to the arbitrability of the grievance and the Association's request for production of documents. The parties agreed to argue these matters by way of written submissions. Their respective submissions were received by the Board on December 10, 2021 and the Association filed a reply submission on December 14, 2021.

Arbitrability

The Employer submits that the grievance is not arbitrable for three reasons:

1. the remedies sought are not available under the Collective Agreement or otherwise;
2. the grievance contains no facts or specific allegations that could reasonably establish a breach of the Collective Agreement; and
3. the grievance was filed after the expiration of the time limit in the Collective Agreement.

The grievance concerns the administration and use of online Student Opinion of Teaching Surveys (SOTS) commencing in the spring/summer term of 2020 due to the pandemic. For convenient reference, a copy of the grievance is attached as Appendix A.

The Employer's first argument on the issue of arbitrability focuses on the remedies sought in the grievance. However, in the Board's view, the threshold issue for purposes of determining arbitrability is whether the grievance alleges a breach or breaches of the Collective Agreement. The fact that the grievance may seek forms of redress which are beyond the Board's jurisdiction to grant does not render the grievance inarbitrable. The present grievance alleges breaches of several specific provisions in the Collective Agreement dealing with SOTS. These allegations are certainly arbitrable. If the Association is able to prove any of the alleged

breaches, only then will the question of remedy arise and it will be up to the Board to determine what relief is appropriate, recognizing that it is beyond the Board's authority to amend to the Collective Agreement or require the parties to renegotiate the terms thereof.

Turning to the Employer's second argument, as we have already noted, the grievance does contain allegations that specific provisions of the Collective Agreement have been breached. Indeed, the Employer acknowledges in its written submission that the alleged breaches of Article E1.3.1f relating to the timing and final access date of the SOTS are arbitrable; however, it contends that it "has provided the Association with a full answer" to these allegations. Whether or not this is so is for the Board to determine after hearing the evidence and submissions of the parties on the merits.

Finally, with respect to the Employer's timeliness argument, the Board is not satisfied that the grievance was filed outside the 20-day time limit in Article F2.8. The Association had initially sought to resolve its concerns about the SOTS under Article F2.3 which states, among other things, that "The Parties will use every effort to encourage informal settlement of complaints.". Article F2.8 provides that where a grievable complaint is first dealt with under F2.3 the 20-day time limit for filing a grievance will commence on the date which the Employer's representative renders an informal decision. According to the Association's submission, the informal decision in this case was not provided by the Employer's representative until January 11, 2021, less than 20 working days prior to the grievance being filed. Further, the Employer raised the time limit objection for the first time in its written submission of December 14, 2021. It was not mentioned in communications between the parties or their counsel when this matter was scheduled for arbitration many months ago or in subsequent correspondence. Moreover, it was not raised during the Board's telephone conference with counsel on November

30, 2021. In these circumstances, the Board is satisfied that the Employer waived any right it may have had to object to the timeliness of the grievance.

Document Production

The Association has requested that the Employer produce the following documents prior to the arbitration:

1. For each course in the Spring, Summer and Fall 2020 semesters and the Winter and Spring 2021 semesters at UPEI:
 - a. Documents showing the first and last date on which students could access the electronic Student Opinion of Teaching Surveys (SOTS);
 - b. Documents showing when UPEI ITSS uploaded SOTS to individual Moodle course sites, the date when those SOTS were made “visible” to UPEI students, and the date when students were no longer permitted to complete the SOTS;
 - c. Documents showing any changes to electronic SOTS after they were created and uploaded to Moodle including the date and reason for the change; and
 - d. Documents showing what information for electronic SOTS was provided to UPEI Administration, and particularly whether student comments were provided;
2. Documents showing the number of SOTS completed by students and received by UPEI for each course during each semester of the 2017-18, 2018-19, 2019-20 and 2020-21 academic years and documents showing the number of students enrolled in each of those courses; and
3. A copy of all questions, concerns and complaints from students and faculty to UPEI regarding the electronic SOTS during the 2019-20 and 2020-21 academic years, including but not limited to all email correspondence between students/faculty and UPEI

Information Technology System and Services and all IT tickets opened regarding technical issues with SOTS.

The Employer opposes the Association's request on the basis that it constitutes a "fishing expedition" given the lack of particulars provided in the grievance with respect to the alleged breaches of the Collective Agreement.

The Board is satisfied that, for the most part, the documents requested by the Association are "arguably relevant" to the issues raised in the grievance. Accordingly, the Board orders production of the documents identified in the Association's request as items 1(a), (b) and (c). However, the Board does not see the documents requested in item 1(d) as being sufficiently relevant to warrant their production.

With respect to item 2, the Board has already advised the parties by letter dated December 17, 2021 that it is of the view a "before/after" comparison is "arguably relevant" to the issues raised in the grievance. In that letter, the Board sought further input from the parties on how difficult or time consuming it would be for the Employer to comply with the request as framed or whether an adequate comparison could be made in a more efficient way such as, for example, using a shorter timeframe or an audit-type approach. The Board subsequently received comments from the parties and will convene a telephone conference with counsel shortly to discuss this issue further.

Finally, with respect to item 3, the Board grants the Association's request for production for all questions, concerns and complaints from students or faculty to UPEI Information Technology System and Services regarding online SOTS during the 2019-20 and 2020-21 academic years and all IT tickets opened regarding technical issues with SOTS. The Board

considers the Association's request for all questions, concerns and complaints from students or faculty "to UPEI" to be overly broad and unlikely to reveal facts which are of arguable relevance.

DATED at Halifax, Nova Scotia, this 5th day of January, 2022



BRUCE OUTHOUSE, Q.C.
Chair

KERRI CARPENTER
Employer Nominee

NEIL TUDIVER
Association Nominee

considers the Association's request for all questions, concerns and complaints from students or faculty "to UPEI" to be overly broad and unlikely to reveal facts which are of arguable relevance.

DATED at Halifax, Nova Scotia, this 5th day of January, 2022

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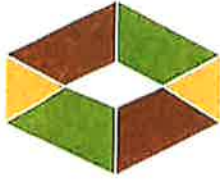
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APPENDIX "A"



UPEIFA
UNIVERSITY OF PRINCE EDWARD ISLAND
FACULTY ASSOCIATION

5 February 2021

Dr. Alaa Abd-El-Aziz
President
University of Prince Edward Island

RE: FA-21-02-A

Dear President Abd-El-Aziz:

In accordance with Article F-2 (Grievance and Arbitration Procedures) of the Collective Agreement for the UPEIFA Bargaining Unit #1, the UPEIFA formally submits this grievance to address concerns around the rapid and mandatory transition to online course delivery in the context of the COVID-19 global pandemic.

In the context of a global pandemic and the transition to online teaching, it has become clear that an increased workload, untenable working conditions, and technical issues associated with the transition to online course delivery have created an environment which (a) is not conducive to our members effectively carrying out their academic function (H2.1) and (b) has compromised the teaching evaluation process making it impossible to provide a fair and reasonable (A2.4) assessment of our members' teaching performance.

As the Employer is well aware, the challenging working conditions that have developed in the wake of the COVID-19 global pandemic have required our members to make rapid and unprecedented changes to the way they carry out their academic function. With most of our members required to teach courses remotely, they have found their workloads significantly increased (H1.2) at a time when the supports necessary for carrying out their academic function have been significantly reduced (H2.1). It is clear that in many instances, this has had a detrimental impact on our members' safety, health and physical or psychological well-being (H2.2).

It is in this context of increased workload and reduced resources that our members' teaching is being evaluated (E1.1.2). Since these evaluations are used in a number of processes and procedures from hiring to tenure/promotion, these evaluations can have a significant impact on our members' academic careers. Moreover, when such evaluations are carried out under these unprecedented conditions, there is no doubt

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that they can have a significant impact on our members' health and physical/psychological well-being (H2.2).

Additionally, many of our members have drawn attention to technical issues related to the transition to online teaching evaluations including:

- instances in which our members did not receive any Student Evaluations of Teaching (SOTS) from students even in large courses (200+ students) suggesting technical issues that may not have given students a "reasonable chance to respond" (E1.3.1a);
- instances in which our members were notified that online student surveys would be available to students past the last day of class (December 8) and in some cases potentially past when grades may have already been submitted by instructors (E1.3.1f);
- the timing for administering online surveys was established by UPEI Information Technology System and Services (ITSS) rather than individual Faculty Members (E1.3.1f);
- in contrast to written SOTS in which most students typically take the survey all at one time, online surveys were available to students for up to three (3) weeks and perhaps longer making fair and reasonable comparisons and assessments highly problematic (E1.3.1f).

Against the background of increased workloads (H1.2) and reduced resources (H2.1), we believe these technical issues have compromised the Student Opinion of Teaching Survey (SOTS) rendering them an unfair and unreasonable measure of our members' teaching performance.

Despite our good faith efforts to come to a reasonable agreement with the Employer to address these issues (F2.3), we were recently informed by UPEI Administration that the Employer is not interested in working towards an agreement to mitigate the deleterious effects of these unprecedented working conditions on our members. As such, we find it necessary to file a grievance in this matter.

We believe the Employer is in violation of A2.4, E1.1.2, E1.3.1, H1.2, H2.1, H2.2, and any other relevant sections of the *UPEI/UPEIFA Collective Agreement*.

This is an Association grievance and as the Chief Grievance Officer for the UPEIFA, I will be the designated representative for this grievance. Please indicate who will be

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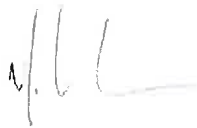
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representing the Employer in this matter. In accordance with Article F-2, this grievance is being initiated at Step 2.

The Association seeks the following redress in this matter:

1. A ruling that the Employer has violated the above mentioned and any other applicable articles and sections of the *UPEI/UPEIFA Collective Agreement*.
2. A ruling that for the duration of the COVID-19 pandemic, course instructors shall be given the discretion to include or to not include Student Opinion of Teaching Surveys (SOTS) for tenure/promotion/hiring processes.
3. A ruling that a course instructor's decision not to include SOTS in tenure/promotion/hiring processes will not in and of itself have a negative impact on those processes.
4. A ruling that the Employer will enter into good faith negotiations with the Faculty Association to provide additional supports for our members as they attempt to carry out their academic function in the unprecedented context of a global pandemic.
5. Any other remedies that will provide full redress for Faculty Association members impacted by these violations of the *UPEI/UPEIFA Collective Agreement*.

Sincerely,



Dr. Michael Arfken
UPEIFA President & Chief Grievance Officer
grievance@upeifa.ca

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cc: Dr. Margot Rejskind, Vice President, UPEIFA
Dr. Katherine Gottschall-Pass, VPAR (Interim), UPEI

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