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Our File No.: 300-17-013

September 22, 2017

Alberta Labour Relations Board
501, 10808 99 Avenue
Edmonton, AB T5K 0G5

FAX NO. 780-422-0970

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Attention: Tannis Brown, Director of Settlement

Dear Madam:

RE: An Application brought by NorQuest College Faculty Association affecting NorQuest College and the Alberta Union of Provincial Employees

We are counsel for NorQuest College Faculty Association.

Please find enclosed an Application respecting academic staff designations and an unfair labour practice complaint by NorQuest College Faculty Association, affecting NorQuest College and the Alberta Union of Provincial Employees, for filing.

We look forward to hearing from you.

Yours truly,

CHIVERS CARPENTER**GORDON NEKOLAICHUK**(Email: gnekolaichuk@chiverslaw.com)

GN/rmd

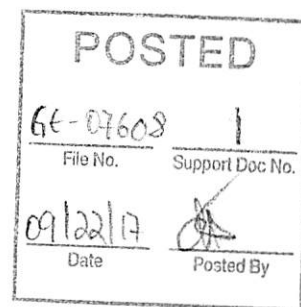
Encls.

cc: NorQuest College
Attention: Laurel Evans

cc: Neuman Thompson
Attention: Gabriel Joshee-Arnal

cc: NorQuest College Faculty Assoc.
Attention: Leslie Sayer

cc: AUPE
Attention: Leslie Marquardt



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* Denotes lawyer whose professional corporation is a member of the partnership
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LABOUR RELATIONS BOARD

An application respecting academic staff designations and an unfair labour practice complaint under sections 12(2)(a), 16(1), 16(3), and 58.6(1) of the *Labour Relations Code*, RSA 2000, c L-1 [Code].

I. APPLICANT:**NORQUEST COLLEGE FACULTY ASSOCIATION (the "Association")****MAILING ADDRESS:**

10215 108 Street NW
Edmonton, AB T5J 1L6

CONTACT PERSON:

Leslie Sayer
President, NCFA
PHONE: 780-644-5879

LEGAL COUNSEL:

Gordon Nekolaichuk
Chivers Carpenter Lawyers
101, 10426 - 81 Avenue
Edmonton, AB T6E 1X5
PHONE: 780-439-3611
FAX: 780-439-8543

II. NAME OF EMPLOYER (RESPONDENT):**NORQUEST COLLEGE (the "Employer" or the "College")****MAILING ADDRESS:**

10215 108 Street NW
Edmonton, AB T5J 1L6

CONTACT PERSON:

Laurel Evans
Executive Director, Workforce
Development and Human Resources
PHONE: 780-644-6187
FAX: 780-644-6013

LEGAL COUNSEL: Gabriel Joshee-Arnal

Neuman Thompson
301, 550 91 Street S.W.
Edmonton, AB T6X 0V1
PHONE: 780-733-6573
FAX: 780-488-0026

III. NAME OF AFFECTED PARTY:**ALBERTA UNION OF PROVINCIAL EMPLOYEES**

MAILING ADDRESS:

Solidarity Place Edmonton
10451 – 170 Street
Edmonton, AB T5P 4S7

CONTACT PERSON:

Leslie Marquardt
Room E220, 10232 106 Street NW
Health Education Centre
NorQuest College
Edmonton, AB T5J 1H7
Chair, AUPE 071/010
PHONE: 780-644-6523
FAX: 780-644-6529

IV. SECTION AND SUB-SECTION ALLEGED TO HAVE BEEN VIOLATED:

The Union alleges the College has violated s 148(1)(a)(ii) of the *Labour Relations Code* and s. 60(2) of the *Post-Secondary Learning Act*, SA 2003, c P-19.5 [*PSLA*].

V. PARTICULARS**4. Background**

1. The College is a "public post-secondary institution" pursuant to the *PSLA*. It provides post-secondary education services to full-time, part-time, and continuing education students. The College operates two campuses in the City of Edmonton, in addition to campuses in Wetaskiwin, Drayton Valley, and Whitecourt.
2. The Association is an "academic staff association" pursuant to the *PSLA*. Section 58.3(c) of the *Code*, in conjunction with the *PSLA*, designates the Association as the exclusive bargaining agent for all academic staff at the College.
3. There are approximately 350 academic staff members at the College.
4. The Alberta Union of Provincial Employees ("AUPE") is the certified bargaining agent for all non-academic staff at the College (Board Certificate No. E218-99).

5. As discussed in further detail below, on June 26, 2017, the College eliminated a position, Academic Strategist, designated as an academic staff position, and terminated the permanent, full-time academic staff members employed as Academic Strategists,
6. On July 18, 2017, the College created a new position, Accommodated Learning Specialists, designated as a non-academic staff position, which is the same in all relevant aspects to the previously eliminated position.
7. When eliminating the academic staff position, as well as creating and designating the non-academic staff position, the College did not consult or negotiate with the Association, but did attempt to negotiate directly with academic staff members represented by the Association.

B. Former Academic Staff Association Position (Academic Strategist)

8. At all relevant times prior to June 26, 2017, the College employed 5 people in the position of Academic Strategist.
9. Three of the Academic Strategists, referred to above, were employed as full-time, permanent employees in that position. One of the Academic Strategists was employed as a full-time, term employee, and the remaining Academic Strategist was a permanent, full-time employee who had been seconded to the position.
10. The College designated the category of employees in the Academic Strategist position as academic staff members.
11. As described in the job description for the Academic Strategist position, attached as **Appendix "A"**, the primary function of the Academic Strategist was to provide learning assistance and instructional support to students with disabilities.
12. Academic Strategists taught learning strategies to students with disabilities. The teaching occurred primarily one-on-one, either in person or via an online classroom. In order to develop a learning strategy for the individual student, the Academic Strategists spoke with the student about his or her educational needs, reviewed the student's educational plan and educational psychological assessment (if any), and consulted with other faculty.
13. Academic Strategists also provided presentations as invited guest lecturers in regular classes for a variety of disciplines. The purpose of the presentations was to instruct students on learning strategies for their own use, similar to the purposes of the one-on-one teaching

described above, but also to instruct students on learning strategies to be applied by the students in their future careers when working with people with disabilities.

14. In the job description for Academic Strategists, the work in classrooms is referred to as "workshops".
15. In addition, Academic Strategists developed resources to be used by themselves and other faculty for assisting students with disabilities.
16. Academic Strategists had no managerial or labour relations related responsibilities.

C. History of the College's Designation of Academic Strategists as Academic Staff

17. The College has no policies regarding designation of academic staff, or has not shared those policies with the Association. However, past practice of the College suggests it views anyone who offers specialized learning content as academic staff. The College's past practice includes its designation of employees in the position of Academic Strategist as academic staff.
18. One or more of the Academic Strategists employed on June 26, 2017 had previously been employed by the College as Instructional Assistants, and designated as non-academic staff members within the AUPE bargaining unit. In or around the 2006-07 academic year, the College reclassified one or more of the Instructional Assistants as Academic Strategists, and designated them as academic staff.
19. The College advised the former Instructional Assistants who had been reclassified as Academic Strategists that they were being designated as academic staff because the College deemed them as offering specialized content in the area of disabilities.

D. Elimination of Academic Strategist Position

20. On June 26, 2017, the College met with the three permanent, full-time Academic Strategists and advised that the College intended to eliminate their positions.
21. The College did not discuss the position elimination or consult with the Association at any time. The Association first learned of the position elimination minutes before the meetings scheduled with each of the affected employees. The College notified the Association on June 23, 2017 that there would be a meeting with 3 academic staff on June 26, but did not inform the Association that the College intended to eliminate the Academic Strategist position or that the three employees would be terminated at the meeting.

22. Further, following a group meeting with all three employees regarding the elimination of their position, the College met simultaneously with the three affected employees individually to discuss details of their termination. However, the College notified only one representative of the Association. As a result, the Association could only attend one of the three termination meetings.
23. At the termination meeting, the College presented the three full-time, permanent Academic Strategists each with a termination letter, offer of severance, and release. The amount of severance offered by the College was the same as required by the Collective Agreement in effect between the College and the Association. Nonetheless, the College made the payment of the severance conditional upon the execution of the release.
24. The College did not discuss or negotiate the terms of the releases provided to the affected employees at any time.
25. Following the termination of the three permanent, full-time Academic Strategists, the College made no attempt to find any of the terminated employees another position within the College or to assist with their transition.

E. Designation of Non-Academic Staff Position (Accommodated Learning Specialist)

26. On or about July 18, 2017, the College posted for a new position titled "Accommodated Learning Specialist".
27. The College designated the Accommodated Learning Specialist position as a non-academic staff position.
28. At no time has the College consulted with the Association regarding the designation of the Accommodated Learning Specialist position.
29. The Accommodated Learning Specialist position has substantially the same scope of work, duties, and responsibilities as the recently eliminated academic staff position of Academic Strategist.
30. The job description for Accommodated Learning Specialists, attached as **Appendix "B"**, mimics the job description for Academic Strategist. Accommodated Learning Specialists report to the same person as Academic Strategists did, the Manager, Learning Support. The job description also indicates Accommodated Learning Specialists deliver learning strategies

one-to-one, both in person and online, and in classrooms – referred to as large group workshops – as Academic Strategists did previously.

31. The academic qualifications for Accommodated Learning Specialists are greater than the qualifications for Academic Strategists, contrary to what might be expected when an academic position is reclassified as a non-academic position. Academic Strategists were required to have a Bachelor's Degree. Accommodated Learning Specialists are now required to have a Master's Degree.
32. The two Academic Strategists who were not in the position permanently both became Accommodated Learning Specialists following the expiry of their term contracts. Their duties have not effectively changed since they become Accommodated Learning Specialists.

VI. SUMMARY AND BASIS OF THE APPLICATION

4. *Academic Staff Designations*

33. Anyone employed by the College as an Accommodated Learning Specialist should be designated as an academic staff member. The duties of Accommodated Learning Specialist are substantially similar, if not identical, to the duties of the former Academic Strategist, recently eliminated by the College. The College previously designated anyone employed as an Academic Strategist as an academic staff member. The College has not provided the Association any reason to justify designating Accommodated Learning Specialists differently from Academic Strategists.
34. Based on the College's practice when designating Academic Strategists as academic staff members, the College has historically designated employees as academic staff if they offered specialized content. Accommodated Learning Specialists have the same or greater specialized skills, training, and knowledge of disabilities as Academic Strategists.
35. Further, the College failed to consult with the Association when designating the Accommodated Learning Specialist position as a non-academic staff position, as required by s 60(2) of the *PSLA*. Section 58.6(2)(b) of the *Code* authorizes the Board to consider the College's failure to consult when considering an application to designate employees as academic staff. In the circumstances of this case, the College's failure to consult should

result in Accommodated Learning Specialists being designated the same as Academic Strategists.

B. Interference

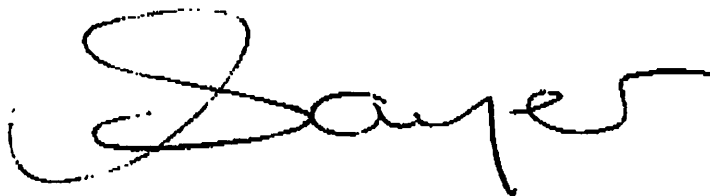
36. When eliminating the Academic Strategist position, terminating those employed in that position, and creating the Accommodated Learning Specialist position, the College interfered with the representation of employees by the Association, contrary to s. 148(1)(a)(ii).
37. The College did not notify the Association of the terminations of the Academic Strategists until immediately prior to the termination meetings and intentionally scheduled the meetings with the affected Academic Strategists simultaneously to prevent the Association from assisting more than one of its members at those meetings. The College's actions severely harmed the Association's reputation with its members, and in particular the terminated Academic Strategists. The Association appeared ineffective, unprepared, and insufficiently attentive at the termination meetings.
38. Further, the College excluded the Association and bargained directly with the terminated Academic Strategists by offering the employees severance in exchange for signing a release. The Association was not aware of the release and did not negotiate any of its terms with the College. The College also did not discuss or negotiate with the Association about making an offer of severance pay to the terminated Academic Strategists in exchange for them individually signing a release, which released the College from claims that are the Association's.
39. In addition, the College attempted to reduce the bargaining unit represented by the Association by effectively and unjustifiably re-designating multiple academic staff as non-academic staff unilaterally and without consulting with the Association.

VII. REMEDY REQUESTED

40. On the basis of the above, the Association seeks the following remedies:
 - a. A declaration that any employee of the College falling within the category of Accommodated Learning Specialists is an academic staff member;
 - b. A declaration that the College has violated the *Code*;

- c. An order that the College cease and desist violating the *Code*;
- d. An order that the College engage in meaningful consultation with the Association whenever, in future, designating employees or categories of employees as academic staff or non-academic staff;
- c. Damages to Association flowing from the College's violation of the *Code*;
- f. Damages to the Accommodated Learning Strategists, who were previously Academic Strategists, flowing from the College's improper designation and violations of the *Code*;
- g. An order that the College post notices for employees setting out the Board's orders in this matter; and
- h. Any other order or direction that is appropriate in the circumstances.

DATED at the City of Edmonton, in the Province of Alberta, this 22nd day of September, 2017.



Leslie Sayer, President
NorQuest College Faculty Association

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APPENDIX A

NorQuest College
Learning Support, Academic Support Centre, Student Services
Position Description
(Instructor) Academic Strategist

Position Summary:

Reporting to the Manager, Learning Support, the Academic Strategist's primary function is to provide learning assistance and instructional support to students with disabilities. This Faculty position is responsible to support students with disabilities who require learning strategies to help maximize their performance in Mathematics, Sciences and/or Humanities courses. The Academic Strategist participates as a member of the Academic Support Centre. The Academic Support Centre falls under the direction of the Dean of Students Services/Registrar.

Major Duties and Responsibilities based on the categories in the Excellence in Teaching document:

Teaching and Learning Strategists

- Teach academic strategy skills one-to-one or in small groups, in person or via distance to students with disabilities
- Coach students with disabilities to evaluate existing strategies and modify and apply strategies based on academic requirements and students' disability-related learning profiles
- Work with assistive technology (AT) specialists to instruct and support students with disabilities who use various types of assistive technology
- Deliver workshops on topics to do with their role/work as Academic Strategists (e.g. learning strategies)

Evaluation Experts

- Develop, document, implement, and manage individualized Strategies Plans to support student learning based on Individual Educational Plans
- Ensure student information is managed throughout its life-cycle, following College procedures for managing student records
- Customize and evaluate supports for students with disabilities based on functional limitations, academic strengths, and possible impact of medical conditions/disabilities
- Supervise diploma exams and assist with other exams as required

Learning Facilitators

- Work closely with other members of the Academic Support Centre to engage

in collaborative and integrated academic support activities, as well as functional involvement with colleagues in the Wellness and Accessibility unit in order to provide services for students who have a disability

- Assist in the orientation of new students to the unit and NorQuest employees, as well as interested external individuals and groups
- Assist in the preparation of materials for students requiring alternate formats (i.e., Braille, large print and audio files)

Learner Advocates

- Liaise between students and NorQuest faculty and staff, as appropriate
- Collaborate with instructors in NorQuest College Faculties to implement Universal Instructional Design principles
- Report ongoing progress and concerns to the students' Student Support Specialists

Professionals and Scholars

- Maintain accurate records of activities and support
- Collect data for research and administrative functions of the department/unit
- Develop knowledge and skills through participation in courses, workshops, professional meetings, interaction with colleagues, and through independent study of current literature
- Participate on department/unit and NorQuest College committees
- Provide input and feedback for operational planning, as requested
- Participate in special projects and/or applied research, as required
- Other duties as assigned by the Manager, Learning Support

Curriculum Developers

- Plan, create, and develop workshops for students and/or faculty and staff of NorQuest
- Consult with faculty and staff about the implementation of Universal Design and Universal Instructional Design

Qualifications:

- Bachelor's degree with coursework in a related area; Education degree preferred, but equivalencies may be considered
- Experience supporting individuals with disabilities preferred
- Experience teaching and supporting adult learners preferred
- Ability to teach various learning strategies
- Knowledge regarding a variety of disabilities
- Ability to communicate effectively with students and staff, orally and in written form
- Knowledge of Universal Design and Universal Instructional Design

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APPENDIX B

ACCOMMODATED LEARNING SPECIALIST

All times are in Mountain Daylight Time.

Job ID

2017-1989

Job Location

CA-AB-Edmonton

Positions

1

Job Type

Full Time

Job Industry

Education

Career Level

Experienced

Years of Experience

3

Posted Date

8/17/2017

More information about this job:

Job Description:

ACCOMMODATED LEARNING SPECIALIST SPECIALIST (III) STUDENT SERVICES ACADEMIC SUPPORT CENTRE

NorQuest College helps students unlock their potential and realize their dreams. We are Challenge Positive and embrace every situation as an opportunity. As the Edmonton region's community college, we play an integral role in Alberta's education system. NorQuest College offers a vibrant, inclusive, diverse, and student-centred learning environment that transforms lives and strengthens communities. We are nationally recognized leaders in health, community studies, and business post-secondary career programs, as well as foundational, intercultural, and language training. We are proud to offer our employees meaningful work, competitive salaries, a comprehensive benefits program, and a commitment to a positive work/life balance. This is an exciting time to be a part of NorQuest College. Take a step forward with us. Together, we can help build and sustain a strong province for future generations.

Reporting to the Manager, Learning Support, Accommodated Learning Specialists provide learning support to NorQuest students within the Learner Centre. These positions primarily provide learning strategy support to students with documented disabilities, as well as participate in the provision of academic skills coaching for all students. These positions may also cross-train and participate in other learning support services as needed, such as content tutoring. This role uses a variety of delivery modes to meet diverse learning needs.

KEY RESPONSIBILITIES:

- Provide student-facing learning support as an accommodated learning specialist for students with disabilities and as an academic skills coach
- Cross-train with content learning specialists and provide tutoring support, as needed

- Select effective educational/learning approaches for students, in consultation with best practices and service standards
- Develop and maintain individualized learning or coaching plans in collaboration with the student
- Deliver support via multiple service points and delivery modes (e.g. in-person and online; one-to-one and large group workshops)
- Liaise and collaborate with teaching faculty, Learner Centre staff, and Disability Services to provide wrap-around academic support
- Develop and implement projects and initiatives that support student success
- Manage student online booking tools and scheduling software
- Contribute to on-going improvements in service quality via process improvement projects and professional development

QUALIFICATIONS:

- Graduate degree required (i.e. MEd, MA, MSc); degree in Education (at the undergraduate or graduate level) preferred
- Equivalencies may be considered.
- Specialization in learning strategies for students with disabilities
- Strong familiarity with senior high school curriculum in either math and science, or the humanities; knowledge of both is a strong asset
- Minimum of 1-3 years of experience working with adult learners, inclusive of those who are ESL, those with disabilities, and those with other learning challenges
- Knowledge of Universal Design Learning principles and Duty to Accommodate
- Confident computer/technology skills and ability to learn new technology quickly
- Demonstrated ability to work independently, using evidence-based decision making to make sound professional judgements that align with defined best practices and service standards

KNOWLEDGE, SKILLS AND ABILITIES:

- Developed skill/knowledge in using individualized learning strategies to mitigate the functional impact of disability
- Experience working with adults in an educational setting
- Must be culturally sensitive
- Exceptional interpersonal and communication skills (both oral and written)
- An ability to exercise judgment within established guidelines
- A positive and professional attitude and the ability to work independently and as a team member is essential
- Ability to remain calm in demanding situations and appropriately deal with stress resulting from situations
- Strong organizational and problem-solving skills, with ability to prioritize, plan, and schedule workload

SALARY: There are multiple permanent positions available. This salary range for this position is \$59,380 - \$77,106 per annum; commensurate with education and experience. This position also includes immediate participation in our comprehensive pension and benefits plan.

HOURS OF WORK: Current shifts occur Monday-Friday, between 8am-6pm. Evenings and weekends may be required in future as needed.

COMPETITION NUMBER: P5004-7-17

CLOSING DATE: Open until suitable candidates found.

TO APPLY: If you meet the requirements of this position and wish to apply, please continue with this online process by uploading your resume and cover letter combined as one document

NOTE: Only candidates who will be shortlisted for interview will be contacted