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**By Fax Only**

January 4, 2018

Tannis Brown  
Director of Settlement  
Alberta Labour Relations Board  
501, 10808 – 99 Avenue  
Edmonton, AB T5K 0G5

Dear Ms. Brown:

**RE: An application by the University of Lethbridge Faculty Association affecting the University of Lethbridge regarding the number of bargaining units and collective agreements**

We act on behalf of the University of Lethbridge Faculty Association ("ULFA"). Kindly accept this letter as an application on behalf of ULFA seeking a declaration from the ALRB that ULFA is the bargaining agent of one bargaining unit that would be described as all academic staff and that ULFA and the Board of Governors of the University of Lethbridge (the "University") are bound to one collective agreement which expires on a single expiry date of either April 30, 2018 or June 30, 2018.

This application is brought pursuant to sections 16, 16(3), and 58.7(7) of the *Labour Relations Code* (the "Code") seeking that the ALRB exercise its authority set out in Part 9.1 and sections 12 – 18 of the *Code*.

Detailed particulars of the application are as follows:

1. ULFA is a corporation established under the *Universities Act*, section 25 and continued by section 126(5) of the *Post-Secondary Learning Act (PSLA)* when the *Universities Act* was repealed. Pursuant to sections 126 and 85 of the *PSLA*, ULFA "consists of the academic staff members" of the University.
2. ULFA and the University over the years historically entered into a series of agreements pursuant to the now repealed provisions of section 87 of the *PSLA*, which required faculty associations and universities to enter into an agreement regarding a series of mandated employment related topics. The now repealed section 88 of the *PSLA* required the agreement be settled by compulsory binding arbitration if the parties were unable to reach agreement.
3. Section 87 and 88 of the *PSLA* referred to a single agreement in regards to the academic staff. However, the practice at the University of Lethbridge, since 2007, was for the University and ULFA to bargain two documents that they referred to as handbooks: one called University of Lethbridge Faculty Handbook ("Faculty Handbook") and one called University of Lethbridge Sessional Lecturers Handbook ("Sessional Handbook"). Copies of the handbooks will be provided to the ALRB with this application.
4. ULFA membership includes all persons designated as academic staff by the University. The University policy on Designation of Academic Staff (copy attached) provides that all persons to which the Faculty Handbook and Sessional Handbook apply are designated as academic staff.

### **One Bargaining Unit, One Collective Agreement**

5. On May 4, 2017, by the operation of Bill 7, *An Act to Enhance Post-Secondary Academic Bargaining*, the new Part 9.1 was added to the *Code*, which brought labour relations relating to academic associations, including ULFA and the University, under the provisions of the *Code*.
6. It is submitted that the new provisions set out in Part 9.1 of the *Code*, have the following impact on the relationship between ULFA and the University (section references are to the *Code* unless specified):
  - a. "Academic staff", "academic staff member" and "member of the academic staff" mean "an employee of the board of ... the university who, as a member of a category of employees or individually, is designated as an academic staff member in accordance with this Act". s. 58.1 (2) of the *Code* and s. 1(c) of the *PSLA*.

- b. The Faculty and Sessional Handbooks are now a collective agreement. s. 58.1(3).
  - c. The University is an employer in relation to the academic staff. s. 58.3(1)(a)
  - d. The academic staff members are employees of the University. s. 58.3(1)(b)
  - e. ULFA is "the bargaining agent of the academic staff" of the University and "has the exclusive authority to bargain collectively on behalf of the academic staff and bind them by a collective agreement." s. 58.3(1)(c)
  - f. ULFA is deemed to be a trade union. s. 58.3(2)
  - g. The concept of designation of academic staff and academic staff members as set out in the *PSLA* remains and the ALRB has powers under s. 58.6 to address designation issues.
7. The issues in this case, however, are whether ULFA represents one or two bargaining units of academic staff and whether there are one or two collective agreements regarding the academic staff at the University of Lethbridge.
8. ULFA submits that the impact of placing it and its members into the *Code*, both by the operation of Part 9.1 and the remaining provisions of the *Code*, is that ULFA is the bargaining agent of a single bargaining unit of academic staff. Further ULFA submits that the Faculty and Sessional Handbooks are together a single collective agreement. ULFA submits that this interpretation is consistent with the plain meaning of the provisions of *Code* and is consistent with the ALRB's jurisprudence.
9. ULFA submits that if section 58.3(1)(c) was intended to create multiple bargaining units it would have specified that possibility. Further, Part 9.1 would have included provisions that would allow for clarification by the ALRB of such separate bargaining units as the parties transitioned into the *Code*. Given the ALRB's ongoing supervisory role regarding the bargaining units and their boundaries, it is necessary for there to be a clear understanding of the bargaining units as the parties enter the *Code*.
10. ULFA submits that there was a clear intention in the new provisions of the *Code* to make it the bargaining agent of a single bargaining unit comprised of "all academic staff" at the University. All of the accepted principles related to determining the appropriate bargaining unit under the *Code* are

also consistent with an interpretation that ULFA was made the bargaining agent of one single bargaining unit.

11. The Faculty Handbook was the sole document setting out the agreement as to terms and conditions of employment for academic staff between ULFA and the University until 2007. In 2007, the University designated sessionals as academic staff who were represented by ULFA. The separation of the terms and conditions of employment for sessional staff into a separate Sessional Handbook from the Faculty Handbook occurred at the conclusion of the bargaining between the parties in 2007 at the insistence of the University.
12. Historically, from at least 1977 to 2007, the collective bargaining of the Faculty Handbook was done at two bargaining tables. One table discussed economic benefit provisions and the other table discussed non-monetary terms and conditions of employment. ULFA had two separate negotiating teams, complete with separate resource committees for each topic. The University previously had separate negotiating teams for each topic; however, more recently, the University has had one negotiating team for both tables.
13. After 2007, when sessionals were designated as academic staff, the parties continued to bargain the economic benefit provisions and the non-monetary terms and conditions of employment at two separate tables. The economic benefits table discussed the economic benefits for faculty and sessionals together. The non-monetary terms and conditions of employment table discussed those non-monetary terms for faculty and sessionals together.
14. The parties have predominantly bargained Faculty and Sessionals Handbooks concurrently, though there have been years in which one or the other was not bargained at all or that only the non-monetary terms and conditions were bargained while the economic benefit provisions were not or vice versa. Although there are two separate booklets, the separation in the bargaining tables was by topic, economic benefits and non-monetary items. When both the Faculty and Sessionals Handbooks were bargained in a given year, the separation in bargaining tables by topic was maintained.
15. While the parties now print two separate handbook documents, the existence of two handbook booklets is consistent with there being one collective agreement with two parts. It is not at all uncommon for a single collective agreement to have different terms and conditions for different groups of employees, different departments, different sections of the operation, different locations, etc.

16. In fact, the parties have always seen the Sessional Handbook as deriving from and being based upon the Faculty Handbook. For example, Article 1.01 of the Sessional Handbook addresses any item or provision inadvertently left out of the Sessional Handbook because the Sessional Handbook is intended to be based upon the Faculty Handbook – one would only know an item was left out of the Sessional Handbook by reference to the items included in the Faculty Handbook.
17. ULFA submits that the provisions of the *Code*, the ALRB's policies, and the jurisprudence from the ALRB and from Labour Relations Boards across Canada do not support the proposition that a single bargaining unit could have two separate collective agreements. ULFA submits that there is one collective agreement for its single bargaining unit.
18. A determination that ULFA represents two separate bargaining units – faculty and sessionals – would mean that ULFA and the University would have to bargain two collective agreements, two essential service agreements, be involved in two separate mediation opportunities, and potentially have two separate strikes or two separate lockouts. It makes no labour relations sense for the new provisions of the *Code* to be interpreted to allow for such a result.
19. ULFA and the University met on November 10 and December 15, 2017 to discuss preliminary matters in preparation for collective bargaining.
20. At the meeting on November 10, ULFA clearly stated its position that there was one bargaining unit, one required essential services agreement, one collective agreement, and one round of upcoming collective bargaining to renew the current collective agreement. The University asserted that there were two separate bargaining units and two separate collective agreements. The parties agreed to consider the issue further.
21. At the December 15, 2017 meeting the University maintained its position that there were two separate bargaining units, two collective agreements with two discrete expiration dates, two upcoming rounds of essential services bargaining, and two upcoming rounds of collective bargaining. The University told ULFA that if it disagreed, the proper route for resolution was the Alberta Labour Relations Board. The University has subsequently modified that position to state that it believes that one of the proper routes for resolution is the ALRB.
22. It is essential that this issue of the number of bargaining units, collective agreements, together with the question of whether the upcoming essential services and collective bargaining relates to one bargaining unit or two be determined as soon as possible and before the parties commence bargaining early in 2018.

**Expiry date of the collective agreement**

23. Historically, under the *PSLA*, the parties understood that the agreement contained in the economic benefit provisions set out in Schedules A and B to each of the Faculty Handbook and the Sessional Handbook had expiry dates. The non-monetary terms and conditions of employment were understood by the parties to be continuing without specific expiry dates, unless the parties agreed to amend them during annual negotiations.
24. The parties historically bargained every year for both economic benefits and non-monetary items, however annual bargaining was very time consuming. When sessionals were designated as academics in 2007, the parties continued an annual bargaining cycle.
25. To address their bargaining fatigue, in July, 2014, ULFA made an effort to separate the economic benefit bargaining for faculty and sessionals. The parties agreed to a one year term ending April 30, 2015 for economic benefits for sessionals and to a two year term ending June 30, 2016 for economic benefits for faculty. The following year, the parties bargained a three year term ending April 30, 2018 for economic benefits for sessionals. In 2016 the parties agreed to a two year term ending June 30, 2018 for the economic benefits for faculty, thus syncing up the terms of the two agreements again.
26. At the last round of negotiations of the Faculty and Sessional Handbook, language was agreed to by the parties which ULFA submits must lead to the interpretation that both Schedules A and B (economic benefits) and the non-monetary terms and conditions of employment set out in the balance of each handbook expire on set dates as set out in the Schedules. However, those dates do not fully align between the two handbook documents, in that the expiry date set out in Schedule A of the Faculty Handbook is June 30, 2018 and the expiry date set out in the Sessional Handbook is April 30, 2018.
27. The specific provisions to be referred in the Faculty Handbook are sections 3.01, 3.02, Schedule R, Schedule A, Schedule B, and Schedule C, and especially Schedule R which states:
- “2. Schedules A & B are modified as attached and as follows:
- a. The term of the agreement is two (2) years:
- i. Year One: July 1, 2016 to June 30, 2017
- ii. Year Two: July 1, 2017 to June 30, 2018”

The specific provisions in the Sessional Handbook are sections 3.01, 3.02, Schedule F, Schedule A, Schedule C, and especially Schedule F which states:

- "1. The term of the agreement is three years:
- a. Year One: May 1, 2015 to April 30, 2016
  - b. Year Two: May 1, 2016 to April 30, 2017
  - c. Year Three: May 1, 2017 to April 30, 2018"

28. When Part 9.1 was added to the *Code*, transitional questions were also included. Section 58.7(5) provides that when a collective agreement regarding academic staff currently operates for an unspecified term, it will operate for a three year term beginning on May 4, 2017 (date of Royal Assent of Bill 7) or a shorter term if the parties agree. Section 58.7(7) provides for an application to the ALRB to determine issues arising from the transition.

29. ULFA submits that the reasonable interpretation of the language of the current Faculty and Sessional Handbooks is that all provisions have an expiry date and that together the handbooks comprise a single collective agreement that expires either on April 30, 2018 or June 30, 2018. As between those dates, ULFA prefers the June 30, 2018 date.

30. Alternatively, although ULFA does not agree, it may be possible to read the overall collective agreement as having an unspecified end date and as such the parties could agree to an end date earlier than May 3, 2020 or the expiry date is May 3, 2020 by operation of the *Code*.

31. When the parties met on November 10 and December 15, 2017, ULFA understood that the University was not asserting that they were bound to an agreement or agreements that had an unspecified end date. Rather, ULFA understands the University to take the position that there are two separate collective agreements: the Faculty collective agreement which expires on June 30, 2018, and the Sessional collective agreement which expires on April 30, 2018. ULFA made it clear that its position was that there was a single collective agreement, which expired on either April 30 or June 30, 2018, and that it would be reasonable for the parties to simply agree on the expiry date.

#### **Alternative approach to the transition**

32. ULFA submits that the *Code* does not permit more than one collective agreement for each bargaining unit and further, that interpretation is consistent with the jurisprudence of the ALRB and other Canadian Labour Relations Boards.

33. ULFA submits that should the ALRB determine that there is one bargaining unit but that there are, at present two collective agreements between ULFA and the University, then the ALRB should order the parties to transition to one collective agreement consistent with the requirements of the *Code*. There is no basis to allow these parties to continue a situation that is outside of the requirements of the *Code*.
34. Besides being inconsistent with the provisions of the *Code*, it makes no labour relations sense for ULFA and the University to have two separate bargaining units of designated academic staff who have a significant single community of interest. Such a situation would mean that these parties would have to bargain two essential services agreements. They would have to collectively bargain two separate collective agreements. They would have potentially two separate mediations and two separate strikes or lockouts. Such strikes or lockouts could be serial, allowing for whipsaw bargaining. Such strikes and lockouts might totally distort the bargaining power of each group given the similarity of the work performed.
35. ULFA states the question of the date of expiry of the collective agreement, or in the event that it is found that there are two collective agreements, then the expiry date for each collective agreement, must be resolved quickly as the answer impacts significantly on the upcoming collective bargaining.

### **Expedited Hearing**

36. The parties have an agreement or agreements that expire on April 30 or June 30, 2018 and as such should begin moving into bargaining their essential services agreement and moving into collective bargaining early in 2018. In fact, the University has indicated that it plans, this week, to serve Notice to Bargain regarding only the Sessional Handbook. As a result ULFA asks the ALRB for an expedited hearing of this matter in January 2018.

### **Remedy Sought**

37. ULFA seeks the following relief:
- a. A declaration that ULFA is the bargaining agent of employees of the University in a single bargaining unit comprised of "all academic staff";
  - b. A declaration that there is currently one collective agreement between ULFA and the University;



- c. Alternatively, a declaration that whatever the current number of collective agreements, the parties must, moving forward, conclude a single collective agreement for the bargaining unit at the next round of collective bargaining and that such bargaining will require only one essential services agreement, one single bargaining table, and one opportunity for mediation, strike and lockout;
- d. A declaration that the single collective agreement between the parties expires on either April 30, 2018 or June 30, 2018;
- e. Alternatively a declaration clarifying the expiry date of the single or, alternatively, if two collective agreements are found, of the two collective agreement(s) between the parties;
- f. An expedited hearing on these issues;
- g. Such interim relief as may be requested by the parties and allowed by the ALRB;
- h. Any further relief that is deemed appropriate.

The parties to this application are:

**ULFA:**

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**Counsel for ULFA:**

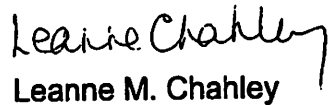
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We look forward to hearing from you with respect to next steps. We have copied the University with this application by fax.

Yours truly,



Leanne M. Chahley

cc. Annabree Fairweather, ULFA  
Scott Harling, University of Lethbridge