

LABOUR RELATIONS ACT, 1995

RESPONSE TO "AMENDED" APPLICATION  
UNDER SECTION 96 OF THE ACT  
(UNFAIR LABOUR PRACTICE)

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

*rec. Dec. 21, 2010*

**Between:**

Denis Rancourt of Ottawa, Ontario: former professor, University of Ottawa, Ottawa, Ontario

**Applicant,**

- and -

- (1) Allan Rock, President, University of Ottawa, Ottawa, Ontario; and
- (2) University of Ottawa, Ottawa, Ontario; and
- (3) Association of Professors University of Ottawa (APUO), Ottawa, Ontario

**Responding Parties.**

**The responding party (APUO) states in response to the application:**

**OR**

\_\_\_\_\_ **intervenes in this proceeding and**  
**(Name of Intervenor)**

**states in response to the application:**

1. (a) Correct name of the responding party/intervenor:  
  
Association of Professors of the University of Ottawa (APUO)
- (b) Address, telephone number, facsimile number and e-mail address of the responding party/ intervenor:  
  
Association of Professors of the University of Ottawa  
348 - University Private  
Ottawa, Ontario K1N 6N5  
Telephone: 613-562-5800 ext. 4364  
Facsimile: 613-562-5197  
Email: apuo@uottawa.ca

**Form A-34**

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

Renata Green  
Administrator  
Association of Professors of the University of Ottawa  
348 - University Private  
Ottawa, Ontario K1N 6N5  
Telephone: 613-562-5800 ext. 4364  
Facsimile: 613-562-5197  
Email: apuo@uottawa.ca

2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person, trade union, employer or employers' organization who may be affected by the application and who has not already been identified by another party:

Not applicable

- (b) The person, trade union, employer or employers' organization named in paragraph 2(a) is affected by the application for the following reason(s):

Not applicable

**[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, a copy of the Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act, a completed copy of your response, and a blank response form. You must also complete the attached Certificate of Delivery.]**

3. The following statements in the application are agreed to:

See Schedule "A" attached

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4. The following statements in the application are not agreed to:

See Schedule "A" attached

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**Form A-34**

5. In support of its response, the responding party/intervenor relies on the following material facts:

See Schedule "A" attached

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(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the response and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

See Schedule "A" attached

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(Describe your position with respect to the order(s) requested by the applicant.)

7. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

8. Other relevant statements:

See Schedule "A" attached

**Hearing Estimate Information:**

*[Note to Applicant: If you disagree with the hearing estimate of the responding party/intervenor, you must file with the Board your own Hearing Estimate form (Form A-16) within seven (7) days of receiving this response.]*

9. Estimated number of days to complete the whole case (including evidence and argument): See Schedule "A" attached
10. Number of major witnesses I expect to call: See Schedule "A" attached  
(A major witness is one expected to testify for at least one day, including cross-examination.)

**Form A-34**

11. Number of minor witnesses I expect to call: See Schedule "A" attached  
(A minor witness is one expected to testify for less than one day, including cross-examination.)

12. (a)  do  
I  do not intend to make preliminary motions or objections.  
See Schedule "A" attached

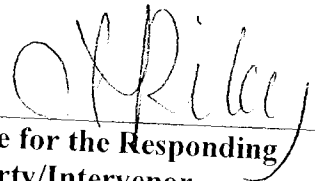
(b) The preliminary motions or objections I intend to make are:

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(c) Estimated time required to hear the preliminary objections or motions: \_\_\_\_\_

DATED 16 December 2010.



**Signature for the Responding  
Party/Intervenor**

Administrative Secretary  
for Renata Green  
APUC Administrator

## **Schedule “A”**

### **Overview**

1. As directed by the Board in its decision dated December 9, 2010, this response sets out only those facts relevant to any request for preliminary dismissal or deferral. The Responding Party Association of Professors of the University of Ottawa (“APUO”) reserves the right to file a more complete response and to adduce further evidence, including documentary evidence, in the event the Board determines that the matter should proceed.
2. The correct name of the APUO is the Association of Professors of the University of Ottawa.

### **With respect to paragraphs 21, 28, 29, 32, 33, 34, and 35**

3. Under the collective agreement, an individual member who files a grievance is considered party to the grievance up to and including the Step-1 meeting. The other party in an individual grievance is the University of Ottawa (the “University”). As such, the Applicant had, and has, standing within that process as the grievor. For this reason, the grievor is the party with the authority to settle or withdraw a grievance up to the Step-1 level.
4. The APUO, and not the grievor, is the party to the collective agreement and, therefore, has an interest in and role with respect to the process under the collective agreement and the specific procedures involving Step-1.
5. APUO has previously explained to the Applicant that it would respect the Applicant’s request for APUO not to be involved in the first steps of a grievance except as a silent observer at any Step-1 meetings. APUO has not agreed that it will refrain from commenting on any issue affecting the collective agreement to the University if necessary. Moreover, APUO has taken an active role on a number of occasions in the past several years in communicating with the employer with respect to collective agreement procedures affecting the Applicant’s rights under the grievance procedure.
6. APUO specifically denies the allegation that it has failed to inform the Applicant of communications from the employer within the context of the grievances that are the subject of this Application (G25, G26 and G27). Furthermore, the APUO denies that it is collaborating with the employer to disregard the Applicant’s rights.

7. The Applicant has made a series of bald statements about the actions of APUO, either without any supporting facts, or in circumstances where he admits that he has no information to support the allegations (P31, P32, P33, P50, P73). Those allegations should be struck.

**With respect to paragraph 91**

8. Under section 13.4.3 of the collective agreement, the employer and the APUO (not the grievor), may consent to waive a Step-1 meeting. Any action by APUO in that regard is done only after consultation with the grievor, which was the case in the previous grievances referred to by the Applicant in paragraph 91.

**With respect to paragraphs 49, 50, 55, 65, 73, 75, 77, 95, 96, 103, 104, 105, 112, and 114**

9. To the extent that the above noted paragraphs are directed at APUO, or allege improper conduct by it, APUO denies these allegations and, in particular, denies that it has abandoned any matter, collaborated with the employer in disregarding the Applicant's rights, condoned any violation of the collective agreement, contributed to any intimidation of the Applicant, or facilitated or enabled any disregard for the collective agreement.
10. APUO is reviewing numerous grievances filed by the Applicant, including the grievance of his termination. It has invited the Applicant to participate in the review process by commenting on the various documents that have been collected and prepared to this end. Those documents are not produced here as they might prejudice APUO's ability to defend the Applicant to the best of its abilities. APUO expects to determine within the next six weeks to be able to decide which of the grievances it will be pursuing to arbitration and then to decide the best order in which to schedule any hearings.
11. APUO has not abandoned any of the grievances that are the subject of this Application.
12. APUO provided detailed explanation and advice to the Applicant in October 2010 with respect to how APUO believed these matters should be handled. APUO considers these communications to be privileged, but reserves the right to rely on such communications and will seek leave to produce them, to the extent necessary in the course of these proceedings. APUO has determined that it would not be in the best interests of the Applicant to try to process various grievances filed following his termination in advance of the conclusion of the grievance regarding his termination. It is the APUO's view

that, to the extent that matters raised in the grievances that are the subject of the within application are relevant to the termination grievance, those matters could be dealt with in any hearing of that grievance.

13. It would also not be an efficient use of the Applicant's or APUO's resources to process these grievances independently and prior to determining whether the University had grounds to terminate the Grievor's employment.
14. Finally, it is the view of APUO that, although it has managed to resolve some previous, unrelated grievances at an early stage, it is extremely unlikely to be the result in the Applicant's case for grievances G25 to G27, given that the employer terminated the grievor's employment for cause before those grievances were filed.

### **Summary and Relief Requested**

15. APUO has not refused to process any grievance filed by the Applicant that is the subject of this application.
16. It has formed the view that there is no advantage to filing a grievance to obtain a step one hearing for grievances that were filed subsequent to the termination of the Applicant's employment. This will remain true until the question of whether the employer had just cause to terminate the grievor's employment has been determined. It is of the view that doing so will further delay the determination described above, and will serve no useful labour relations purpose in fulfilling any rights under the collective agreement. It is the view of APUO that the grievance procedure for grievances G25 to G27 should be placed in abeyance until that determination is made.
17. The grievor disagrees with the APUO's conclusion and would like APUO to take measures, including filing a grievance, to force step one meetings, then to take no part in them.
18. As a result, there is no failure to represent in any manner that could be described as arbitrary, discriminatory or in bad faith.
19. It is the expectation of the APUO that this preliminary matter could be disposed of without a hearing. However, in the event the Board convenes a hearing for the purposes of argument on these preliminary issues, argument should be completed within one day.
20. For these reasons, the APUO requests
  - a) an order dismissing the within Application against it; or, alternatively,

- b) an order deferring the application or adjourning it until the APUO has made its determination about which grievances and which issues it intends to process to arbitration, and until those arbitration procedures are complete,
  - c) striking the paragraphs set out in this interim response,
- without the need for a hearing of this matter.