

**Additional Submissions from the Applicant
Pursuant to the Board's Decision of July 21, 2011
OLRB File No. 2567-10-U**

1. The Applicant understands the Board's offer (July 21, 2011, Decision) to provide additional submissions as an opportunity for the Applicant to provide additional arguments, clarifications and alleged material facts; not as a Board's request for the Applicant to provide actual evidence at this time.

2. The Board's July 21, 2011, Decision states (par.6): *"The University takes the position that, if the applicant's dismissal is upheld at arbitration, grievances G25, G26 and G27 will not be arbitrable because the applicant was not an employee in the bargaining unit at the time they were filed."*

3. The Applicant is pursuing a right which has vested in the Applicant under the collective agreement while still an employee, namely the right to access and benefit from the Step-1 process in which the Applicant has standing for three grievances which were duly filed.

4. The University and Mr. Rock agree that the grievances were filed correctly (par.10.b; November 19, 2010 Response): *"Although the three grievances were filed correctly pursuant to the terms of the collective agreement, ..."*

5. It is the position of the Applicant that all the duly filed grievances which are excluded from substantive treatment in view of resolution and reparation in the dismissal arbitration (see below) must be processed pursuant to the collective agreement, including time delay directives, irrespective of the process or outcome in the treatment of the dismissal.

6. The grieved incidences (G25-G26-G27) occurred while the Applicant was an employee in the bargaining unit, allege actual and aggravated damages which are reparable, and were only discovered via access to information after the Applicant was dismissed.

7. All the access to information requests were made while the Applicant was an employee in the bargaining unit. The requests were vigorously opposed by the University and Mr. Rock, including at the appeal stages before the Information and Privacy Commissioner (Ontario).

8. The employer also disregarded its collective agreement duty to provide the Applicant with some or most of the information – ultimately requested via access to information – while the Applicant was an employee in the bargaining unit. For example, one relevant section of the 2004-2008 collective agreement reads:

“39.1.2.1 Any alleged behavior which may lead to disciplinary proceedings against a member shall be properly investigated by the member's dean, it being understood that:

(a) any unsolicited complaint against a member shall promptly be communicated to her, with proper confidentiality safeguards where appropriate;

(b) any fact-finding procedure, evaluation or request for advice in respect of an individual member, conducted by the dean, shall be carried out in conformance with the relevant provisions of this agreement or, where there are no relevant provisions, in a manner appropriate to the alleged cause for disciplinary proceedings;

(c) the member whose alleged behavior is being investigated shall be notified by the dean, as promptly as is reasonable in the circumstances, as to the reasons for and the nature of the actions being taken by the dean;

(d) the member whose alleged behavior has been investigated shall be promptly informed of the results of that investigation by her dean, subject to any applicable provisions of sections 39.2, 39.3 or 39.4.”

9. Despite the egregious nature of the behind-the-scenes attacks against the Applicant's academic freedom and collective agreement rights and despite a duty to do so, the University and Mr. Rock never provided any information about the grieved incidents to the Applicant while the Applicant was an employee in the bargaining unit.

10. The grieved alleged violations of the collective agreement (G25-G26-G27) are of a nature as to have caused significant damage to the Applicant, including to his professional reputation, status within the institution, professional advancement prospects, professional certification to supervise graduate students, personal dignity, health and welfare, and leading to an unjustified dismissal (ungrounded and disproportionate) of a tenured professor.

11. Had the material information been duly provided by the University and Mr. Rock while the Applicant was an employee in the bargaining unit then the collective agreement time limit would have required the grievances to be filed (13.4.1) *“within 15 working days of the occurrence of the incident or the date the member had notice of the event in question”* and the grievances would then have been filed while the Applicant was an employee in the bargaining unit.

12. Case law shows that valid reasons for finding a grievance to be inarbitrable include: that no provision of the collective agreement has been breached, untimely submission in terms of mandatory time limits set out in the collective agreement, that a matter is beyond the scope of the arbitrating body, that the grievance has already been disposed of or settled, that the grievance was filed improperly by not following procedures, and that a grievance is moot. These do not apply.

13. On December 8, 2009, the union Legal Counsel John D. Henderson responded by email to the agent (Jean-Yves Leduc) of the University and Mr. Rock that the union was of the position that the Step-1 meeting for G25 should be convened. The union

questioned the legitimate basis for refusing to hold a Step-1 meeting. This was the last time that the union attempted to secure the Applicant's collective agreement right to the Step-1 process. The union's representations to the Board show that the union no longer opposes the University's position.

14. The position of the responding parties that an employer decision stands until reversed (article 13.2.10, collective agreement) and that the Applicant therefore did not have standing to file grievances after dismissal (par.11.a; November 19, 2010 Response) does not apply for the decision of dismissal. Otherwise, for example, a dismissal could not be grieved and dismissal could be used by an employer to deny an employee his/her rights pursuant to a collective agreement. This is an obvious point.

15. The position of the University, of Mr. Rock and of the union that the Step-1 process can be denied to the Applicant because the applicant was not an employee at the time they were filed is not tenable at law in the instant case circumstances. Otherwise, employers could harm employees in secret and then fire them without recourse.

16. The statement of the University and Mr. Rock that "the three (3) grievances at issue are the only ones he [the Applicant] filed following his dismissal" (par.14.b; November 19, 2010 Response) is wrong since the grievance for dismissal was also filed after dismissal. This shows that these responding parties are prepared to make incorrect statements to advance their arguments to deny the Applicant his rights pursuant to the collective agreement. The stated and implied point of their par.14.b is also in contradiction with their recent behaviour (see par.21 below) to deny collective agreement rights regarding private-status grievances that were filed while the Applicant was still an employee in the bargaining unit (and broadly to deny all grievances other than the dismissal, see below).

17. The alternative position of the University and Mr. Rock that the question of the Applicant's right to Step-1 procedures can be properly addressed within grievance arbitration is also untenable. Arbitration comes after Step-1. The employee has standing at Step-1, not at arbitration. The University and Mr. Rock have expressly barred all further grievances. The union is on-side with blocking the grievances.

Developments since Amended Application

18. Arbitration hearings for the dismissal (grievance G24) have now commenced. The first hearing date was May 2, 2011. The second hearing day is in October 2011 and hearing dates are scheduled into 2012.

19. The dismissal arbitration excludes the three grievances G25-G26-G27 of the instant submission as grievances duly considered in view of reparation. There is no mechanism foreseen in the employer-union negotiated conditions of the dismissal hearings whereby the three grievances can be duly treated in view of resolution and reparation. The three grievances remain under the standing of the Applicant.

20. The question before the arbitrator relates only to the dismissal (G24) and two grievances (G14 and G15) judged by the parties to the collective agreement (not the Applicant) to be immediately related to the dismissal. No other grievances are to be treated by the arbitrator. All other grievances have been postponed by the University, Mr. Rock and the union until after the dismissal arbitration decision. The Applicant has opposed the latter decisions.

21. On March 2, 2011, the Applicant duly informed Mr. Rock and the University that two private-status grievances (G16 and G19) in which the Applicant has standing (both duly filed while the Applicant was an employee in the bargaining unit) now needed to proceed to arbitration. After a reminder was sent on March 12, 2011, the University replied on March 13, 2011. The point of the reply reads: *“As has been the case in the past, we will defer dealing with any grievance until such time as the status of your employment has been determined by an administrative tribunal. Once that issue has been determined, we then proceed accordingly.”*

22. The later recent development is a new violation of section 56 of the Act. The related grievances G16 and G19 were for progressive discipline involving a suspension without pay. They are private grievances under the purview of the collective agreement, where the union does not have standing. They are unrelated to the reasons for dismissal put forward by the University. The collective agreement foresaw a deadline of March 16, 2011, for the University to provide a next administrative step towards arbitration for G16-G19, which the University did not do.

23. The new situation with G16-G19 provides more evidence of the University's and Mr. Rock's disregard for the collective agreement and the Act (section 56) and more evidence of the alleged breach of section 76 of the Act in dismissing the Applicant to illegitimately bar his grievances. The Applicant seeks direction from the Board on how to additionally obtain an order for the University to proceed with the G16-G19 arbitration, as part of the relevant legal context of the present file and/or as a separate application to the Board.

Conclusion

24. The Applicant has made a *prima facie* case of violations of sections 56 and 76 of the Act and the remedies requested. A case has been made for the orders and remedies requested, on assuming the alleged material facts to be true. There are submitted material facts and particulars alleging that the three named responding parties have violated sections 56 and 76 of the Act.

25. Grievance arbitration is not a proper forum for reviewing the alleged violations of sections 56 and 76 of the Act. As a particular, all further arbitration processing of the non-dismissal grievances has been repeatedly and expressly barred by the University and Mr. Rock.

26. The Applicant submits that the Board is the proper authority to process the instant application regarding these breaches of sections 56 and 76 of the Act. This is needed to uphold the principles of the Act as intended and will thereby strengthen labour law in Ontario.

27. There is a breach of the collective agreement, namely a broad repudiation of all grievances judged by the employer to be unrelated to the dismissal, and there is a breach of the Act, namely intimidation and coercion including barring from campus and dismissal to prevent the processing of grievances. The breach of the collective agreement amounts to a repudiation or disregarding of the collective agreement and this breach has no justification within the purview of the collective agreement or any past established practice at the University.

28. The Act requires that there be a grievance and arbitration or resolution process in the collective agreement and this requirement is effectively being repudiated by the responding parties.

29. The alleged intimidations and coercions described in the Applicant's submissions, including the recent Respondents' email of March 13, 2011 (par.21), are expressed and implied demands to refrain from seeking due access to the grievance and arbitration processes foreseen in the collective agreement.

30. The benefits in the Board exercising its authority to treat the instant application include: a benefit to the public in preserving the integrity of the university institution as a just workplace, a benefit to the public in preserving the integrity of the Act, clarified and improved labour relations regarding the need to uphold collective agreements, and a statutory advance regarding the conditions under which section 56 of the Act can be violated.

31. Deferral of the application to arbitration would not benefit the practice of collective bargaining. The nature of the application is not primarily contractual but rather involves questions of statutory rights (sections 56 and 76). The section 56 component of the instant application requires the Board to make an important elaboration and application on this key provision of the Act.

Filed with the Board and served to the Respondents on July 26, 2011.

Denis Rancourt
Applicant