Form A-33

LABOUR RELATIONS ACT, 1995

APPLICATION UNDER SECTION 96 OF THE ACT
(UNFAIR LABOUR PRACTICE)

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Denis Rancourt of Ottawa, Ontario; former professor, University of Ottawa, Ottawa, Ontario.

Applicant,

- and -

Allan Rock, President, University of Ottawa, Ottawa, Ontario.

Responding Party.

The applicant states that the responding party has violated section(s) ______56., 76._________ of the *Labour Relations Act, 1995*. (You must claim that some section OTHER THAN SECTION 96 has been violated.)

The applicant requests the following:

That the Responding Party be ordered to immediately convene the "Step-1" required resolution-attempt meetings foreseen by the Collective Agreement (13.4.2) between the University of Ottawa and the Association of Professors University of Ottawa (APUO) in three grievances filed by the Applicant denoted: G25 filed on November 22, 2009, G26 filed on September 21, 2010, and G27 filed on October 14, 2010.

The Applicant further requests that the Responding Party be ordered to participate in good faith in a complete Step-1 process resolution attempt for each of the three grievances in question, G25, G26 and G27, as foreseen by the Collective Agreement between the University of Ottawa and the Association of Professors University of Ottawa (APUO).

This will establish that the Applicant is entitled to the Step-1 resolution-attempt process which the Respondent Party has an obligation under the Act to convene and that the Applicant cannot be intimidated away from securing his Collective Agreement right to the process in question for these three grievances.

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(Describe **in detail** what you wish the Board to order as a result of this application.)

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The applicant states:

1. (a) Name, address, telephone number, facsimile number and e-mail address of the applicant:

Denis Rancourt, [redacted]

(b) Name, address, telephone number, facsimile number and e-mail address of a contact person for the applicant:

Yavar Hameed, Barrister and Solicitor, Equity Chambers, 43 Florence Street, Ottawa, Ontario, K2P 0W6, [redacted]

(c) Name, address, telephone number, facsimile number and e-mail address of the responding party:

Allan Rock, President, University of Ottawa, Office of the President (Room 212), Tabaret Hall, 550 Cumberland, Ottawa ON K1N 6N5, Ph 613-562-5809, Fax 613-562-5103, allan.rock@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:

Association of Professors University of Ottawa (APUO), University Centre (Room UCU 348), 85 University, Ottawa, ON K1N 6N5, Ph 613-562-5800 ext.4364, Fax 613-562-5197, apuoadm@uottawa.ca

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

The APUO has a duty of fair representation to help ensure that the Applicant's rights pursuant to the Collective Agreement between the University of Ottawa and the Association of Professors University of Ottawa (APUO) be upheld and protected.

[Before you file your application with the Board, you must deliver to the responding party and to the person(s) named in paragraph 2(a): a copy of your application, a blank response form, and a Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act (Form C-12) with the names of the parties and the date inserted. You must also complete the attached Certificate of Delivery.]

3. In support of its request, the applicant relies on the following material facts:

These facts were prepared by the Applicant as self-represented. I hereby confirm their accuracy.

Table of grievances at issue

Three grievances are at issue in the present application, as per this table:

code	grievance title	date filed
G25	"Grievance G-25 (my code) – covert surveillance of a professor and of students"	November 22, 2009
G26	"Grievance G26 – Violation of academic freedom, global warming science"	September 21, 2010
G27	"Grievance G27 – Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915"	October 14, 2010

Collective Agreement jurisdiction

The Collective Agreement between the University of Ottawa and the Association of Professors University of Ottawa (APUO) (the "Collective Agreement" for short) has the force of law pursuant to the *Labour Relations Act* (section 56.).

Some sections of the Collective Agreement relevant to the present application changed between the 2004-2008 Collective Agreement and the 2008-2011 Collective Agreement. The latter came into force on May 1, 2008. The changes are given in a publicly available document entitled "Settlement – Collective Agreement – 1 May 2008 to 30 April 2011" here:
http://www.apuo.uottawa.ca/Info/2008-201CA/2008-11%20SETTLEMENT.pdf

The complete current 2008-2011 Collective Agreement is publicly available on the web here:
http://www.hr.uottawa.ca/policies/agreements/apuo.php .

The complete previous 2004-2008 Collective Agreement is publicly available on the web here:
http://www.apuo.uottawa.ca/Info/Convention/APUO_CA_04-08.pdf

The alleged substantive violations of the Collective Agreement for G25 and G27 occurred before May 1, 2008. Therefore, G25 and G27 relate to the 2004-2008 Collective Agreement.

The alleged substantive violations of the Collective Agreement for G26 occurred after May 1, 2008. Therefore, G26 relates to the 2008-2011 Collective Agreement.

For all three grievances the alleged violations of the Collective Agreement were only discovered by the Applicant after they occurred, thanks to access to information (i.e., *Freedom of Information and Protection of Privacy Act*, Ontario) requests and appeals. The FIPPA request and appeal results were the last significant developments that in each case gave rise to the particular grievance filing date pursuant to the Collective Agreement (section 13.4.1: "or the date the member had notice of the event in question").

At the times of the alleged substantive violations of the Collective Agreement for all three grievances (G25, G26, and G27) the Applicant was a tenured professor at the highest rank of Full Professor at the University of Ottawa and was therefore a full member of the Association of Professors University of Ottawa (APUO).

The three grievances were correctly filed pursuant to the Collective Agreement procedure (13.4.1). This has not to this date been challenged by the Responding Party.

Applicant's right to the Step-1 process

The Collective Agreement stipulates that the Responding Party ("the employer's liaison officer") "shall convene" (or "shall arrange for", 2008-2011) a resolution-attempt Step-1 meeting within ten working days of filing a grievance (section 13.4.2).

The Applicant, not the Applicant's association, has legal standing in the grievance process up to and including the Step-1 process, at least up to the point when the Applicant's association assumes the grievance or formally decides to not assume the grievance (13.1, 13.2.1, 13.2.2).

The Step-1 meeting is a resolution-attempt meeting facilitated by liaison officers (13.2.6, 13.4.2).

The Step-1 resolution-attempt process ends with a Step-1 memorandum (13.4.5).

Only a party (with standing) in the Collective Agreement has the authority to settle or withdraw a grievance (13.2.2).

It is therefore clear that the Applicant has an unqualified right under the Collective Agreement to the Step-1 grievance process. It is also clear that the Step-1 process is intended to be a good faith attempt to resolve the grievance before it needs to be assumed by the association for further processing.

The Applicant submits (see below) that the Responding Party has intimidated the Applicant to accept an abrogation of the Applicant's right to the Step-1 process for each grievance in question (section 76.) and that the Responding Party has violated the Act by refusing its binding obligations pursuant to the Act (section 59.).

Communications between the Applicant's association and the Respondent Party

The Applicant has on several occasion, both in writing and verbally, instructed the Applicant's association (APUO) to not have any communications with the employer (the Respondent Party) about the Applicant's grievances during all Step-1 processes and during all times when the Applicant has standing in the grievances and before such grievances are assumed by the Applicant's Association.

The APUO has confirmed both in writing and verbally (via both APUO Legal Counsel John D. Henderson and APUO Liaison Officer Mario Lamontagne) that it would always comply with the Applicant's instructions to not have any communications with the employer (the Respondent Party) about the Applicant's grievances during all Step-1 processes and during all times when the Applicant has standing in any grievance and before such grievance is assumed by the Applicant's Association.

The Applicant has direct knowledge that the APUO has informed the Respondent Party of this agreement of non-communication.

The Applicant has no evidence that would establish that the APUO has violated this agreement of non-communication. For the purpose of the present application, the Applicant assumes that this non-communication understanding has been respected by the APUO.

Likewise, the Applicant reasonably assumes (following explicit and acknowledged requests from the Applicant) that any and all communications from the Respondent Party to the Applicant's association (APUO) about grievances for which the Applicant has standing are promptly communicated to the Applicant by the Applicant's association.

Grievance G25

The Applicant duly filed "Grievance G-25 (my code) – covert surveillance of a professor and of students" (G25 for short) on November 22, 2009.

Receipt of the grievance G25 was acknowledged by email by an agent (Director of Human Resources Louise Page-Valin) of the Responding Party on November 23, 2009.

The entire November 23, 2009, email from Louise Page-Valin to the Applicant reads:

> "I acknowledge receipt of your e-mail and the grievance it contained. The position of the University is that the grievance is inarbitrable.
> Without prejudice, the grievance will be processed in accordance with the procedures under the Collective Agreement with the APUO."

No further explanation was given. "Inarbitrable" is not an English word and is not contained in the Collective Agreement.

Two common definitions of intimidate are: “1. To make timid; fill with fear. 2. To coerce or inhibit by or as if by threats.”

The Applicant interpreted the terse November 23, 2009, e-mail as a threat that the Responding Party, which commands a powerful and influential institution, would present significant but undefined barriers against the grievance being even heard.

On December 8, 2009, following a verbal request to the Responding Party from the Applicant’s association (APUO) that the required Step-1 meeting be scheduled, an agent (Assistant Director Human Resources Jean-Yves Leduc) of the Responding Party informed the APUO (Legal Counsel John D. Henderson) by email that the Responding Party would not convene a Step-1 meeting for G25. The central point was:

> “As previously advised, it is the position of the University that this grievance is inarbitrable in light of the fact that the grievor is no longer employed. In these circumstances, a Step 1 meeting will not be scheduled.”

Here the Responding Party is now contradicting its earlier commitment to proceed with a Step-1 meeting and denying access to the Collective Agreement process on the basis that it has fired the Applicant. This statement with the firing is illegitimately based only on imposing the employer’s authority, not based in law or accepted practice. It is a further intimidation, an illegitimate attempt to dissuade the Applicant from pursuing access to the Applicant’s Step-1 and further Collective Agreement rights.

On December 8, 2009, the APUO (APUO Legal Counsel John D. Henderson) responded by email to the Responding Party’s agent (Jean-Yves Leduc) that the APUO was of the position that the Step-1 meeting for G25 should be convened. The APUO questioned the legitimate basis for refusing to hold a Step-1 meeting and pointed out the contradiction with the Respondent Party’s initial written commitment.

To the knowledge of the Applicant, no further communication occurred about G25 between the association (APUO) and the Respondent Party.

The Step-1 meeting for G25 has not been convened by the Respondent Party as required to this date.

On the face of it, it is difficult to understand why the Respondent Party would advance such a rash and tenuous objection to respecting the Applicant’s Collective Agreement rights. It appears to be an attempt to intimidate by stone-walling so as to discourage all future grievances that could arise from several on-going access to information (FIPPA) requests and appeals.

This is in the context of the unresolved firing of a tenured professor that is considered by the Canadian Association of University Teachers (CAUT) to be a major academic freedom case in Canada and where expert researcher on the academic workplace (several books on the subject), Professor Kenneth Westhues (University of Waterloo), has in an independent public report concluded with stated certainty that the firing of the Applicant was an “administrative mobbing”.

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Grievance G26

The Applicant duly filed “Grievance G26 – Violation of academic freedom, global warming science” (G26 for short) on September 21, 2010.

Receipt of the grievance G26 was acknowledged by email by an agent (co-Director Human Resources Jean-Yves Leduc) of the Responding Party on September 21, 2010. No mention was made that the grievance was “unarbitrable” or defective in any way. It was simply received and not acted upon by the Responding Party.

The Step-1 meeting for G26 has not been convened by the Respondent Party as required to this date.

Ignoring a required process to which an employee has a statutory right and which the Respondent Party has a legal duty to initiate (13.4.2), without even an explanation, is a form of authority-based intimidation, especially following a similar grievance (G25) with the same employee (the Applicant) where the same issue was debated.

Grievance G27

The Applicant duly filed “Grievance G27 – Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915” (G27 for short) on October 14, 2010.

As part of the October 14, 2010, grievance G27, the Applicant wrote:

> “I hope to resolve the present grievance during the Step-1 mediation process foreseen by the Collective Agreement (13.4.2). Please convene the Step-1 meeting within 10 working days, as you are required to do under the Collective Agreement. Please arrange for court reporter recording of the Step-1 meeting, as per our established practice.
> I note that the employer has, in violation of the Collective Agreement, so far refused to convene Step-1 meetings for two former grievances, G25 (dated November 22, 2009) and G26 (dated September 21, 2010). Please also convene these Step-1 meetings immediately.”

Receipt of the grievance G27 was acknowledged by email by an agent (co-Director Human Resources Jean-Yves Leduc) of the Responding Party on October 14, 2010. Like with G26, no mention was made that the grievance was “unarbitrable” or defective in any way. It was simply received and not acted upon by the Responding Party.

The Step-1 meeting for G27 has not been convened by the Respondent Party as required to this date.

Ignoring a required process to which an employee has a statutory right and which the Respondent Party has a legal duty to initiate (13.4.2), without even an explanation, is a form of

authority-based intimidation, especially following two similar grievances (G25 and G26) with the same employee (the Applicant).

Applicant's further attempt to access the Step-1 resolution process

On November 1, 2010, the Applicant wrote an email directly to the Respondent Party (President of the University Allan Rock) with the APUO and Human Resources agents in cc. The text of the email was:

> RESPONSE NEEDED BY NOVEMBER 2nd, 5PM.
> Dear Mr. Rock,
>
> In university press releases that you approved you stated that the Collective Agreement procedures would be followed in my case.
>
> Yet you have refused to convene Step-1 meetings for my Grievances G25, G26, and G27. The legal deadlines are far overdue. These meetings are resolution-attempt meetings that you are required to convene under the Agreement which in turn has force of law pursuant to section 56. of the Labour Relations Act.
>
> I am prepared now, after a long time and several attempts, to file a complaint with the Ontario Labour Relations Board (and to serve you accordingly) to ask that you be ordered to follow the law.
>
> I would prefer if you agreed to follow the Step-1 resolution-attempt process in good faith as foreseen by the law.
>
> Please therefore respond by end of work day Tuesday November 2nd (tomorrow) that we can proceed to schedule the needed Step-1 meetings for these three grievances.
>
> In an email dated November 23rd 2009 you (via your agent Louise Page-Valin) had agreed to proceed with the Step-1 process for grievance G25 but then later reneged in writing on your commitment.
>
> Please acknowledge the present communication.
>
> Sincerely,
> Denis Rancourt

There were two (contradictory) responses, both as signed letters dated November 2, 2010, from co-Director Human Resources Jean-Yves Leduc in PDF-file format sent in two separate emails.

The first November 2, 2010, letter stated that the Respondent Party would not communicate with the Applicant in this matter and would only recognize communications from the Applicant's association (the APUO):

Dear Mr. Rancourt:
Subject: your email of November 1, 2010 regarding Step 1 grievance meetings

Your email of November 1, 2010 has been referred to me for reply.

With respect to all communications in relation to outstanding grievances, it is the practice of the University to deal solely with the representatives of the trade union which has carriage of the grievances. This practice is in conformity with the University's obligations under the Labour Relations Act.

I would be pleased to respond to any inquiries regarding the grievances in question which might be forwarded by your trade union, the APUO.

Regards,
Jean-Yves Leduc

The second November 2, 2010, letter provided the Applicant directly with an answer addressed to the Applicant (with the APUO in cc). The text of the letter was:

Dear Mr. Rancourt:
Subject: your grievance (G-27) dated October 14, 2010

As I have already acknowledged receipt of your grievance by email on 2010 10 14, I would like to offer the following in response to the filing of your grievance:

1. As has been the case in the past, the position of the University is that the grievance is inarbitrable at this time pending the outcome of other grievances, particularly those dealing with your dismissal;

2. Without prejudice to the University's position, the grievance will be processed in accordance with the procedures under the Collective Agreement once the outcome of other grievances regarding your dismissal has been determined.

Regards,
Jean-Yves Leduc

This is now quite remarkable in many regards.

First the Respondent Party stated it would not communicate with the Applicant on this matter. Now (on the same day) it communicates but deals only with one of the three grievances in question, without any explanation as to why.

The Respondent Party first stated (G25) that it would proceed with the Step-1 process, then (G25) that it would not because the grievance was filed after the Applicant had been fired, then the Respondent Party ignored the issue altogether for many months and with three separate grievances filed, and now the Respondent Party astonishingly states (G27; November 2, 2010) that it will proceed with the Step-1 process, irrespective of the outcome of a separate dismissal grievance, but only after the entire dismissal process has been completed (presumably to an

arbitration ruling and beyond to an appeal?). An arbitration start date for the dismissal grievance has not even yet been set.

There is no basis in the Collective Agreement for agreeing to the required Step-1 process while arbitrarily and illegally delaying the process in question until a separate grievance is completely resolved to the limit of the law. This is absurd and is contrary to extensive past practice with which the Applicant has direct experience.

Such contradictory and convoluted maneuvering while steadfastly refusing to follow the unambiguous prescriptions of the Collective Agreement can only be understood, in the Applicant's opinion, as sustained stone-walling intended to intimidate the Applicant away from seeking access to his rights, intended "to make timid" the Applicant.

Applicant's desire to resolve the grievances

The Applicant's desire is to access the intended Step-1 resolution-attempt process for grievances G25, G26 and G27 in order to attempt resolutions in good faith so that the matters can be fully resolved quickly and before the expected dismissal grievance is heard, so as not to complicate or prolong or unduly influence the already exceedingly slow separate dismissal grievance process.

Resolutions of grievances G25, G26 and G27 would clarify any factual or contextual relations between these grievances and the separate dismissal grievance, to the benefit of all parties.

If the G25, G26 and G27 matters cannot be resolved it is possible that they will enter the dismissal grievance arena at a significantly later time.

Conclusion

The Respondent Party has no basis in law for overtly, continuously and repeatedly denying the Applicant's unqualified right to the foreseen Step-1 resolution-attempt process of the Collective Agreement which is in turn binding on the Respondent Party by virtue of the Act (section 56.).

The Respondent Party seeks by intimidation (stone-walling, prolonged ignoring, and multiple and contradictory communications directly sent to the Applicant) to compel the Applicant to refrain from exercising his resolution-attempt Collective Agreement right under the Act (section 76., section 59.).

The Respondent Party is directly violating the Act (section 56.) by overtly, consistently and repeatedly refusing its binding obligations prescribed in the Collective Agreement, a collective agreement, subject to and for the purposes of the Act, binding upon the employer (the Respondent Party).

(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 application and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

4. Other relevant statements:

None.

DATED ___[November 5, 2010]________.

___[Denis Rancourt]_______
Signature for the Applicant

[Assigned OLRB File No. 2567-10-U]