

November 19, 2021

VIA E-MAIL (ALRB.EDM@gov.ab.ca)

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

Attention: Tannis Brown, Director of Settlement

Dear Madam:

Re: An unfair labour practice complaint brought by the Athabasca University Faculty Association affecting The Athabasca University Governing Council – Board File No. GE-08604

Following is the reply of the respondent, The Athabasca University Governing Council (“AU” or the “University”) with respect to both the above-referenced unfair labour practice complaint (the “Complaint”) initiated by the Athabasca University Faculty Association (“AUFA” or the “Association”) on September 24th, 2021, and the Association’s response to the University’s request for further particulars, received on November 3rd, 2021.

AU maintains that there is no merit to this unfair labour practice complaint. The University did not refuse to meet with the Association in collective bargaining or otherwise breach its obligations under section 60(3) of the *Labour Relations Code*, R.S.A. 2000, c. L-1 (“the Code”). It remains ready and willing to continue negotiations with the Association. Nor has the University interfered with any representational activities of the Association to contravene sections 148(1)(a)(ii) of the *Code*.

The University asserts that this Complaint should be dismissed.

Reply to Particulars

AU replies to particulars in the Complaint as follows:

1. The particulars included in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 are admitted.

Bargaining

2. The parties first met for collective bargaining on March 3rd, 2021, where bargaining protocols and ingoing proposals were discussed. It was at this meeting that AUFA was advised that AU's ingoing proposal was limited to its non-monetary package and explicitly reserved AU's right to table additional proposals in the future. AUFA did not object to this and in fact, AU's bargaining committee left the March 3rd, 2021, protocol meeting under the assumption that AUFA would also be tabling a non-monetary ingoing proposal. **[TAB 1]**
3. Contrary to the assertion made in paragraph 14, it is not true that the parties did not meet again until April 16th, 2021. In fact, the parties met and exchanged ingoing proposals on March 24th, 2021, and met again on March 25th, 2021. **[TAB 1, TAB 2, TAB 3]**
4. Despite having been informed on March 3rd, 2021, that AU would be tabling a non-monetary ingoing proposal, AUFA indicated for the first time on March 24th, 2021, that it would not engage in extensive conversations until AU tabled monetary proposals. AUFA's chief negotiator, Jason Foster, also claimed that AUFA would not sign-off on any proposals until AU tabled its monetary. **[TAB 1]**
5. The parties next met on April 16th, 2021.
6. The parties met again on May 10th, 2021. In an attempt to gain momentum and move away from the traditional positional based negotiation style, the Employer proposed engaging in interest-based discussions on Article 3 – Regular Appointment, Probation, Determination and Performance of Duties and Promotion for Academic Staff Members. In response, not only was AUFA not willing to engage in interest-based discussions, but Mr. Foster stated that AUFA was not prepared to discuss the article at all, as AU had not tabled a monetary package. **[TAB 4]**
7. The parties were next scheduled to meet on May 31st and June 1st, 2021, and then again on June 23rd, 2021. Unfortunately, the University had to cancel the scheduled May 31st, 2021, meeting. The University advised the Association of this on May 28th, 2021.
8. The June 1st bargaining session was then truncated due to a scheduling issue that arose on the part of AUFA and Mr. Foster. On May 28th, 2021, Mr. Foster informed AU's co-chair, Chantel Kassongo, to request a later start to the day. He wrote that he was "chairing a conference plenary in the morning. I apologize for that. It is just one of those things that happens." **[TAB 5]**
9. Much as occurred on June 1st, 2021, with Mr. Foster's scheduling conflict, the University had a similar scheduling conflict arise for the morning portion of the June 23rd, 2021, meeting. The University's co-Chair, Dr. Margaret Kierylo, was required to attend the Campus Alberta Quality Council meeting on the morning of June 23rd, 2021. As such, on June 16th, 2021, Ms. Kassongo e-mailed Mr. Foster to request a later start time. Mr. Foster replied the evening of June 17th, 2021, stating that this was "unfortunate, but acknowledged." It was, perhaps, just one of those things that happens. **[TAB 6, TAB 7]**



10. A few moments later on June 17th, 2021, Mr. Foster e-mailed Ms. Kassongo again, claiming that he was “unable to identify any articles where at this time we can make any further progress” until AU tabled its monetary proposals. The University finds this curious, as on June 1st, 2021, Mr. Foster committed at the bargaining table to discussing AU’s parental leave proposal on June 23rd, 2021, as well as providing a formal response to AU’s grievance procedure proposal. No rationale was provided as to why AUFA could no longer meet that previously stated commitment. **[TAB 8, TAB 9]**
11. AUFA then cancelled the entirety of the June 23rd, 2021, bargaining session. When cancelling this bargaining date, Mr. Foster in his email stated that, “We are of the position that we cannot make any significant progress on outstanding articles until the entirety of your package is in front of us.” **[TAB 10]**
12. In responses to paragraphs 23 and 26 of the Complaint, the University agrees that AUFA cancelled the June 23rd, 2021, bargaining session at the last minute – whether the evening of June 22nd, 2021, or the morning of June 23rd, 2021 – despite requests from AU to discuss a number of outstanding non-monetary proposals. One of the proposals which AUFA refused to discuss was its own OHS proposal.
13. As such, the University is skeptical of the claim made in paragraph 16 of the Complaint that AUFA was committed to “moving forward as quickly as possible on bargaining.” It cancelled 1.5 of the two days of bargaining scheduled for June, including cancelling a whole day due to a supposed lack of material to discuss, notwithstanding its previous commitments made at the table and its own outstanding non-monetary proposals.
14. After the sudden cancellation of the June 23rd, 2021, bargaining session, the parties did not have additional bargaining dates scheduled. This scheduling is likely something that would have occurred at the table on June 23rd, 2021. Moments after his June 17th, 2021, 6:06pm e-mail, Mr. Foster e-mailed Ms. Kassongo again, claiming to have had canvassed his committee for additional dates for bargaining, providing three dates: July 7th, August 30th and August 31st, 2021.
15. It is AU’s position that Mr. Foster’s request to meet for bargaining on July 7th, 2021, was not made in good faith. Mr. Foster and his committee knew, or ought to have known, that AUFA and AU were scheduled to be in front of the Labour Relations Board on that day pertaining to another matter. The AUFA Executive Director, a member of AUFA’s bargaining committee, and a key member of AU’s bargaining committee were required to attend the Board that day.
16. AU regrets the possibility that Mr. Foster’s requests to meet in the last week of August were not met with a formal response. However, AU’s committee was not able to meet due to pre-existing vacation and work commitments of various committee members and understood Mr. Foster’s position to be, given AUFA’s cancellation of the June 23rd, 2021 bargaining date, that AUFA would not meet to bargain unless AU tabled its monetary proposals.
17. On August 12th, 2021, Ms. Kassongo emailed Mr. Foster to set up additional bargaining dates and offered September 14th and 15, 2021. **[TAB 11]**



18. On August 23rd, 2021, Mr. Foster wrote back to confirm the Association was available and was prepared to meet on these dates, despite prior suggestions that there were no articles where further progress could be made until AU tabled its monetary proposal. **[TAB 12]**
19. In fact, in that same e-mail Mr. Foster continued his insistence that this was a “prerequisite” to making further progress on finalizing a collective agreement.
20. AU has repeatedly come to the table prepared to bargain with proposals, rationales, justifications, and counterproposals only to be consistently met with foot-dragging and reluctance by AUFA to even discuss its own proposals or provide counterproposals that it had previously committed to at the bargaining table.
21. It became patently clear that AUFA was only coming to the table to avoid what would have been, had they not shown up, a bad faith refusal to bargain.
22. In response to paragraph 30, the University agrees that it has not provided a firm date on which it will table its remaining proposals. As is normally the case, the sequence of proposals will depend on the flow of discussions, and the conclusion of negotiations of non-monetary items. There outstanding non-monetary proposals yet to be discussed.
23. The parties met to continue bargaining on September 14th and 15th, 2021, as well as October 25th and October 29th, 2021. **[TAB 13]**
24. In response to paragraph 43, AU has not demonstrated an absence of flexibility. Except for one date when the parties were already scheduled to be at the Board and two dates in the last week of August 2021, AU has agreed to AUFA’s requests to meet and bargain. AU did cancel one date due to an urgent medical appointment for one of its key committee members and provided as much notice as was feasible in the circumstances.
25. The parties have met three times in March 2021, once in April 2021, once in May 2021 (due to AU cancelling one day for a medical issue), once in June 2021 (due to AUFA cancelling one day because of a feigned lack of material to discuss), twice in September 2021, and twice in October 2021.
26. Bargaining sessions have been held regularly and frequently, particularly in light of AU’s obligations to also meet and bargain with two other bargaining agents at the same time with many of the same personnel being involved on AU’s committees, and the many of the same individuals also being required to attend to other litigation at the Board and in arbitrations.
27. In further response to paragraph 43, it was actually AU who first offered the possibility of canvassing bargaining committees for availability to meet and bargain over the summer. Unfortunately, due to conflicting schedules it was not possible. **[TAB 14]**

28. AUFA has provided no evidence that it offered to meet on weekends, and AU has been unable to find any record of the same in its bargaining notes or e-mail correspondence with AUFA.

AUFA Blog Posts

29. At the same time as AUFA was purporting to bargain in good faith, its public communications were sending another message entirely.
30. On June 22nd, 2021, AUFA published a blog post entitled “Strong Support for Job Action if Necessary” in which it claimed that bargaining was scheduled for the next day. It published this despite its previously stated intention to cancel that session. The blog post was factually inaccurate throughout, claiming that AU had refused to table the majority of its proposals and that AU had been “resistant to AUFA proposals.” In fact, AU had tabled the vast majority of its proposals and had agreed to some of AUFA’s proposals which AUFA had been willing to discuss. The blog further stated that AUFA members would “need to begin taking job action” and that AUFA had been “preparing for a work stoppage since 2017”. **[TAB 15]**
31. In fact, AUFA has been communicating to members its intention to reach a strike position since days after the last Collective Agreement was ratified, and almost one year before the current agreement expired. **[TAB 16]**
32. On August 31st, 2021, AUFA published another blog post with the image of a LEGO set titled “Bad Faith Bargaining”. The image depicted a woman in a low-cut dress and the wording “Pig in a Poke Playset” with text below stating, “Warning: if the employer won’t table an offer or meet, a strike is inevitable”. This, despite having over a dozen outstanding proposals that AUFA had to-date refused to discuss and two upcoming bargaining dates already set. Further, the previous one-and-a-half of the last two days of scheduled bargaining had been cancelled by AUFA. It’s clear who had been reluctant to meet, and it was not the Employer. **[TAB 17]**
33. The blog post was also riddled with inaccuracies. It falsely claimed that it had received no reply from AU about bargaining dates. It falsely claimed AU had refused to table a proposal dealing with equity on the grounds it was monetary when AU had actually requested in its ingoing proposal that the article be open for discussion.

Reply to Further Particulars

34. In its November 4th, 2021, response to the Employer’s request for further particulars, the Association claims that rational informed discussion has been inhibited on all proposals which it believes have a monetary component to them.
35. It is the University’s position that as there remains outstanding non-monetary proposals, no rational informed discussion has been inhibited, and if it has, it is as a result of AUFA refusing to engage in rationale and informed discussions.



36. The Association also confirms in this response that the only proposal that has not been disclosed to date is the Employer's monetary proposal. This practice is hardly unusual.

37. To further demonstrate how common this practice is at the University, AUPE and CUPE have to date also only tabled their non-monetary proposals in the current round of bargaining with AUFA.

Reply to Complaint

AU denies that it violated sections 60(3) or 148(a)(ii) of the *Code*, as alleged or at all. The University did not refuse to meet with the Association's representatives in collective bargaining. In fact, the University has been repeatedly stymied by the Association's refusal to meet or engage in discussion about outstanding proposals. AU's approach to bargaining (i.e. deferring monetary issues to non-monetary issues) is not only lawful, but has been recognized by this Board as a "conventional choice."¹ While AUFA may hope to complete surface level bargaining on all outstanding issues so that it can more quickly achieve its publicly stated aim of being in a strike position, AU remains ready and willing to continue negotiations with the Association.

Relief Sought

AU opposes all of the relief sought in the Complaint. It asks that the unfair labour practice complaint against it be dismissed.

It is submitted that this is an appropriate case for the Board to exercise its discretion under section 16(4)(e) of the *Code* to summarily dispose of this Complaint without the need for a hearing.

We will await the Board's further direction.

Yours truly,

NEUMAN THOMPSON

DWAYNE W. CHOMYN, Q.C.

DWC/DPM/sw

cc: Fenton Corey (via Email – Fenton.Corey@gov.ab.ca)

cc: Chivers Carpenter

Attention: Kelly Nychka (via Email – knychka@chiverslaw.com)

cc: Athabasca University Faculty Association

Attention: David Powell/Richard Roach (via Email – president@aufa.ca / roachr@aufa.ca)

cc: Client (via Email)

¹ *Unifor, Local Union No. 855 and West Fraser Mills Ltd.*, [2021] Alta. L.R.B.R. LD-087 at para 12