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Filed by Email Only

November 28, 2021

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

Dear Ms. Brown:

Re: An unfair labour practice complaint alleging violations of sections 60(3), section 148(1)(a) (i), and (148(1)(a)ii) of the *Labour Relations Code* brought by the Association of the Academic Staff University of Alberta affecting the Board of Governors of the University of Alberta

We represent the Association of the Academic Staff University of Alberta (AASUA).

This is an urgent complaint in respect of bargaining related misconduct by the Board of Governors of the University of Alberta (the “employer”). The facts are not complex, even though the context in which they occurred is. The complaint is filed in haste, and AASUA reserves the right to add additional particulars should they come to light.

The Board has previously condemned the practice of making a late breaking offer to a union in bargaining and at the same time communicating the offer to the affected employees without it being presented and considered in an appropriate collective bargaining context. That it has done so is not surprising - such actions are so obviously destructive of good faith bargaining and so obviously likely to undermine the affected union with the employees that it represents that their destructive effects must inevitably be seen to have been intended. Regrettably, that is what this employer has done.

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AASUA asks for an expedited hearing in order to repair a round of collective bargaining that stands to be badly damaged by the conduct particularized below.

Parties

Association of Academic Staff University of Alberta (“AASUA”)

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Executive Director & General Counsel
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Board of Governors of the University of Alberta (the “Employer”)

Steven Dew
Provost and Vice-President Academic
2-24D South Academic Building
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Edmonton, AB T6G 2J7
Phone: 780.492.3443
Email: steven.dew@ualberta.ca

Particulars

1. AASUA is the exclusive bargaining agent for academic staff employed by the employer. A collective agreement with a term of July 1, 2018 to June 30, 2020 is bridged while the parties are engaged in bargaining for a renewal. Although bargaining was slowed down by the pandemic there have now been numerous formal bargaining meetings and although progress has been made in some areas, some key areas, and in particular compensation, have not been discussed at the table.
2. The last formal bargaining session was on November 10, 2021. The parties planned to meet again in the new year, although no dates have been set.
3. On Thursday, November 25, 2021 just before 4 PM MT AASUA’s bargaining spokesperson Dr. Gordon Swaters received a text message

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and an email from Geoff Tierney who is his counterpart on the employer's bargaining committee. Dr. Swaters was about to board a flight and had no reason to expect any bargaining-related initiatives from the employer at that time.

4. Mr. Tierney, in his text, asked Dr. Swaters if he had time for a five minute call at 4 PM, MT. Dr. Swaters indicated that he was at the airport for a 5 PM flight, but he was available if the call was not too long. Mr. Tierney said that he would call and would be sending an email as well. Dr. Swaters reply was "OK sounds ominous".
5. Mr. Tierney phoned Dr. Swaters at 3:59 PM MT. The call lasted for fourteen minutes. He indicated that an offer was coming by email and briefly outlined the content of the offer. Dr. Swaters asked one or two questions for clarification and told him that he had to present the offer to his Team and to the AASUA Executive and would get back to him well before a deadline of 5 PM on December 6 (the offer was to expire at that point). Mr. Tierney said that was fine, or words to that effect.
6. At no time did Mr. Tierney tell Dr. Swaters that it was the employer's intention to post the offer publicly.
7. On the morning of Friday, November 26 Dr. Swaters forwarded the email with the attached offer to members of the AASUA Bargaining Team and requested a meeting as soon as possible to discuss the offer. A meeting was scheduled for Monday, November 29, at 10:30 AM.
8. On the morning of Saturday, November 27 it was brought to AASUA's attention by members that the employer had posted publicly a "bargaining update" which included a link to a copy of the November 25th offer. The bulletin states, among other things, that "With stability and progress in mind, the University of Alberta has tabled a settlement offer for AASUA's consideration".
9. The update is dated November 26, 2021. AASUA does not know what time it was posted.
10. AASUA states that it is misleading to claim publicly that an offer has been "tabled" when the parties were not even meeting in bargaining, and the offer had not been presented to its bargaining committee. It is not surprising that members have been expressing dismay that they learned of the offer from the employer and not from AASUA. AASUA's bargaining committee has not even had a chance to review the offer together. What occurred was an intentional "blindsiding" by the

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employer, but nothing in the employer’s bargaining bulletin reveals the true circumstances. AASUA states that the Employer’s conduct is both appalling and unlawful.

11. AASUA states that the Employer’s conduct is inimical to the duty to bargain in good faith and is in clear violation of section 60(3) of the *Code*. In no way was the offer “tabled” – it was emailed at the 11th hour as part of a pre-determined plan to go public virtually immediately, leaving ASSUA no time to inform itself sufficiently or to inform its own members. Further, the short turnaround time (the offer is stated to expire December 6, 2021) in the context of a bargaining round which had essentially adjourned until the New Year on November 10 defies benign explanation.
12. AASUA states that the misleading and precipitous communication with the members it represents interferes profoundly with its representation of its members. The entirely predictable consequence of the employer’s actions was to make AASUA members question whether their bargaining agent was keeping them informed. AASUA states that this sophisticated employer had to have known that, and that this was exactly what was intended. Even if one could imagine a benign intention behind the scheme, that would not diminish the interference (which is in violation of section 148(1)(a)(ii)) because intention is not required for a finding of a violation of section 148(1)(a)(ii). However, parties, and especially sophisticated ones, must be taken to intend the predictable consequences of their actions.
13. Further, by preventing orderly internal communication within AASUA before the offer was presented to the members the employer had interfered with AASUA’s administration contrary to section 148(1)(a)(i).
14. AASUA states that significant remedies are required to put it in the position it would be in had the employer not broken the law. We ask for an expedited hearing into this matter and will endeavor to make ourselves available on short notice for such purpose.

Remedies

15. AASUA seeks:
 - a. Declarations that the *Code* has been violated as alleged above;

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- b. A cease and desist order;
- c. An order that the Employer table and present its November 25 offer at the next formal bargaining session, and that the Employer be directed not to revoke the offer until at least two weeks have passed between the last formal bargaining session at which the offer was discussed, or AASUA has formally rejected the offer, whichever comes first;
- d. An order that (with the exception of such remedial directives as the Board may order which must be posted with no editorial comment) the Employer refrain from posting bargaining updates for a period of 60 days from the date of the Board's decision unless AASUA has agreed in advance to such posting, at which point for the current round of bargaining it shall provide AASUA with copies of any proposed bargaining updates at least seven full working days before posting;
- e. A formal set of findings and directive to be posted on all employer-controlled bulletin boards throughout all physical workplaces, on the employer's bargaining update web page, and the employee-digest electronic communications, which posting must be done with no editorial comment;
- f. Damages;
- g. Such further and other relief as the Board finds appropriate in the circumstances; and
- h. Costs.

We have provided a copy of this complaint to the employer.

Yours truly,



J. Robert W. Blair

cc. Brygeda Renke, Executive Director & General Counsel, AASUA
Steven Dew, Provost and Vice-President Academic, U of A