

Academic Matters

Fall 2020

OCUFA'S JOURNAL OF HIGHER EDUCATION

LA REVUE DE L'ENSEIGNEMENT SUPÉRIEUR DE L'OCUFA

Collective strength in precarious times

Stephanie Bangarth

Courage, strength, and resolve: How the King's University College Faculty Association unionized in the middle of a pandemic

Geoffrey L. Hudson

Advancing equity and fairness through collective bargaining

Jennifer Dekker

Pushing ahead: Advancing collective bargaining rights in the library



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New Publication

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Karen Busby and Joanna Birenbaum

Anyone drawn into a formal sexual violence complaint faces a steep learning curve. You may be called upon to determine whether interim measures should be imposed; whether complaints can proceed in tandem with criminal charges; how to balance privacy and confidentiality with demands for accountability and transparency; whether a report of sexual violence is credible; and what sanctions or remedial actions are appropriate. All the while, decision-makers must ensure that the procedures used are fair, efficient, and bias-free.

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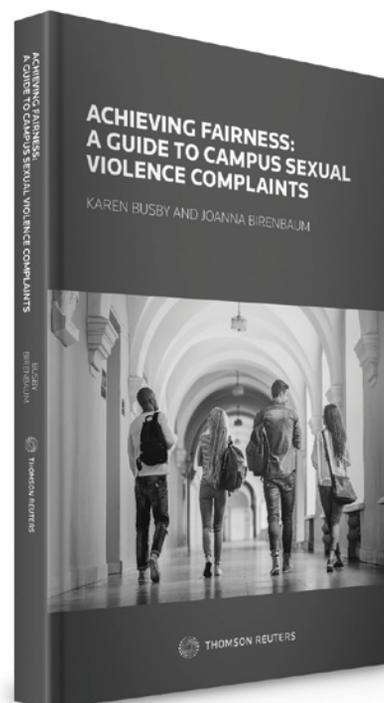
Simplifies complex topics

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This journal is produced in the Dish With One Spoon Territory, which extends from the Great Lakes to Quebec and from Lake Simcoe into the United States. The territory exists as the result of a treaty between the Anishinaabe, Mississaugas, and Haudenosaunee that bound them to protect and share the land and creatures within it. Subsequent Indigenous nations and peoples, Europeans, and all newcomers have been invited into this treaty in the spirit of peace, friendship, and respect. It is in this spirit that each issue of *Academic Matters* is produced.

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Academic Matters

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Academic Matters is published two times a year by OCUFA, and is received by 17,000 professors, academic librarians, and others interested in higher education issues across Canada. The journal explores issues of relevance to higher education in Ontario, other provinces in Canada, and globally. It is intended to be a forum for thoughtful, thought-provoking, original, and engaging discussion of current trends in postsecondary education and consideration of academia's future direction.

Readers are encouraged to contribute their views, ideas, and talents. Letters to the editor (maximum 250 words) are welcome and may be edited for length. To provide an article or artwork for Academic Matters, please send your query to Editor-in-Chief Ben Lewis at editor@academicmatters.ca.

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The collective challenges of COVID-19

THIS HAS BEEN a challenging year.

We were just putting the final touches on this issue of *Academic Matters* when the COVID-19 pandemic swept through Canada. A few final tweaks and the journal would have been on its way to campus. Except that, suddenly, there was no one on campus to read it. So, we decided to wait.

As the virus spread, it became clear that faculty, librarians, and other academic staff would not be returning to campus any time soon. Along with increased concerns about health and safety, the pandemic created many additional challenges for academic staff. Courses were quickly moved online while schools and childcare centres closed, leaving parents with more work, more responsibility, and limited access to support.

As COVID-19 continues to cast its shadow over our lives, anxiety about employment and financial security continue to grow—especially for contract faculty. Most of us are still struggling to find a balance in this new normal.

Although this issue of *Academic Matters* was largely written before the COVID-19 pandemic, its central theme, the role of collective bargaining in shaping Ontario university campuses, has been integral to the ways that institutions and faculty associations have responded to this crisis.

Since the Ryerson Faculty Association became the first group of Ontario faculty to unionize in 1964, most university faculty associations have followed suit and certified as

unions with the Ontario Labour Relations Board. Even in cases where faculty associations have not formally certified, they still collectively negotiate terms and conditions of employment for their members.

Faculty recognize that negotiating agreements and contracts collectively is the most efficient, effective, and equitable way to ensure their members are being treated and compensated fairly—and that these agreements play a vital role in protecting members during times of crisis.

As Ontario's universities plot a path forward in the shadow of COVID-19, it is through this process of collective negotiation that faculty associations are arriving at agreements with university administrations on how to effectively carry on teaching, research, and librarianship during this health crisis.

We already had a fantastic issue lined up when the pandemic struck. And, with publication delayed, we reached out to faculty associations to see how they were responding to the crisis.

This resulted in two additional articles specifically about collective action during the pandemic. As Stephanie Bangarth writes, the King's University College Faculty Association, facing an uncooperative administration, successfully unionized during the crisis. Meanwhile, Larry Savage reflects on the remote negotiation and engagement work that led to strong collective agreement gains for the Brock University Faculty Association (BUFA).

Also from BUFA, Michelle Webber and Linda Rose-Krasnor

describe the vital role collective bargaining plays in advancing the principles of academic freedom, tenure, equity, and institutional autonomy that are core to the academy's mission.

Former OCUFA Research Director Donna Gray reviews the history of bargaining at Ontario's universities, with a focus on who has benefitted under the limits imposed by the *Ontario Labour Relations Act*.

Geoffrey Hudson, President of the Northern Ontario School of Medicine Faculty and Staff Association, highlights the benefits of integrating and prioritizing equity in the collective bargaining process.

Academic librarians and archivists face particular challenges in the workplace, many of which University of Ottawa librarian Jennifer Dekker discusses as she details the importance of bargaining for these sometimes overlooked groups.

Finally, Annabree Fairweather, Executive Director of the Confederation of University Faculty Associations of British Columbia, provides a critique of BC's Public Sector Employers' Council, how it interferes in the collective bargaining process, and what it might mean for public policy in other provinces.

A big thank you to these contributors for their work and patience. The ideas they advance are more vital now than ever. As the impacts of COVID-19 reverberate through Ontario's universities, collective negotiation has been key to protecting the integrity of our postsecondary education system. This has been a challenging year, but this issue's contributors have shown just how much can be accomplished through collective action.

A reminder that all the articles in this issue, and many more, are available on our website: AcademicMatters.ca.

Thanks for reading. ■■

Ben Lewis is the Editor-in-Chief of Academic Matters and Communications Lead for OCUFA.

“Courage to start; strength to endure; resolve to finish.” I’m not really sure who said this, but it is a mantra for distance runners. Certainly, this expression inspires my marathon training, but I never realized how true it is for other aspects of life until I helped lead the King’s University College Faculty Association’s union certification drive during the COVID-19 pandemic.

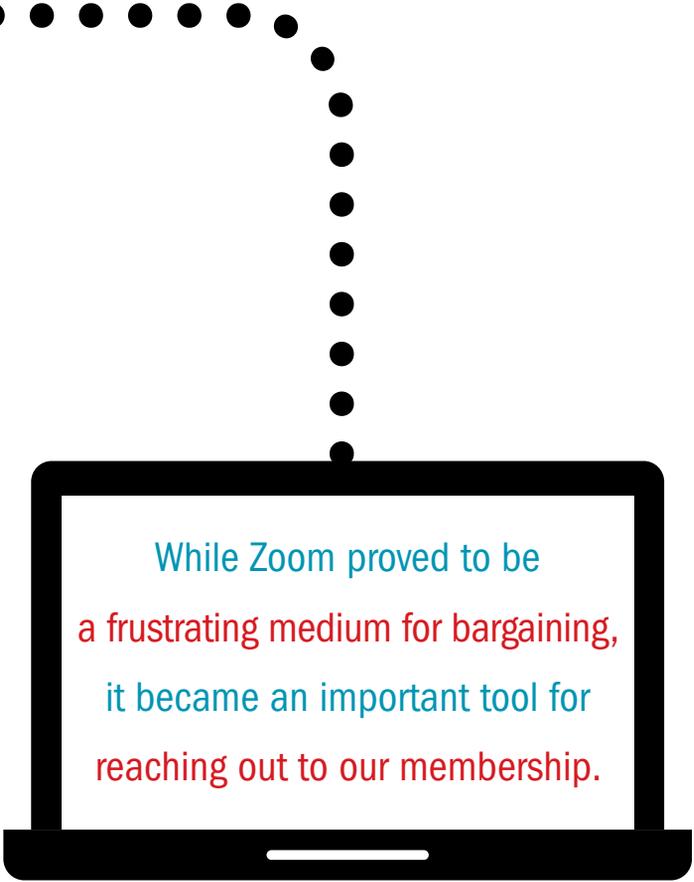
We did not intend to lead a certification drive when we met the employer’s negotiating team at the end of February, much less during a pandemic. Of course, the idea of certification has been bandied about for some years, with a mainly lukewarm response from our faculty members. I have often heard that certification drives hinge on a crisis, and, while we’ve had our share of concerning moments at King’s, I don’t think that we have encountered anything near a crisis in recent years.

Our negotiations began rather normally. We had a slate of both monetary and non-monetary goals to achieve for our members. Our non-monetary issues were focused on human rights, including a salary anomaly study to address wage gaps for female and racialized faculty, caregiving leave, and an equity provision for international summer teaching.

Because we were not a certified union recognized under the *Ontario Labour Relations Act*, our existing negotiation processes was quite one-sided. We would have to provide our proposals weeks in advance of the first meeting with comprehensive justifications for our changes and additions. Once our submission had been made, we would then wait for the employer’s proposal, which would typically be issued only a few days before our meeting.

This year, we were presented with easily the most severe document we have received from the employer, which included many punitive proposals that ran counter to our Catholic social justice institution’s mission. That was, perhaps, the first hint that this round would be challenging. Then the pandemic hit, and we entered a very different bargaining environment.

While Zoom proved to be a frustrating medium for bargaining, it became an important tool for reaching out to our membership. Our virtual faculty association meetings were very well attended as it quickly became clear that the lack of in-person engagement meant that our colleagues craved interaction, even online. As our senior administration warned of the pandemic’s dire financial and enrolment consequences, and as collegial governance suffered, faculty members were reaching out to our association executive.



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While there was a lot of anxiety and our members were asking probing questions about the administration’s actions, they were also looking for ways to get involved. Members were volunteering to help counter the administration’s pandemic panic narrative and overreach by organizing important pushback within our institutional structures, including the Educational Policy Committee, Faculty Council, and College Council.

At the same time, negotiations were devolving as the employer’s negotiating team refused to engage in meaningful negotiations, standing firm on their punitive and unacceptable proposals. Bargaining bulletins and updates in our virtual faculty association meetings kept our members informed of the situation. Gradually, the membership came to realize what we on the negotiations team and our association executive had already realized: to move forward and improve our negotiating position, we needed to certify as a union.

With assistance from the Canadian Association of University Teachers and the Ontario Confederation of

University Faculty Associations, we engaged in the kind of organizing one might recognize in a typical union drive: mapping the membership, phone trees, email communication, a document with frequently asked questions about certification, and, most importantly, membership meetings that were often attended by 85–90 per cent of the membership.

Our members were very engaged in these meetings and concerned about what was happening at the bargaining table and more broadly around King's University College's pandemic planning. A small group of members worked as our engagement team and managed to speak with nearly 94 per cent of the faculty association's membership.

By early June, with the members mapped, contacted, and informed, the decision was made to submit our application for certification to the Ontario Labour Relations Board. We used Adobe's Sign software in order to create union cards that members could sign and achieved well beyond the 40 per cent requirement. There were a few hiccups, of course, as one might expect from technology, and from a university administration who tried to contest the application.

The electronic vote took place over four days in June. Under normal circumstances, an in-person vote would be



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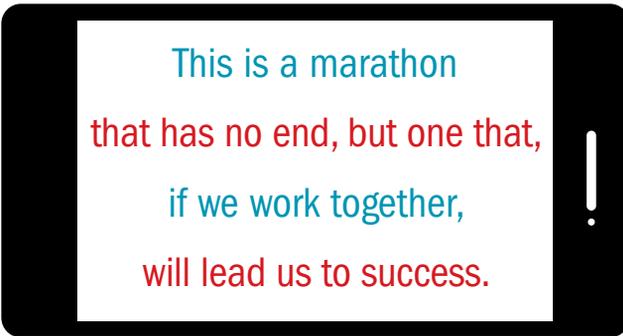
held for a much shorter period, during which it would be possible to track which members voted. However, the pandemic meant that was not possible. Instead, our engagement team worked hard at getting out the vote, finding other ways of tracking who voted, and providing periodic updates throughout the voting period. We knew we would win the vote but remained cautiously optimistic about how strong support would be. With a 95 per cent voter turnout and an 89 per cent “Yes” vote, we were ecstatic with the final results.

When we announced the outcome to our members in a series of post-certification updates, the response was gratifying. More than a few faculty members reached out to say that they had never felt more connected to their colleagues and to the faculty association as they had during the certification process.

“Courage to start; strength to endure; resolve to finish.” In many ways, our journey to certification embodied this expression. It took a lot of courage to start (as all drives do); we needed the strength to endure the unusual circumstances brought on by the pandemic; and once we started, we were resolved to finish.

The successful certification vote may have been the end of one marathon, but it was also the beginning of another. It marked the end of the old way of doing things, also known as the “King's Way,” and the start of a new approach that we hope will foster important long-term change at our institution. While COVID-19 proved to be the push we needed to certify, the pandemic also revealed an important lesson: The work we did to build trust and engagement among our members during the certification drive is work we need to continue if we want to be effective in the future. This is a marathon that has no end, but one that, if we work together, will lead us to success. ■■

Stephanie Bangarth is Chair and Chief Negotiator for the King's University College Faculty Association and an Associate Professor of History at King's University College.



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that has no end, but one that,
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RISING TO THE CHALLENGE:

Reflections on a round of pandemic bargaining

Larry Savage

Bargaining is an intensive and complex process during the best of times, but what happened when the Brock University Faculty Association found itself bargaining a new collective agreement in the middle of a pandemic?





Our main challenge was figuring out how to reach beyond the virtual bargaining table to ensure that members remained engaged.

A CHALLENGING TIME FOR BARGAINING

When the Brock University Faculty Association entered its most recent round of bargaining in April 2020, the Ontario government had already declared a state of emergency in response to the spread of COVID-19 and Brock University had suspended face-to-face classes.

With the recent, and legally dubious, wage restraint legislation passed by the Ford government, we were already anticipating a tough round of bargaining; however, it quickly became clear that the pandemic would also have an impact on the university and collective bargaining process in ways none of us could have predicted.

When the Brock University administration signaled its intention to move ahead with bargaining in March—in spite of COVID-19—our union took stock of the situation. We considered the merits and drawbacks of delaying negotiations and ultimately decided to proceed by shifting gears in order to rise to the challenge of pandemic bargaining. This meant overcoming several challenges, including the logistics of bargaining remotely and of engaging the membership virtually.

THE LOGISTICS OF PANDEMIC BARGAINING

First, we addressed the mechanics of bargaining. The parties agreed to bargain via videoconference and the union secured agreement that it would host the virtual meetings using Zoom—a platform not licensed by the university—to reduce the risk of privacy and confidentiality breaches. While the union used a virtual breakout room to caucus, the administration’s team used their own separate platform.

The parties also agreed to a system of electronic document exchange that included a process for tracking dates, times, and changes to documents shared and received. We typically exchanged proposals within ten minutes of convening or reconvening the videoconference and ran into very few technical problems during bargaining—the exception being a neighbourhood power outage that was easily

resolved through a backup plan that allowed disconnected members to rejoin via teleconference.

Overall, the technology and accompanying protocols were not overly influential in determining bargaining processes, let alone outcomes. In fact, it is remarkable how familiar the bargaining process felt despite being conducted entirely over videoconference.

PHYSICALLY DISTANCED BUT VIRTUALLY ENGAGED

Our main challenge during bargaining was figuring out how to reach beyond the virtual bargaining table to ensure that members remained engaged. Early on, we recognized that we would need to rethink traditional member engagement strategies, given that faculty and professional librarians were working from home and practicing physical distancing. Here, our advanced planning paid off.

Our Contract Action Team, tasked with supporting the work of the Negotiating Team through member engagement strategies, had already mapped the workplace and established an informal internal communications network to encourage multidirectional member discussion and awareness. However, traditional in-person engagement and mobilization strategies would need to be adjusted, given the realities of COVID-19.

Unlike administrations or university boards, who do not have to concern themselves with broad collaboration or



Members responded positively to the union's overt efforts to include them in the bargaining process.

consultation to achieve their bargaining mandates, academic staff associations must proactively engage and mobilize a broad cross-section of members if they hope to “hold the line” and resist concessions, let alone secure bargaining breakthroughs.

Rather than roll over our contract in the face of the pandemic, which might have been the easy thing to do, we redoubled our efforts to connect with members and resolved to implement an engagement strategy that would prevent the administration from using the pretext of COVID-19 to gut our collective agreement and give us a firm foundation to make gains for our members at the bargaining table.

While in-person conversations with members are always preferred, COVID-19 made that impossible, so we had to be creative and use technology in a way that would bolster member engagement.

1. We developed video and text-based bargaining backgrounders for members to provide context for, and underscore the importance of, the union's key bargaining priorities. Beginning in April, backgrounders were released on a weekly basis in anticipation of the first official bargaining session in mid-May.
2. After each and every bargaining session, members received a detailed bargaining bulletin reviewing the proposals that had been discussed and the articles of the collective agreement that had been settled. The bulletins also served to frame the key

issues for members and often included a call-to-action as an effort to keep members engaged.

3. The union used flash polls to gauge member views on issues that popped up in the course of bargaining. We also actively solicited written feedback from members as part of every bargaining communication and made sure to respond to every query and comment.
4. We held general membership meetings via video and teleconference where we provided members with updates and responded to questions.

Our approach was labour intensive, but necessary insofar as we understood that the administration would only take us seriously if it was clear that members were demonstrably aligned with the union's key bargaining priorities.

THE BENEFITS OF A UNIFIED MEMBERSHIP

Despite the challenges posed by the COVID-19 pandemic, the union's strategies for membership engagement were validated when a number of well-respected faculty members not typically aligned with the union praised the frequency and detailed content of the union's bargaining updates and the quality of the union's engagement strategies. Online membership meetings yielded record attendance, and the volume of member feedback received in response to the union's bargaining updates was unprecedented. Members responded positively to the union's overt efforts to include them in the bargaining process and, by all indication, gave them a greater stake in the outcome.

The level of engagement and the resolve of the membership to have its key priorities addressed emboldened the negotiating team to reject concessionary demands and insist on a settlement that members could be proud of.

The result was a groundbreaking contract that included important gains for all segments of the bargaining unit. The settlement included guaranteed minimum course releases to compensate for extraordinary levels of research output and unscheduled teaching (important gains during a



Pandemic bargaining meant fine-tuning our priorities and adjusting our membership engagement strategies.

pandemic), provisions for greater scheduling flexibility, language maintaining open searches for senior academic administrative positions, and significant additions designed to promote Indigenization and decolonization.

The union also managed to beat back the administration's proposals to introduce a teaching-intensive stream and grant deans the right to schedule faculty to teach on Saturdays.

Maintaining contact with student leaders proved key to derailing the push for Saturday teaching. Because the union learned from students that administrators had made no effort to consult with their organizations about the impact or desirability of mandatory Saturday courses, we were able to exploit this disconnect in bargaining.

The revelation put the administration's negotiating team on the defensive and provided an opportunity for the union to amplify faculty concerns which, in many ways, dovetailed with issues raised by the student leadership. At the virtual bargaining table, the union read out solicited feedback about the negative consequences of mandatory Saturday courses on students, programs, and faculty members themselves. Having members, more or less, speak for themselves not only provided strong evidence against mandatory Saturday teaching, but also demonstrated that the union and its members were strongly aligned.

STRATEGICALLY POSITIONED FOR SUCCESS

Bargaining in the midst of a pandemic certainly had an impact on the priorities and strategies of both the union and university administration. Uncertainty and anxiety were prevalent as a result of COVID-19, but understanding that these emotions were not exclusive to the union's membership was key. Senior administrators and university's Board of Trustees were equally, if not more concerned about future enrolments, the institution's image, and the risk of a labour dispute.

Given the wage restraint law passed by the Ford government and the additional financial anxieties Brock was

facing as a result of COVID-19, the union made a strategic decision to pivot and prioritize non-monetary issues like scheduling, collegial governance, and Indigenization. We did this because we knew the administration could not credibly invoke the feared financial fallout from COVID-19 as a justification for refusing to engage with these key union priorities.

The tentative deal was reached after ten bargaining sessions, without the assistance or pressure of a third party, and ratified before the collective agreement was set to expire on June 30, 2020.

The bargaining context in each round and on each university campus is constantly changing. That means academic staff associations must also be open to changing their practices, structures, and strategies. Meeting the challenge of pandemic bargaining meant strategically fine-tuning our priorities and adjusting our membership communication and engagement strategies in ways that would bolster our bargaining position, even in the face of COVID-19.

This round of bargaining had its own unique challenges, but the lessons we learned, the relationships we strengthened, and the advances we made will undoubtedly inform and improve our union's engagement and mobilization strategies in the future. ■■

Larry Savage is the Chief Negotiator for the Brock University Faculty Association and Professor in the Department of Labour Studies at Brock university.

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THE PARTIES AGREE THAT...

The role of collective bargaining in advancing university goals

Michelle Webber and Linda Rose-Krasnor



Universities play a vital role in society and the principles of academic freedom, tenure, equity, and institutional autonomy are foundational to their success. How are these principles defended and strengthened? Through collective bargaining.

Collective bargaining
has an important role
in helping the
university succeed.

Twenty years ago, in his book *The Uses of the University*, Clark Kerr used the term “multi-university” to describe the gradual emergence of complex, heterogeneous, and diverse institutions of higher education over the last several centuries. These changes were, at least partly, in response to rising societal expectations for universities to achieve broad and diverse goals that went well beyond the core functions of teaching and research.

Universities now function to achieve both individual and public good. For example, beyond providing students with a broad-based education and job-relevant skills, universities typically function as intellectual centres, which preserve and disseminate knowledge; promote national and international development; serve as engines of economic development and producers of qualified labour; are sources of social critique and analysis; and promote social equity and access.¹ We cite, as an example, a section of Brock University’s current strategic plan:

Brock University works to enhance the economic, social, cultural and intellectual lives of the communities around us—Niagara, Ontario, Canada and beyond—and to demonstrate the vital ways in which we contribute to the health, well-being and betterment of society in the 21st century.

Collectively, university administrations, staff, and faculty have considerable resources and expertise with which to achieve many of these goals. In this article, we propose that collective bargaining between faculty members and the university administration has an important role in helping the institution realize these objectives and succeed in performing the diverse functions that are part of its modern mandate. The effectiveness of collective bargaining in achieving these goals is rooted both in the bargaining process and in the collective agreement language that results from these negotiations.

WHAT IS COLLECTIVE BARGAINING?

Collective bargaining occurs when a group of employees negotiates as a single entity with their employer. These negotiations encompass salaries, benefits, working conditions, and the working relationship between employers and workers. At universities, negotiations typically also include tenure and promotion, academic freedom, hiring, and the role of faculty in governance. Most workers at Ontario’s universities are unionized, and so collective bargaining is the norm across the university sector. Herein, we propose that the negotiation of these processes enhances a university’s ability to be successful in fulfilling many of its primary functions.

Collective bargaining is conceptualized as a democratic process. Employees typically have a substantive role in bargaining, including participating in the selection of their negotiating team; contributing to and approving the union’s bargaining mandate; and ultimately ratifying the negotiated agreement. To be effective, collective bargaining requires that the employees’ and employer’s participation is independent and autonomous, and that both parties are bargaining in good faith. Human Rights Watch considers collective bargaining a human right and, in Canada, it has been judged by the Supreme Court to be a right protected in the *Canadian Charter of Rights and Freedoms*.

THE POSITIVE INFLUENCE OF THE COLLECTIVE BARGAINING PROCESS

By engaging in collective bargaining, faculty members and the university administration foster communication, identify concerns, and develop proposals to address those concerns. The negotiation process provides a structure and time frame for interaction and facilitates communications between both parties, resulting in a

greater mutual investment in the collective agreement. This process produces solutions to workplace challenges and approaches for achieving the university's goals that are more creative and innovative than compulsory arbitration.

Collective bargaining is a process in which both employers and employees are active participants. Each typically commits significant time, effort, and resources to reach a settlement.

For the union, the success of a bargaining agenda depends on its consistency with the membership's priorities and local conditions, thus ensuring members' engagement. A similar consistency is needed on the employer's side and, as such, both employer and employees have a stake in adhering to any resulting agreement.

Collective bargaining also leads to increased communication and engagement among union members, including exchanges between members, the executive, and the negotiation team. The union typically encourages the active participation of members in setting and approving the union's bargaining mandate (goals), as well as ratifying the proposed settlement. In doing so, an engaged collective bargaining process may serve to increase member support for both the collective agreement as well as the union itself and its future work.

The Brock University Faculty Association (BUFA) Chief and Deputy Negotiators, for example, hold meetings with all willing departments to talk about possible bargaining priorities in advance of our mandate-setting meeting. Throughout the bargaining process, members are kept informed through regular bargaining bulletins.

For the last two negotiations, BUFA has had a Contract Action Team with representation from across the university. This team has specific goals of maximizing member engagement and creating informal networks to ensure a constant multi-directional flow of communication between BUFA members and their negotiating team. All of these communications serve an educative function for members, as they address issues such as governance,

Academic freedom allows faculty and professional librarians to pursue the truth no matter where it may take them, advance learning, and disseminate knowledge.

educational quality, academic freedom, health and safety, and equity. These communications also provide valuable feedback for the negotiating team, as members are able to indicate their support for the team, raise concerns, and identify issues about which they would like more information.

Beyond the bargaining period, increased knowledge of workplace issues and institutional challenges

has positive value for the university. Therefore, the collective bargaining process may be an effective tool for achieving a variety of university goals.

ADVANCING THE UNIVERSITY'S MISSION THROUGH COLLECTIVE AGREEMENTS

Collective bargaining also tends to result in negotiated collective agreement language that protects key university processes in service of the university's goals and mission. In Canada, several common types of clauses are found in faculty collective agreements that ensure day-to-day university life unfolds in ways that serve the foundational tenets of the university: academic freedom, tenure, and equity.

Below we provide examples of cases where the negotiated grievance/arbitration process is used to both identify breaches of bargained language regarding academic freedom and tenure by university administrations, and remedy those breaches in service of protecting the rights of faculty members and the important work of the academy. In our discussion of equity provisions, we provide an example of how collectively bargained language can move the university forward in service of its goals. Protecting and promoting these rights serves the mission of the university—that faculty are free to teach, research, and serve, and to do so with job security and with sensitivity to equity and diversity.

Tenure and good tenure decision-making processes are essential for the university.

ACADEMIC FREEDOM

At Brock University, the faculty association’s collective agreement defines academic freedom as “the freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and comment publicly without deference to prescribed doctrine.” Ensuring such freedom allows faculty and professional librarians to pursue the truth no matter where it may take them, advance learning, and disseminate knowledge. Academic freedom language also protects intramural speech—the ability to criticize the university. Drawing from the collective agreement at Brock, we see that academic freedom “does not require neutrality in expression or attitude. Rather, academic freedom makes commitment possible and may result in strong statements of beliefs and positions.”

Such protective language was at issue in the York University case involving Professor David Noble. In 2004, Noble distributed a two-page flyer to attendees of a film being shown on campus. The flyer depicted the university as well as several York University Foundation Board members as being pro-Israel. The university responded with a press release that, while not naming Noble directly, condemned the material in the flyer as offensive.

While universities certainly have the right to comment on events on campus, they must proceed with caution. YUFA successfully used the arbitration process to protect both the negotiated academic freedom language and academic freedom as a key right of academics. Academic freedom protects the ability of faculty members to speak publicly about controversial social issues, which furthers the university goal of providing critical social analysis.

Whereas the case above dealt with academic freedom in extramural speech, our next example focuses on the violation of academic freedom in teaching. In December 2015, Michael Persinger, a Professor at Laurentian University, was removed from the classroom after the institution received a student complaint about offensive content in one of his psychology courses. Further, the university set up a dedicated telephone hotline and publicly invited additional complaints against Persinger.

The Laurentian University Faculty Association (LUFA) launched a grievance arguing that the university violated Persinger’s academic freedom rights. In Persinger’s courses, students were introduced to a wide range of words that some might have found offensive. However, intro-

ducing such content was a pedagogical tool connected to course material.

The arbitration award found that the university had failed to consider Persinger’s academic freedom rights when they removed him from the classroom and had violated due process. As a result of the award, the university agreed not to “publicly invite complaints against faculty members and will never again utilize a stand-alone telephone number for complaints.” Similar to the York case above, it is because of LUFA’s action, perseverance, and collective agreement with the university that academic freedom was protected both in form and in principle. Sadly, Persinger passed away before the case was resolved.

TENURE

Tenure as a process intersects with academic freedom, providing security of employment and economic position enabling faculty members to effectively carry out their teaching, research, and service. Tenure processes are complex and generally involve multiple levels of assessment and recommendation, including the candidate’s academic unit, external referees, faculty dean, wider university-level committee, and then a final decision being made by the university’s president or provost (as negotiated in the collective agreement).

In June 2014, Professor Ken Ogata was denied tenure and promotion at York University. YUFA grieved the decision of the university president. At issue were procedural concerns of a nature serious enough to quash the president’s decision (York University v. York University Faculty Association, 2016). For what he considered to be “complicated” cases, the president had created a system of consultation with the provost that was not contemplated in the collective agreement.

In the arbitration award, it notes that the university must follow the language that the two parties negotiated. The arbitrator ordered the decision of the president be quashed but did not weigh in on the academic merits of the faculty member's dossier, leaving it to the parties to come to an agreement about how to proceed.

The collectively bargained language and the grievance/arbitration mechanism ensure that tenure decisions are made on the basis of fair process rather than being subject to arbitrary, and potentially unfair, administrative decisions. Tenure and good tenure decision-making processes are essential for the university to meet several of its fundamental goals. Such goals include the freedom of pursuing potentially paradigm-shifting research, teaching in ways that challenge students to explore new directions, and providing social analysis that may be critical of established regimes of power.

EQUITY

Collective bargaining can also be used as a vehicle to enact change with respect to equity and move the university forward. For example, many faculty associations have bargained employment equity language serving to support the diversification of faculty ranks. Employment equity language can be aspirational, but more concretely, it can outline positive, proactive steps to ensure that unless substantially different, equity candidates shall be hired.

In the 2017 round of bargaining at Brock, the parties agreed to extend the provisions of the employment equity article to lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons. The inclusion of LGBTQ persons in these provisions went further than what we found in other Ontario university collective agreements at the time.

Having robust employment equity language is just one of the tools that can help remove barriers to employment and advance the careers of members of equity-seeking groups. Promoting equity and diversity in faculty ranks not only creates more diverse universities that reflect their communities and the student body, but fosters an environment where individuals with various backgrounds and perspectives can bring forward new ideas to meet both emerging and existing challenges.

CONCLUSION

The university has a number of important characteristics that make it unique in society, including academic freedom, shared governance, and tenure protections. We propose that collective bargaining is key to protecting these unique attributes of the academy and that it is largely these characteristics that enable the university to achieve its core goals of: creating, preserving, and disseminating knowledge; promoting national and international development; serving as engines of economic development and producers of qualified labour; providing social critique and analysis; and promoting social equity and access.

The communication and engagement aspects of the collective bargaining process comprise one part of this protection. Further protection and promotion of these attributes are afforded by collective agreements, which are the products of collective bargaining. We have also noted how collective bargaining can lead the university toward fulfillment of goals such as equity by negotiating targeted language.

Collective bargaining has become the norm in Ontario universities for addressing workplace issues between faculty members and university administrations in a way that remains sensitive to local contexts and institutional conditions. Collective bargaining bolsters both the institutional autonomy that is so important to the work of our universities and their ability to represent and serve the needs of their communities. However, recent provincial government positions restricting the ability of university administrations to negotiate wages and benefits threatens the ability of universities to engage in effective collective bargaining. We believe that such bargaining is a strength of higher education that is worth defending, both for the success of our universities and the public good. ■■

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1. Crowley, G. R., & Beaulier, S. A. (2018). Public-sector Unions and Government Policy: Reexamining the Effects of Political Contributions and Collective Bargaining Rights. *Public Finance Review*, 46(3), 454-485.

HOW THE GOVERNMENT RESTRICTS
FREE AND FAIR COLLECTIVE BARGAINING:
An examination of
faculty bargaining history
as constrained by the
Ontario Labour Relations Act

Donna Gray



Looking back over half a century of bargaining by university faculty and librarians, it is clear that not all academics have seen the same benefits. Is the *Ontario Labour Relations Act* to blame and how can the scales be rebalanced?

Once again, Ontario faculty find themselves confronted by a government determined to undermine the laws and regulations that provide the foundation and framework for the province's collective bargaining regime. In response to the Ford government's legislation capping the compensation increases public sector unions can negotiate, OCUFA has joined with other unions to defend the constitutional right to "free and fair" collective bargaining by challenging this legislation in court.

We have been here before. Between 1993 and today, governments led by each major provincial political party introduced legislation to undermine public sector collective bargaining, cap compensation, or end public sector strikes.

This is an opportune time to reflect on what a free and fair collective bargaining regime means for faculty, academic librarians, and other academic professionals. What gains have been made to terms and conditions of employment in half a century of faculty and academic librarians collectively bargaining under the *Ontario Labour Relations Act (OLRA)*? Who has benefited from these gains? What elements of the current regime are essential to the labour movement's conception of free and fair bargaining? What structural or procedural obstacles might account for workplace problems that remain unsolved at Ontario's universities?

Faculty bargaining outcomes under the OLRA

Ontario faculty associations began to unionize in the 1960s and today they have one of the highest rates of union density of any occupation covered by the OLRA. As the reliance on contract faculty increased in the 1980s, faculty associations and the Canadian Union of Public Employees (CUPE) began to certify contract faculty separately or in combined units with tenured faculty. Looking back, we now have half a century of bargaining outcomes for tenured faculty and academic librarians, and somewhat less for contract faculty, to measure against their goals and priorities.

This article's high-level summary of bargaining outcomes reveals that the existing OLRA bargaining regime results in very disparate outcomes for faculty. Faculty members' type of appointment, whether they have secured tenure or work on contracts, seems to be the main determi-

The existing OLRA bargaining regime results in very disparate outcomes for faculty.



nant of whether they can solve their workplace problems through negotiations. The power gap between permanent and contract faculty is evident in compensation negotiation outcomes, as well as bargaining outcomes on rules, processes, and governance provisions.

Salaries, benefits, and pensions

The salary model for tenured faculty and, to a lesser degree, academic librarians pre-dates unionization. With only a few exceptions, this model was incorporated into collective agreements when union certification took place. In the absence of legislative caps, improvements to tenured faculty salaries have closely tracked inflation. However, as Felice Martinello reveals in "University Revenues and Faculty Salaries in Ontario: 1970/71–2003/04," salary increases for faculty strongly correlate with increases to provincial operating grants, a variable outside the scope of faculty bargaining in the existing regime.

Another challenge are the wage gaps that exist within the sector. Among tenured faculty, there is a gender pay gap of approximately 11 per cent. Anomaly funds negotiated by faculty associations have ameliorated the gap, but weaknesses in the underlying salary structure, such as the

negotiation of starting salary, time to promotion, and merit evaluation procedure, perpetuate the gender pay gap. The pay gaps between tenured faculty and other categories of faculty (academic librarians, teaching stream, and contract faculty) also remain largely unaddressed.

While contract faculty wage increases have also tended to at least match inflation, the stipend structure used to compensate contract faculty is so inadequate that the use of this metric for measuring gains is questionable at best. OCUFA's research has demonstrated an approximate 40 per cent pay gap between contract faculty and tenured faculty in per-course compensation. For contract faculty, the existing collective bargaining regime has not resulted in compensation that corresponds to the social value of their work or the human capital of the worker.

Faculty associations have slowly and steadily made gains in pensions and benefits for tenured faculty and academic librarians over the last half a century. When benchmarked against the broader public sector, the average non-salary compensation for full-time faculty is generally similar to other workers at this salary level. Conversely, pension and benefit coverage for contract faculty is uneven across the sector and inadequate when benchmarked against any comparable group of permanent employees with similar work responsibilities and job qualifications.

Workplace rules, governance, and fair processes

It is no secret that governments tend to obsess about the 20 per cent of a collective agreement that affects compensation. However, it is in the 80 per cent of the agreement that governs workplace rules and processes where faculty have made the greatest gains through collective bargaining. Collective agreement clauses curtailing harassment and discrimination, limiting the arbitrary application of managerial power, protecting intellectual property and academic freedom, ensuring health and safety, and creating fair discipline and grievance processes represent real and significant improvements to working conditions relative to the standards in place prior to unionization. Further, access to binding arbitration, guaranteed under the OLRA, ensures that these standards can be enforced once negotiated.

In many of these areas, contract faculty have similar or identical rights to tenured faculty and academic librarians, with one glaring exception. Tenured faculty and academic librarians have carefully detailed appointment and evaluation procedures, culminating in the granting of tenure and a permanent appointment, and which is protected by strong collective agreement language governing financial exigency, redundancy, and layoffs. In contrast, contract faculty have struggled, fought, and struck to achieve only modest degrees of job security. And, even then, this security generally only applies to specific previously taught courses, is subject to positive evaluations by students and peers, and is unprotected in the case of financial exigency or redundancy.

Faculty associations have been quite successful at bargaining rules to protect collegial self-governance and shared departmental level governance. However, the influence of that representation relative to the centralized power structures of university boards of governors and trustees remains an issue of contention. Meanwhile, collective agreements only provide contract faculty with limited access to representation in these governance structures.

As to the university's central decision-making bodies, faculty associations have yet to succeed in negotiating meaningful improvements to their composition, practices, or authority, including input in the development of university budgets or the hiring and search procedures for presidents, provosts, and other senior administrator positions.

Unresolved university sector issues

There are a number of areas where collective bargaining has proven inadequate for solving the problems facing faculty as a collective or the university sector as a whole. Two of these areas routinely top faculty association bargaining surveys as priorities: faculty complement size and workload, and precarious working conditions for contract faculty.

A number of faculty associations managed to negotiate complement guarantees in the past and, as a result, there are several legacy clauses in collective agreements to this effect. However, university administrations re-defined faculty complement size as a management rights issue a number of years ago and administrations now routinely

There are a number of areas where collective bargaining has proven inadequate for solving the problems facing faculty as a collective or the university sector as a whole.



refuse to engage with union proposals in this area. As a result, the system-wide ratio of students to full-time faculty continues to worsen.

Similarly, caps on the use of contract faculty are present in a few legacy agreements, but university administration regularly use bargaining to pressure faculty associations to amend or remove these clauses, and administrations will not entertain new clauses in this area. Further, as noted above, attempts to negotiate job security gains for contract faculty are strongly resisted by administrations. The result of this bargaining impasse is the growing reliance on and abuse of contract faculty.

The OLRA's limits and restrictions

There is no question that the *Ontario Labour Relations Act* puts precariously employed workers in all sectors at a disadvantage. While the current collective bargaining regime has many strengths that have served workers well, it also limits the exercise of collective power in ways that calls for further examination.

A truly free regime of collective bargaining would not unduly hinder or impede the use of collective power to

achieve worker objectives. Additionally, a fair bargaining regime would acknowledge that the parties begin with vastly unequal power and that public policy plays an important role mitigating this inequality or, at the very least, not exacerbating it.

Clearly, legislation that mandates a particular compensation outcome or truncates a strike prematurely violates the fundamentals of a free and fair bargaining regime. However, many other constraints imposed by the OLRA undermine the power of faculty associations and constrain their capacity to solve serious problems—both on campus and within the broader society they serve.

Workplace and bargaining unit based limitations

The OLRA restricts bargaining to an individual's workplace and employer. As a result, collective bargaining can only solve problems that are local in nature and allocate resources within the university's control. This means that, despite the substantial workplace problems academics face as a result of the government's chronic underfunding of postsecondary education, overall university funding levels cannot be bargained.

The OLRA also limits bargaining to a very specific group of people—those defined as “the bargaining unit.” As a result, problems that affect all workers in an institution or a group of workers across the university system, such as contract faculty, must be dealt with unit-by-unit and university-by-university. Workers can coordinate across bargaining units or through coalitions across universities and unions, but the legal framework for bargaining does not incorporate or facilitate these strategies. For a one-year window in 2018, the OLRA allowed unions to consolidate bargaining units to gain power, but the Ford government slammed that window closed upon election.

Further, it is not possible to bargain for members who are no longer in the bargaining unit (retirees, for example). Should changing circumstances affect the pension plan or post-retirement benefits, the union cannot directly represent former members (nor can retirees access the tools of the OLRA on their own). Contract faculty who do not have a

contract to teach during the window in which bargaining is occurring have no legal labour rights under the OLRA, regardless of the frequency with which they may teach at the university.

Many of the challenges that impede the academic process of students, or prevent them from accessing a university education in the first place, lie in broader societal inequalities and injustices beyond collective agreements. Except in an indirect way, it is not possible to bargain for the interests of students or potential students, except insofar as their needs are directly impacted by the terms and conditions of faculty work. And, while students' unions exist at many of Ontario's universities and colleges, their status is not recognized in any legislation and they do not have the same legal rights as labour unions.

Restrictions on the right to strike

The right to strike is the single most important element of a free and fair collective bargaining regime. For a faculty association, or any workers' union, to pressure the employer to concede to its demands, it must be able to withdraw its labour and impose disruption costs on the employer proportionate to the financial cost or re-balancing of power required by those demands.

Yet, the OLRA has constrained the rights of workers to withdraw their labour from inception. Legal strikes are limited to a very small window of time once the agreement has ended. Because of the local nature of bargaining, it is not legal to undertake a solidarity strike in support of others fighting for the same demands or bargain together to solve shared problems. It is also not legal to strike in support of students or for necessary changes to the broader postsecondary education system if they fall outside the purview of a collective agreement. Like all workers, faculty, academic librarians, and other academic professionals are legally constrained in who they strike or picket against, where they strike, when they strike, and which strike tactics they are legally allowed to engage in.

One of the great strengths of the OLRA is its protection of permanent employment should workers withdraw their labour through a legal strike. While this provision might protect tenured faculty from retaliatory acts by a university, it cannot ensure that contract faculty will be offered contracts in the future.

Would a new framework for bargaining in Ontario improve outcomes?

Many academics, unions, and practitioners question whether the current collective bargaining regime remains appropriate for an economy increasingly dependent on precarious labour and with an ever-growing imbalance in power between workers and employers.

The Labor and Worklife Program at Harvard University recently released the report "Clean Slate for Worker Power: Building a Just Economy and Democracy," which includes input from experts around the globe. The report's many public policy proposals are designed to create more democratic and just workplaces. Many proposals include encouraging broader based bargaining at the sector or industry level, while others call for lifting existing constraints on strikes so that workers can direct their collective action against the entity they believe is exercising real power over their lives.

These policy ideas are worthy of serious consideration. Under the existing OLRA regime, the current challenge is how workers can leverage their collective power to build a labour movement strong enough to solve persistent workplace problems and secure an improved collective bargaining regime that provides ways to address broader systemic inequalities and advance the public good.

The OLRA was a result of illegal strikes that impeded the functioning of Ontario society and forced government to concede to a previous generation's demand for free and fair collective bargaining. In many right-to-work states in the US, where weak or employer privileging labour laws prevent fair bargaining outcomes, education workers are once again utilizing illegal strikes to change labour laws, improve the education system, and make gains for their members.

Worker solidarity and organizing across all employers, workplaces, and jurisdictions has been the only labour tactic that has consistently delivered fair rules, fair bargaining outcomes, and a fairer society. At some future date, the courts may ultimately strike down the Ford government's compensation cap legislation. But, for now, we need to organize and bring all workers into the labour movement's struggles. Only then will we get the rules, outcomes, governments, and, ultimately, court decisions that Ontario workers deserve. ■

Until December 2019, Donna Gray was the Research Director at OCUFA.

Advancing equity and fairness through collective bargaining

Geoffrey L. Hudson



Building more equitable and diverse universities is vital, but it can be challenging. By integrating equity into their bargaining process and prioritizing it in their negotiations, the faculty, librarians, and professional staff at the Northern Ontario School of Medicine have made remarkable progress on these issues.

Equity must permeate the entire collective agreement.

While we must continue pushing for stronger legislation that advances equity, in many ways collective bargaining is more effective than legislation in creating equity and fairness in the workplace and broader society. This is especially true in jurisdictions with weak employment standards, such as Canada and its provinces, where analysis by the Organisation for Economic Co-operation and Development has demonstrated that collective bargaining is crucial for improving worker rights over and above those provided in legislation.

Substantive equity, rather than formal equality, includes the goal of addressing specific needs of specific equity seeking groups. Mainstreaming equity is the view that equity must permeate the entire collective agreement and not be limited to the vital equity and no-discrimination clauses. These approaches frame this article, which summarizes equity gains made by the Northern Ontario School of Medicine Faculty and Staff Association, and discusses several relevant political considerations for advancing equity on a postsecondary campus.

THE HISTORY OF NOSM

The Northern Ontario School of Medicine (NOSM) is the Faculty of Medicine for Lakehead and Laurentian Universities. Academically, it reports through the senates of both institutions, but is its own legally distinct institution, complete with a board of directors.

When my colleagues and I were hired by NOSM in mid-2004, we found ourselves as an unorganized group of faculty, in a sector where almost all faculty are represented by their own faculty associations. Looking to change this, we approached the Canadian Association of University Teachers (CAUT) and, with their help and that of the Laurentian and Lakehead Faculty Associations, founded the NOSM Faculty Association in 2005 (now the NOSM Faculty and Staff Association). In early 2006 we became a certified union under the *Ontario Labour Relations Act* and began negotiating our first collective agreement.

Our first challenge was determining which other workers we should compare ourselves with so that we



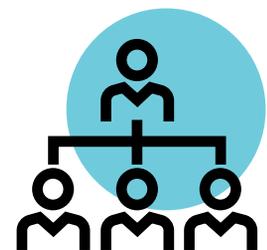
could ensure our members were being treated fairly and equitably within the broader sector. Although Canada has a relatively decentralized bargaining system, the university sector negotiates within a broader unionized context and uses comparators to justify terms and conditions of employment. Since we were considered employees in the Faculty of Medicine for two universities, both the employer and union agreed that the terms and conditions of faculty at Lakehead and Laurentian, as well as other Ontario medical schools, would serve as appropriate comparators.

Another challenge was that our union includes both academic staff (faculty and librarians) and professional staff (instructional designers and student counselors), which is unusual for Ontario. However, as this is more common in other provinces, we were able to use those collective agreements as comparators for our professional staff members.

BUILDING FOUNDATIONS FOR EQUITY IN BARGAINING

In 2006, we were negotiating in a relatively new context. The 2003 ruling of the Supreme Court of Canada that “the substantive rights and obligations of human rights codes are incorporated into every collective agreement” was an important frame of reference. We had a legal obligation to prevent and address systematic discrimination.

Of great benefit to the (then) NOSMFA in our first round of bargaining were the comprehensive resources (e.g. model clauses, bargaining advisories, sharing of best practice, staff assistance) developed by other faculty associations as well as organizations such as CAUT, including those about establishing and enhancing equity and



Achieving equitable bargaining outcomes requires integrating equity into the bargaining process.

fairness. These resources proved indispensable in our first round of bargaining, as was the support of CAUT generally.

Achieving equitable bargaining outcomes requires integrating equity into the bargaining process. With this in mind, we ensure that our negotiating team for each round includes persons of each gender, and a combination of academic and professional staff. Members of the negotiating team are also selected on the basis of their complementary skill sets.

In addition, our union has a remarkably large executive, allowing for a full range of participation in discussion and decision making at the executive level. For the academic and professional staff bargaining unit, the development of bargaining objectives involves holding individual meetings with all the members of each group that make up the bargaining unit. In those meetings, the negotiating team discusses its research and thoughts on possible equity advances with members, seeking their feedback and suggestions.

INTEGRATING EQUITY INTO HIRING AND EVALUATION

In our first set of negotiations, the association established numerous bargaining objectives, with the goal of implementing equitable hiring and evaluation practices at NOSM. We won agreement with the employer on:

- a proactive statement of commitment to equity;
- a list of equity-seeking groups;
- the need to take special care to not eliminate equity candidates early in the hiring process;
- comprehensive non-discrimination language, with provision for a range of accommodations;
- the identification and elimination of unfavourable policies and practices currently in operation;
- an equity representative on all personnel committees;
- equity training for all persons on those committees; and
- the sharing of information subsequent to hiring (the review process).

In addition to all members of personnel committees receiving equity training, there is a comprehensive and mandatory orientation on procedural fairness in career

decisions. In both cases, the union has taken the lead in cooperation with the employer on the training. We also bargained a requirement that search committees report how equity provisions are applied in their decisions.

Another notable achievement in the first collective agreement was the inclusion of language requiring the employer to exercise its management rights in a *fair* and *equitable* and reasonable manner consistent with the agreement.

Following our first round of bargaining, we have significantly improved our initial equity hiring language, with the provision that, “where two or more applicants are substantially equally qualified as the best candidate and one of these applicants is a member of a designated group, then the applicant who is a member of a designated group shall be recommended for appointment.”

Finally, to ensure fair and equitable evaluation processes, we negotiated language stating that peer reviews of teaching may only be conducted at the request of members and that the results are confidential to the member except if the member wishes to include them in their teaching dossier and/or relevant personnel file.



ACHIEVING EQUITY THROUGH ORGANIZING AND REPRESENTING DIVERSE GROUPS OF WORKERS

Improvements to equity and fairness rely on extensive coalition building with other unions and social movements. For us, one such instance was accepting an invitation from NOSM's support staff (office, clerical, administrative, technical, and service employees) to organize them into our faculty association. By 2009 this was achieved, and we became the only union at an Ontario university to represent both academic and support staff.

Fairness and equity, as well as academic freedom, are contingent upon stability and certainty of employment.

With a broader range of members than the traditional “faculty” association, the NOSM Faculty and Staff Association (NOSMFSA) works to identify rights enjoyed by some members and not others. With equity in mind, we have secured improved rights for librarians and professional staff, including:

- sabbaticals, research time, and salary anomaly adjustments for librarians;
- a multi-rank wage structure for librarians and professional staff with significantly higher wage ceilings;
- significant increases in vacation for librarians and professional staff; and
- the establishment of a salary anomaly fund.

With equity, fairness, and the health of all members in mind, the union has taken language from a previously negotiated harassment and bullying policy and integrated significant pieces of that language into our collective agreement.

In our most recent round of negotiations, our academic and professional staff unit negotiated concrete representative rights for our colleagues in the support staff bargaining unit. Any change to employer policies pertaining to harassment, discrimination, or workplace violence would have to first be discussed by a working group that includes representatives from all bargaining units.

In addition, we negotiated an obligation on the part of the employer to include support staff unit representation on the Joint Benefits Committee.

The support staff organizing drive took place at the same time we decided to transfer our existing bargaining unit into the Ontario Public Service Employees

Union (OPSEU). Our new union provided us with a special transfer agreement that respected

our unique nature as the only university academic staff unit in OPSEU at that point in time (the Algoma University Faculty Association has since joined). OPSEU provided the resources to enable us to defend the newly negotiated rights to fairness and equity in grievance-arbitration.

Rights are meaningless if you cannot defend them and, as a small new faculty association with few resources, we

found in OPSEU a union that would let us run our own affairs and maintain our affiliations, while supporting us in defending equity and fairness. With OPSEU, we are in a progressive union in the house of labour, in alliance with a huge variety of workers in a range of sectors.

PROTECTING JOBS, ACADEMIC FREEDOM, AND COLLEGIAL GOVERNANCE

Fairness and equity, as well as academic freedom, are contingent upon stability and certainty of employment. Our first collective agreement had language ensuring that layoffs could only be made for financial exigency, not program redundancy, and only after an independent commission had investigated the employer’s declaration of financial exigency. Additionally, in the first set of negotiations, all professional staff then on term appointments were issued continuing appointments. The school and association also agreed on strong language to prevent contracting out.

Faculty members employed during the first collective agreement were deemed founding faculty and permitted to apply for tenure under a founding faculty tenure option, with tenure achieved on the basis of three satisfactory annual reviews. Fair and appropriate procedures are clearly delineated for appointments, promotion, tenure and continuing appointments, assessment, and evaluation.

Inclusive academic workplaces require the promotion of collegial governance and the full participation and academic freedom of members. Since the first agreement, we have been successful in extending academic freedom protection to all professional staff as well as the academic staff. In addition, we have expanded the academic freedom article to include recognition that collegial governance supports the exercise of academic freedom and that all members are entitled to have representatives on, and participate in, collegial governing bodies.



Inclusive academic workplaces require the promotion of collegial governance and the full participation and academic freedom of members.

FAIR WAGES

During our first round of collective bargaining, the employer proposed merit pay. The proposal was considered by the membership in a series of meetings and ultimately rejected. We were a relatively small group—collegiality rather than competition needed to be fostered. It was also recognized that such a proposal was likely to increase inequity in the workplace, especially for female members. Instead, we negotiated a professional development fund additional to the annual professional development monies secured in negotiation for individual members.

Given that our members work in the Faculty of Medicine for two universities, the employer accepted that if the average wage increase for faculty at those institutions ended up being higher than those at NOSM, then our wages would be adjusted upwards accordingly (along with our salary floors and ceilings).

FOCUSING ON FAMILY AND LIFE OUTSIDE THE WORKPLACE

The initial collective agreement also focused on work-life balance and included many family-friendly provisions—allowing leaves for study, sickness, family responsibility (maternity and parental), and other reasons. In this area, as with others, collective bargaining has secured breakthroughs that lead to improved employment standards for all (e.g. better paid maternity leave won in the Quebec Common Front negotiations in 1979 and by CUPW across the country in 1981).

Subsequently, we have clarified and improved the language providing for family-friendly leaves. The employer must now top up a member's salary, regardless of whether they have been entitled to employment insurance benefits from their first day of hire. The collective agreement now also provides for the possibility of an additional retroactive progress-through-the-ranks



increment, should a member have been delayed in their promotion application as a result of an illness or family responsibility leave.

INDIGENOUS RIGHTS

In the lead up to negotiations in 2018, our executive decided to take a leadership approach on equity and fairness for Indigenous peoples. The national context is well known—the Truth and Reconciliation Commission and its Calls to Action have pointed to the obligations faculty associations have as members of the university community. In Northern Ontario (Thunder Bay and Sudbury are NOSM's main campus locations), racism and persecution of Indigenous peoples has been ongoing for centuries.

Our executive reviewed and adopted CAUT's Policy on Indigenizing the Academy and shared it with the membership. Subsequently, the members demonstrated their support for bargaining objectives related to this policy, including the need to recognize the additional contributions, qualifications, and community work undertaken by Indigenous faculty members.

In negotiations, we secured the expansion of the definition of scholarly activity to include “research carried out using traditional/Indigenous knowledge and the practical applications or dissemination of such research generally, or specifically through engagement with Indigenous communities.” In addition, we negotiated language to recognize the provision of linguistic (translation) services as a governance and administrative activity.

We also negotiated special provisions for members who do community-based research that requires engagement with First Nations, Métis, or Inuit communities. These members can request the election to their personnel committee of two additional voting members who conduct similar research or have taught Indigenous health at the university level.

In addition, we agreed to improve equity data collection and renewed our commitment to identify and eliminate discriminatory practices. Subsequent to negotiations, the parties decided to proactively recruit a Research Chair who “self identifies as

The rise of contingent and precarious contracts is one of the most significant threats to equity and fairness at our institutions and within society more generally,

First Nations, Inuit or Métis or who has significant Indigenous lived experience.”

CONCLUSION

There are goals we have not yet achieved, but towards which the work continues. We always negotiate with a long-term vision and do our best to foster a productive and positive relationship with the employer when it comes to issues of equity and fairness.

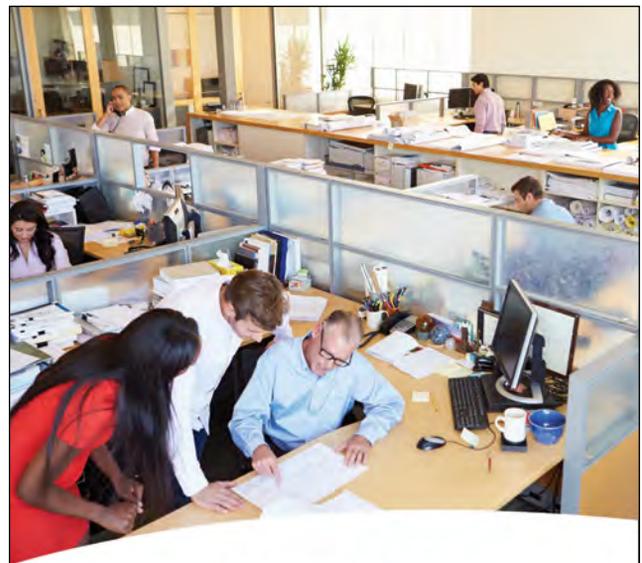
One unrealized goal is that of organizing and improving the working conditions of NOSM’s contract faculty. Although our support staff unit includes part-time members, thus far we have been unsuccessful in organizing NOSM’s part-time faculty. The rise of contingent and precarious contracts is one of the most significant threats to equity and fairness at our institutions and within society more generally, and it is a threat that OCUFA and its many affiliates, including the NOSMFSA, are committed to tackling.

Another broader goal is to strengthen legislation protecting the rights to free association and free and fair collective bargaining. In Canada, governments have legislated permanent exceptions to our human right of free association, undermining the rights of all Canadians. Both the International Labour Organization and, more recently, the Supreme Court of Canada, citing the *Canadian Charter of Rights and Freedoms*, have repeatedly condemned these legislative breaches of our human rights.

Finally, and most recently, the introduction of “performance” based funding models in several provinces, including Ontario, represents a significant threat to academic freedom and equity. To win this challenge, we must join and fight in broad-based coalitions with other workers, students, and community groups. We should also engage with our members to find new and creative ways to bring these damaging metrics to heel at the bargaining table.

Despite these many challenges, collective bargaining continues to provide us with a vital tool to advance equity in our workplaces. By looking at the past fifteen years, we can see just how much progress bargaining has allowed us to make on these issues. Looking forward fifteen years, I’m optimistic we can achieve so much more. ■■

Geoffrey L. Hudson is President of the NOSM Faculty and Staff Association and OPSEU Local 677, as well as Chief Negotiator for the Academic and Professional Staff Unit. He is an associate professor (history of medicine) in the Human Sciences Division, NOSM.



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PUSHING AHEAD: Advancing collective bargaining rights in the library

Jennifer Dekker

Well-resourced libraries are core to advancing the goals of the academy and the work of faculty and students. Often overlooked due to their small numbers, what challenges do librarians and archivists face in the workplace and how can we ensure they are supported?



Universities have an important role advancing the public interest. However, the contributions and concerns of academic librarians and archivists are often overlooked in such discussions, even in faculty unions. This may owe to our small numbers and distinctive responsibilities, but, despite this, we remain committed to advancing our rights to better defend the vital work of the university library. How do we accomplish this? Through collective bargaining.

Librarians and archivists work on behalf of communities to ensure reliable and fair infrastructure for delivering scholarly and educational resources; we make these available to the greatest number of people for the best cost and terms that we can negotiate; we carefully analyse and describe our collections so that those beyond our immediate communities can find unique and important materials; we build and preserve research collections; we protect intellectual freedom; and we are actively engaged in pushing back against unethical commercial publishers that prioritize profit over education and scholarship.

In this work, we have faced many challenges in recent years, including reductions in professional staffing, redistribution of professional work to lower-paid staff, outsourcing, and the implementation of flawed performance metrics.

This article outlines how faculty unions can proactively ensure that librarians and archivists have the conditions we need to facilitate our work. Many of these concerns are shared with professors and other academic staff because, in a highly interdependent system like a university, challenges to one group often have repercussions for others. With that in mind, this article provides a perspective based on my experience as an academic librarian in Ontario.

GOVERNANCE: WHO MAKES THE DECISIONS ANYWAY?

Governance is concerned with decision-making, authority, and power. Who controls the university's resources? How are resources generated? Is control well-executed? Is decision-making shared with those who have expertise in educating students and performing scholarly activities, or is it primarily a management function?

Ontario universities are typically bicameral in their governance structures, meaning that management—delegated by a university's board of governors—shares some power over a limited number of resources with the rank and file, meaning professors, librarians, archivists, and other academic staff.

Access to decision-making is foundational because it ensures that librarians and archivists have meaningful control over our work. Like professors, librarians and archivists have expertise that management often lacks, as well as objectives that provide a counterbalance to those of the administration. Unlike management, the interests of rank and file workers go far beyond increasing institutional efficiency and intensifying control over university budgets. We express perspectives that favour the educational interests of students and the public, which, in the heavily commercialized sphere of scholarly production and dissemination, are perspectives that are becoming more and more important.

There are substantial challenges with increasing governance rights, but among academic librarians and archivists, awareness, interest, and action toward this goal are growing. Recent works on the topic of library councils—equivalent to faculty councils—mirror the expansion in consciousness, with many demonstrating the importance of these councils being inclusive and accountable governing bodies that oversee library planning, policy, and budgets.¹ Unions and staff associations should pay special attention to this issue, as librarians and archivists have difficulty making progress on governance without the support of faculty and other professionals at the bargaining table. Is there a library council established in your collective agreement? How does it function? Do librarians and archivists feel it provides an authentic venue for shared governance? If not, can the union negotiate a stronger voice for librarians and archivists?

COMPLEMENT: PUSHING BACK AGAINST OUTSOURCING

One of the most significant issues facing librarians and archivists at Ontario bargaining tables is the protection of our professional work. Like the full-time faculty complement, the number of librarians and archivists hired in universities is not increasing, even though student enrolment has grown significantly over the past decade. Unlike faculties, investment in academic libraries has been declining for decades. To compensate, professional responsibilities such as reference services, cataloguing, collection development, and even information literacy are now assigned to support staff, students, contract employees, and outsourced to private companies and extramural organizations. Contract negotiations should focus on increasing investment in academic libraries and maintaining the complement of librarians and archivists, ensuring

The article includes archivists, but archivists are not equally affected by all the issues covered. When I use academic librarians without including archivists, it is intentional.





We express perspectives that favour
the educational interests of students and the public, which,
in the heavily commercialized sphere of scholarly production and dissemination,
are perspectives that are becoming more and more important.

that replacements are hired when people retire or leave the employer.

Outsourcing in academic libraries is widespread. Employers have devised clever substitutes for hiring librarians and archivists, especially when innovation is the order of the day (this usually implies doing something new, without increasing staffing). Among the many examples, collaborative projects are a growing concern. These often rely on for-profit companies and contract staff to accomplish tasks previously performed by locally-hired librarians and archivists. Readers may be familiar with Omni, a new search platform shared by 14 Ontario university libraries. Omni is a commercial product created by a private company based in Israel called Ex Libris. In 2015, an enormous profit-oriented content provider, Proquest, acquired Ex Libris—I mention this detail because, in addition to concerns about outsourcing academic work to commercial entities, we should be wary of search bias in Omni that may push ProQuest results above other content.

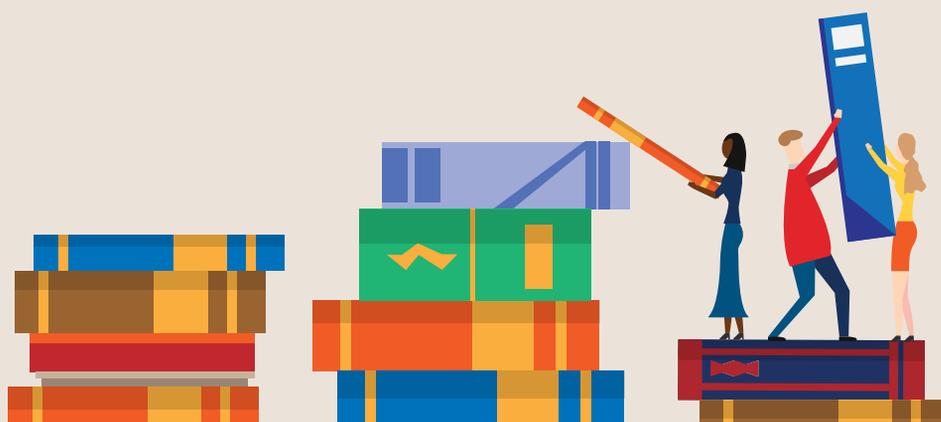
Although academic libraries have relied on outside technology providers in the past, what is different today is the widespread, intentional, and simultaneous adoption of private technology to replace the work of academic librarians in so many Ontario universities. As the Ontario Council of University Libraries frames it, “radical collaboration” helps libraries “face the challenges of today - the transformation of scholarly communication and higher education,

rapid developments in information technology, and declining or limited resources.”

These collaborative projects mean that employers hire fewer librarians for collection development and cataloguing. Academic libraries also spend less on acquisitions, while relying more heavily on support staff for inter-library loans rather than purchasing material and having it on site. This strategy works in tandem with mandates in many university libraries that give preference to digital collections, meaning that fewer physical items are acquired. Whether digital content is actually preferred by students and faculty is debatable; a 2015 study by linguist Naomi S. Baron found that 92 per cent of US college students stated that they preferred reading print books to reading online. However, student, faculty, and librarian preference seem to matter little, as budgets decline and commercial contracts are an easy way to continue to provide collections without the obligations of hiring librarians and archivists.

Related to complement, some faculty association bargaining units in Ontario also include archivists, but this is far from universal. Unfortunately for many unions, changes to the *Ontario Labour Relations Act* in the 1990s made it very difficult to modify the scope of bargaining units to include new groups of members like archivists. This is an important issue—librarians and archivists perform similar work, but archivists may not have academic freedom if they are not members of a faculty association. If archivists can be fired for critiquing the employer or otherwise exercising





Academic librarian and archivist work

has long been underpaid and undervalued compared to
other male-dominated professions
that require similar levels of education.

academic freedom, this can actually weaken academic freedom for librarians and erode potential for solidarity between the two groups.

If your faculty association does not include archivists, what can you do to protect their academic freedom? Can you integrate them into your bargaining unit? Although it may not be possible to include a new group in the union, it might be possible to have archivist positions integrated into the bargaining unit through the librarian stream. That way, archivists can benefit from the intellectual and academic freedoms that are necessary to their work.

DESKILLING: HOW DO WE PROTECT EXPERTISE?

With the “performance” funding model introduced in the 2019 Ontario Budget, hundreds of millions of dollars in university funding is now threatened and could be cut. This reckless funding model will tie 80 per cent of university funding to market-based metrics and make year-to-year funding for universities far more difficult to plan for.

Since outsourcing and collaborative projects will not save universities enough money, and libraries are often perceived as an endless expense rather than good investments, professional librarian job descriptions are now under attack. Librarians who were previously specialists are now supporting a broad swath of faculty and departments with no regard

for our educational backgrounds and expertise. This deskilling not only affects the quality of our working lives, but the quality of our library collections. It makes it challenging for students and faculty to access expert help when they need it.

Faculty unions should ensure that employers do not have the power to arbitrarily modify librarian and archivist job descriptions by ensuring that employees have significant input when their job descriptions are revised, and that our collective agreements have strong language that protects us from these changes. Library restructuring projects are often the red herring leading to changes in responsibilities, and grievances are rarely effective after the fact. Unions should be engaged from the start and should consider appointing a negotiator to work on behalf of librarians when restructuring is initiated. This could prevent individuals from being bullied into accepting changes that we know are not beneficial to our ourselves and our communities.

PERFORMANCE METRICS: HOW DO YOU QUANTIFY OBSESSION?

Elements of neoliberalism in higher education, including “performance” metrics, external ranking fetishes, and obsessions with quantification, have had deleterious effects on the working conditions of Ontario’s academic librarians—just as they have on the working conditions of professors and other academic staff.



Recently, a few Canadian universities introduced an academic benchmarking tool called Uniforum (developed by private Australian firm Cubane Consulting). This tool has been imposed on librarians, archivists, and support staff at UBC, the University of Alberta, and at York University, as well as librarians at the University of Toronto. McMaster University also has a contract with the company. Different but equally oppressive tools for managing and measuring our work have been encouraged, including at the University of Ottawa where librarians and archivists were recently asked to capture all interactions with students, faculty, and the public in 15-minute increments.

Courageous colleagues have challenged these managerialist practices, but we must have the broader support of our unions and strength at the bargaining table to fight these initiatives. For example, librarians at the University of Toronto, supported by their faculty association, secured the settlement of a grievance stating that librarians at U of T will not be subject to Uniforum. Considering that Cubane has been applied to professor performance in countries outside of Canada, it would be wise to strengthen collective agreements now—not just for librarians and archivists—but for all members of the faculty association.

SCHOLARLY ACTIVITY: WHO DECIDES WHAT RESEARCH IS IMPORTANT?

Although academic librarians and archivists support others in their research, we also require opportunities to engage in scholarly activities that have both personal and professional benefits. Scholarly activities are an important part of maintaining academic competence, sustaining interest in our work, expanding our professional and intellectual networks, and informing the expansion of and investment in library collections.

A major issue is that we frequently lack the time to develop independent research plans in between sabbatical leaves. Knowing this, administrators will suggest projects that would be useful to them. Consequently, many academic librarians fall into the trap of performing scholarship in the service of the employer.

Interestingly, research published in the 2013 article “Academic Librarians and Research: A Study of Canadian Library Administrator Perspectives” concluded that the head librarians at Canadian universities felt that academic librarians were not engaging enough in research. However, the paper neglected to discuss what types of research

administrators prioritized. If what is most frequently encouraged primarily supports institutional goals, it is understandable that many professionals might not want to engage. There is room to improve many of our collective agreements so that librarians and archivists have increased opportunities, intellectual freedom, and support for scholarly activities. Can your faculty association negotiate a month each year for librarians and archivists to engage in scholarly activities? Is your collective agreement clear that librarians and archivists have the academic and intellectual freedom to pursue their own priorities and goals?

SALARY: HOW DO WE ADDRESS INEQUITABLE PAY?

Academic librarian and archivist work has long been underpaid and undervalued compared to other male-dominated professions that require similar levels of education. A recent study by the Ontario Pay Equity Office, “Occupational Segregation, Skills, and the Gender Wage Gap,” theorized that jobs emphasizing traditional “female” attributes—such as interpersonal and communication skills—are negatively correlated to salary. This might explain why the gender pay gap persists in our field. A 2019 attempt to capture and promote the “competencies” of Canadian academic librarians by the Canadian Association of Research Libraries may have inadvertently overemphasized these same soft skills that seem to keep wages low.

The salaries for academic librarians and archivists do not adequately compensate for the education costs required to become professionally qualified—tuition at U of T is now \$12,000.00 a year for the Master of Information program. Low pay may also contribute to the lack of racial and socioeconomic diversity in the profession, as suggested by Erin Schreiner in her 2017 article “Librarians and the Gender Pay Gap.” Considering that librarians and archivists are a relatively small number of members in any bargaining unit, can your faculty association negotiate salaries that are on par with professors or develop a plan for achieving pay equity?

CONCLUSION

I have outlined some key issues that unions should consider when preparing collective bargaining for librarian and archivist members. Among them:

- Including librarians and archivists in the lead up to bargaining, both through ongoing consultation and, potentially, by including a representative on the bargaining team.



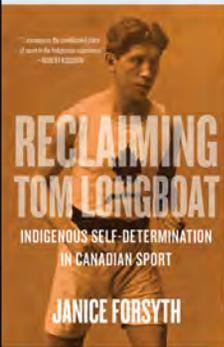
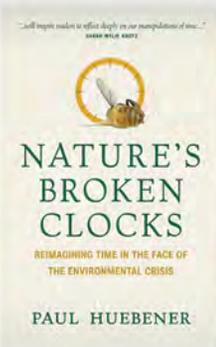
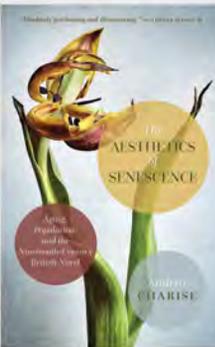
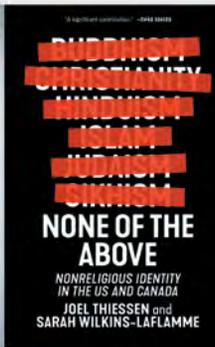
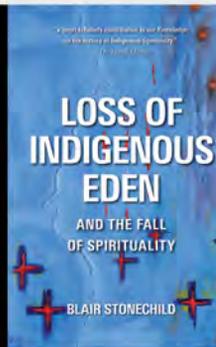
- Strengthening governance as a counterbalance to the rigid hierarchies and administrative authority that pervade academic library management.
- Protecting librarian and archivist complement and work to ensure our continued existence.
- Ensuring that archivists are included in bargaining units and that they have access to academic freedom.
- Fighting arbitrary changes that make librarian and archivist job descriptions more generic. This disadvantages students trying to access specialized supports and libraries and archives working to develop strong collections.
- Maintaining focus on improving collective agreement language to ensure that librarians and archivists can engage in scholarly activity and receive fair compensation for their work.

It is often said that an injury to one is an injury to all. In parallel, strengthening one group of workers, such as librarians and archivists, will strengthen others as well. We know that students, faculty, and the public rely on our labour. Protecting our work and enhancing our ability to defend the public interest in the ways that I have outlined will have benefits beyond our own numbers and collective bargaining is how we can achieve this. **AM**

Jennifer Dekker is a librarian at the University of Ottawa.

1. See Leona Jacobs, "Library Councils in Canadian Academic Libraries: A Summary of Responses" (Lethbridge, AB: University of Lethbridge, 2008), <https://opus.uleth.ca/handle/10133/564>; Canadian Association of University Teachers, "Librarians' Councils" (Ottawa, ON: Canadian Association of University Teachers, May 2014), <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-library-councils>; Tim Ribaric, "Collegial Self-Governance for Professional Librarians: The Establishment and Evolution of Library Council at Brock University," in *In Solidarity: Academic Librarian Labour Activism and Union Participation in Canada* (Sacramento, CA: Library Juice, 2014), 277–87; Patti Ryan, "'This Is Our Time': Towards a Library Council at York University Libraries," November 2015, <https://yorkspace.library.yorku.ca/xmlui/handle/10315/30546>; Eva Revitt and Sean Luyk, "Library Councils and Governance in Canadian University Libraries: A Critical Review," *Canadian Journal of Academic Librarianship* 1, no. 1 (2016): 60–79; Canadian Association of University Teachers, "Academic Status and Governance for Librarians" (Ottawa, ON: Canadian Association of University Teachers, November 2018 para. 3.3), <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-status-and-governance-for-librarians-at-canadian-universities-and-colleges>; Eva Revitt and Sean Luyk, "The Role of Library Councils in Canadian Higher Education: An Exploratory Study," *Canadian Journal of Higher Education / Revue Canadienne d'enseignement Supérieur* 49, no. 1 (2019): 140–58; and others.

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Bargaining in the shadow of BC's Public Sector Employers' Council

Annabree Fairweather



For three decades, the wages, benefits, and language British Columbia's faculty associations are able to negotiate have been restricted by the government. How do workers mobilize and challenge the PSEC regime and its iron grip on the province's public-sector bargaining?

What is PSEC anyway?

There are approximately 430,000 workers in British Columbia's public sector, which includes Crown corporations and agencies, health and community social services, and K-12 and postsecondary education. More than 330,000 of these public-sector workers are unionized and they are all subject to the same "mandate," determined by the Public Sector Employers' Council (PSEC), which has coordinated all public-sector bargaining in British Columbia for over 25 years. This "mandate" stipulates that all public-sector bargaining agents are subject to the same wage increase, collective agreement length, and bargaining cycle.

According to PSEC, its purpose is "to oversee the province's strategic coordination of labour relations, total compensation planning, and human resource management across six public sectors." Its website justifies its role by stating that it "protects the interests of taxpayers by ensuring public sector compensation costs are aligned with... the budget objectives set by government."

While PSEC is often portrayed as autonomous from government, this is and always has been fiction. It exists within the Ministry, is Chaired by the Minister of Finance, and its president reports directly to the Minister.

The history of PSEC: From language to money

Created in 1993 by the NDP government of Premier Mike Harcourt, PSEC was part of the Public Sector Employers' Act. The council was originally intended to bring uniformity to language in collective agreements. On paper, it was an advisory body, and no laws were ever written to secure its jurisdiction as an official authority. Under PSEC, each public-sector area has its own employers' association, including higher education.

In its now 27 years of existence, PSEC has morphed into an official body that oversees all aspects of collective bargaining. It sets financial limits on contract outcomes through bargaining mandates that artificially constrain public-sector wages. This explains why both university faculty and K-12 teachers in the province have low salaries relative to their counterparts in other provinces, despite British Columbia's robust economy and high cost of living. PSEC's oversight is not confined to compensation and the body scrutinizes and approves all employer proposals and counter-proposals.

PSEC and its bargaining mandates have persisted through many years, transcending political parties in power and becoming an omnipresent feature of public-sector

bargaining. Initially focused on aligning collective agreement language, cost containment was an afterthought that naturally manifested once government had its foot in the door. One might ask, "Whom does it benefit?" Certainly not BC's public-sector workers. There are fewer public-sector workers per capita in BC than in any other province, and their wages have not kept up with inflation over many years of cutbacks and redundancy initiatives.

PSEC might seem to have little relevance for BC's universities and colleges, who receive less than fifty per cent of their base funding from the provincial government. Nonetheless, the sector has fallen under PSEC's purview since its inception, and its scrutiny of postsecondary bargaining has grown over time.

PSEC expands territory: Union busting

Once established, PSEC began to intrude further into public-sector bargaining, particularly in the years of austerity budgets in the mid-1990s. As NDP Premier Glen Clark famously put it, "If I gotta pay I getta say."

PSEC did not have a specifically anti-union mandate until the election of Gordon Campbell and the BC Liberals in 2001. Among Campbell's first initiatives was ushering in one of the most ambitiously anti-union legislative and regulatory frameworks since World War II. Employers, including research universities, were stripped of all autonomy at the table and bargaining often devolved into a cynical charade. PSEC was, in essence, turned into the enforcement branch of the Liberals' union-busting agenda. The clearest example of this was the Liberal government's 2012 attempt (under Premier

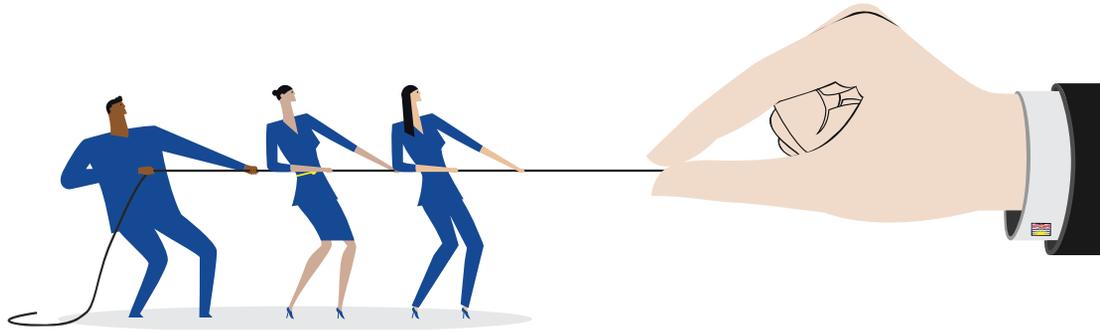
Christy Clark) to provoke a full-blown strike rather than bargain in good faith with the BC Teachers' Federation (BCTF). A subsequent legal challenge ended with the Supreme Court finding in favour of the BCTF.

In the case of colleges and universities, PSEC enforces its mandates through board of governor appointments. In BC, government appointees hold the majority share of votes on boards of governors, and the appointment process has long been overtly political. Because of this, a board that contravenes PSEC's mandate can easily be fired and replaced.

PSEC as both a sword and shield

PSEC is often described as the bogeyman of bargaining; perhaps even better likened to the *Wizard of Oz*. At the table, employers use PSEC as both a sword and a shield,

A board of governors
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claiming that they can't agree to *this* (defence) or they must achieve that (offence) because of direction from PSEC. The mandates of the employer and PSEC become conflated in such a way that the union never knows with whom it is bargaining. Is it the employer pushing for draconian management rights or PSEC? Each say it's the other but, since PSEC isn't physically in the room, it's hard to pinpoint an origin with any real confidence.

For BC's research universities, bargaining plays out like this: employers and faculty associations sit across the table and pass proposals back and forth while PSEC casts its shadow over the entire negotiation. Every proposal and counterproposal the employer develops is passed through PSEC to be vetted and approved before being handed to the union. Numbers are crunched, edits are made, and language is fine-tuned. The process slows and caucuses are long as everyone waits for PSEC. At times, it is not entirely clear who has the authority to conclude bargaining, but, at some point it draws to an end and the collective agreement is ratified. Or, in the case of the University of Northern British Columbia (UNBC), members end up walking out and seeking support through the labour board or an arbitrator, as they have done in the last two rounds of bargaining.

Real-world consequences

The only board of governors to defy the PSEC mandate was that of Okanagan College under the Campbell government. In 2002, the college's governing board agreed to a settlement with faculty that was more generous than the terms dictated by PSEC. In swift response, Campbell fired the entire board, dismissed its president, shut down its academic programs, and created the University of British Columbia-Okanagan as a replacement. It was a chilling event and serves as a warning to this day. No university board or president has defied PSEC since.

After two decades of bargaining, PSEC had largely limited its sphere of influence to enforcing and monitoring compensation, as it had become less focused on the language uniformity it had been created to coordinate. However, in the 2012 round of bargaining PSEC extended its reach even further into the bargaining room by

ordering employers not to negotiate *anything* that could be construed as management rights without PSEC's explicit permission. This egregious overreach continues today.

PSEC's role in collective bargaining at research universities presents unique challenges in BC, and represents an extreme level of government intrusion in comparison with other provinces where negotiations take place directly between each faculty association and university board of governors. It could well be argued that

PSEC's role in bargaining undermines a fundamental tenet of research universities—autonomy from direct political intrusion.

What is to be done?

The current BC NDP government, led by Premier John Horgan, has shown no appetite for eliminating or even restricting PSEC's role in bargaining—especially where monetary issues are at stake. The government has also shown little appetite for depoliticizing the board of governor appointment process or for eliminating the majority share of government appointees at universities. PSEC remains a powerful force, with three different political parties having affirmed its authority for nearly thirty years.

Faculty associations have existed in the province's research universities for decades, but most began formal certification as a means to countervail the power of employers and PSEC. The UBC Faculty Association was voluntarily recognized in 1989, but uses binding arbitration rather than job action for resolving impasses. The other member

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associations of the Confederation of University Faculty Associations of BC (CUFA BC) certified later. Royal Roads University Faculty Association certified in 2006, followed by the faculty associations at Simon Fraser University, UNBC, and the University of Victoria in 2013 and 2014. Unionization has helped to recalibrate the power differential, but PSEC has shown that, to maintain its control over both rights and compensation, it is willing to force impasses at the table and let the unions go out on strike.

It is worth noting that arbitrators in the province have been very clear that they will not be guided by the PSEC mandate when making awards. Consider the language in two recent decisions: In 2012's UBC vs. Association of Administrative and Professional Staff of UBC award, the arbitrator stated that "[Any] arguments raised by UBC relating to ability to pay or PSEC will not be considered... While PSEC or ability to pay issues may have been topics that UBC considered during the negotiation process, they are not part of my assessment..." Then, in 2014's UBC vs. UBC FA award, the arbitrator stated that the "agreement does not involve application of the PSEC bargaining mandate, and does not mirror the University's funding from government."

The dismissal of PSEC's authority by arbitrators is the sole reason PSEC instructed employers to reject any bargaining proposals for binding arbitration or as a dispute resolution mechanism. This is a signature example of PSEC's political power—an amorphous and defining labour relations regime that exists nowhere in law or policy but is zealously enforced.

PSEC's proposals have been more palatable in the 2019-2020 round of contract talks than in previous years. We are seeing a three-year mandate of two per cent wage increases instead of the usual cuts. There is less overt hostility to unions, less intrusion into so-called management rights, and, for the first time, a willingness to meet with provincial union representatives instead of whispering in the ears of the employer exclusively. That doesn't change the fact that PSEC still represents an interference in the right to free and fair collective bargaining and, beyond mobilizing support and mounting political pressure, the only other potential check on PSEC's power is the courts.

It is critical to understand that the jurisdiction of PSEC has never been enshrined in legislation and has always relied on a brazen tradition of *realpolitik* prevalent in British Columbia. The legal standing of PSEC is such that it has managed to evade constitutional challenges as a court

case would be lengthy and costly, requiring alliances among all labour organizations in the province.

In the last several years, the Supreme Court of Canada has turned the so-called "labour trilogy" on its head by firmly enshrining free and fair collective bargaining as a Charter right protected by freedom of association. Though the most senior labour lawyers in BC have been cautious about the potential success of any legal challenge of PSEC, the ground has shifted, leaving PSEC more vulnerable to a potential challenge. However, any challenge would need to be undertaken with special care and intention. A loss in the courts would open the floodgates to something much worse than what exists now and would likely have significant ramifications for other provinces. Regardless, a legal challenge may be inevitable.

Conclusion

The biggest tragedy in all of this has been the government's obvious conflict of interest as it rationalizes being both the employer and lawmaker; that is, the organization that gets to make the laws that regulate its rights as an employer. Court challenges are too prolonged and costly to remedy violations of freedom of association with any real consequence. By the time corrective systems come to the rescue, there is a new government in power with a new agenda. On some level, the absurdity of unchecked power must be known.

At its core, PSEC is essentially a political problem born of the political culture of BC. While the province's complicated bargaining system makes up the very fabric of public-sector labour relations, we know that other provincial governments keep a watchful eye on PSEC's successes.

Any strategy to oppose PSEC must be rooted in mobilizing political support for free and fair collective bargaining. Despite its lack of legislative teeth, PSEC has been incredibly effective at devaluing the political capital of unions and demoralizing organizing efforts. That said, the organizing capacity of unions is precisely why PSEC was created in the first place. Building that capacity and organizing are the only sustainable ways to restore free and fair collective bargaining in BC. ■

Annabree Fairweather is the Executive Director of the Confederation of University Faculty Associations of BC (CUFA BC) based in Vancouver, BC.

Any strategy
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