

AT A GLANCE

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Dear Colleagues,

Welcome to the inaugural issue of a new Bulletin created to inform you about the activities of the UPEIFA *Grievance and Discipline Committee*. This Committee is responsible for all Association activities under the *Grievance, Arbitration and Discipline* sections of the Collective Agreements.

As a certified union, the Association has a responsibility to act on behalf of itself, or its Members, when the Employer's actions violate, or appear to violate, the Collective Agreement. Sometimes, this responsibility requires the filing of a grievance. As a certified union, *due process* for a Member in a disciplinary action initiated against them by the Employer is also protected. The *Grievance* procedures are provided in Article F-2 of the Collective Agreement, while the *Discipline* procedures are given in Article F-6.

It is vital that Members know their rights under the Collective Agreement and that each of us takes responsibility to ensure that they are respected. The *Did You Know* section of this bulletin will help in this regard. Get your paper copy of the Collective Agreement from the Association office, or find it on the website on the *RESOURCES* page at www.upeifa.org.

Should you have any questions regarding any of the Committee's activities, or should you be concerned that your Collective Agreement rights might have been violated, you should contact the Chief Grievance Officer immediately.

Sincerely,

Robert O'Rourke
UPEIFA Chief Grievance Officer

• Adoption of the *Fair Treatment Policy*.

The UPEI Board of Governors approved the new *Fair Treatment Policy* on November 15, 2004, despite significant concerns with it raised by the Faculty Association as far back as June, 2004.

The most serious of these reflect conflicts or violations with the Collective Agreement. Others reflect legal issues with the Employer's assertion of its jurisdiction and language/structure issues within the *Policy* itself. In the Association's opinion, these were serious enough to possibly compromise any *due process* required and the Association's ability to protect its Members.

Leading up to its approval, the Association communicated its concerns to the Chair of the Steering Committee, the new Fair Treatment Advocate and to the University President through letters, emails and meetings. The Association's message was clear. Serious problems existed with the *Policy* and, should it be adopted, the Association would be forced to act. In essence, these concerns were not addressed prior to the Board's approval of the *Policy*.

IN THIS ISSUE...

- Board adoption of *Fair Treatment Policy*.
- Failure to apply *Policy on Integrity in Research and Scholarly Work*.
- Placement of *statistical results of student evaluations* in official employee files.
- Intellectual property rights.

DID YOU KNOW?

- There are two types of grievances - a *Member grievance* filed on behalf of an individual Member or a group of Members and an *Association grievance* filed on behalf of the Association.
- All grievances must be filed by the Association; Members cannot file grievances directly.
- Grievances must be filed within 20 working days of the date of the events giving rise to the grievance or within 20 working days of the date when the events giving rise to the grievance ought reasonably to have been known, whichever is later; **act quickly and don't delay.**
- If the Association is not satisfied with the Employer's response to a grievance, it has the right to refer it to a hearing in front of an independent arbitration board.
- **Contact the Chief Grievance Officer if you are concerned that your rights have been violated.**
- For more info, see Article F-2 of the Agreement or contact your *Grievance and Discipline Committee*.

An Association grievance was filed in response to the Board's adoption of the *Policy*, contending that it violates several articles of the Collective Agreement. Subsequent to filing the grievance, minutes of the Board of Governors' January 18, 2005 meeting note that the "*Policy was adopted by the Board, with the understanding that all groups on campus were supportive of the Policy*".

In seeking redress, the Association requested that the "...*Policy be suspended until such time as the Employer and the Association reach an agreement on an acceptable finalized version...*". Although the *Policy* was not suspended in its entirety, the grievance process played an essential role in getting the Employer to negotiate changes to it in response to some of our concerns.

At this time, the Association is waiting on the revised *Policy's* consideration by the Board. It appears that this will not occur until September or October. In the meantime, the Association retains its ability to exercise its grievance options.

Note that the *Policy* version posted on UPEI's *News & Publications* website page does not reflect any changes now before the Board. Until the revised *Policy* is approved by the Board, the Association advises all Members to seek its guidance with respect to harassment issues.

- ***Application of Policy on Integrity in Research and Scholarly Work.***

An Association grievance has been filed with respect to the *Policy on Integrity in Research and Scholarly Work*. While this is a Senate policy under the Research Advisory Committee, it is part of the Collective Agreement according to Article F6.21, as is the *Fair Treatment Policy*.

This grievance was filed in response to the Employer's apparent failure to appropriately address concerns raised by Members with respect to allegations of fraud and misconduct in scholarly work. It contends that the appropriate administration officials did not discharge their duties under the *Policy* when concerns were brought to their attention and that the Employer failed to "*deal expeditiously and fairly with any known instances or allegations of academic fraud following approved procedures*".

Presently, the grievance process is still in progress with respect to this issue. There will be more to report at a later date.

The *Policy on Integrity in Research and Scholarly Work* can be found on the *Policies and Procedures* page of the ORD website. A link to it is provided on the *Resources* page of the Association's website. Given the serious nature of the subject of this policy, everyone is advised to become familiar with it and to seek guidance from the Association should concerns arise.

- **Placement of *statistical results of student evaluations* in official employee files.**

On May 9, 2005, the Vice-President Academic Development issued a memo to Deans and Chairs requesting that copies of *statistical results of student evaluations* from all faculty members' teaching surveys be forwarded to Human Resources. The memo further indicated that these "*shall be placed on the Official Employee File*" as per the Collective Agreement.

The Association responded that this request is not supported by the Agreement and recommended, as a first action, that the matter be referred to the Joint Committee. No agreement could be reached by this manner.

The Employer subsequently stated that its request was justified and that it intended to follow through with it. After confirming that some *statistical results* had been placed in individual employee files, an Association grievance was filed with respect to the Employer's action.

Article E-1 of the Agreement covers teaching surveys and faculty reviews. It states that they are "*primarily for formative purposes*". Also, Article E1.3.1 indicates that the *statistical results of teaching surveys* are to be restricted to the surveyed Faculty Member and the Department Chair (or Dean, in faculties without Chairs), except as required by the Agreement.

Apart from the formative faculty review, which involves only the Faculty Member and his/her Chair (or Dean, in faculties without Chairs), the only other use for these, required by the Agreement, is their inclusion in Members' teaching dossiers for tenure/promotion purposes.

The Association's position, then, is that there is no need, according to the Agreement, for these *statistical results* to be placed on the official employee files which are held by Human Resources. This University's past practice saw this type of information held only at the Department, or Faculty, level. Without a reason under the Agreement for this information to be held by Human Resources, it should not be done.

Finally, it must be clarified that this grievance is only about the appropriate place for this personal, formative-type information to be held. It is not about the merits of teaching surveys and faculty reviews themselves. The Faculty Association remains committed to the principles of teaching evaluations and faculty reviews as covered by Article E-1 of the Collective Agreement.

Despite this data being the property of Faculty Members, the Employer contends that it has the right to insist that this personal, formative-type information be placed in official employee files without a clear purpose for it being there. Until this matter is settled, however, the Employer's request to have it forwarded to Human Resources remains. Given the fact that Members own this information, the Association firmly believes that Members' rights are being violated when this information is passed to Human Resources.

- **Intellectual Property Rights**

Currently, a number of Faculty Members are involved in research projects funded through ACOA's Atlantic Innovation Fund (AIF). Across campus, these are valued at over \$30 million. The AIF program objectives for Atlantic Canada include building capacity for R&D and increasing the commercialization of R&D outputs.

In each project, the University signs an agreement with ACOA that obligates it to commercially exploit the products of the research. Also, it must assure ACOA that the University and its employees either own IP rights, or hold sufficient rights in the same, to permit the project to be carried out and the products to be exploited.

After signing these agreements with ACOA for AIF Round 2, the Employer notified Faculty Members that each would be required to enter into a sub-agreement with the Employer. The intent of this sub-agreement is to specifically modify Section H-4 of the Collective Agreement to assign any and all IP rights of the Member to the Employer. The Members were not made aware that the Employer would require the sub-agreement at the time the Employer signed its agreement with ACOA.

In response, the Association sent a letter to the Employer emphasizing the following points:

- that Article A3.1 of the Collective Agreement establishes the UPEIFA as the “*sole and exclusive bargaining agent*” for its Members and precludes the Employer from negotiating directly with Members on matters such as IP;
- that the sub-agreement violates several articles of the Collective Agreement; and
- that the Association contends that the sub-agreement is not necessary for the University to meet its obligations to ACOA.

The Employer responded that its legal review confirmed the need for this sub-agreement. It justified its position on the premise that IP articles in the Collective Agreement contradict the terms of the Employer/ACOA agreement and, thus, the sub-agreement is required to allow the Employer to meet its obligations to ACOA.

An Association grievance was subsequently filed with respect to this matter. The Association contends that the Employer’s intent to have Faculty Members sign this sub-agreement violates Section H-4 of the Collective Agreement, as well as Articles A3.1 and A3.2.

It is the Association’s opinion that the sub-agreement exceeds that which would adequately provide assurance to ACOA that the University and its employees hold the necessary IP rights.

The Association believes that the language of Section H-4 of the Collective Agreement is sufficient to satisfy the concerns of the funding agency with respect to this point.

Subsequent to filing the Association grievance, the Employer again requested that Members sign these sub-agreements. In response, the Association has filed a group Member grievance on behalf of these Members.

Underlying this issue is an obligation to commercialize the products of research. This is a goal to which each of the Faculty Members involved are committed. Undoubtedly, they would not have sought support from ACOA had they intended otherwise.

The Association is not necessarily opposed to the commercialization of research. It does believe, however, that it must be done in a manner that respects the rights of individual Faculty Members regarding intellectual property, academic freedom and publication, as negotiated in good faith through the collective bargaining process.

ACOA is now proceeding to solicit proposals in its AIF Round 3. Any Members intending to submit a letter of intent are encouraged to contact the Association immediately should they have any concerns regarding their rights under the Collective Agreement.

UPEI Faculty Association Grievance and Discipline Committee

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The Committee’s Terms of Reference can be found on the RESOURCES page at www.upeifa.org.