



# University of Prince Edward Island FACULTY ASSOCIATION

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## *Memo*

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**To:** All Members of the UPEI Faculty Association  
**Date:** February 11, 2008  
**Subject:** Individuals with bargaining unit appointments while in *excluded* positions

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In January 2007, an arbitrator ruled that the Employer violated the Recognition Article (A-3) of the Collective Agreement. This violation resulted from the Employer's appointment of a faculty member to a position specifically excluded from the Union's bargaining unit, while allowing the individual to simultaneously continue duties as a faculty member. This arbitration ruling established that such dual-status appointments are clear violations of the Collective Agreement and of the Union's Certification Order.

Due to information provided by the Employer at the time of this arbitration hearing, it was necessary for the Union to file two additional grievances for violations of the same nature which had occurred prior to the hearing. In these past violations, individuals had been appointed as Sessional Instructors while they also held excluded positions – more examples of dual-status situations.

In our last report on this issue (Grievances At-A-Glance, No. 3, Sept. 21, 2007), it was indicated that the Employer had once again violated the Collective Agreement in this manner for the 2007 fall semester and that a third grievance had to be filed. This violation, however, was different in that it had been executed by the Employer at a time when it was fully aware of the January 2007 arbitration ruling and of the Association's clear objection as asserted by the two grievances which had already been filed. Consequently, this third grievance sought redress in the form of punitive and/or aggravative damages as a result of the Employer's blatant breach.

Recently, the Union received rulings from the Employer's designated representative regarding two of these grievances. These rulings found that the Employer had again violated the Collective Agreement and ordered the Employer to comply with the Agreement's relevant provisions. The ruling for the most recent grievance also indicated that the Employer had rectified the situation for the 2007 fall semester by removing the individual from the Sessional Instructor position.

In response, the Union considered these grievances resolved but replied that *should there be any additional repeat violations of the Collective Agreement of this nature, the Association will absolutely seek monetary punitive and/or aggravative damages through the grievance process, and will not agree to any resolution of the grievance without payment of such damages to the Association.*



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It was with extreme dismay and surprise, then, that the Union recently learned that the Employer had yet again appointed an individual in an excluded position to a Sessional Instructor teaching position for this current semester. This was done, of course, despite the original arbitration ruling, the subsequent grievance rulings by the Employer's designated representative and the Union's explicit message regarding the action it would take should there be any further violations of this type. Consequently, a fourth grievance has been filed.

The Employer has an obligation under the Collective Agreement to not provide individuals, who hold excluded positions, with Sessional Instructor contracts given that it knows that doing so will lead to violations of the Collective Agreement. It is the Employer, then, that is responsible for these situations which require the Union to defend its rights.

The Recognition Article of a collective agreement is an essential and fundamental component of collective bargaining between the parties because it establishes, in part, who can and who can not be a member of the bargaining unit. The Employer's action to challenge this, in these cases, represents serious and seemingly deliberate challenges to the integrity of the bargaining unit itself.