

UNIVERSITY OF MANITOBA
Faculty Association

Summary of Arbitration Award, Re: Guidelines for Assignment of Teaching in the Faculties of Education, Architecture and Arts

In 2016 the Conservative government of Manitoba intervened directly in the negotiations between the University administration and the Association. While it knew for weeks that the government wanted a 0% salary increase and a one year deal from UMFA, the administration didn't tell the Association about the government's demands until mediation (a process initiated by the Association) had begun, with only three days remaining before the strike deadline set by the Association. The Administration has since apologized for keeping secret the government's directive, and in response to an order from the Manitoba Labour Board paid a fine to each Member of the UMFA and the Association itself for its actions.

The government's secret directives and the University's willingness to abide by them resulted in a 21 day strike, but negotiations didn't cease. One of the results was agreement on contract language that would result in each academic Unit at the UM developing guidelines for the assignment of teaching duties.

However, in implementing the new process several units at the University introduced loopholes that would allow deans to assign teaching workloads that were not consistent with the guidelines voted on by UMFA Members. UMFA filed a grievance that was recently settled by an order from a third-party arbitrator.

On June 24, 2021, Arbitrator Arne Peltz issued his decision. He found that UMFA was correct in its assertion that the Guidelines established by the deans in these faculties violated the Collective Agreement in that the Guidelines created a loophole that deans could rely on to adjust a Member's teaching workload independently of the criteria set out in their respective Guidelines.

Below are some of the details of the grievances and the arbitration award.

Core aspects of the Guidelines for the Assignment of Teaching

To address a major concern about increasing teaching loads UMFA negotiated new language into Article 19 of the Collective Agreement (CA) regarding the assignment of teaching duties. The amendments to Article 19, introduced during collective bargaining in 2016, included a collegial process for each unit to create guidelines for the assignment of teaching duties, as well as certain limitations on the assignment of teaching duties. An important part of that process is written into section 19.A.1.2.1 of the CA, which states that in assigning teaching duties a dean/director shall comply with the faculty/school/college's guidelines and the limitations on assignment of teaching set out in Article 19. Further, section 19.A.1.3.6 states that each set of guidelines shall include a standard teaching workload range and address the circumstances when the teaching load of a Member will deviate from the norm:

UNIVERSITY OF MANITOBA
Faculty Association

19.A.1.3.6 Guidelines of a faculty/school/college shall include a standard teaching workload range, and address the circumstances when the teaching load of a Member shall differ. The Guidelines shall also provide guidance on when a course is cancelled.

This means that in the Faculty of Arts, for example, a professor has a teaching workload of twelve credit-hours per year; however, if that Member is in the first year of their probationary appointment, their teaching workload is reduced by three credit-hours.

Association Grieves the Administration's Creation of Loopholes

As various faculties developed teaching workload guidelines following 2016's round of bargaining, the Executive Council and UMFA professional staff worked with Members to ensure their unit's guidelines complied with the CA. In consulting with UMFA Board Representatives and other Members in Architecture, Education, and Arts, a common problem emerged: clauses in those draft guidelines would allow the respective Deans to increase or decrease teaching workload without reference to the circumstances outlined in the guidelines. Assignments of teaching load would therefore be based solely on a dean's subjective assessment.

UMFA filed grievances regarding each of these sets of guidelines, arguing that the language in Section 19.A.1.3.6 requires teaching workload guidelines to list the specific situations in which a dean/director is permitted to alter a teaching workload outside of the standard range. The University countered that its intent in agreeing to the amendments to Article 19 in 2016 was to create a transparent process, but not certainty in assigning teaching workload. The University also contended that it would be unreasonable to expect guidelines to include an exhaustive list of circumstances for increasing or decreasing a teaching workload outside of the standard range.

Third-Party Arbitrator Sides with UMFA's Position

The key question at arbitration was what restrictions applied to a dean/director in determining teaching load. A significant amount of evidence was presented during the arbitration hearing as to the collective bargaining history which led to the negotiation of the amendments to Article 19, which Arbitrator Peltz considered important in interpreting the language (see paragraphs 35 to 88 of the decision). Arbitrator Peltz recognized that decanal discretion over teaching loads had been constrained by the amendments, with binding guidelines created by a collegial process as well as standard teaching workloads, rather than a unilateral dean's decision. Peltz also recognized that the Collective Agreement requires the Guidelines to address the circumstances when the teaching load of a Member shall differ from the norm.

Referring to the language in Section 19.A.1.3.6, Arbitrator Peltz found that the grieved clauses of each of the three Guidelines from the Faculties of Education, Architecture, and Arts failed to comply with the Collective Agreement because "they lack the specificity implicit in the words

UNIVERSITY OF MANITOBA
Faculty Association

‘address the circumstances’ when the load shall differ”. Section 19.A.1.3.6 made it mandatory for the Guidelines to include a standard teaching workload range, but individual variations were allowed.

However, Arbitrator Peltz remarked that if the phrase “address the circumstances” meant that a dean/director only had to consider the appropriate combination of teaching, research, and service, “it would essentially be a restatement of the pre-existing deans’ authority in Articles 19.A.2.3 and 19.A.2.4.” While Peltz did not conclude that “address the circumstances” means “provide an exhaustive list”, he concluded that it does not allow open-ended discretion by the dean/director, and the circumstances as to when a teaching workload may be increased or decreased must be identified in the Guidelines.

With regard to the grieved clauses of the Education, Architecture, and Arts Guidelines, Peltz further concluded:

I find that the phrase ‘address the circumstances in Article 19.A.1.3.6 must be read as requiring a structured exercise of decanal discretion regarding teaching load. Most of the exceptions to teaching load or norms in the Guidelines appear to fall within this concept. The impugned provisions do not.

[...]

In conclusion, I accept UMFA’s argument that cumulatively, the impugned Guideline clauses are tantamount to saying, ‘The Dean may assign a greater or lesser teaching load when the Dean the circumstances so require.’ **This has the potential to undermine the standard teaching workload range and was not what the parties contemplated in the 2016 settlement.**

This means that the Deans in Architecture, Education, and Arts can no longer use the sections of the guidelines in question.

Next Steps

In allowing UMFA’s Association Grievances, Arbitrator Peltz declared that the grieved clauses in the Guidelines in the Faculties of Education, Architecture, and Arts violate the Collective Agreement. Peltz also ordered the University to provide UMFA with a copy of the Guidelines for the Assignment of Teaching Duties from all faculties and schools at the University of Manitoba.

Once UMFA receives copies of all of the guidelines from the University, it will conduct a review to ensure that each unit’s guidelines fully comply with the Collective Agreement. UMFA will also review whether any Members in the Faculties of Education, Architecture, and Arts had their teaching workloads increased or decreased over the last few years pursuant to the clauses of their faculty’s guidelines which have now been found in violation of the Collective Agreement.

UNIVERSITY OF MANITOBA
Faculty Association

Does your unit have a set of Guidelines with a similar loophole? Has your workload been altered by a dean or director using such a loophole? Contact the office – 474.8272 / faum@umfa.ca

The full arbitration document can be read [here](#).