

Taylor McCaffrey LLP

Grant Mitchell, Q.C.

Professional services provided through

Grant Mitchell Law Corporation

Direct Line: 204 988-0352

Direct Fax: 204 953-7199

E-Mail: gtmitchell@tmlawyers.com

Assistant: Jodie Minnick

Direct Line: 204 988-0317

November 22, 2016

Manitoba Labour Board
Suite 500, 5th Floor
175 Hargrave Street
Winnipeg, MB R3C 3R8

DELIVERED

Attention: Ruth Liwiski, Registrar

Dear Ms Liwiski:

Re: **The University of Manitoba and UMFA**
Alleged Unfair Labour Practice
Case No. 215/16/LRA

We now enclose our Form A and Reply, in triplicate, for filing with the Board. Since the extension for filing the reply was granted by the Board, the strike has ended and the parties have settled their collective agreement, which includes a term of one (1) year and no salary increase. If the Board does not consider that the matters addressed in the application are now moot due to the settlement of the dispute, please contact this office for the purpose of setting hearing dates.

Yours truly,

TAYLOR McCAFFREY LLP

Per: 

GRANT MITCHELL, Q.C.

GM\jminnick
c. Greg Juliano, University of Manitoba
Garth Smorang, Myers Weinberg
encls.



MANITOBA LABOUR BOARD

Suite 500, 5th Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8
T 204 945-2089 F 204 945-1296
www.manitoba.ca/labour/labbrd

FORM A: Memorandum of General Information Required on all Proceedings

THE LABOUR RELATIONS ACT

Short Style of Proceedings:

Applicant/Employee/Interested Party/Respondent: (Cross out the ones that are not applicable)

Name: University of Manitoba Faculty Association

Address: 100 – 29 Dysart Road, Fort Garry Campus ___ **Postal Code:** R3T 2N2

Phone No. : () ___ **Fax No. :** () ___

Email Address: ___

Employer:

Name: University of Manitoba

Address: 309 Administration Building, Fort Garry Campus ___ **Postal Code:** R3T2N2

Phone No. : (204)474-8717 ___ **Fax No. :** (204)474-7505 ___

Email Address: lisa.halket@umanitoba.ca

Union:

Name: University of Manitoba Faculty Association

Address: 100 – 29 Dysart Road, Fort Garry Campus ___ **Postal Code:** R3T 2N2

Phone No. : () ___ **Fax No. :** () ___

Email Address: ___

Type of Proceedings: Unfair Labour Practice

(Certification, Unfair Labour Practice, Duty of Fair Representation, etc:)

Attached documents filed on behalf of the Respondent By: Lisa Halket

of 309 Admin Bldg, Fort Garry Campus, Winnipeg, R3T 2N2 (204)474-8717; 474-7505

___	___	___	___
(Address)	(Postal Code)	(Phone No.)	(Fax Number)

Office held by person filing documents: Director, Staff Relations

Do you agree to accept service of documents by e-mail? X
Yes No

Email Address: gmitchell@tmlawyers.com

Interest or status of party on whose behalf documents are filed:

Respondent Employer

(Employer, Intervenor, Applicant for Certification, etc.)

FORM A: Memorandum of General Information Required on all Proceedings

Page 2

Brief statement of business of affected Employer: University

Particulars of other parties directly affected (where not named above):

Name

Address

In What Way Interested

Not applicable

CANADA:

I, Lisa Halket

PROVINCE OF MANITOBA:

of the City of Winnipeg

TO WIT:

in the Province of Manitoba
do solemnly declare

1. I am the Director, Staff Relations of the above-named Respondent Employer and have a personal knowledge of the facts set forth in the attached hereto except where they are stated to be upon information and belief.
- *(Strike out where not applicable)
- *2. The facts set forth in the Reply attached hereto are true.
- *3. where stated to be based upon information and belief they are to the best of my knowledge true in substance and fact and I have shown the source of my information.

And I make this solemn declaration knowing that it is of the same force and affect as if made under oath and by virtue of "The Evidence Act".

DECLARED before me at the City/Town
of Winnipeg, in the Province of Manitoba
this 15th day of November, 2016



Signature

CM Harsace
~~Commissioner for Oaths~~
A Notary Public in and for
the Province of Manitoba.
My Commission expires: _____

Case No. 215/16/LRA

**THE LABOUR RELATIONS ACT
THE MANITOBA LABOUR BOARD**

BETWEEN:

UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

Applicant/Union,

-and-

THE UNIVERSITY OF MANITOBA,

Respondent/Employer.

APPLICATION ALLEGING UNFAIR LABOUR PRACTICE

EMPLOYER REPLY

EMPLOYER REPLY

1. The Respondent denies that it has failed to bargain in good faith or failed to make every reasonable effort to conclude a collective agreement, or has breached either of ss. 63 or 26. In fact, the Application does not even disclose a prima facie case against the Respondent and should be dismissed without the necessity of a hearing.
2. The University of Manitoba (the "University") and the University of Manitoba Faculty Association (the "Union") have had a bargaining relationship for over 40 years and are currently in the first work stoppage that has occurred since 2001.
3. The parties have been negotiating since January, 2016 for a collective agreement to revise the one that expired on March 31, 2016. The University initially proposed interest based bargaining. This was rejected by the Union, which stated that it preferred conventional bargaining.
4. On March 9, 2016, noting that the Provincial election was approaching on April 19, 2016, the University offered to the Union a one-year money-only offer with a general increase of 1.5%, market

adjustments to certain groups within the bargaining unit, and an agreement that both sides would meet during the term of the one-year agreement to discuss in good faith any issues and amendments to be made in the subsequent round of bargaining. The University's chief negotiator, Mr. Greg Juliano, indicated that this was a limited time offer made in light of the upcoming provincial election, noting that the Province has traditionally set a "mandate" for financial bargaining in the public sector and a new government could change the mandate and create significant problems. The University has worked from a "mandate" in all prior rounds of UMFA bargaining of which I am aware. The Union's chief negotiator, Dr. Robert Chernomas, responded that the Union membership looked favorably on the one-year offer, but wanted to discuss governance issues in an "expedited bargaining" round.

5. The parties met on April 12, 2016, April 18, 2016, and April 20, 2016, in the context of an expedited or fast-track round of bargaining. During these meetings, the Union presented set positions and language on substantial issues that the parties ultimately agreed could not be addressed in the context of expedited or fast-track

bargaining. As a result, the parties set a schedule for substantive bargaining, beginning in May 2016.

6. On May 25, 2016, the Union presented its full package of proposals, which included the Union's proposal for a one-year contract. Following its usual practice in negotiations with the Union, the University presented its full package of non-salary proposals on May 25, 2016, and deferred its salary proposal until negotiations had occurred on the non-salary issues.

7. With respect to salary:

- (a) Mr. Juliano clearly indicated to the Union at the meeting of the parties on May 27, 2016, that the University intended to counter the Union's money proposal, but that the University would need time to assess the University's position based on the government's position, the stock market, and other factors that inform the University's financial position.
- (b) After a number of meetings between the parties, it became apparent to the University that a number of the Union's proposals on language in fact had a monetary impact. As a result, Mr. Juliano indicated to the Union on July 14, 2016, that

the University would present its counteroffer on money as part of a comprehensive settlement proposal that dealt with all issues.

- (c) This comprehensive proposal was given to the Union on September 13, 2016, and it reflected the discussions on the issues that had been identified during the negotiations.
- (d) The comprehensive proposal proposed a four year collective agreement, with annual wage increases of 1%, 2%, 2%, 2%, plus targeted market adjustments in the first year and the existing salary schedule mechanics for performance increments. The targeted market adjustments were equal to 0.48% of payroll. The University's proposal would have resulted in an average salary increase of 3.66% in the first year. The total cost of the University's proposal for the first year would be \$4,719,000.00.
- (e) In presenting the comprehensive proposal, the University clearly noted to the Union that the general increases were based on a four-year deal, and if the Union rejected the offer in

favour of a shorter agreement, then the University would likely not be able to offer the same general increases.

8. At the meeting on September 30, 2016, Mr. Juliano referred to and subsequently emailed to Dr. Chernomas the Winnipeg Free Press article dated September 30, 2016, entitled "There's a new sheriff in town: Tories warn unions not to expect easy negotiations" (attached as Appendix "A" to this Reply), and he indicated that this was a worry for the University. He indicated that he had an unreturned call at his desk from Mr. Gerry Irving, who was just appointed Secretary of the Compensation Committee, and he needed to return the call. Mr. Juliano expressed his opinion that there was urgency to wrapping up a settlement, as he did not want to get nine-tenths finished and be told by the government that the University could not give a monetary offer. Dr. Chernomas brushed these concerns off, and called the government "pussycats".
9. On October 3, 2016, the Union presented to the University its counteroffer on salary, indicating that the cost of its counteroffer would be \$7 million. Mr. Juliano indicated that he would take the Union's counteroffer to the University's administration for instructions,

although Mr. Juliano did express skepticism about whether the counteroffer would be accepted.

10. The University denies that it re-offered the monetary proposal of September 13, 2016. The University notes that:

- (a) The parties had one meeting between October 3, 2016, and October 21, 2016, which took place on October 12, 2016.
- (b) At the meeting on October 12, 2016, Mr. Juliano indicated to the Union that he had not received instructions regarding the Union's counteroffer because his principals were dealing with government. He indicated that Dr. Barnard was scheduled to meet with the Minister of Finance on October 17, 2016. Mr. Juliano further indicated that he was concerned about the outcome of that meeting, as the government could give a mandate that set a different pattern from the past. Dr. Chernomas responded that Mr. Juliano had been very clear with his concerns, and agreed there was reason to be concerned with this government.

- (c) At the meeting on October 21, 2016, the only offer on the table was the Union's offer October 3, 2016, by which the Union had rejected the University's offer of September 13, 2016.
- (d) At the meeting on October 21, 2016, Mr. Juliano stated that he had been instructed to officially record that the University was rejecting the Union's offer of October 3, 2016. He also noted that Dr. Hudson had been indicating in public that the University was maintaining its current offer, and that this was not accurate. He indicated that the September 13, 2016 offer had been rejected by the Union by their counteroffer on October 3, 2016, which the University had now officially rejected. Mr. Juliano confirmed that the University had made no counteroffer since then and was not in a position to make a counteroffer because of ongoing discussions with government. Therefore, there was no offer on either side on the table. When asked specifically by Dr. Chernomas if he was formally withdrawing the salary proposal, Mr. Juliano indicated that the offer was not withdrawn, it had been rejected in accordance with the law of offer and acceptance.

11. The University denies the Union's description of what Mr. Juliano conveyed to Mr. Steinberg and Dr. Chernomas. In particular:

- (a) Mr. Juliano did not indicate a specific date as to when he had been contacted. Mr. Juliano conveyed that Mr. Irving had contacted him a little over 2 weeks ago and there had been a series of interactions over that time between a variety of government officials and University officials.
- (b) The University denies that Mr. Juliano conveyed to Mr. Steinberg and Dr. Chernomas that Mr. Irving directed the University to withdraw its proposal. When Mr. Juliano communicated with Mr. Irving, the proposal was no longer on the table, having been rejected by the Union's counteroffer of October 3, 2016.
- (c) Mr. Juliano conveyed that he had received a mandate from the government, through Mr. Irving, to pursue a wage pause and extension of the salaries under the current collective agreement, which effectively meant 0% over a one-year collective agreement.

- (d) Mr. Juliano conveyed that Mr. Irving had expressed concerns regarding mediation.
 - (e) Mr. Juliano conveyed that the government had indicated that they would not necessarily fund a resulting award from arbitration.
 - (f) Mr. Juliano conveyed that Mr. Irving had confirmed his direction to the University via email to Mr. Juliano.
 - (g) Mr. Juliano conveyed that the University felt bound by the new government mandate and was not prepared to offer anything beyond a one-year collective agreement, with no salary increases.
 - (h) The Union subsequently stated publicly that it could agree to zero increase in a one-year collective agreement if it were satisfied with the rest of the agreement.
12. Mr. Juliano clearly communicated to the Union that the University had been working over the prior weeks to fully understand the government's expectations, to understand what the government was going to say about the new mandate, and to confirm whether it was

absolutely necessary that the mandate apply to these negotiations. Mr. Juliano also indicated that the University did not want to present an offer for a one-year contract at 0% unless it was absolutely certain that this was the government's mandate. In the period of time between initial contact from the government and written confirmation of the government mandate, Mr. Juliano made several attempts to warn the Union that the government may impose a mandate on the University, and that the University would have to comply with such mandate when it was issued.

13. The University has at all times been clear and upfront with the Union regarding the effect that a government mandate might have on the University's ability to make an offer. In particular, the University notes:

- (a) The University made an initial money-only offer on March 9, 2016, because it was concerned that should there be a change in government, the new government would not be bound by the promises made by the outgoing government and they could set a mandate so as to create significant problems with the competitiveness of faculty salaries;

- (b) When the parties met on April 12, 2016, Dr. Chernomas acknowledged the benefit of implementing an agreement before an alternative austerity government came in.
- (c) Mr. Juliano indicated on May 25, 2016, and on May 27, 2016, that the University's financial position would have to reflect funding, any government mandate received, the stock market, and other factors that inform the University's financial position.
- (d) On July 12, 2016, the University's Comptroller, Mr. Tom Hay, presented to the Union on the University's financial situation and noted that operating grants are set by government, and tuition rates are controlled by the government.
- (e) On July 19, 2016, Mr. Juliano indicated to the Union that the relationship between the University and the government is hard, and the University cannot "bite the hand that feeds us".
- (f) On August 3, 2016, when the parties were discussing duration of the agreement, I indicated to the Union as alternate negotiator for the University that the University did not know how the changes in government would affect both sides and

suggested that the Union might want to think about locking in for a longer deal.

- (g) On September 30, 2016, Mr. Juliano also expressed his opinion that there was urgency to wrapping up a settlement, as he did not want to get nine-tenths finished and be told by the government that the University could not give a salary offer.
- (h) Notwithstanding these warnings the Union chose to reject the University's salary offer by presenting a counteroffer on October 3, 2016.

14. In reply to paragraph 19 of the Application, the University denies that the failure of the mediation process was due to the salary position of the University, since the Union announced publicly that it was prepared to accept a one year agreement with a salary freeze if other non-salary items were resolved. The mediation failed because the parties could not agree on those non-salary items. The strike was caused by the Union choosing to withdraw services rather than accept the University's position on those non-salary items. The University complied with its bargaining duty in rejecting the Union's demands on non-salary issues by listening to the Union's rationale for


its positions and presenting its counterproposal and the rationale for it.

15. In reply to the whole of the Application, the University states that the University at all times bargained in good faith and made every reasonable effort to conclude a collective agreement and continues to do so. The University engaged in the proposed mediation process and in a post-strike conciliation process, and has continued to propose new ways to break the impasse in bargaining. Throughout the mediation and conciliation discussions, the parties have not focused on salary adjustments or duration, but rather on the Union's non-salary demands and the University's attempts to address the concerns behind those demands. According to the Union itself, it is not salary that is the reason for the continuing job action.
16. In the alternative, the University states that while its salary offer in October was lower than it proposed previously, the intervening events outlined above justified the University in modifying its offer on salary and duration, and this principle is recognized within the duty to bargain in good faith and to make every reasonable attempt to conclude a collective agreement.

17. The University asks that this Application be dismissed.

DATED: 15 November 2016

THE UNIVERSITY OF MANITOBA

Per: 

Lisa Halket,
Director, Staff Relations

From: Gregory Juliano
Sent: Friday, September 30, 2016 12:54 PM
To: Robert Chernomas
Cc: 'byapps@umfa.ca'
Subject: WFP article

Robert, below is the article I mentioned today as not necessarily a good thing for either side.

Greg



GREGORY L. JULIANO, B.A., LL.B.
Associate Vice-President (Human Resources)

THE UNIVERSITY OF MANITOBA
310 Administration Building
Winnipeg, Manitoba R3T 2N2

Phone (204)474-9575
Fax (204)474-7505
gregory.juliano@umanitoba.ca
http://umanitoba.ca/admin/human_resources/

<http://www.winnipegfreepress.com/local/theres-a-new-sheriff-in-town-395370571.html>

Manitoba's finance minister says the province needs to do a better job of negotiating contracts with public-sector unions if it is going to get its fiscal house in order.

In an interview, Cameron Friesen would not say if the Pallister government will demand wage freezes in future contract negotiations; nor would he set any specific pay guidelines. He said such targets are now being drafted.

But facing a projected summary deficit of \$911 million this fiscal year and with no end to negative balance sheets in the near future, Friesen said the government must negotiate on behalf of "all Manitobans."

"These are very exceptional financial conditions we find ourselves in as a province. You don't make headway as a province unless you also bargain well on behalf of all Manitobans. We are bargaining on behalf of Manitobans."

One indicator for measuring bargaining success is the results of workplace-ratification votes, he said.

"Over and over and over again," Friesen said, public-sector union members have voted 95 per cent or more for negotiated settlements.

"So as the minister responsible for this area, I have to ask myself if that is an acceptable number and whether that represents that government has bargained well enough on behalf of all citizens," he said.

Friesen wouldn't directly criticize a five-year contract the Pallister cabinet approved earlier this month with the province's engineers that had been negotiated during the spring election. But he left little doubt the province would not entertain such increases in the next few years.

A tentative deal calling for annual wage increases of one, one, two, two and two per cent was reached with the engineers March 12. The agreement is retroactive to the spring of 2014. In this fiscal year, some of the engineers will receive a 2.5 per cent top-up in addition to the general two per cent wage hike, bringing their total raise to 4.5 per cent.

Friesen said the PCs had no choice but to honour the deal that had been negotiated when they took office, but it will set no precedent for the new government.

"It doesn't mean, somehow, that now government is going to continue in that way, shape and form on a go-forward basis," he said.

"We're expecting to lead the nation in terms of economic performance with a year-over-year growth of less than 2.5 per cent. And if you're negotiating (wage increases) north of two per cent it makes it a huge challenge (fiscally) to go in the right direction," Friesen said.

Michelle Gawronsky, president of the Manitoba Government and General Employees' Union, said the civil service has "huge recruitment and retention problems," and the province will have to pay to keep good people.

"If you don't have the good people there, then you don't have the service," she said.

The MGEU is the largest union in the province, representing 40,000 workers, including the bulk of civil servants.

Gawronsky said she is puzzled when Friesen cites high ratification rates. She said her union doesn't release the results of a ratification vote, only whether the deal is ratified.

She said, however, it is in the government's best interests to have a happy, productive workforce.

Gawronsky said the MGEU feels no trepidation in bargaining with the new government. Its approach, she said, will not change.

"The ball is going to be in their court to see how well they're going to be valuing the folks that provide the services that they claim they are going to be protecting," she said.