

Filed by Email

October 22, 2020

Tannis Brown
Director of Settlement
Alberta Labour Relations Board
501, 10808 – 99 Avenue
Edmonton, AB T5K 0G5

Dear Ms. Brown:

**RE: An application for determination and a complaint made by MacEwan Staff Association affecting the Board of Governors of Grant MacEwan University and the Grant MacEwan University Faculty Association
New application**

I act on behalf of the MacEwan Staff Association (“MSA”) and ask that you kindly accept this letter as an application and complaint affecting the Board of Governors of Grant MacEwan University (the “University”) and the Grant MacEwan University Faculty Association (“GMUFA”).

Briefly, the University employs a number of employees generally referred to as Advisors who work with students as part of the University’s Advising Team to “help them understand the various pathways forward to a degree, diploma or certificate; assist and support students as they make choices which impact their future; discuss career plans; and support students experiencing academic difficulty” (quoting from the job description).

The University employs persons performing the Advising role in the GMUFA bargaining unit with job titles such as Faculty School Advisors, Academic Advisors and/or Instructional Assistants who are doing the same work as employees in the MSA bargaining unit performing the Advising role with job titles such as University Advisors or Academic Advisors. MSA submits that these positions should all be in one bargaining unit and that the proper bargaining unit is the MSA bargaining unit.

Furthermore, MSA understood that the University was going to place the Advisors in its bargaining unit but, it abruptly changed its course on June 30, 2020. MSA complains under

section 45(1)(a) of *Public Service Employee Relations Act* that the University has interfered with its administration in doing so.

The bargaining relationship between the University and MSA is under the *Public Service Employee Relations Act* ("PSERA") and the bargaining relationship between the University and the GMUFA is under the *Labour Relations Code* (the "Code") so this application is brought under both statutes.

MSA is seeking the following relief:

- a. A determination pursuant to sections 3(2)(h) and (p) of PSERA and sections 12(3)(i) and (o), and 58.6(1) of the Code, that those persons employed by the University in the role of Advisor, including as Faculty Advisors, Academic Advisors, University Advisors, and Instructional Assistants are employees within the MSA bargaining unit and not employees within the GMUFA bargaining unit and are properly employed under the collective agreement between MSA and the University, not the collective agreement between the University and the GMUFA.
- b. A determination under section 58.6(1) that the University has failed to remove the designation of the employees who are designated as academic staff and who are working in the Advising role, including Academic Advisors, Faculty School Advisors, and Instructional Assistants, so that those employees can be included in the MSA bargaining unit along with the other employees in the MSA bargaining unit performing the same Advising work.
- c. An order that the University has committed an unfair labour practice in breach of section 45(1)(a) of PSERA in failing to place all the Advisors into the MSA bargaining unit after agreeing to do so.
- d. An order directing the University to move all of the Academic Advisors, Faculty School Advisors and Instructional Assistants to the MSA bargaining unit effective June 16, 2020 along with an order that makes all affected employees (including those MSA members who were laid off or suffered position abolishment) whole in all respects and an order that MSA receive all outstanding dues and remittances for the Advisors.
- e. Such interim orders as are required to address these issues.
- f. Such further and other relief as may be appropriate.

Detailed particulars of this application are:

1. MSA was certified as the bargaining agent for a bargaining unit described as "all non-academic employees" of the University. The current certificate is number E125-2015, issued on August 10, 2015. This is an updated certificate to change the employer's

name. The original certification was certificate #100-2006, issued on July 10, 2006. Prior to that time, MSA had been voluntarily recognized as the bargaining agent by the University and the University's predecessor, Grant MacEwan College, for many years.

2. GMUFA is the bargaining agent for the academic staff of the University by operation of law under section 58.3(c) of the Code and prior to that provision being enacted, by operation of law under the *Post-secondary Learning Act* and predecessor legislation.
3. MSA and the University have been parties to a many successive collective agreements. They are currently bound to a collective agreement covering the non-academic staff bargaining unit which has a term from July 1, 2019 to June 30, 2020. (the "MSA collective agreement")
4. MSA gave notice to commence collective bargaining on September 27, 2019. Collective bargaining is ongoing.
5. GMUFA and the University are party to a collective agreement covering the academic staff bargaining unit which has a term from July 1, 2019 to June 30, 2020.
6. MSA has been advised that notice to bargain a renewal of the GMUFA collective agreement was given and collective bargaining between the University and GMUFA is ongoing.
7. MSA and the University have been in discussions since 2007 about employees of the University who have been placed in the wrong bargaining unit and who have not been placed in either the MSA or GMUFA bargaining unit by the University.
8. On December 10, 2015, MSA met with the GMUFA to discuss jurisdictional determination at the University, including the role of the Advisors in both bargaining units. There was a joint consultation between MSA and the University on August 26, 2015.
9. On or about January 8, 2016, MSA learned that the University had created a subcommittee to look at the Advisor role in the Faculty of Health & Community Studies, with an anticipated implementation date for changes to be February 5, 2016. The parties also met on February 11, 2016. After inquiring, MSA was informed on or about April 20, 2016 that the matter had not progressed in the Faculty of Health & Community Studies and that any further work would be undertaken by all faculties, not by individual faculties.
10. By letter dated March 8, 2016, MSA wrote to the University under the provisions of the existing collective agreement formalizing its request for information about the names and positions of the employees not included in its bargaining unit (the "non-union employees"). MSA estimated that there were about 700 referred to by the University as

“other” employees and about 240 employees referred to by the University as “out of scope” employee at that time. The University did not provide the requested information.

11. By letter dated April 18, 2016 the University proposed to MSA a timeline for further discussions on the “out of scope” employee issue. It was suggested that the process would be broken down into two phases and the total process would take about a year to complete.
12. As part of that process, MSA and the University began discussion of the Advisors, including the positions of University Advisor, Faculty School Advisor and Instructional Assistant. The first meeting specifically regarding Advisors was on April 27, 2016.
13. On May 5, 2016, MSA met with the GMUFA at the GMUFA annual meeting. MSA gave a presentation explaining its process to seek to identify and work with the University to move employees to the correct bargaining unit and to move all the non-union employees into the appropriate bargaining unit, whether it was the MSA unit or the GMUFA unit.
14. On or about November 21, 2016, about 15 – 20 “out of scope” positions were moved by the University into the MSA bargaining unit, including payroll specialists, marketing and communications, and process analysts.
15. MSA met further with the GMUFA to discuss jurisdiction between their two bargaining units on January 25, 2017, July 18, 2017 and again on September 19, 2017.
16. As the discussions with the University continued and were not resolved, MSA made a detailed presentation to the Vice President Academic Dr. John Corlett on November 24, 2017 on these issues. MSA understood at the conclusion of the meeting that Dr Corlett would look into the issue. In that presentation, MSA pointed out that:
 - a. In 2016 it was determined that 224 employee positions were deemed by the University to be “out of scope”. In phase 1 MSA received 21 of those positions and 14 in Phase 2. MSA has still not been given a list of all of the “out of scope” employees or their positions.
 - b. In 2016 MSA was told by the University that there were over 700 positions in the “other” category. MSA was told in the spring of 2017 that 150 positions were being transferred to it but MSA was never given a list of the positions or the names of the employees.
 - c. MSA’s records showed that the change in dues payers in the bargaining unit had reflected an additional 88 employees from October 2016 to October 2017. The

records provided to MSA with dues remittances do not permit MSA to identify which are new positions or employees.

17. The University provided MSA with a Jurisdictional Plan document dated August 31, 2018 at a meeting. During the meeting the parties discussed the fact that dependent contractors were missing from the plan. The plan indicated that Phase 2 of the process first discussed in 2016 was to be completed by September 30, 2018 and that a new Phase 3 was to be completed by December 2018 and a new Phase IV was to be completed by June 2019.
18. MSA and the University met on April 12, 2019 to discuss this issue. At that time the University advised MSA that the Board of Governors would be reviewing the definition of "academic" in regard to designation of academic staff at the Board of Governors meeting in May 2019. There was discussion of moving some positions to MSA as of July 1, 2019 and MSA understood that the University needed another 6 months to complete Phase 3.
19. One of the positions that was in discussion over all these years was the Advisors. The University employed University Advisors in the MSA bargaining unit and Faculty Advisors and Instructional Assistants in the GMUFA bargaining unit. However, MSA was of the view that these employees all performed the same work and that there was no basis for them to be in different bargaining units with different pay and benefits.
20. MSA and the University met on November 4 2019. This meeting focused on the Advisor positions. The parties discussed recommendations from Dr. John Corlett. The University shared the information it had gathered from meeting one on one with the various Advisors. MSA was told to expect a decision and recommendation to the Provost on the Advisors within a couple of weeks.
21. On February 4, 2020, the University provided a report on the Advisor Review in a Town Hall. In that review, there was no acknowledgement of either MSA or the GMUFA. The University explained that it would create an Advising Centre, that Advisors would be supervised by an in-scope supervisor, that there would be a Director of Advising, that each faculty or school would have no less than 2 Advisors, and that there would be a standardized job description.
22. On March 5, 2020, the University's Board of Governors passed Criteria for Designation of Academic Staff (Motion # 09-03-05-2019/20). MSA submits that the Advisor positions do not meet this definition of academic staff.
23. By letter dated April 8, 2020, Dr. Craig Monk, Provost & Vice-President Academic, advised the GMUFA that the Board of Governors had approved criteria for academic staff designation on March 5, 2020. He also advised that "at the April 9, 2020 meeting,

the Board of Governors will commence a review of the Faculty School Advisor and Instructional Assistant designation as academic staff members.” The GMUFA was invited to commence engagement in consultation with the University on this review of the designation. MSA was copied on this letter.

24. On April 16, 2020 the University held a virtual town hall about the next steps regarding the Advisors. This town hall was followed up with an email to those who attended, including MSA dated May 1, 2020. The town hall and follow up email advised that:
- a. There were 12 Faculty Advisors and 8 Instructional Assistants who were in the GMUFA bargaining unit.
 - b. There were 3 Student Advisors, 1 Team Lead University Advisor and 25 University Advisors who were in the MSA bargaining unit.
 - c. All existing positions would no longer exist and those positions would be replaced in the new model by a new position called Academic Advisor and there would be a total of 20 less positions overall in the new model.
 - d. All existing Advisors were eligible to apply for the new positions.
 - e. There would be a new Manager, Academic Advising who would be out of scope.
 - f. A hub and spoke approach would be set up with the Manager and generalist Academic Advisors in the hub and then specific Academic Advisors and Program Assistants in the spokes which were to be in Faculties or Schools.
 - g. Job descriptions were provided as well as written Frequently Asked Questions with the May 1 email.
 - h. The job descriptions state that the Academic Advisors and the Program Assistants would be in the MSA bargaining unit.
25. On April 22, 2020, the GMUFA wrote a letter to Dr. Monk, which was copied to MSA. That letter objected to the decisions communicated in the April 16, 2020 town hall. The GMUFA stated that it felt that it had not been properly engaged in the required consultation, that it did not consent to the review of the designation of the Faculty School Advisors and that it considered the decision communicated on April 16, 2020 to be a violation of section 147 of the Code due to the freeze created by their ongoing collective bargaining.
26. On May 14, 2020 MSA filed a grievance objecting to the consideration of persons outside of MSA for filling the Academic Advisor positions. MSA grieved that only the

displaced MSA members should be considered to fill the newly created jobs that were virtually identical to their existing jobs. A grievance meeting was held on June 11, 2020.

27. On June 8, 2020 MSA met with the University regarding the Advising project. MSA was provided a list of employees who would be abolished and the locations of where the remaining employees would be assigned. The University advised that 18 Academic Advisor positions were offered to the MSA advisors and that 12 would be staying with their faculty in the spokes. MSA was told that the position abolishment date was to be June 16, 2020 and employees who were being moved would be via the reassignment provisions of the collective agreement. There were detailed discussions about specific details of the situation for individual employees.
28. On June 16, 2020, employees were given letters offering them the Academic Advisor positions. Those letters referenced that the position would be under the MSA collective agreement.
29. By notifications dated June 26 and July 2, 2020 the University advised the university community that it was proceeding with the new academic advising model.
30. However, on June 30, 2020 the University advised MSA that it had decided to set aside the de-designation decision and that the new model would proceed with advisors working in both the GMUFA and the MSA bargaining units. Further, MSA understands that none of the GMUFA advisors suffered position abolishment or layoffs and that the 20 reductions in the total compliment of advisors was suffered by MSA bargaining unit employees only.
31. In the June 30, 2020 the University acknowledged that the Advising positions in both bargaining units are the same. It stated "The new model will be implemented with advisors from both the Faculty Association bargaining unit and the MacEwan Staff Association Bargaining Unit. It is intended that regardless of the jurisdiction the work will be the same and the expectations of service delivery will also be consistent."
32. The University's reason for not placing the Advisors in the MSA bargaining unit as it had announced was because of collective bargaining. It stated "the University has decided to set aside the designation and jurisdiction of the employees involved in advising work during the new model implementation period and while collective bargaining is underway." And also said "The University intends to revisit the designation of the positions in the Faculty Agreement and the jurisdiction of these positions after negotiations for the new collective agreements for both Association are completed."
33. MSA submits that the evidence is clear that the Advisors are all performing work that falls within the MSA bargaining unit. The Advisors do not meet the definition of academic staff as determined by the University's Board of Governors. It is unfair for employees to be doing the same work in different bargaining units, receiving different

pay and benefits. Moreover, there is no basis in law for the same work to be split between two bargaining units which are designed to be exclusive of each other.

34. MSA submits that the Board ought to exercise its jurisdiction under section 58.6 to review the designation of the Advisors (whatever their current title) who remain designated as academics in light of the facts and in light of the definition of academic determined by the University's Board of Governors.
35. MSA submits that the GMUFA has known about the overlap of the Advising positions since at least the MSA presentation in May 2016. MSA had no control over the consultation or lack thereof by the GMUFA and the University over the Advisors. MSA submits that consultation should not be a determining factor in this case.
36. MSA submits that organizational decisions such as those regarding the Advisors are not the kind of changes prohibited by the bridging and freeze provisions of the Code. Decisions about which bargaining unit particular employees and positions belong in are part of the routine labour relations of larger employers with multiple bargaining units and bargaining agents.
37. Ultimately, the Board has the exclusive jurisdiction to make determinations of the scope of the MSA certificate under PSERA and whether or not a person and position falls within the MSA bargaining unit, whether or not a person is an employee on whose behalf a collective agreement has been bargained or whether or not the person or their position should be designated as academic staff under the Code. The Board is not restricted by the freeze in addressing these questions.
38. Further, the result of the University's about face on this issue is that a number of members of the MSA bargaining unit have lost their jobs, been reassigned or have suffered position abolishment. MSA does not have all the members of its bargaining unit, that is all Advisors, recognized in that unit. Both of these results reduce the strength of the MSA bargaining unit while it is in collective bargaining. Further, MSA is undermined in the eyes of its members as being ineffective and powerless and instead that the GMUFA is able to obtain the result it wants at the expense of MSA and of its members. All of this amounts to unfair labour practices in violation of s. 45(1)(a) of PSERA.

39. The parties to this application are:

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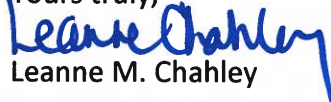
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A copy of this application has been provided to the parties by email. We look forward to your advice as to the next steps.

Yours truly,



Leanne M. Chahley

cc. Donna-Mae Winqvist / Harry Oosterhoff

Dr. Annette Trimbee

Karen Boros

Rafat Alam

Jasmine French