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

Dear Ms. Brown:

**RE: An application for determinations 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 against the Board of Governors of Grant MacEwan University (the “University”).

Briefly, MSA is making a determination application, seeking that the Board determine the placement in the MSA bargaining unit of those employees and positions who are, without justification, excluded from its bargaining unit by the University. The group of employees in question are currently in positions referred to as “other”, “out-of-scope”, “dependent contractors”, and “managerial” (the “non-union employees”). MSA is also making the same application for determination in regard to those employees who might no longer meet the new definition of “academic” as approved by the Board of Governors (the “no longer academic employees”) and thus should not be included in the bargaining unit of the Grant MacEwan University Faculty Association (“GMUFA”).

First, MSA is seeking an interim order from the Board that the University provide it with all the necessary information about the non-union and no longer academic employees and the

positions they occupy at the University. MSA has been trying to work with the University since 2007 and especially since 2015 on this issue of trying to determine who those employees are, what their positions are, and if an agreement could be reached placing them in the MSA bargaining unit. The University has failed to provide the necessary information to MSA, it has dragged this process out for years, and MSA feels it has been more than patient and collaborative. At this juncture, MSA submits it is more than past the time to seek the Board's assistance and intervention.

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

MSA is seeking the following relief:

- a. A determination pursuant to sections 3(2)(h) and (p) of PSERA that the non-union employees and the no longer academic employees employed by the University and who have been excluded by the University from the MSA bargaining unit fall within the MSA bargaining unit and are employed under the collective agreement between MSA and the University.
- b. If necessary, orders pursuant to section 58.6 of the Code, that the no longer academic employees should no longer be included in a designation as academic staff by the University either individually or by category and under sections 12(3)(i) and 12(3)(o) that the no longer employees should no longer be included in the GMUFA bargaining unit or be employed under its collective agreement with the University.
- c. An interim order that the University provide to MSA a detailed list of all the non-union employees and all employees who are no longer academic employees employed by the University, as well as their positions, their position descriptions, the appropriate organizational charts and other information about the work assigned to them sufficient for MSA to determine which positions to continue to pursue in this application for determination.
- d. Case management directions necessary to allow MSA to proceed in an orderly fashion with this determination application for all of the non-union employees and the no longer academic employees of the University who are not currently included in the MSA bargaining unit.
- e. A make whole order regarding union dues and any lost wages, benefits and/or pension for all employees who should have been in the MSA bargaining unit.
- f. Such other interim orders as are required to address these issues.
- g. Such further and other relief as may be appropriate.

In addition to sections 3(2)(h) and (p) of PSERA, and section 58.6 of the Code, MSA relies on the related provisions of both statutes regarding the bringing of this application and the right to seek interim relief and disclosure of information and documents.

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. 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”)
3. MSA gave notice to commence collective bargaining on September 27, 2019. Collective bargaining is ongoing.
4. The Grant MacEwan University Faculty Association (“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.
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 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.
7. On December 10, 2015, MSA met with the GMUFA to discuss jurisdictional determination at the University. There was a joint consultation between MSA and the University on August 26, 2015.
8. 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.

9. 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 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” employees at that time. The University did not provide the requested information.
10. 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.
11. As part of that process, MSA and the University began discussion the position of University Advisors, Faculty Advisors and Instructional Assistants. The first meeting on this issue was on April 27, 2016.
12. 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 all the non-union employees into the appropriate bargaining unit, whether it was the MSA unit or the GMUFA unit.
13. 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.
14. 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.
15. 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. 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.

16. 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.
17. 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" 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.
18. 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.
19. MSA is concurrently commencing a separate application and unfair labour practice regarding the Advisors and does not seek to include the Advisors in this application.
20. On March 5, 2020, the University's Board of Governors passed Criteria for Designation of Academic Staff (Motion # 09-03-05-2019/20). As a result, MSA submits that there is now a group of employees who might no longer be academic employees within this new criteria.
21. 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.
22. As set out in MSA's other application regarding the Advisors, much activity between the parties has occurred between November 4, 2019 and the date of this application regarding the Advisor positions. However, there has been no further discussion of Phase 2, 3, or 4 of the overall determination/jurisdiction project regarding the other non-union employees and the no longer academic employees since April 12, 2019.

23. MSA is also aware that the positions called assistant coaches and research assistants are somehow being paid through accounts payable and not as employees of either bargaining unit. MSA submits that these positions are also properly included in its bargaining unit.
24. MSA still does not have a list of the non-union and no longer academic employees and their positions at the University. This group includes positions that the University has referred to as “out of scope” (eg. Faculty Development Coordinators and Coaches); “other” (eg. research assistants and non-credit instructors); “management” (eg. Manager Governance); “dependent subcontractors” (eg. assistant coaches) or positions currently within the Faculty Association which might no longer meet the new definition of “academic” approved by the Board of Governors (eg. Learning Specialists, Professional Resource staff, lab instructors, lab supervisors and counsellors).
25. Instead, MSA worked with the University on the Advisor position over several months, only to have the University recant its position on resolving that issue at the end of June 2020.
26. MSA submits that since it represents a bargaining unit comprised of all non-academic staff and the GMUFA represents a bargaining unit of all academic staff, there should be no employees of the University who are employed outside of one or the other bargaining units. While true managerial staff, employees who are confidential for labour relations purposes and those few employees who fall within the section 12 PSERA exclusions are properly excluded, the bulk of the remaining non-union employees and no longer academic employees working for the University ought to be included in the MSA bargaining unit.
27. MSA submits that it has been more than patient and has attempted to work collaboratively with the University to resolve the designation of these employees. However, the result has not advanced the issue to conclusion in the 5 years that MSA has been actively pursuing it. Therefore, MSA seeks assistance from the Board to get the information it has repeatedly asked for and which it has not received to allow it to move forward to complete the determination process.
28. MSA submits that there is no basis to allow the University to continue to hold non-union and no longer academic employees out of the MSA bargaining unit.

The parties to this application are:

MacEwan Staff Association

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The Board of Governors of Grant MacEwan University

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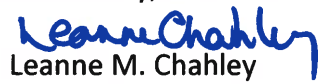
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A copy of this application has been provided to the parties by email. We look forward to your advice as to the next steps.

Yours truly,


Leanne M. Chahley

cc. Donna-Mae Winquist / Harry Oosterhoff

Dr. Annette Trimbee

Karen Boros

Rafat Alam

Jasmine French