

The Update



Special Issue February 16, 2016

IN THIS ISSUE

President's Report	2
1 st Vice-President's Report.....	4
2 nd Vice-President's Report	6
Council and CARC members.....	8

LETTERS TO THE EDITOR

The *Update* welcomes letters to the editor, upcoming event notices, or other submissions. I encourage you to write either in response to what you read in the newsletter or about other Faculty Association matters. Letters to the *Update* do not represent the opinions of the editor nor the OCFA Executive or Council. Please send letters as e-mail to the *Update* editor Amy Cohen at acohen@okanagan.bc.ca. The preferred format is MS-Word.

DELIVERY OF THE UPDATE

The *Update* is now distributed electronically as a PDF file by e-mail as well as being available on the OCFA webpage at: [http://www.okanagan.bc.ca/Campus and Community/employees/ocfa/update.html](http://www.okanagan.bc.ca/Campus_and_Community/employees/ocfa/update.html). Copies of the *Update* are also posted in local campus mailrooms.

MARK YOUR CALENDARS

SPECIAL GENERAL MEETING

March 4th, 6:30 pm

KLO Campus, Room TBA

***Purpose:** To discuss recent layoffs of OCFA members*

***Note:** No food or drinks will be served.*

ALL GENERAL MEETING

Kelowna Campus Cafeteria

Wednesday, April 27th, 5:30 pm.

COUNCIL AND EXEC MEETINGS

OCFA Executive meetings are generally held once every two weeks. OCFA Council meetings are generally held once per month. Please contact one of your OCFA representatives (see below for a list of Exec, Council, and CARC members).

President's Report

Tim Walters

As you recently heard from our Chief Steward via email, on January 25th the college issued notice that they intend to lay off two of our colleagues. Since we negotiated our current layoff language in 2001, this is unprecedented. This special issue of *The Update* is intended to give you some context for this situation, and to let you know what your union is doing and is planning to do about it, and how you can help.

We have met with the college twice since this notice was issued, including a formal grievance meeting (more on this in Rod's report below). At these meetings, the college presented us with their basic argument, which runs like this. Enrolments have been falling in the Modern Language department recently, and in French in particular, and they feel that they need to reduce the size of their workforce accordingly. They were clear that this move was not motivated by financial need, and that these TLUs would be redeployed elsewhere in the institution. Their remarkable interpretation of our layoff language is that our program reduction language does not apply here, as that is only triggered in the event of a state of financial exigency. Rather, they are arguing that in all situations other than those explicitly covered by our current layoff language, they have a management right to lay faculty off entirely as they see fit.

In addition to the obvious anguish this is immediately causing our French faculty, the ramifications of this attack on our collective, and our collective agreement, are difficult to

overstate: to be clear, the college is claiming it possesses the right to lay off any continuing faculty they deem necessary in all situations other than those of financial exigency. Notably, an ancillary bonus of this strategy is that, since the agreement is silent on these kinds of layoffs (because it is built entirely upon the assumption that they are prohibited), no process is articulated by which such layoffs can occur. Education Council has no role to play, nor does the union, nor does the Board of Governors, all of whom are very much involved in this process in our actual contractual language for obvious reasons. The college is claiming that this is simply a management right they have always possessed, and faculty who have taken comfort in their job security for the past decade and a half have been naive to do so: we never had any job security at all, as it turns out. We just thought we did.

Suffice it to say, this argument is dangerous nonsense from top to bottom. I won't go into too much detail here about the gaping holes and massive inconsistencies that underscore this position, or about the myriad ways in which it directly contradicts everything that has taken place at the bargaining table for the past fifteen years—our Chief Steward and Bargaining Chair begin to cover that ground below, and it's something we'll be discussing in more detail at our Special General Meeting on March 4th.

What I'd like to ask you to think about is what this decision by the college potentially means for our union, and for this institution. Let me

preface this by saying that when Rod and I met with Andrew Hay and HR last week to discuss this, we urged them to reconsider, and to rescind these notices, and I am still hopeful that at some point OC will come to its senses and do just that. This is a mad and cynical decision. We absolutely believe that this is not an arbitration that they can win, nor is it one that they should want to win even if they could. We made it very clear to them that this was not going to be like any other grievance we have ever dealt with, that this was an argument that would not just be fought by lawyers and arbitrators, but by all of our members together, actively and directly resisting this in various contexts until the college respects the agreement we have made with them about the conditions of our employment. We made it very clear that this has the potential to destroy absolutely the good collegial relationship that we have built up over the years at OC, and fundamentally reshape the internal dynamics of our institution in ways none of us want. We remain hopeful that the college will abandon this ruinous scheme before it lands in front of an arbitrator, and this remains a possible resolution.

Having said that, we have been placed in a position such that we must proceed as if this is not the case. The college has claimed that it is going to lay off two of our colleagues and make an ill-advised attack on the entire continuing faculty's job security, and we must respond accordingly. In addition to the excellent preliminary work undertaken by Rod and Bob (described below), here is what we've been doing. The OCFA Executive had an emergency meeting following our grievance meeting with the college last week, and agreed to the

following short term actions (in concert, obviously, with our ongoing legal preparations). I have called an emergency joint Council and CARC meeting to develop our strategic and tactical response to this action for Wednesday of this week. **I am calling a Special one-item, in camera General Meeting of the OCFA for Friday March 4th at 6:30pm (Kelowna location tba),** and would encourage every single one of you to plan to attend this meeting. At this session we will present a comprehensive plan of action that will provide opportunities for each of you to help us resist this attack, and give you all the opportunity to ask any questions you may have or contribute to our collective response. Between now and then, I will be speaking with the OC President, and raising this with the Board of Governors at their next meeting on February 23rd.

The coming weeks and months are a critical time for our union: this is a challenge to all of us far in excess of anything we have dealt with since the split. Two of our colleagues are facing unemployment, and all of us are facing the prospect of following them. It's imperative that we rise to meet this challenge appropriately, and together. That is precisely what we will do.

I hope to see each of you at the GM, but feel free to get in touch with myself or your Council/CARC representatives if you have any questions or feedback in the meantime.

In solidarity,
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1st Vice-President and Chief Steward's Report

Rod Watkins

On January 25, 2016, the OCFA was notified that the College was anticipating a workload reduction in French and that the end result may be the laying off of two OCFA members. Our position on this action is clear: it is an obvious violation of the collective agreement. These notices should never have been sent.

Since then, I have been very busy. On January 27, 2016, Tim and I met with college to discuss why the notice had been sent and what process the college intended to follow. It was primarily a meeting for us to gather information from the college to determine a course of action. And that we did. While at the meeting, we tentatively scheduled a JCAA meeting for February 9 to discuss pre-lay-off canvassing—the process used to prevent the layoff through retirements or retraining and so on. That same day, the two affected members were notified by college of the workload reduction.

On February 1, 2016, I filed a step 2 policy grievance: FAC16/01. The letter asserts that the college violated articles 1.2, 4, 33 and 34 and other applicable articles. As well, at that time I informed the college that since the entire layoff process was a violation of the CA, we would not be participating in the pre-layoff canvassing meeting of the JCAA on February 9. The college responded that the meeting would proceed and, laughably, that it was still a “JCAA” meeting. I replied by letter that we would not be attending, it was not a JCAA meeting and objected to the meeting taking place.

The meeting, now no longer a JCAA meeting since we were not present, proceeded nonetheless. Upon confirmation that the meeting took place, we moved the grievance to step 3. The college’s insistence on meeting to

discuss the pre-layoff canvas before we even met to discuss the grievance was taken by us as equivalent to denying the grievance. The same meeting resulted in layoff canvas notices being sent to three members of the union. So on February 9, I advanced the grievance to step 3. In addition, on February 10, we amended the grievance to include that we will be seeking damages for the members receiving layoff notices.

The college responded that the grievance was still at step 2 and that we would have the step 2 meeting on February 11. Rather than get bogged down in minutiae, we met with the college and agreed to settle the issue of the step we are at another time. We met for about 45 minutes on February 11. We stated our position that the college only has a right to lay-off employees as defined in articles 33 and 34—that is, only when a program redundancy or reduction occurs (33) or a financial exigency has been declared (34). The college has argued that the layoffs are not the result of a program reduction or redundancy nor is it a financial exigency. When asked what gives them the right to lay faculty off otherwise than through 33 and 34, the college argued that it is a management right (see article 4). It simply is not and the college offered no argument other than the bald assertion that they have this authority to justify their claim.

As all this was occurring, I was researching our layoff language: its history and meaning. I also began studying the recent layoffs at other institutions. Our Negotiations Chair Robert Groves developed a report on the history and purpose of the layoff language that has already been very useful. I also have been in touch with

Peter Murray, John Pugsley, Richard Christie and soon Jim Johnson—all members of the Executive and/or the Bargaining Committee the year we negotiated our current layoff language. I have also been in daily contact with our FPSE representative Zoe Towle. She has been extremely helpful in guiding us through a process we have been lucky enough not to have dealt with since before 2001. Thanks to Zoe!

With Zoe's help, we have also started producing a list of arbitrators we would agree to hear the grievance. We have already approached the college's counsel Colin Gibson about selecting an arbitrator.

At this point (February 14), we are awaiting a response from the college after our meeting on

the 11th. I do not expect any answer other than that the grievance has been denied. As a result, I am proceeding as if we will be arbitrating this grievance.

As you all know, we will be holding a special Council meeting to discuss strategy and tactics followed on March 4th by a Special General Meeting at which I will report on the newest developments.

In solidarity,

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New Collective Agreements and Employee Handbooks Now Available!!

The 2014-2019 Collective Agreement is now available on the OCFA's website:

[http://www.okanagan.bc.ca/Assets/Departments+\(Administration\)/Faculty+Association/2014-19+OCFA+Collective+Agreement.pdf?method=1](http://www.okanagan.bc.ca/Assets/Departments+(Administration)/Faculty+Association/2014-19+OCFA+Collective+Agreement.pdf?method=1)

Contact one of your executive or council members if you would like hard copies of the CA.

2nd Vice-President & Bargaining Chair's Report

Robert Groves

Memorandum re layoffs, February 2016

As members will be aware, the College has initiated layoff proceedings for two of our continuing members.

Over the reading break, Peter Murray and I searched our bargaining records in our archives at the Vernon campus. We wanted to discern what our recent negotiations history might reveal regarding the language in Articles 33 and 34 of our local collective agreement concerning workforce reductions. Below I present some of my preliminary observations.

The collective agreement negotiated by OUC and the OUCFA for the period 1998-2001 contained *Article 20 – Change in Employment Status*. That Article incorporated discussions relating to retirements, resignations, and reductions in the number of various categories of employees, including those on continuing appointment.

Article 20.03 dealt specifically with reductions in the number of continuing employees. My reading of this Article is that it largely preserved an unfettered right in the College to initiate layoffs.

Article 20 also made reference to the then *Articles 6.2-6.4* of the common agreement to which the parties were also signatories. Apart from a general commitment on the part of the College to “*make every reasonable attempt to minimize the impact of funding shortfalls and reductions on the work force*”, the common agreement provisions also do not appear to

have restricted the right of the College to lay off employees.

The collective agreement negotiated for 2001-2004 resulted in a significant change in the language relating to layoffs. Gone was the language in the previous *Article 20* that affirmed the expansive employer right to lay off. The new language was contained in *Article 36 – Program Redundancy and Program Reduction*, and *Article 37 – Financial Exigency*. Apart from some minor changes necessitated by changes in job classifications which have occurred in the interim, the new language in the 2001-2004 agreement appears to be virtually the same as the wording in our current collective agreement relating to these matters.

From the perspective of the Association (and perhaps, too, the principals of OUC at the time) the 2001-2004 language was intended to place our members on the same footing, as regards job security, as was enjoyed at other universities across Canada.

The hard copy of the Association's bargaining issues document for the 2001 round survives, and is of significant interest. It says this regarding layoffs:

The Association proposes to modify Article 20.03 to ensure that layoffs only occur in cases of financial exigency or program redundancy.

Comment: The Association is seeking “industry standard” language that would prevent unnecessary layoff notices being served in

response to short-lived reorganizations or budgetary scares. In the industry standard language tenured faculty cannot be laid off unless there is a genuine financial exigency or a program is being eliminated. Downsizing of departments in response to a fall in enrollment or in response to a shift in resources to other uses would occur through attrition, not layoff.

A plausible inference to be drawn from this bargaining history is that the new 2001-2004 language, which appears in substance to have been carried forward to date, was intended to replace a nearly unfettered right in the College to lay off with a formulation that would limit layoffs to situations where the College could demonstrate financial exigency or the desire to eliminate or reduce a program.

One might also make the observation that if the current position of the College is to be accepted, it means that the Association must have been convinced, in 2001, to agree to provisions relating to job security which were the exact opposite of what it proposed during bargaining. That is, instead of a regime in which the College could *only* lay off in the case of financial exigency or program redundancy (and only then with great difficulty), the Association agreed to an entirely unrestricted right to lay off *except* where a financial exigency or a program redundancy presented itself. To put it charitably, this seems absurd.

An indication of the College's position regarding the effect of the job security language in the collective agreement following the 2001 negotiations appears in its proposals

for the 2010 round of bargaining. Essentially, the College proposed that the 2001 language be almost entirely replaced with wording that once again gave the College a nearly unrestricted right to lay off employees. The comments accompanying the College proposal include the following:

The Collective Agreement addresses how employees enter the bargaining unit; likewise, the Collective Agreement needs to meaningfully address how a workforce reduction is accomplished.

...

Provides for the orderly reduction in the workforce.

If it is the position of the College that the collective agreement language which currently exists preserves its unfettered management right to reduce its workforce absent the circumstances that would prevail if its narrow interpretation of program redundancy, program reduction, or financial exigency were to be confirmed, one wonders why the College would have requested that the current language needs to be replaced in order to provide for an "orderly reduction in the workforce."

Respectfully submitted.

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Members of OCFA Council and CARC

2015-2016

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