

MEMORANDUM OF UNDERSTANDING
ARTICLE 1.02.3 INTERPRETATION AND APPLICATION

WHEREAS on November 20, 2020, ULFA initiated a grievance (“Grievance”) on the Board’s interpretation and practice related to Article 1.02.3 of the then current 2018-2020 University of Lethbridge Academic Staff Collective Agreement (“ASCA”). This article remains in the 2020-2024 ASCA as Article 1.02.3;

AND WHEREAS the Parties have entered into this Memorandum of Understanding to clarify the interpretation and application of Article 1.02.3;

AND WHEREAS the Parties both desire to abide by the provisions of Article 1 of the ASCA and resolve disagreements about its interpretation and application in an expeditious and mutually agreed upon manner;

NOW THEREFORE in settlement of the Article 1.02.3 dispute between ULFA and the Board, the Parties agree as follows:

- 1) Article 1.02.3 produces a stay of an ongoing Collective Agreement procedure in progress in the Academic Staff Collective Agreement (ASCA) when Article 9 is invoked by either the Board or the Association regarding that procedure in progress subject to the following:
 - a) Stays stop Collective Agreement procedures in progress. Procedures in progress stayed in this manner have any relevant timelines halted on the day the stay is claimed.
 - b) Stays do not apply to historical matters that do not involve Collective Agreement procedures still in progress.
 - c) A stay is no longer in effect once a grievance is withdrawn, settled, or decided via arbitration. Any timelines associated with a procedure in progress stayed in this manner resume the day after the grievance is withdrawn, settled, or decided via arbitration.
- 2) The Parties agree that going forward it will be incumbent on the Party claiming that a stay is in effect under Article 1.02.3 to state that fact on their Article 9.03.4 or Article 9.03.5 filing. This reporting procedure is set out in Section 5 below.
- 3) The Parties agree to a new procedure regarding stays claimed under Article 1.02.3 to allow either Party to challenge the claim that a stay is in effect. This procedure is set out in Section 6 below.
- 4) The Parties may mutually agree to waive a stay or alter the timelines below by mutual consent.

Reporting Procedure

- 5) When filing an informal grievance under Article 9.03.4 or a formal grievance under Article 9.03.5, the Board or the Association may claim that a Collective Agreement procedure in progress is stayed by Article 1.02.3. The party claiming the stay must identify what the Collective Agreement procedure in progress is, how this application qualifies under Article 1.02.3 and what actions are being applied to be stayed. The parties have an obligation to act in good faith when claiming a stay pursuant to Article 1.02.3.
 - a) Upon either the Board or the Association claiming that a stay is in effect, the Parties will hold an informal meeting to discuss the matter in regards to the stay application within five (5) Working Days. This meeting may happen concurrently with or separately from a meeting held under Article 9.03.4 or Article 9.03.5.
 - b) If a meeting is not held and the time limit for such meeting has not been extended by mutual agreement, then the party responsible for causing the delay will lose their opportunity to participate in that step and the matter shall move forward to the next step in the process.
 - c) Should the Parties agree to the details of the claimed stay at the informal meeting, the stay will be in place until one of the conditions in Section 1(c) above is met.
 - d) Should the Parties disagree on the details or practicability of the claimed stay at the informal meeting, they will make use of the Dispute Resolution Procedure set out in Section 6 below.

Dispute Resolution Procedure

- 6) Either Party may challenge an assertion that a stay under Article 1.02.3 is in effect.
 - a) Such a challenge shall be on the basis of whether this was a Collective Agreement procedure in progress or that such a stay would cause either physical harm or unreasonable economic harm to the Board or Association, or otherwise violates Article 1.02.2.
 - b) This challenge must be provided with a rationale within five (5) Working Days of the informal meeting held under Section 5(a) above. Such rationale will be brief and shall be limited to no more than five pages.
 - c) Upon receiving the rationale from the Party challenging the stay, the Party invoking the stay shall have five (5) Working Days to either withdraw the claimed stay or respond with their own rationale for why the stay should remain in effect. Such response rationale shall be brief and limited to no more than five pages.
 - d) Within five (5) Working Days of receiving the rationale from the Party claiming the stay under Article Section 6(c) above, the Party challenging the stay shall either withdraw their challenge to the stay or refer the matter to an umpire.
 - i) An umpire under Section 6(d) above shall have the power to determine the issue on an expedited basis.

- ii) The parties will agree to an Umpire List of acceptable umpires. The Umpire List will normally include at least five acceptable umpires. Before an umpire is added to the list, the Parties will contact that proposed umpire and ensure that they are willing to work within the time limits and the process set out in this agreement. The Parties may add or delete umpires from the Umpire List by mutual agreement at any time and will jointly review the Umpire List at least once every two years.
- iii) If the Parties mutually agree to do so, they can provide an umpire with a mutually agreed upon set of background facts and materials at any time prior to the umpire hearing the matter. The Parties will make their best efforts to provide the umpire with an agreed statement of facts to assist in expediting the matter to resolution.
- iv) In the event that an umpire is required, the Party referring the matter to an umpire, together with the other Party, will contact the umpire next listed on the Umpire List. If that umpire declines the appointment or is deemed to decline the appointment, the Parties will contact the next listed umpire.
- v) An umpire will accept an appointment within (2) two Working Days of receipt of the appointment request or will be deemed to have declined the appointment.
- vi) The umpire will receive the written submissions composed pursuant to Sections 6(b) and 6(c) above from both Parties immediately upon their acceptance of the appointment.
- vii) The umpire will make a decision on whether the stay is to be enforced or not, utilizing the criteria set forth in Section 6(a) above.
- viii) The umpire retains the right to call upon the Parties to supply further particulars on request. The umpire may request further particulars in writing or verbally as needed. In doing so the umpire shall keep in mind the mutual desire for a swift decision and the time limit for rendering their decision. The Parties will comply with such requests as soon as possible but in any event no longer than three (3) Working Days from receiving such a request.
- ix) The umpire will issue a decision to the Parties within five Working Days of accepting the appointment. The decision will provide a rationale where possible.
- x) The Parties may mutually agree to extend the timelines in this process but generally agree to not request extensions except in exceptional circumstances.
- xi) The Parties agree that the decision of an umpire is final and binding and the Parties agree that they will not seek judicial review or any other kind of appeal or challenge of any umpire decision rendered in this process.
- xii) Decisions by an umpire are made on a without precedent basis.

- xiii) Each Party shall bear 50% of the cost for the Umpire and be responsible for all of their own costs associated with the umpire hearing.
- 7) As a result of this Memorandum of Understanding ULFA withdraws the Grievance initiated on November 10, 2020.
- 8) The Parties each reserve the right to grieve the interpretation or misimplementation of this Memorandum of Understanding via the grievance procedure contained in Article 9 of the 2020-2024 ASCA.

DATED AT Lethbridge, Alberta on the dates as set out below.



Board of Governors Representative

October 23, 2023

Date



University of Lethbridge Faculty Association
Representative

October 19, 2023

Date