

December 11, 2007

To: OCADFA Membership

From: Bill Leeming (Negotiations Chair, OCADFA)

Re: OCAD/OCADFA Arbitration Award (Background)

On November 30, 2005 the OCADFA Negotiations Chair served Notice to Bargain to Sara Diamond, President of OCAD. Bargaining commenced after a preliminary roundtable meeting on February 8, 2007. A tentative agreement was reached on July 31, and distributed in the form of an OCAD/OCADFA Memorandum of Settlement (MOS) to the Membership of OCADFA on August 23. The proposed MOS was presented to the Members on August 28 for ratification. The MOS was rejected by a two-thirds majority vote. A Members' Workshop to identify reasons for the rejection of the MOS was called by the OCADFA Board of Directors on September 21. Two OCADFA Negotiations Committee representatives, OCADFA Legal Counsel and a CAUT representative met with two University representatives and OCAD Legal Counsel on October 2 to discuss a list of issues ("OCADFA's Proposed Changes to the Rejected Renewal of the MOA"). On November 2, OCAD and OCADFA issued an "Open Letter to OCADFA Members" that (a) attested to a willingness to return to the bargaining table, and (b) initiated the dispute resolution procedure (mediation and/or arbitration) set out under Article 12 of the Memorandum of Agreement with a deadline for finishing negotiations set for December 1. On November 18, the Board of Directors of OCADFA adopted a proposal to hold an open forum to review all negotiations proposals and the mandate of the Negotiations Committee. On November 20, the Board approved a motion to reconstitute the Negotiations Committee. On November 22, a Special Members Meeting of OCADFA was held at and the Negotiations Committee was reconstituted with a revised mandate.

Restarting Negotiations

- As per an "Open Letter" (November 5, 2007) to the members, entitled *Restarting Negotiations*, from Sarah McKinnon (OCAD Chair of Negotiations) and Geoffrey Shea (then OCADFA Co-Chair of Negotiations), Bill Leeming was contacted on November 16 by Cathy Lace (OCADFA Legal Counsel) regarding his availability to appear before a Mediator/Arbitrator on December 6, 2007.
- On November 20 (2007), the Board of Directors approved a recommendation from the President of OCADFA, Sandra Altwerger, and Negotiations Chair, Bill Leeming, to hold an urgent meeting for the General Membership of the Ontario College of Art and Design Faculty Association to hear a report on Negotiations from Bill Leeming.

- At the November 22, 2007 Special Members Meeting of OCADFA, the Negotiations Committee was reconstituted and includes the following Members:

Sandra Altwerger (President, ex officio)	Faculty of Art – Faculty
Cathy Berry	CSD - Academic Counsellor
Frederick Burbach	Faculty of Liberal Studies/Design - Faculty
Matt Dunn	IT Services – Technician
Tanya d’ Anger	Liberal Studies -Sessional Faculty
Timothy DeVries	Liberal Studies – Teaching Assistant
Bill Leeming (Negotiations Chair)	Faculty of Liberal Studies – Faculty
Peter Mah	Faculty of Art - Faculty
Nancy Paterson	Faculty of Art - Continuing
Stuart Reid	Faculty of Design - Faculty ¹
David Scopick	Faculty of Art - Faculty
Ron Wood	Faculty of Art – Continuing

- The Mandate set at the November 22nd Special Meeting directed the Committee to revisit the following five issues as outlined in the November 22nd Meeting Memorandum from the Negotiations Chair (Bill Leeming): Length of Agreement (item 37); Workload Reduction (Faculty workload - item 24); Workload Recognition (Academic Staff appointments, item 30); Job Security (Sessional appointments, item 10; Continuing appointments, item 12); Faculty and Academic Staff Compensation (items 14, 15, 16, 31).
- The following dates were noted at the November 22nd Special Meeting as having been set for returning to the Bargaining Table with the University: Monday, November 26, beginning at 5 pm; Wednesday, November 28, 10am - 1 pm; Saturday, December 1 (TBD).

Negotiations

- Re November 26 negotiations: (Present for the employer – Sarah McKinnon, Nicky Davis; Present for the Association – Bill Leeming, Sandra Altwerger, David Scopick.) OCADFA distributed a worksheet prepared by Bill Leeming analyzing the issues raised in bargaining to date and the main issues for faculty leading to the refusal to ratify. OCADFA identified key problems associated with (1) sessional and continuing appointments pertaining to job security; (2) faculty workload, (3) academic staff workload recognition, and (4) length of contract. OCADFA and OCAD agreed to return to the table and look for creative non-monetary solutions to differences.
- Re November 28 negotiations: (Present for the employer – Sarah McKinnon, Nicky Davis, Peter Fraser and Margot Blight [legal counsel]; Present for the Association - Bill Leeming, Ron Wood, Frederick Burbach, Sandra Altwerger,

¹ Stuart Reid subsequently resigned (November 24, 2007) from the Negotiations Committee.

Cathy Lace [legal counsel].) OCADFA maintained its position that it wanted the employer to come back to the table and bargain a solution rather than go to mediation/arbitration. According to Margot Blight, there was a willingness on the part of the University to work with OCADFA, but there were major “reticences” to throwing any significant money on the table. She said the University had spent their mandate the last time, and it would be unwise to put more on the table in the circumstances, even if they were able to. They were willing to look at moving money around within the financial parameters of the previous deal. They were, however, reluctant to send a deal back to ratification. Bill Leeming explained that the mandate from the Members was to take back a proposal for ratification, and that he had to consult with the larger Negotiations Committee before any proposal would be approved to take back to the members. The University subsequently proposed a model for redistributing monies stipulating that any discussions surrounding this model were without prejudice, and at this point, would only be discussed with the OCADFA Negotiations Committee. The parties agreed to meet on Saturday, December 1. OCADFA would be come at 9:30 and present the November 28 discussions to the larger committee. The University’s Negotiations Committee agreed to be at the Bargaining Table from 11 am – 2 pm.

- Re December 1 negotiations: (Present for the employer – Sarah McKinnon, Nicky Davis, Peter Fraser and Margot Blight [legal counsel]; Present for the Association - Bill Leeming, Nancy Paterson, Frederick Burbach, Matt Dunn, Peter Mah, David Scopick, Sandra Altwerger, Cathy Lace [legal counsel].) Two models for redistributing monies were discussed on a without prejudice basis.² At 2:10 in the afternoon, the University’s Negotiations Committee left the bargaining table and exercised their right to request “Negotiation Mediation and Arbitration,” as set out in Article 12.2, citing a preference for interest arbitration “for issues on which the parties have not come to agreement.” OCAD and OCADFA agreed to prepare a joint mediation/arbitration brief.

Mediations/Arbitration

- Between December 2 and December 6, Bill Leeming contacted and worked with the following parties to collect comparator data and write up positions for the OCADFA Mediation/Arbitration Brief: Cathy Lace (OCADFA legal counsel), Emma Philips (Sack, Goldblatt, Mitchell), Donna Gray (OCUFA), Peter Simpson (CAUT), Jane Milton (FUNSCAD), Walter May (ACADFA), and Ted Becher (Emily Carr Faculty Association).
- The Brief was submitted to OCAD legal counsel and William Kaplan (Mediator/Arbitrator) the morning of December 6. The Brief cited the following

² The two models were subsequently incorporated into the University’s Mediation/Arbitration Brief and are, consequently, sealed from public view under the orders of William Kaplan, Mediator/Arbitrator.

issues as being in dispute and as factors that OCADFA believed led to the rejection of the August 2007 Memorandum of Settlement: (1) the fact that the term of the agreement was for four years; (2) the failure of the settlement to provide for workload reduction with respect to teaching load, service to the University and research for permanent faculty, both Studio and Liberal Studies, to a level that OCADFA perceives to be comparable to the norm in the Ontario university sector, and necessary in order to achieve the goals of OCAD with respect to teaching load, service to the University and research; (3) the failure of the settlement to provide for opportunities for job security for Sessional and Continuing faculty; (4) the failure of the settlement to provide for workload recognition of many Academic Staff whose jobs do not fit within the parameters of current appointment definitions; (5) the failure of the settlement to provide for achievement of the foregoing objectives without causing salaries at OCAD to fall further behind salaries in the Ontario university sector, in which the typical “Across the Board” (ATB) increase is in the range of 3-3.5% during the relevant period.

- The entire OCADFA Negotiations Committee (with regrets from Nancy Paterson and Timothy DeVries) appeared before William Kaplan on December 6 to argue its case for mediation/arbitration (i.e., Bill Leeming, Ron Wood, Frederick Burbach, Matt Dunn, Tanya d’Anger, Cathy Barry, Peter Mah, David Scopick, Sandra Altwerger, Cathy Lace [legal counsel]).³
- The parties were unsuccessful in achieving a settlement at mediation, and, consequently, mediation proceeded to an Arbitration hearing. Mr. Kaplan, in his capacity as arbitrator, notified the two parties that an award was coming. The award was handed down on Tuesday, December 11.

³ The Mediator/Arbitrator (William Kaplan) instructed all parties that all specific conversations and proposals made before the Mediator/Arbitrator are privileged and all records and materials such as the mediation/arbitration briefs submitted by the Negotiations Committees are sealed. In this regard it is important to note that, by having agreed to have a “negotiations mediation and arbitration process” clause in our collective agreement (i.e., MOA Article 12), we are legally bound to the principals and conditions of the mediation/arbitration process in this province. As per MOA Article 12.2.6, “The Negotiations Arbitrator has the duties and powers of an interest arbitrator or board of arbitration under section 40 of the Labour Relations Act, 1995 and the powers of an arbitrator under the Arbitration Act.”