



Policy Grievance

Grievor's Name: Windsor University Faculty Association (WUFA)	FILE: GR# 0900
Collective Agreements Referenced: 1973 - Present	Type of Grievance Policy

1. Nature of Dispute

This is an ongoing grievance relating to improperly held funds in the hands of the University that should otherwise have not been deducted or, having been improperly deducted and held by the University, should have been and or should be paid out to the benefit of past and present members of the Association, relating to the University's participation in the Federal EI Premium Reduction Program ("Program").

The Association claims that the University, in its capacity as the employer, by withholding and keeping the said funds was and is in possession of funds in the nature of trust funds, or otherwise as damages, owing to the Association's members, (past and present) for failure to comply with the provisions of the Program and for keeping funds of the affected members to which it was/is not otherwise entitled.

The University continues to unlawfully hold these funds as an actual, deemed or constructive trustee in law or is otherwise in breach of its ongoing obligations to comply with the Program since the inception of the Program by the University or the applicable Collective Agreement(s). This obligation is continuing to date, until the University accounts for and repays the funds, either as trust funds or as damages, together with compound interest, to the entitled employees or their representative(s).

The University did not inform the Association of its participation in the Program until 2008. Thereafter, the Association raised the issue continuously, asking for an accounting and the return of the funds to those entitled. No such accounting or return of funds has occurred.

The Association pursued this matter through the Court system (the complete history of which the University is fully aware), culminating in a decision of the Court of

Appeal dated June 13, 2016. The Court of Appeal's finding ultimately confirmed the University's position that this matter comes within the jurisdiction of the Collective Agreement and an Arbitrator under the Labour Relations Act, 1995, as well as the jurisprudence in support of this. The Association has chosen to not pursue further court review and, accordingly, accepts the University's position and the Court's direction.

The Association claims the appropriate declaratory relief, all entitlements to all members, past and present and/or all other damages in kind or reflective of the breaches of trust or otherwise arising out of the University's acts of commission and/or omission related to the Program, from its inception forward and ongoing.

2. Section (s) of Agreement Violated

Article 3/Recognition clause and Article 52 (Salary clause) and/or their predecessor clauses and all related clauses in all applicable Collective Agreements covering the period 1973 forward; the applicable legislation and regulations governing the Program; the arbitrator's jurisdiction pursuant to the Labour Relations Act, 1995 and the jurisprudence involving this matter (as articulated by the University and found by the Court of Appeal).

3. Remedy Sought

- a. A declaration that the University deducted/held funds from Association members past and present, contrary to its obligations under the applicable Collective Agreement(s) and has kept said funds for its own use or otherwise without authority or agreement and has failed to account for them and/or repay those funds to the affected members since approximately 1973 to the present;
- b. A declaration that the University of Windsor is an actual, deemed or constructive trustee and/or fiduciary in law with respect to all applicable funds deducted improperly from Association members past and present and kept by the University under the provisions of the Program or otherwise, from the date the University first implemented the Program to the present;
- c. A declaration that the University of Windsor owed and continues to owe a fiduciary duty to all affected members of the Association, including the duty to account and the duty to return all improperly deducted/held funds owing to the affected members;
- d. A declaration that the University has failed to meet the requirements of the Program (or such applicable predecessor programs) from the time it was registered to the present;
- e. An interim and/or permanent mandatory Order requiring the University to immediately preserve all records in its possession related to this claim and to produce same for inspection by the Association and/or its designated legal and/or

- accounting representatives for the purposes of ascertaining the full extent of the funds received, their use and their repayment;
- f. An Order that the University provide a full accounting of all funds it deducted/held and/or saved from affected members of the Association as a result of it being a registered participant in the Program (or its predecessors) and, upon such accounting, the appropriate order tracing the use of such monies for the purposes of ascertaining the losses and remedies of the affected members/ the Association;
 - g. A declaration that the University is in breach of its obligations as trustee, fiduciary and/or otherwise under the Program or otherwise, for any one or more of the following reasons:
 - i. It failed to provide to all affected employees who are/were members of the Association, a cash rebate in an amount equivalent to 5/12 of the reduction savings obtained through the Program (or its predecessor programs);
 - ii. It at no time sought or entered into the requisite written mutual agreement between it and the University of Windsor Faculty Association for the use of the premium reduction savings realized through the Program (or its predecessor programs);
 - iii. It failed to provide new employee benefits or upgrading of existing benefits as a direct result of the premium reductions savings realized through the Program (or its predecessor programs);
 - iv. It took and used all of the said savings, which were/are trust monies, for its own benefit without authority to do so and without agreement of the Association and contrary to the provision/conditions of the Program (or its predecessor programs) and/or contrary to the provisions of the Collective Agreement and has continued to use these funds since approximately 1973 to the present for its own purposes or gain or other;
 - v. Such further and other breaches as may be demonstrated and will be particularized during the course of this proceeding;
 - h. An Order, subject to the accounting referred to above, that the University of Windsor return to all affected members of the University of Windsor Faculty Association in such manner as the Association submits and the Arbitrator determines, all monies improperly taken and/or used, together with compounded interest to the date of payment based upon the applicable and appropriate interest rates pursuant to the prime lending rates in effect from time to time in each applicable year;

- i. In addition or in the alternative, an Order for damages for breach of trust and breach of fiduciary duty in an amount to be determined through the course of this arbitration and subject to the full accounting claimed herein;
- j. Such further and other remedies, including the appropriate declaratory relief and mandatory orders to make the Association and the affected members whole for all losses suffered, and/or as deemed appropriate by the arbitrator in the circumstances of this case and under the authority of Article 39.15(b) or such equivalent of the applicable Collective Agreements, up to and including the present Collective Agreement.

Progress

Step 1 n/a

Step 2 n/a

Step 3 Faculty Association delivered the policy grievance to:
Director, Academic Labour Relations on September 13, 2016



Signature of VP Grievance

September 13, 2016

Date

c.c. Faculty Association