



Abey Arnaout  
Labour Relations Specialist  
Athabasca University  
August 17<sup>th</sup>, 2020

Dear Abey,

Thank you for your email of July 24, 2020 that included a revised proposed designation policy and procedure. This letter constitutes AUFA's written response.

In summary:

- the exchanges over the past six months do not amount to meaningful consultation; and,
- AUFA is not in agreement with the revised policy and procedure because:
  - the proposed policy and procedure are not in keeping with AU's duty to consult and AUFA's role in the designation process;
  - AUFA has serious concerns about the definition of academic staff and the exceptions in the proposed policy and procedure.
  - The above points are reviewed further below.

## Meaningful Consultation About the Policy and Procedure

AUFA continues to have a number of concerns about the consultation process. These concerns include, among other things:

- AU's failure to meaningfully canvas the ongoing appropriateness of the 2003 designation policy and instead insist that the policy is unworkable simply because the parties have had disagreements about its application;
- AU's failure to explain how its proposed designation policy and procedure will apply to AUFA's existing members or on a go forward basis;
- AU's refusal to confirm whether the proposed designation policy and procedure removes AUFA members who are professionals, academic coordinators, deans, and managers from the AUFA bargaining unit and, if so, the basis for this; and,
- AU's failure to substantively respond to AUFA's first written submission of June 29, 2020.

As expressed to AU previously, the 2003 designation policy is consistent with the academic mission of AU and makes sense. While AU has informed AUFA that in its view the 2003 policy is unworkable, AU has failed to explore with AUFA its concerns with the 2003 policy and how the proposed policy and procedure address those concerns.

AUFA notes that in order to engage in meaningful dialogue, AUFA needs to understand AU's positions and the reasons for them. Yet, to date, AU has not even explained to AUFA how the proposed policy and procedure will affect its current members and how it will apply going forward.

AUFA notes that while this is the second occasion that AU has requested submissions from AUFA, AU is yet to substantively respond to AUFA's earlier comments.

Despite the above, AUFA remains interested in meaningful consultation and provides these further comments for AU's consideration while reserving its right to object to the policy and procedure should the parties be unable to reach an agreement.

## AU's Duty to Consult and AUFA's Role in the Designation Process

At various points, AUFA notes the proposed policy and procedure suggest AU is solely responsible for designation decisions. This fails to account for AUFA's and the Labour Relations Board's role in the designation process.

As you know, designation decisions are contingent on consultation with AUFA and subject to section 58.6 of the *Labour Relations Code* (see: *Post-secondary Learning Act*, ss 5, 60). Because of this, and because the *Post-secondary Learning Act* requires consultation in advance of every designation decision, AUFA would expect its role would be apparent in the proposed policy and procedure.

Further, while AUFA notes the proposed policy and procedure indicates AUFA may bring forward a concern about designation, this process does not appear to accord with meaningful consultation. This is because consultation is about mutual sharing of information and discussion. AU's imposing a requirement that AUFA present a "business case" appears arbitrary and inconsistent with the mutual dialogue required.

In addition, AUFA notes the proposed policy and procedure appears to ignore the consultation requirement for those cases that fall within the policy. In other words, the proposed policy and procedure appear to dictate the outcome making consultation meaningless. This is inconsistent with the *Post-secondary Learning Act*, which makes every designation decision contingent on consultation.

## The Arbitrary Definition of "Academic Staff"

AUFA has serious concerns with AU's definition of "academic staff" in its proposed policy and procedure.

Although "academic staff" is not defined in the *Post-secondary Learning Act* and is a flexible concept that could include a broad range of employees, AU has proposed an exceedingly narrow definition of academic staff that focuses on the more traditional pillars of research and scholarship, service, and teaching and learning. In addition to satisfying at least two of these three academic criteria, to qualify as academic staff, the proposed policy and procedure require an individual to hold a terminal academic credential or advanced degree in combination with a professional designation or credential. This approach to academic staff is overly narrow and inconsistent with the parties' historical approach as well as the unique AU context.

“Academic staff” should be defined at AU in a manner that aligns with AU’s unique academic mission and history. Because AU offers online and distance education and because technology is central to AU’s academic mission, the parties have historically recognized professional employees are properly included within the academic bargaining unit. Yet, the proposed policy and procedure appear to ignore this context and the parties’ historical approach and instead apply an arbitrary definition of academic staff that is ill-suited to AU’s unique needs.

While AUFA acknowledges the proposed policy and procedure indicates historical bargaining *may* be considered, it appears this factor is only considered as AU “deems appropriate” and does not appear to override the other qualifying language. Because of this, AUFA is concerned that the proposed policy and procedure will arbitrarily exclude numerous individuals from AUFA’s academic staff bargaining unit even though they are properly (and historically) recognized as academic staff. This arbitrarily fractures AUFA’s existing bargaining unit and adversely impacts employees’ right to collectively bargain through AUFA.

## Overbroad Exemptions

In addition to narrowly defining academic staff, the proposed policy and procedure includes broad exceptions to the academic staff bargaining unit.

Among other things, AUFA is concerned that the proposed policy and procedure takes an overbroad approach to the University Executive and managerial exclusions. While the Executive, properly conceived, is a small group, the proposed policy and procedure includes a broad range of individuals in the Executive and indicates the Executive group could expand further. Likewise, the proposed policy and procedure takes a broad approach to managerial exceptions.

Because post-secondary governance is markedly different from hierarchical managerial authority in other businesses, it is recognized that managerial positions are not automatically excepted from the academic staff unit and should only be excluded if there is the potential for significant conflict between an employee’s managerial obligations and the bargaining unit. Indeed, section 58.6(2)(c) of the *Labour Relations Code* expressly recognizes this. Yet, it is not apparent that the proposed policy properly applies this approach and the proposed policy instead appears to broadly exclude individuals with any managerial role. AUFA is particularly concerned with the exclusion of deans and “managers” (which is vague and undefined in the proposed policy). These employees may lack the type of managerial authority required to necessitate their exclusion from the academic staff unit.

AUFA is also concerned by AU’s inclusion of exceptions set out in the *Public Service Employee Relations Act (PSERA)* in the proposed policy and procedure. These exclusions only apply to employer-employee relations that are subject to *PSERA*. AU is not a *PSERA* employer with regard to its academic staff. Because of this, including *PSERA* exclusions in the proposed policy and procedure arbitrarily and unilaterally broadens the exclusions from the academic staff bargaining unit. As you know, academic staff are not excluded from the bargaining unit because of their professional credentials and it is entirely inappropriate to import *PSERA* exclusions into the designation policy (see: s.58.1(4) of the *Labour Relations Code*). Indeed, the effect of this is to disentitle broad groups of employees from representation. AUFA is particularly concerned with the systems analyst exclusion in *PSERA* as it appears

it will likely exclude any IT or IT-adjacent positions from the AUFA bargaining unit. This is not in keeping with the parties' historical understanding of "academic staff" at AU or AU's academic mission.

Thank you for the opportunity to provide these further comments. While AUFA is not in agreement with the proposed policy and procedure and is concerned with the lack of meaningful consultation to date, AUFA remains interested in a meaningful dialogue about academic staff designations and is happy to discuss further with you.

**David Powell**

President, Athabasca University Faculty Association