

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

QUEST UNIVERSITY CANADA

(the "Employer")

-and-

QUEST UNIVERSITY FACULTY UNION

(the "Union")

PANEL: Andres Barker, Vice-Chair

APPEARANCES: Patrick Gilligan-Hackett, for the Employer  
Leo McGrady, Q.C., for the Union

CASE NO.: 73386

DATE OF DECISION: October 22, 2019

DATE OF REASONS: October 31, 2019

## REASONS OF THE BOARD

### I. NATURE OF APPLICATION

1 The Union applies under Section 18 of the *Labour Relations Code* (the "Code") to represent a bargaining unit with the following description:

All Instructional and Non-instructional Faculty, including Faculty Tutors, Visiting Tutors, Teaching Fellows, and Librarians, excluding administrative and support staff and those excluded by the Labour Relations Code, at and from 3200 University Boulevard, Squamish, BC

2 The Employer objects to the application on the grounds the inclusion of visiting tutors ("VTs") in the bargaining unit renders the unit inappropriate for collective bargaining.

3 The Employer also argues, in the alternative, that if the Board finds the proposed unit appropriate for collective bargaining then all VTs who had signed contracts to teach for the upcoming semesters have a sufficient continuing interest in the certification vote and should be entitled to cast a ballot. The Union opposed this position at the expedited certification hearing but later withdrew its objection and stated it agreed with the Employer's alternative position. The parties do not dispute that VTs who have signed contracts have a sufficient continuing interest for the purpose of the vote and so I only need to consider whether a rational and defensible line can be drawn around a unit that includes VTs.

4 I issued a bottom-line decision on October 22, 2019 granting the Union's application, with reasons to follow. These are my reasons for that decision.

### II. BACKGROUND

5 The Employer operates a private, not-for-profit undergraduate university in Squamish, British Columbia. The university was established in 2002 under the *Sea to Sky University Act* SBC 2002 c. 54 (the "Act"). Key components of the university's governance structure under the *Act* are a Board of Governors (the "BG"), a President, and an Academic Council. The BG has also authorized the creation of various committees. Most of these committees are staffed by faculty tutors ("FTs") who are charged with key responsibilities for the operational governance of the Employer. The President also nominates a Chief Academic Officer (the "CAO"), who must be an FT or qualify to be one.

6 The Employer has over 500 students enrolled for the Fall 2019 semester, and as of August 2019 it anticipated staffing 37 FTs, 22 VTs, and 2 Teaching Fellows ("Fellows").

7 The Employer models its educational program on the "block plan", in which students take one course at a time. Courses are spread over 3.5 weeks. As a rule, FTs and Fellows teach six blocks per academic year; VTs teach five blocks or fewer.

8 FTs are appointed for the purpose of undertaking the Employer's central academic work including teaching and research programs. On a secondary basis FTs are involved in related academic services, including the design and delivery of the Employer's full academic program. All FTs are full-time employees.

9 The Employer does not use a tenure system, and FTs are hired according to a schedule of renewable and repeating contracts. FTs are evaluated by the Faculty Performance Review Committee (the "FPRC"), which is an elected body of FTs that recommends contract renewals or terminations to the President. These recommendations are not binding on the President, though the President has rarely denied FPRC recommendations. Non-renewal of an FT's contract is rare.

10 FTs are subject to a nine-month residency requirement, and their normal workload consists of: six months of teaching; three months of time "in residence" for preparation, mentoring students, and administrative work; two months of research; and one month of vacation.

11 All 37 FTs currently employed by the Employer have PhDs, and are subject to a contractual expectation they will remain current in their respective disciplines through research, publishing, attendance at conferences, or similar activities. FTs also receive a professional development allowance each academic year to support these expectations.

12 The Employer also operates a "fully residential campus". Through this model the Employer's residences, services, and academic buildings are located in close proximity to each other. As part of this structure FTs, and to a degree Fellows, play an active role in enhancing students' personal development and fostering a sense of community.

13 A component of the Employer's degree program is the creation by each student of a "Question Proposal" that guides their learning and course selection. The Question Proposal is conceived by the student with the help of FTs, and FTs provide support and mentoring to students. FTs also receive "release time" to provide personalized attention based on their number of mentees.

14 Anyone teaching between one and five blocks in an academic year is designated as a VT. The Employer assigns VTs to a particular course under a one-month contract for each course taught. VTs do not have any responsibility for undertaking the Employer's central academic work, including its research programs and related academic service. During their contract term, VTs are responsible for in-class teaching and related duties such as grading assignments and hosting office hours. VTs are not employed for a total of more than 20 weeks in an academic year.

15 The idea of employing VTs arose from the Employer's recognition that the block based system would allow it to bring in external specialists who could leave their

primary work for a month to teach a block but could not teach for a full semester. The Employer sometimes relies on VTs to function in a sessional capacity because of a need for flexibility arising from transient conditions such as the university's expansion, faculty sabbaticals, and faculty members on leave.

16 The Employer has established a Visiting Faculty Chair (the "VF Chair"), which is an FT responsible for developing, revising, and implementing the Employer's Visiting Faculty Program (the "VF Program"). The VF Program addresses the employment and management of VTs and Fellows. In consultation with the Visiting Faculty Committee (the "VF Committee"), the VF Chair ensures the VF Program has procedures in place for hiring, supervising, and reviewing VTs and Fellows according to best practices, and that the VF Program provides a program of support for VTs and Fellows. The VF Chair liaises with others, including the CAO, to align the procedures governing VTs and Fellows with the Employer's generally applicable procedures.

17 The VF Committee includes four FTs that support the VF Chair in developing, revising, and implementing the VF Program. Each member of the VF Committee, in consultation with the VF Chair and CAO, is responsible for advertising VT and Fellow positions, and administering the support program for VTs and Fellows in the VF Committee members' respective disciplines. The parties disagree whether the ultimate authority for hiring and laying off VTs resides with the VF Chair and VF Committee, or whether they only advise the CAO on such matters. However, I find I do not need to resolve this dispute to deal with the Employer's objection to the Union's application.

18 The VF Chair is the point of contact for the CAO regarding the VF budget and block release allocations. They also advertise VT and Fellow positions, provide input to the CAO on hiring and laying off VTs and Fellows, and administer the support program for VTs and Fellows in the VF Chair's disciplinary area.

19 The Employer provided an extensive list of the differences in conditions of employment between FTs and VTs. It is not necessary to recite them all here, but it will suffice to say that FTs and VTs generally differ in contract length, hiring process, educational qualifications, monetary and health and welfare benefits, job security, and place of residence. VTs also do not advise or mentor students or participate in committee and governance functions.

### III. POSITIONS OF THE PARTIES

20 The Employer argues the bargaining unit applied for by the Union is inappropriate for collective bargaining because it includes VTs. Each party set out its submissions in alignment with the community of interest factors identified by the Board in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93) ("*IML*").

*Similarities in Skills, Interests, Duties, and Working Conditions*

21 The Employer says there are profound differences in the skills, interests, duties, and working conditions of FTs and VTs.

22 The Employer says that FTs are academics with a doctoral level of education who are fully engaged in the pursuit of their academic careers at the Employer and are active participants in its governance. It says the same cannot be said of VTs. The Employer says it is noteworthy one of the committee memberships available to FTs is on the VF Committee, which oversees key aspects of VTs employment including hiring. It says this fact, more than others, highlights the lack of a community of interest between FTs and VTs. The Employer expressly states that it does not argue FTs on the VF Committee are excluded managers, and it did not seek to exclude any FTs on the voters list on the basis they were not employees under the Code; however, it says there is still an obvious conflict of interest in having FTs and VTs in the same unit.

23 The Employer says the differences in skills and duties between FTs and VTs is demonstrated by the fact FTs are required to have the skills and education to discharge a full spectrum of an academic's responsibilities over a longer period of time. It contrasts this with the more limited responsibilities and short-term tenure of VTs.

24 The Employer says the interests of FTs are rooted in the pursuit of a rewarding academic career, which are medium and long-term interests. This is in contrast to the shorter term interests of VTs.

25 The Employer also says the working conditions of FTs are fundamentally different from the working conditions of VTs. It says the differences are a direct product of FTs' and VTs' respective roles and relationship with the Employer, and the profound contrast highlights the absence of a community of interest.

26 In response, the Union states the primary duty of all three faculty groups is teaching. It says FTs, VTs, and Fellows all have similar skills, interests, and duties, and the differences in their working conditions can be readily accommodated in a single collective agreement.

*The Physical and Administrative Structure of the Employer*

27 The Employer highlights the fact it is a small, residential university with a single campus, and its physical structure is designed to foster its educational program.

28 The Employer says FTs are required to be in residence on campus for nine months each year to be accessible to students and to ensure their participation in co-curricular activities. They are expected to integrate themselves into the physical and administrative structure during that time. It says VTs have no similar role and are not subject to any comparable expectation, even during the brief periods of time when they are actively employed. It also notes VTs have no comparable control or influence to FTs, and are not eligible for membership in the Employer's committees.

29 The Union states the physical and administrative structure of the Employer is designed in a remarkably simple and clear fashion. It says the Employer can readily accommodate the inclusion of all three employee teaching groups into a single bargaining unit, and that management's duties would be simplified by a single collective agreement covering all three groups.

*Functional Integration*

30 The Employer says there is little functional integration between FTs and VTs. It says the absence of functional integration is underlined by the absence of VTs from roles in the Employer's administrative structure.

31 The Union denies this factor favors a finding the bargaining unit is inappropriate for collective bargaining.

*Geography*

32 The Employer acknowledges all its employees work at the same location. It says to the extent geography plays a role in the present case it is to emphasize the absence of a community of interest between FTs and VTs. It says FTs live in close proximity to the campus to make their attendance and satisfaction of the residency requirement a straightforward and practical matter. In contrast, VTs live at many different locations.

33 The Union says this factor is simple to address as there is a single campus in Squamish, and the Employer has no plans to add additional campuses.

IV. ANALYSIS AND DECISION

34 The Board's well-established approach to bargaining unit appropriateness is set out in *IML*. In that decision the Board defined the "community of interest" test for determining whether a proposed unit has a rational and defensible boundary and is therefore an appropriate unit for collective bargaining (p. 40).

35 On an initial certification application, community of interest is determined on the following four factors: similarity in skills, interests, duties, and working conditions; the physical and administrative structure of the employer; functional integration; and geography (*IML*, p. 40).

36 There are two fundamental purposes in making determinations of appropriateness: access to collective bargaining and industrial stability. Both principles are always present and must always be balanced; however, on an initial application for certification the Board's primary concern is access to collective bargaining (*IML*, p. 33).

*Similarities in Skills, Interests, Duties, and Working Conditions*

37 As noted in *IML*, those who perform similar work under similar terms and conditions of employment will have a community of interest which can be neatly set within the framework of a single collective agreement (p. 26). However, the Board HAS also stated this factor "may not have the same weight as it has had in the past jurisprudence", as over time all-employee bargaining units have come to include employees with widely different skills and terms and conditions of employment within one collective agreement (*ibid*). Accordingly, "although similarities in skills, interests, duties and working conditions remain at a common sense level a factor in community of interest, it may be of less help in drawing a rational and defensible line; its inherent flexibility may prove useful but provide only limited conceptual guidance" (*ibid*).

38 In the present case, FTs and VTs are both engaged in teaching, and therefore there will be at least some alignment among their skills, interests, duties, and working conditions.

39 I accept the Employer's evidence that FTs engage in more activities than VTs through their involvement in mentorship and research, and the uncontradicted evidence is that FTs spend half the year teaching and the remaining time engaged in other activities. However, the Employer has not identified why these differences would result in unviable collective bargaining if both FTs and VTs were included in the same bargaining unit. I emphasize that the purpose of the community of interest test is to determine whether a rational and defensible line can be drawn around a unit applied for, and the fact that FTs have duties beyond those performed by VTs does not favor a finding the two groups should be separated into different bargaining units.

40 Regarding the participation of FTs in the Employer's governance structure, I note certain FTs are involved in the hiring, supervision, discipline, and policy creation for VTs. However, the Employer does not argue FTs involved in governance functions are not employees under the Code, and it also does not make an alternative argument that certain FTs are supervisors and the Board should exercise its discretion under Section 29 to certify a bargaining unit consisting only of the employees engaged in supervisory functions. I also note that FTs are also involved in labour relations matters concerning other FTs, and not just VTs.

41 While certain FT's' involvement in hiring, discipline, supervision, and policy creation for VTs may establish some degree of tension in the bargaining unit, it does not in itself demonstrate the sort of conflict of interest that would render the unit applied for inappropriate for collective bargaining. To the extent a conflict does exist it primarily arises from the fact specific FTs involved in the Employer's governance structure may not be employees under the Code; however, the parties did not put this issue before me to decide.

42 When looking at this factor as a whole I find it favors the unit applied, with the most persuasive fact being that the primary role of FTs and VTs is instructional.

*The Physical and Administrative Structure of the Employer*

43 The Employer operates a single campus, and it has not asserted that the various classes of teachers are managed or supervised from different locations.

44 The Employer has also not identified why its administrative structure favors a finding that VTs should be excluded from the bargaining unit. Some FTs are integrated into the Employer's supervisory structure but the Employer did not argue that certifying the bargaining unit would require it to change that structure.

45 I find this factor favors the unit applied for.

*Functional Integration*

46 Functional integration arises where employees in the bargaining unit have a day-to-day interchange or integration of duties with employees outside the bargaining unit. It also arises when employees share an integrated work process that extends outside bargaining unit boundaries and goes beyond a functional relationship. The Employer does not allege either of these circumstances exist with the VTs.

47 I also note the absence of functional integration among two groups of employees does not weigh against the appropriateness of a proposed unit (*IML*; and *Red Chris Development Company Ltd.*, BCLRB No. B71/2019 (Leave for Reconsideration of BCLRB No. B162/2018), para. 29).

48 In the absence of any relevant functional integration concerns I find this factor favors the unit applied for.

*Geography*

49 In *IML* the Board noted the following: "Geography as a factor is also a straightforward issue. Employees who are physically separated, whether at different branches or outlets, often develop and have a separate community of interest simply because of their physical separation" (p. 28).

50 The Employer operates a single campus where both FTs and VTs perform their teaching duties. I find the FT's and VT's place of residence is not relevant to this factor, which pertains to the physical separation or closeness between employees in the place where they perform their duties. I find this factor favors the unit applied for.

*Summary*

51 When weighing the factors, I find the Employer has not established why a rational and defensible line cannot be drawn around a unit that includes both FTs and VTs. I accept that FTs are permanent employees with robust academic responsibilities, and I acknowledge they are woven into the Employer's governance structure, which includes oversight of VTs. This contrasts with the more transient nature of employment for VTs whose activities are primarily teaching specific blocks. However, the Employer



has not demonstrated that a rational and defensible line cannot be drawn around a unit that includes both FTs and VTs. Accordingly, I find that the unit applied for is an appropriate unit for collective bargaining under the Code.

V. CONCLUSION

52 The Employer's objections to the Union's application are dismissed. I order that the ballot box be unsealed and the ballots counted, including those ballots cast by VTs.

LABOUR RELATIONS BOARD



ANDRES BARKER  
VICE-CHAIR