

Special Edition (June 11, 2010)

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Bargaining Update: The Great Package Exchange

Jim Anderson

After weeks of difficult discussions over job security issues, with little obvious progress, the LEO-UM contract negotiations seemed to spring forward on June 3 and 4. Both teams presented comprehensive package proposals, covering virtually every open article. The packages revealed several areas of agreement. However, significant areas of disagreement remained, most notably in salary and benefits. Because each element of a package is contingent upon the acceptance of all the other elements, even one area of disagreement can bring the entire package crashing down like a house of cards. With that important caveat in mind, it is worth examining where the sides have moved closer together and where they remain apart.

LEO and the administration have moved close together – call it “hand-shake range” – on several issues, with clear improvements over the current contract for bargaining unit members. Specifically, the sides have almost (but because of the nature of the package proposal system, not quite) come to agreement on the following:

Appointments, Performance Evaluation and Layoff/Recall – Throughout these negotiations, LEO has sought to enhance job protections for lecturers, and several such improvements have now appeared in the package proposals of both sides. These include provisions to eliminate “blind-siding” in major reviews, to allow longer appointments (up to seven years), to streamline reviews after the second major review, to improve the remediation process, and to allow a special appeal of a failed remediation for lecturers who have passed two major reviews. For the first time, the Layoff/ Recall article would include a suggested definition of EAP (expertise, ability and performance), the concept which can trump seniority in layoff decisions.

Professional Development – The University package would modestly increase the amounts of money allocated to lecturer professional development on each campus.

Outstanding Lecturers – The sides have tentatively agreed on the general outlines of a program to honor outstanding lecturers.

Expanded Disability – Both packages include a provision to extend the university's Expanded Disability Plan to Lecturers I with two or more years of service.

Special Case Appointments – Both sides had proposed changes to this article, but both have now proposed returning to current contract language, with a small addition to improve reporting of special case appointments to the Union.

No Strike – Similarly, both sides have now proposed returning to current contract language.

In a couple of areas, the distance between the sides is difficult to determine because only LEO covered the issue in its package. One such area is that of modified duties for new parents; the other is that of special provisions for international lecturers. However, these issues have been extensively discussed in informal, small group sessions; while there are signs of progress on the modified duties issue, there seems to be little will to improve the job security of international lectures.

LEO has put one other issue across the table, a Memorandum of Understanding to reinstate the union's vice president (see attachment, IR Update). The administration has acknowledged that this is a legally permissible subject of bargaining, but not a mandatory one, and they have declined to bargain it. LEO has also filed a grievance in the matter.

Finally, in a few key areas that both sides did cover in their exchanged packages, they remain far apart – call it “shouting range.” Not surprisingly, these are mostly monetary issues. One is the issue of compensation for late course cancellations. LEO has sought to have Lecturers I compensated at the same level as other lecturers are when their courses are cancelled just before or after the start of a semester. After all, a Lecturer I will put in no less work than other teachers in preparing a course. But the administration has thus far rejected equity in late cancellation payments. On a larger scale, the administration has also rejected – or at least ignored – the union's call for equity in salary increases, resulting in a significant gap between the salary

proposals of the two sides. It remains to be seen how the gap can be closed. However, in its benefits proposal, the administration has at least attempted to mitigate the hardships that the university's new benefits premium schedule imposes on part-time lecturers (those with appointments between 50% and 79%) by offering partial, temporary compensation to them. While appreciating the gesture, LEO seeks more complete and enduring protection for these vulnerable members of the bargaining unit. Again, for the union, it comes down to questions of equity and fairness.

We remain determined to bargain a contract that makes significant gains on the old one and that reflects the concerns and goals of the membership. Bargaining in the summer, when most members are not employed by the university and are not present, is difficult and so we are proceeding carefully. We hope to change the end date of the agreement to avoid this problem in the future, but the administration as so far shown no willingness to move the date at all. If you are available, we welcome your presence at bargaining and your voice in the LEO caucus.

Who Defends our Defenders? We do.

Ian Robinson

On June 3rd the LEO bargaining team put a new proposal on the table: a memorandum of understanding under which Kirsten Herold, our Vice-President, would be given a new three year appointment. Her next major review would take place in 2012-13, and her salary would be increased as appropriate for someone passing a major review. In return, LEO would withdraw its grievance which argues that Kirsten's reviews in the English Department have been deeply flawed, procedurally and substantively, partly due to anti-union animus of key actors in that Department.

Most of the provisions in our contract cover broad categories of people; many apply to all lecturers. But unions do use bargaining to make headway on individual cases from time to time, especially when union activists have been punished by employers for performing their union duties. Bargaining – and the threat of collective action to back bargaining demands – is an effective way to defend the members who are at greatest risk of being fired, harassed or otherwise harmed because of what they do on behalf of all other union members.

Kirsten's is such a case. She was on the organizing committee that did the legwork that built LEO. She was there on the picket line on the day we struck to achieve several breakthroughs on our

first collective agreement. She chaired our grievance committee in the first years after we signed that agreement, attempting to get a number of recalcitrant units – notably English, Philosophy and the School of Art & Design – to implement the new rules and practices set out in the document. She became our lead bargainer when we negotiated our second three-year contract. And she became our Vice-President, taking the lead in successful grievances over workload, lecturer titles (aka mapping), and last year's salary grievance. All of these roles called upon her to fight for the values and interests of LEO members, and she has done this very effectively throughout LEO's history.

As Kirsten's grievance – available in full on the LEO website – demonstrates, it was not necessary to go to anything like these lengths to “merit” the ill will of those in who have been running the English Department over these years. Other English Lecturers with much weaker ties to LEO than Kirsten's have also been fired on various pretexts. No other department on any of our three campuses has a comparable record of anti-union animus. Naturally, Kirsten was a prime target. She survived there as long as she did only because she was an excellent teacher, highly qualified (with a UM English PhD), dedicated to and very well liked by her students. It's not easy to construct a plausible rationale for firing someone like that. As well, though, LEO pushed back against earlier attempts to fire her.

The Administration's position is that they aren't legally required to bargain over Kirsten's reappointment. This is true. But neither do we have to take the issue off the table just because they would prefer to ignore it. If we had a grievance process that gave us a decent chance of winning cases such as this, we could use it to defend Kirsten against this kind of attack. But it is difficult to get a fair shake for our members on questions of unjust firing because arbitrators have been reluctant to second-guess exercises of “academic judgment.” We proposed a new appeals process that would remedy this problem, and have made some headway on that front. But these new provisions will not apply retroactively to Kirsten.

This is why the union put the memorandum of understanding across the table as an alternative to the grievance process. If the Administration doesn't want to bargain the issue, the Provost can overturn the English Department's decision at Step Three in the grievance process. Moreover, when the university hears the strength of our case, they may decide that bargaining the MoU is a more attractive option than continuing the grievance to arbitration, which will be time-consuming, costly, public, and precedent-setting. If they do continue to arbitration, it could be as much as a year before Kirsten's case is heard by an arbitrator. In

the meantime, Kirsten will be unemployed. This is unacceptable. She has fought on our behalf many times over the past eight years; it's time now for us to fight for her. In so doing, we also defend the integrity and effectiveness of our union. For if they can fire Kirsten on grounds as spurious as these, who can't they fire? And if we don't rally to her defense, who in their right mind would take the kinds of risks necessary to make this union work that Kirsten did on our behalf?