

Management Bargaining Team Chair's September 15, 2021 Settlement Offer Rationale

We have attempted to engage the Union in a discussion of the facts, circumstances and views (however supported) underlying the Union's various proposals to us. To date, the Union has refused to engage in such discussion and have simply asserted that the proposals that the Union has tabled are the demands of its members based on their lived experience. We have attempted to engage the Union in this discussion so that we could search for common interests between the Union demands and the interests and wants that the Colleges have before tabling specific language proposals. The Union has repeatedly requested that the Colleges table a complete set of its proposals as outlined in our overview of our non-monetary proposals.

Given the Union bargaining team's unwillingness to discuss the basis for the Union's demands and insistence that we table specific proposals beyond the interest we've already outlined to the Union, we now are tabling a complete set of proposals. We have already described for the Union the interests at which these proposals are directed and have provided the Union with our complete set of proposals in advance of this session. Please note that all changes in the complete set of proposals, including changes to wage rate would be effective on the date of ratification. Once the Union have reviewed that complete set of proposals, we would be happy to answer any questions that the Union may have.

In the meantime, we recognize that with the Union's full set of demands on the table and this complete set of proposals from the Colleges, bargaining will be long, difficult and likely unsuccessful. We do not want our bargaining to unfold in that way. We are, therefore, without prejudice to our complete set of proposals, tabling a settlement proposal that puts the Union demands and our proposals aside and concludes an extension collective agreement with some enhancements for Union members.

The COVID-19 pandemic has caused considerable disruption and dislocation for all College community members: Faculty; Support Staff; Students; and Administrators. With some public health restrictions now being relaxed allowing for a limited return to in-person learning, we believe that it is imperative that there be labour stability to protect our students' return to learning. The past 18 months have been trying for everyone and the last thing that any of us now need is a protracted negotiation or the prospect of a strike. Our team has reviewed and considered all of the proposals that the Union have tabled to us. These proposals are extremely complex and they would essentially result in modifications to almost every clause in the current collective agreement. Other than those that are addressed below, the Union's proposals as they were presented to us seem to be designed for rejection.

As we have discussed with the Union as recently as yesterday, in the Union's preambles and contextual presentations, the Union have framed its proposals as being supported by research or otherwise anchored in fact. However, when we have requested that the Union discuss that research or share any data that the Union have at the Union disposal that is informing the Union proposed changes, the Union have failed

to respond and have questioned why we would need access to that information. The Union bargaining team have simply told us that the demands are the demands of Union members based on their lived experience.

However, in a mature collective bargaining relationship, when you look to change provisions or add provisions, are typically guided by the principle that changes ought only be made where there is a demonstrated need for the change. The demonstrated need includes two components: demonstration of the problem, and demonstration that the proposed solution effectively addresses the problem.

While we do not discount the importance of lived experience, lived experience alone is not enough to provide the informed foundation that is required for us to jointly develop solutions and engage in the exploration of practical improvements to the collective agreement.

As they currently stand, the proposals the Union have tabled do not, in any respect, represent terms that the Colleges could ever agree to. As stated in our opening remarks, one of our goals for this round of bargaining is to maintain students as our central concern while balancing the needs of all college stakeholders. As public colleges we are bound by legislation and are accountable to the broader public and the government for our actions, for the achievement of goals consistent with government priorities, and for prudent financial management. In this we must operate with a view to long term sustainability.

We need to be very clear with the Union. We have very closely reviewed all of the Union's proposals and they represent changes that the Colleges would have no choice but to resist, including through a strike.

In the winter, we proposed an extension of the current collective agreement. The CAAT A - OPSEU bargaining team rejected that offer and has tabled demands that we have repeatedly indicated are completely unacceptable to us. We have now been meeting with the Union bargaining team since July. We have heard the Union's concerns and have identified some areas where we have common interests. We are therefore proposing an enhanced extension which addresses some of the Union's concerns which we share.

Although our complete set of proposals outlines a number of changes that we would like to see made to the collective agreement, we continue to believe that securing labour stability, which in turn will secure the academic year for our students, is more important in our current context than achieving those changes in this round of bargaining.

For these reasons, we are tabling a settlement proposal for an enhanced three-year collective agreement extension. Should this proposal not be accepted and ratified, the CEC reserves the right to pursue all of the changes that it has previously proposed.

This settlement proposal is designed to ensure that work continues between rounds of bargaining on:

- The collection of relevant data; and
- The development of recommendations for practical improvements to the collective agreement for the next round of bargaining in areas where we have a shared commitment to effecting positive change: Workload, EDI, and Indigeneity.

At the same time, it is designed to ensure that there is no delay in the implementation of wage increases for members of the bargaining unit, or in the implementation of some of the proposals on which we can achieve agreement during this round of bargaining.

We provided the Union bargaining team with an electronic copy of the settlement proposal just prior to this session. We will not read the entire document but will highlight the sections that it contains and spend time primarily on those elements that are being presented to the Union for the first time today.

With respect to EQUITY, DIVERSITY AND INCLUSION (EDI)

As stated in our presentation yesterday, we share the Union's commitment to the principles of EDI. We believe that this is an area where the parties could work together to obtain data concerning the composition of the bargaining unit and with that information, seek to identify any barriers in the collective agreement which impede the principles of EDI. Yesterday we tabled proposal M07 for the creation of an EDI Advisory Group. That same proposal is repeated in this settlement offer.

With respect to WORKLOAD

The Union has proposed a number of changes to the workload formula which would fundamentally change the way in which workload would be regulated across the system and would result in prohibitive increases to the cost of our delivery model. It is important to note once again that our existing workload formula was not pulled out of thin air. The current formula was created in 1985 and was later the subject of a rigorous statistical study conducted by a three-person working group chaired by one of Ontario's most renowned neutrals, Wesley Rayner.

Extensive consultations and surveys were conducted in 2008 and 2009, resulting in recommendations which provide the basis for the current system. We agree that our systems should be reviewed from time to time and therefore propose to have another expert panel review the functioning of the workload formula and report to the parties in advance of the next round of bargaining with recommendations for consideration at the bargaining table.

We have already submitted our M02 proposal for the creation of a Workload Task Force. That same proposal is repeated in this offer.

Retroactive Accommodation: In addition to our M02 proposal, we have included an additional workload related proposal in this settlement offer.

In the Union's workload submission, the Union has asserted that faculty are devoting more time to student accommodation needs. We note that the support available to faculty from various College departments has dramatically increased. Further, not all student accommodations involve the assigning of additional workload requirements to faculty.

There are, however, certain accommodation situations where there is a need for faculty to perform additional work that may not be reflected in their workload assignment. The Colleges propose, therefore, to add the following provisions in respect of full-time teachers and partial-load employees.

NEW 11.01 M

Where a teacher is assigned by the college to provide a retroactive accommodation under the *Human Rights Code* to a student after the conclusion of the teaching period in which the teacher taught the course, and that accommodation objectively entails additional academic work for the teacher, the teacher shall discuss with their supervisor the impact of the accommodation on their workload and, failing satisfactory resolution, the teacher may advance the matter as provided for under Article 11.02 A 1.

NEW 26.11

Where a partial-load employee is assigned by the college to provide a retroactive accommodation under the *Human Rights Code* to a student after the conclusion of the teaching period in which the partial-load employee was contracted to teach the course, and that accommodation objectively entails additional academic work for the partial-load employee, the partial-load employee shall discuss with their supervisor the impact of the accommodation and the supervisor will consider the provision of additional compensation to the partial-load employee for the accommodation related work.

With respect to INDIGENOUS EMPLOYEES AND TRUTH AND RECONCILIATION

As stated in our presentation yesterday, the Colleges embrace and support the findings and recommendations of the Truth and Reconciliation Commission of Canada. We also recognize that it does not lay to the CEC and OPSEU, two settler organizations, to determine the manner in which we should address reconciliation and the specific needs of Indigenous employees.

That approach is, in our view, disrespectful of the Indigenous community and is the same sort of colonial view that underlies the issues that we have today. Rather, recognized members of the affected Indigenous communities need to be part of the process of addressing reconciliation and Indigenous aspirations. Different measures, determined in partnership with Indigenous communities, may be appropriate in different areas of the Province and at the different Colleges.

We have already submitted proposal M08 which calls for the creation of a Truth and Reconciliation Round Table. That same proposal is repeated in this settlement offer.

With respect to COVID-19 PANDEMIC DEVELOPED COURSE MATERIALS

The COVID-19 pandemic has required all of us to pivot a number of times in seeking to meet the educational needs of our students. Many teachers created online content in order to deliver their courses remotely.

The emergency conversion of courses to remote online delivery is not the same as the development of Purpose-Built Online courses. With the emergency conversion occasioned by the COVID-19 pandemic, the Colleges do not intend to use the materials developed without the engagement of the teacher(s) who created them.

The Colleges propose a Letter of Understanding which provides for this assurance.

The NEW LOU would read as follows

Commencing in March, 2020, and continuing at least until May 2022, because of the COVID-19 Pandemic, courses which were in the process of being taught using Face-to-Face Delivery, or which would otherwise have been taught using Face-to-Face Delivery, were converted by teachers, on an emergency basis, to be delivered using Remote Delivery. In effecting this emergency conversion, teachers prepared various electronic materials including video and audio content, recordings of lectures and labs and other online content. Recognizing that the Colleges, from time to time, engage teachers to develop purely asynchronous online delivery courses ("Purpose-Built Online Course"), it is understood that this letter applies only to those materials that were specifically prepared for the emergency conversion of Face-to-Face Delivery courses to Remote Delivery Courses during the Pandemic (hereinafter "Pandemic E-materials") and not to courses specifically developed as a Purpose-Built Online Course. The Colleges agree that Pandemic E-materials shall not be used in the non-pandemic delivery of courses except by the teacher who developed the Pandemic E-materials or with the consent of the teacher who developed the Pandemic E-materials. It is further understood that where a teacher is assigned to develop a Purpose-Built Online Course, and the teacher uses any of the Pandemic E-materials that the teacher previously developed in the Purpose-Built Online Course, this Letter of Understanding shall not apply to the Pandemic E-materials included in the Purpose-Built Online Course.

In this letter of understanding:

Face-to-Face Delivery means learning that occurs when the teacher and students are together in the same place at the same time. Traditional classroom and lab settings are examples of face-to-face delivery. Face-to-face delivery is synchronous.

Remote Delivery means delivery that occurs when classes are taught at a distance and when students and teachers are not present together in a traditional classroom or lab setting. Remote learning may be synchronous or asynchronous and can be delivered through a Learning Management System, by using videoconferencing tools, emails, printed materials, broadcast media or through telephone or other voice calls or a combination thereof. Remote learning may be online or by correspondence.

Synchronous Delivery means delivery that happens in real time. Traditional face to face classroom or lab delivery are examples of synchronous delivery. Synchronous remote delivery occurs when teachers and students use videoconferencing, telephony tools, live-streaming, chats or instant messages in real-time to engage in teaching and learning activities.

Online Delivery means the delivery of educational content using an electronic Learning Management System or otherwise through the internet. Online delivery may be synchronous or asynchronous.

Asynchronous Delivery means learning that is not delivered in real time. Asynchronous learning may include recorded video lessons, readings, tasks, participation in discussion boards. Asynchronous delivery may or may not be conducted online.

With respect to the COVID-19 PANDEMIC AND STAFFING

The social distancing requirements occasioned by the health directives during the Pandemic have significantly affected the Colleges' staffing requirements for courses that did run on campus.

Where in non-pandemic times, a course or a lab may have run with 40 students and 1 faculty member, during the pandemic class sizes were dramatically reduced to meet social distancing requirements. During one period, they were in fact limited to 10 meaning that that same course would have run with 4 sections of 10 students.

This staffing is not normative and will not continue once we fully emerge from the Pandemic. Therefore, full-time staffing decisions should not be based on this extraordinary occurrence.

The Colleges therefore propose that staffing data during the pandemic not be used for the purposes of Article 2 staffing considerations. We have therefore proposed a change to Article 2.03 D to prohibit the use of staffing data during the pandemic in Article 2 disputes.

We have already submitted the proposal for staffing during the pandemic in M03. That same proposal is repeated in this offer.

With respect to PARTIAL LOAD EMPLOYEE SERVICE FOR PUBLIC HOLIDAYS

Under article 26.09, partial load employees are entitled to holiday pay for statutory holidays on which they would otherwise work and where they work the scheduled days before and after the paid holiday.

The agreement does not presently recognize such a paid public holiday for the purposes of service pursuant to article 26.10 C. The Colleges propose to amend article 26.09 to specifically provide that a paid public holiday pursuant to 26.09 shall be credited as service for the purposes of article 26.10 C.

Our proposal is to amend article 26.09 to provide as follows:

26.09 Statutory and College Holidays

Partial-load employees who are under contract on the last working day prior and the working day subsequent to a holiday as defined in Article 16, Holidays, shall be paid for these if they are regularly scheduled teaching days and shall have such day counted for the purposes of service pursuant to Article 26.10 C. Under contract means there is a written contract between the College and the employee. Details regarding participation, eligibility, waiting period and benefit level are provided in our settlement offer document.

- For clarity, this change will require a transition. The proposed change from the 2017 to 2021 version of this article to the above version is that it shall become effective January 3, 2022.

With respect to PARTIAL LOAD PRIORITY

Partial load priority was introduced into the collective agreement in the last round of bargaining. During the term of the last collective agreement, a number of issues have become manifest with respect to the operation of that priority.

One issue is that the process does not align with the way in which the Colleges operate from a staffing perspective. The process currently operates on a calendar year basis while the Colleges operate on an academic year basis. Accordingly, the Colleges propose amending the article so that it will operate on an academic year basis.

The proposal in our settlement offer is to amend article 26.10 D to provide for the following:

- 26.10 D** In addition to maintaining a record of a partial-load employee's job experience, the college will keep a record of the courses that the employee has taught and the departments/schools where the partial-load employee has taught such courses.

By April 30th in each year, a currently or previously employed partial-load employee must register their interest in being employed as a partial-load employee in the following academic year. This individual will be considered a registered partial-load employee for the purpose of 26.10 E.

For the Fall, Winter, Spring and Summer terms of the 2021 – 2022 academic year and the Fall 2022 semester, partial load employees must register no later than October 30, 2021.

With respect to the COUNSELLOR CLASS DEFINITION

The Colleges and the Union have consulted over the term of the current collective agreement through the auspices of the EERC on revisions to the current Counsellor Class Definition in order to update it. Fulsome and vigorous discussion has occurred.

Class definitions are not intended to describe the minutiae of the duties of positions. Rather, class definitions are intended to provide broad direction with respect to the scope of roles within the system. It is common in the Colleges for persons in the various bargaining units (full time academic, full time support and part time support) to perform similar tasks.

Bargaining unit allegiance is typically determined through a consideration of the full scope of an individual position. As Arbitrator Mitchnick observed “The Colleges' Support unit, ... is not simply an administrative and/or clerical one, and is not without other examples of highly-skilled individuals contributing in a key way to students' success at the College.”

Where the majority of the duties are academic in nature, arbitrators have consistently concluded that those individuals should be in the academic bargaining unit. The class definition in no way alters that balance. The Colleges propose to update the Counsellor's class definition to recognize its critical role in providing professional assistance to students.

Our proposal for the Counsellor Class Definition in this offer of settlement is an amendment to our M01 proposal.

We have added the statement “...and engaging in applied research related to counselling work, as required by the College” to the end of the last paragraph of our previously proposed definition.

With respect to RATES OF PAY

The Provincial government has limited allowable total compensation increases to 1 % per annum over a three year “moderation period”. The Colleges are aware that OPSEU and several other public sector unions have commenced litigation seeking to overturn *Bill 124*.

Given that we must comply with the legislation as currently in existence, and recognizing that there may be changes in the future, we are proposing compliant compensation increases with the opportunity to discuss additional compensation if the legislative restrictions change during the term of this 3-year collective agreement just as we did with the part-time support staff bargaining unit.

Wage increases

The renewal collective agreement shall be for the term October 1, 2021 to September 30, 2024 with 1.0% compensation adjustments across the board in each of the three years of the Collective Agreement.

In this settlement offer, the date of application of the wage increase will be October 1st, 2021 as opposed to the date of ratification.

In addition, the Colleges propose to add the following Letter of Understanding: (LOU # number to be determined)

New LOU Re: Bill 124

Should Bill 124 - *Protecting a Sustainability Public Sector for Future Generations Act, 2019* be found unconstitutional by a court of competent jurisdiction or the legislation is either repealed or amended in such a way as to shorten the moderation period or increase the 1 percent restraint measures prior to the expiry of the Collective Agreement, the parties shall meet within 60 days of the decision to negotiate a remedy, if any, for bargaining unit employees impacted by the legislative restraints. Further, the parties agree to invite Gerry Lee, Mediator to assist the parties.

In addition to the wage increase, we are also proposing in this settlement offer an addition to the EXTENDED HEALTH PLAN

We propose adding new Article 19.01 C regarding medical cannabis.

19.01 C Effective three months after the date of ratification, all full-time employees shall be covered by an employer paid addition to the extended health insurance plan to cover medical cannabis prescribed by a licensed physician to a maximum of \$4,000 per year subject to prior authorization by the insurer and to the eligibility requirements and terms and conditions of the Plan and for the conditions listed in the plan.

Finally, we propose amending article 36.01 to provide for the term of the agreement to be October 1, 2021 to September 30, 2024.

That concludes our presentation for today. We hope that the Union will unanimously recommend this settlement proposal as the basis to conclude a collective agreement by September 30th.