

Constraining Decanal Discretion to Modify Workload: *University of Manitoba v University of Manitoba Faculty Association* (Re Guidelines for Assignment of Teaching in the Faculties of Education, Architecture and Arts), 2021 CanLII 58981

Facts

In their 2017-2021 collective agreement, the University of Manitoba (“the University”) and the University of Manitoba Faculty Association (“the Association”) negotiated new language constraining deans’ discretion to modify a faculty member’s teaching load. Prior to 2016, decanal discretion had been largely unfettered and there was no express limit on teaching load. In 2016, bargaining took place in the shadow of looming budget cuts, which risked dramatically increasing workloads. New language was introduced under Article 19.A.1 to ensure that reasonable teaching loads were maintained. The new language mandated that each faculty set guidelines for assigning teaching duties, including a workload range and criteria for deviating from that range.

Between 2018 and 2020, the Association filed three policy grievances alleging that the guidelines in the faculties of Education, Architecture and Arts violated the collective agreement. The Association alleged the guidelines did not meet Article 19.A.1’s requirements for transparency and member consultation when teaching loads deviated from the norm. The guidelines enumerated circumstances that the dean had to consider, but they also included “catch-all” clauses that would allow the deans to consider other unenumerated, vague or subjective circumstances at their discretion. The Association took the position that this would effectively allow a dean to sidestep the guidelines at will. In the case of the Architecture guideline, the Association also alleged that no teaching load range was identified.

To advance its position, the Association brought evidence of the parties' 2016 bargaining history, which the University opposed. The Arbitrator allowed the evidence and found in favour of the Association in all three grievances, noting that the subjective criteria in the guidelines would essentially allow a dean to "assign a greater or lesser teaching load when the Dean believes the circumstances require," which would have the "potential to undermine the standard teaching workload range and was not what the parties contemplated in the 2016 settlement" (para. 187).

Analysis and Conclusions

The case turns on the particular language of the collective agreement. The arbitrator ultimately found that the ambiguous "catch-all" clauses in the guidelines, which allowed deans to consider any criteria they pleased, introduced opaqueness and subjectivity to a process that the parties had intended to be transparent and objective.

The arbitrator used the bargaining history from the 2016 cycle to find that the parties had intended a transparent and objective process. He provided a principled articulation for why: a) arbitrators were obliged to take the objective circumstances in which a contract was formed into account when interpreting the contract; and b) extrinsic evidence could be introduced even where there was no ambiguity in the language of the contract.

Arbitrator Arne Peltz followed the modern "practical approach" to contract interpretation which was set out by the Supreme Court of Canada in [*Sattva Capital Corporation v Creston Moly Corporation*, \[2014\] 2 SCR 633](#) ("Sattva"). That approach requires reading the words in a contract in their ordinary sense, consistent with the surrounding context. As such, the Arbitrator did not limit his contextual evaluation to the four corners of the contract, and considered extrinsic evidence:

Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning.

No contracts are made in a vacuum: there is always a setting in which they have to be placed..." (para. 11, quoting Sattva, para. 47).

In his analysis, Arbitrator Peltz found that allowing extrinsic evidence in this instance was a complement to the rule against *parol* evidence which typically prohibits outside evidence, because it could be used to "to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract" (para. 110, quoting Sattva at para. 57) without changing or overruling the meaning of the words.

Take-aways

1. The objective context and factual matrix in which an agreement is formed must be considered for the purpose of interpreting that agreement. That said, evidence of the parties' subjective intentions will still not be relevant.
2. Academic staff associations should take stock of circumstances of their bargaining because they may be necessary for contract interpretation, but bargaining notes should not be used a substitute for negotiating the clearest possible language.
3. Academic staff associations can bargain transparent and objective processes for determining workloads even where workload guidelines/formulae do not yet exist.