

B - 5 MEMORANDUM ISSUES

In accordance with Article 17 of the Memorandum of Agreement, (which states: "Changes or amendments to this Agreement may be made by mutual consent of the parties at any time,") the Association proposes the following changes to the Memorandum:

Memorandum Issues

(i) Task Force re: Changes to Memorandum of Agreement

UTFA proposal:

The parties agree to appoint a Task Force to report to the parties with respect to any proposed changes to the Memorandum of Agreement. Each party will name a Co-chair and up to four representatives. It is understood that the representatives of either party may consult broadly. The Task Force will report by April 30, 2006.

Administration proposal:

9.d. Memorandum Article XVII

The parties agree to appoint a Task Force to make recommendations to the parties with respect to any proposed changes to the Memorandum of Agreement. Each party will name a Co-Chair and up to four representatives. It is understood that the representatives of either party may consult broadly. The Task Force will report by April 30, 2006.

The parties appear to be substantially in agreement on this issue.

The Association submits that the date originally proposed, April 30, 2006, is no longer feasible, and instead proposes that the Task Force report by December 31, 2006.

Memorandum Issues

(ii) Agreement to Discuss Removal of Reference to "Retirement" in Article 4(c)

UTFA proposal:

In the light of the abolition of mandatory retirement, parties have agreed outside of negotiations to discuss removal of the following phrase from Article 4(c) of the Memorandum: "...provided the requested leave does not fall within seven years of the normal age of retirement."

Article 4 of the Memorandum of Agreement between the Association and the Administration outlines the principles governing research leave, intended for academic study, research and writing. Article 4(c) states:

... each faculty member on a 50 percent or greater appointment shall be entitled to apply for research or study leave for a six month period (from July 1 to December 31 or January 1 to June 30) after every three years of service at 82.5 percent salary provided the requested leave does not fall within seven years of the normal age of retirement. Such leave shall not be unreasonably denied.

The Agreement to End Mandatory Retirement (Book of Documents, Volume II, Tabs 17 and 18) between the Association and the Administration, allows faculty members and librarians to choose between a number of retirement options, including early retirement, postponed retirement and phased retirement.

In negotiating the end of mandatory retirement, and subsequent to that agreement, the Association and the Administration have agreed in principle that the abolition of mandatory retirement makes it unfeasible to determine eligibility for research leave by way of reference to retirement date.

The Association seeks confirmation that the parties will meet outside of the salary, pension, and benefits negotiations to discuss a formal change to the Memorandum to eliminate the reference to retirement in Article 4(c).

Memorandum Issues

(iii) Amendments to Article 11

UTFA proposal:

Delete the last paragraph of Article 11 and substitute the following:

“It is understood that this Article shall not be construed to require the University (a) to compile information and statistics in particular form if such data are not already compiled in the form requested, or cannot, without unreasonable efforts, be compiled in such form, or (b) to provide any information relating to any named individual.

The University shall designate an Information Officer who shall conduct the exchange of information with an Information Officer designated by the Association.

If any dispute arises with respect to the implementation of this Article, the matter shall be referred by either party, as expeditiously as possible, to a mutually agreed upon arbitrator who shall, within 48 hours from the referral, confer with the parties and issue a final and binding decision including appropriate directions. If the parties cannot agree upon an arbitrator, or in the event that he or she is unable or unwilling to act, the President of the Ontario Labour-Management Arbitrators’ Association shall select the arbitrator.”

Administration proposal:

Article 11 – delete the last paragraph of Article 11 of the Memorandum of Agreement and substitute the following: “It is understood that this article shall not be construed to require the University,

(a) to compile information and statistics in particular form if such data are not already compiled in the form requested; or

(b) to provide any information related to any individual or otherwise prohibited by law.

The University shall designate an information contact person who shall conduct the exchange of information with an information officer designated by the Association.

If any dispute arises with respect to the implementation of this article, the matter shall be referred by either party, as expeditiously as possible, to the Chair of the Grievance Review Panel or his or her designate who shall, as expeditiously as possible, confer with the parties and issue a final and binding decision including appropriate directions.”

Article 11 of the Memorandum of Agreement addresses the Administration's obligations to provide information to the Association. As noted above, with respect to the Association's need for information about salaries by department and information about members who are planning to retire (B4(ii) and (iii)), there are significant problems with both the nature of the information provided to the Association, and the process for obtaining that information. As the situation currently stands, the Association submits that it does not have the meaningful access to information that was envisaged in the original Memorandum between the parties.

The Association has proposed the above changes to Article 11 of the Memorandum in an attempt to improve this situation. The Association's proposed changes reflect changes in technology since the Memorandum was signed in 1977, and changes in the nature of views on access to information and freedom of information more generally.

The key change in the first paragraph of the Association's submission on this point is the insertion of the phrase "or cannot, without unreasonable efforts, be compiled in such form." This change is aimed at requiring the Administration to provide information which could easily be compiled through the use of the Administration's databases and other information management systems.

The Association's submission, in this regard, is based on the obligations placed on the government under Ontario's *Freedom of Information and Protection of Privacy Act*. While the University of Toronto is not subject to this Act, the Association submits that the definition of "record" which is required to be produced is an excellent benchmark for the minimum obligation which should rest on the Administration in respect of the Association.

Under s.1(1), the Act defines a "record," which is required to be produced, as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

The regulation (*Freedom of Information and Protection of Privacy Act*, Regulation 460) specifies:

2. A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

The Association's proposal simply incorporates this notion into the Memorandum: the Administration would not be required to collect new data in order to create records, but it should be required to produce records where such record could be produced without unreasonable effort based on the Administration's existing data.

The language of other proposed changes to Article 11 is outlined fully above, at section B-4(iv).