

IN THE MATTER OF the *LABOUR ACT*, R.S.P.E.I, 1988, CAP. L-1.

- and -

IN THE MATTER OF AN ARBITRATION between the University of Prince Edward Island Faculty Association and the University of Prince Edward Island regarding Grievances FA-21-O6-A and FA-22-O1-A.

BETWEEN:

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION

(The Association)

- and -

UNIVERSITY OF PRINCE EDWARD ISLAND

(The Employer)

BEFORE:

Bruce Outhouse, K.C., Chair

Kerri Carpenter, Employer Nominee

Neil Tudiver, Association Nominee

HEARING DATES:

January 10, 11, 2023

FOR THE ASSOCIATION:

Jillian Houlihan

FOR THE EMPLOYER:

Murray M. Murphy, K.C.

DATE OF DECISION: SEPTEMBER 26, 2023

DECISION

Overview

The Association filed grievances on September 7, 2021 and February 11, 2022 alleging that the Employer had violated the Collective Agreement and the PEI *Occupational Health and Safety Act (OHS)*. The February 11, 2022 Grievance also alleged violations of the PEI *Freedom of Information and Protection of Privacy Act (FOIPOP)*, but those allegations were not pursued at the hearing.

The Employer denied the grievances and the Association referred them to arbitration. This Board was constituted to hear both Grievances. The hearing was originally scheduled for October 25 and 26, 2022 but was adjourned at the request of the parties to give them an opportunity to exchange will-say statements and prepare a joint book of documents. The hearing was rescheduled for January 10 and 11, 2023.

In December of 2022, the Employer applied to the Board for an order requiring the Association to disclose documents. In its application, the Employer indicated that it had previously disclosed documents in response to a request from counsel for the Association. Both parties subsequently filed written submissions on the issue and the Board directed that the documents be provided to it for review. After reviewing the documents, the Board issued a preliminary decision on January 5, 2023 requiring disclosure of some but not all of the documents requested by the Employer.

Prior to the commencement of the hearing, both parties provided the Board with will-say statements and separate books of documents. These were placed in evidence by agreement without formal proof. Although the parties initially indicated that they intended to cross-examine the authors of the will-say statements, they ultimately elected not to do so. Consequently, the entire evidentiary record is comprised of the will-say statements and documentary exhibits. There was no oral testimony.

Grievances and Replies

The September 7, 2021 grievance and the Employer's reply of October 7, 2021 are reproduced below:

RE: FA-21-06-A

Dear President Abd-El-Aziz:

In accordance with Article F-2 (Grievance and Arbitration Procedures) of the Collective Agreement for UPEIFA Bargaining Unit #1, the UPEIFA formerly submits this grievance to address the Employer's failure to adhere to the the [sic] *UPEI/UPEIFA Collective Agreement (CA)* and the *PEI Occupational Health and Safety Act (PEI-OHSA)* which is incorporated into our CA.

In our view the employer has:

- Failed to take every reasonable precaution to protect the occupational health and safety of our members at or near the workplace;
- Failed to provide sufficient information, instruction, training, and supervision as are necessary to ensure the occupational health and safety of our members;
- Failed to ensure that our members are not exposed to occupational health and safety hazards;
- Failed to consult and cooperate with the *UPEI Joint Occupational Health and Safety Committee (UPEI-JOHSC)* on policies/procedures for improving the occupational health and safety of our members;
- Failed to cooperate with an FA representative performing a duty or exercising a power conferred under PEI-OHSA;
- Failed to comply with PEI-OHSA and its regulations;
- Failed to notify UPEI-JOHSC of the existence of reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace by, or at the request of, an OHS officer or the Employer;
- Intimidated or coerced an FA representative who has sought the enforcement of PEI-OHSA and/or acted in compliance with PEI-OHSA;
- Unfairly, and unreasonably interfered in the operations of UPEI-JOHSC.

As such, we believe the Employer is in violation of the following articles of the UPEI/UPEIFA Collective Agreement:

- A2.4, A3 A4 A10
- H2.2.
- Any other applicable articles or sections of the UPEI/UPEIFA Collective Agreement.

We believe the Employer is also in violation of the following sections of the PEI Occupational Health and Safety Act (PEI-OHSA)

- 12.1 (a, b, c, d, f)
- 12.2 (a, b, c, c)
- 25.5
- 25.6
- 25.7
- 25.12
- 27.4
- 30.1
- Any other applicable articles or sections of the PEI Occupational Health and Safety Act (PEI-OSHA)

This is an Association grievance and as the Chief Grievance Officer for the UPEIFA, I will be the designated representative for this grievance. Please indicate who will be representing the Employer in this matter. In accordance with Article F-2, this grievance is being initiated at Step 2.

The Association seeks the following redress in this matter:

- A declaration that the Employer has violated the above mentioned and any other applicable articles and sections of the UPEI/UPEIFA Collective Agreement and the PEI Occupational Health and Safety Act.
- A declaration that the Employer failed to take every reasonable precaution to protect the occupational health and safety of our members at or near the workplace.
- An order requiring the Employer to cease interfering with the operations of the UPEI JOHSC.
- An order requiring the Employer to cease intimidating and/or coercing FA members who are seeking the enforcement or acting in compliance with PEI-OHSA.
- An order requiring UPEI senior administration to undergo training on their obligations/ responsibilities under PEI-OHSA.
- An order requiring the Employer to consult and cooperate with UPEI JOHSC on the development of policies and procedures for protecting and improving the occupational health and safety of our members.
- An order requiring the Employer to regularly provide UPEI JOHSC with reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace.
- Any other remedies that will provide full redress to our members.

Sincerely,

Doctor Michael. Arfken

UPEIFA President & Chief Grievance Officer

Dear Doctor Arfken:

RE: UPEIFA Grievance FA-21-06-A

In accordance with Section F2 (Grievance and Arbitration Procedures) and as required in my role as the designated Employer Representative for this Step 2 grievance, I am providing my final response on this grievance.

The grievance is denied for the reasons set out in this letter.

The grievance contains no facts or specific allegations that could reasonably establish a breach of any articles of the collective agreement. Consequently, the grievance is hypothetical, speculative, and inarbitrable.

The University's Joint Occupational Health and Safety Committee ("JOHSC") is a committee formed in accordance with the Occupational Health and Safety Act (the "Act"). The JOHSC's purpose is to advise the employer on health and safety issues in the workplace. The JOHSC has, and continues to operate in accordance with the Act and its terms of reference.

The University is, and always has been, in compliance with the Act. The University has been in constant communication with Joe MacAulay, an Occupational Health and Safety Officer appointed under the Act. Mr. MacAulay has attended a meeting of the JOHSC to explain the committee's role and functions. Occupational Health and Safety Officers appointed under the Act are the legislated experts and their interpretations of the role of the JOHC is authoritative. A decision by an Occupational Health & Safety Officer is determinative, and is not subject to a grievance arbitration procedure. An arbitrator has no jurisdiction to overrule an Occupational Health & Safety Officer.

Mr. MacAulay, an Officer, has made it clear that the Employer's presence at JOHSC meetings is in accordance with the Act, and that the JOHSC's mandate is to make recommendations to the Employer, which recommendations may be accepted or rejected on the basis that ultimately, the responsibility for health and safety at the University is the responsibility of the Employer.

The University takes the pandemic seriously and is doing everything that can reasonably be expected in a very difficult circumstances. The University has provided resources, and developed policies, protocols and supports to the campus community under challenging - and constantly changing - conditions.

The University has also cooperated with union leaders on health and safety issues. The proof of vaccination policy was instituted at the union leaders' behest since they believed that the honour system of self reporting vaccination status would not work. The University has hired consultants to assess generalized concerns raised by union leaders about the HVAC systems in campus buildings. University officials have kept union leaders apprised of the status of the consultant's work, and have indicated that the results of the consultant's report will be shared. Union leaders were asked to highlight the specific areas with HVAC concerns, but none have been forthcoming.

The grievance seeks a declaration that the Employer has violated applicable sections of the Occupational Health and Safety Act. As discussed above, an Occupational Health and Safety Officer has already determined that the University is in compliance with the Act.

The grievance seeks a declaration that the Employer interfered with the operations of the JOHSC, and that the Employer intimidated and coerced FA members seeking enforcement of the Act. An Occupational Health and Safety Officer has already made it clear that the Employer's presence at JOHSC meetings is in accordance with the Act. There is no merit to these allegations.

Other than "a declaration that the Employer has violated the above mentioned and any other applicable articles and sections of UPEI/UPEIFA Collective Agreement", the remaining relief sought in the grievance is beyond the jurisdiction of an arbitrator or otherwise unavailable.

On the basis stated above, it is my determination that the University has not violated the collective agreement. As such, the above-noted grievance is denied and this letter serves as formal notification of my decision at Step 2 of this grievance process.

Sincerely,

Jackie Podger, BA(Hons), MA, MIR, CPA, CMA

Vice-President, Administration and Finance

The February 11, 2022 grievance and the Employer's reply of March 11, 2022 read as follows:

RE: FA-22-01-A

Dear Interim President Keefe:

In accordance with Article F-2 (Grievance and Arbitration Procedures) of the Collective Agreement for the UPEIFA Bargaining Unit #1, the UPEIFA formally submits this grievance to address the Employer's failure to adequately ensure the health and safety of our members. As such, we believe the Employer is in violation of the *UPEI/UPEIFA Collective Agreement (CA)*, the *PEI Freedom of Information and Protection of Privacy Act (PEI-FOIPP)* and the *PEI Occupational Health and Safety Act (PEI-OHSA)* which is incorporated into our CA.

In our view, the Employer has:

- failed to take every reasonable precaution to protect the occupational health and safety of our members at or near the workplace;
- failed to ensure that campus ventilation systems (mechanical and non mechanical) at our workplace are properly maintained as recommended by the manufacturer or required by the regulations;
- failed to provide sufficient information, instruction, training and supervision as are necessary to ensure the occupational health and safety of our members;
- failed to ensure that our members, other campus workers and supervisors are familiar with occupational health and or safety standards at the workplace;
- failed to ensure that our members are not exposed to occupational health and safety hazards;
- failed to ensure that the employer's undertaking is conducted so that our members (and other campus workers) are not exposed to occupational health or safety hazards as a result of the undertaking;
- failed to consult and cooperate with the *UPEI Joint Occupational Health and Safety Committee (UPEI-JOHSC)* on policies/procedures for improving the occupational health and safety of our members;
- failed to cooperate with our members when they were performing in duty or exercising in power conferred under PEI-OHSA;
- failed to comply with PEI-OHSA and its regulations;

- failed to adequately address health and safety concerns raised by our members (and other campus workers);
- failed to review at least annually a written occupational health and safety program/policy and consult with worker representatives on this program/policy;
- failed to notify UPEI-JOHSC of the existence of reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace by, or at the request of, an OHS officer or the employer;
- failed to make available, at the request of our members, reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace by, or at the request of, an officer or the employer;
- failed to adequately implement and maintain a system (a) for workplace occupational health and safety monitoring, prompt follow-up and control of identified hazards and (b) for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;
- failed to disclose without delay (a) information about a risk of significant harm to the environment, health and/or the safety of the public, our members, and/or other campus workers and (b) information of which is clearly in the public interest;
- failed to make a reasonable effort to assist our members who have requested information and to respond to their requests for information openly, accurately, and completely;
- intimidated or coerced an FA representative (and other campus worker) who sought the enforcement of PEI-OHSA and/or acted in compliance with PEI-OHSA;
- unfairly and unreasonably interfered with the operations of UPEI-JOHSC;
- knowingly hindered or interfered with a worker selected by the workers to represent them in the exercise of functions under PEI-OHSA.

We believe the Employer is in violation of the following articles of the *UPEI/UPEIFA Collective Agreement*:

- A2.4, A3, A10
- H2.1.1, H2.2.
- Any other applicable articles or sections of the *UPEI/UPEIFA Collective Agreement*.

We believe the Employer is also in violation of the following sections of the *PEI Occupational Health and Safety Act (PEI-OHSA)*

- 12.1, 12.2
- 23.1, 23.3
- 24.1
- 25.5, 25.6, 25.7, 25.12
- 27.4, 27.5
- 30.1
- 42
- Any other applicable articles or sections of the *PEI Occupational Health and Safety Act (PEI-OHSA)*

Finally, we also believe the Employer is in violation of the following sections of the *PEI Freedom of Information and Protection of Privacy Act (PEI-FOIPP)*:

- 8
- 30
- Any other applicable articles or sections of the *PEI Freedom of Information and Protection of Privacy Act (PEI-FOIPP)*

This is an Association grievance and as the Chief Grievance Officer for UPEIFA, I will be the designated representative for this grievance. Please indicate who will be representing the Employer in this matter. In accordance with Article F-2, this grievance is being initiated at Step 2.

The Association seeks the following redress in this matter:

- A declaration that the Employer has violated these and any other relevant sections of the *UPEI/UPEIFA Collective Agreement*, *PEI Occupational Health and Safety Act*, *PEI Freedom of Information and Protection of Privacy Act*.
- A ruling that the Employer will complete a comprehensive evaluation of the air quality/ventilation of all UPEI workplaces (i.e. classrooms, labs, offices, etc.) and fully redress all issues in a timely fashion.
- A ruling that the Employer will provide the UPEI Faculty Association with a comprehensive plan (including reasonable timelines) for addressing all UPEI health and safety issues.
- A ruling that the Employer and its designates (i.e. Senior Administration) will receive training regarding their obligations under the *PEI Occupational Health and Safety Act (PEI-OHSA)*.
- A ruling that the Employer and its designates (i.e. Senior Administration) will receive training regarding their obligations under the *PEI Freedom of Information and Personal Privacy Act (PEI-FOIPP)*.
- A ruling that the Employer will provide appropriate redress (including financial compensation) for any FA members who may have been impacted by these violations.
- Any other remedies that will provide full redress to our members.

Sincerely,

Doctor Michael Arfken

UPEIFA President & Chief Grievance Officer

Dear Doctor Arfken:

RE: UPEIFA Grievance FA-22-01-A

In accordance with Section F2 (Grievance and Arbitration Procedures) and as required in my role as the designated Employer Representative for this Step 2 grievance, I am providing my final response on this grievance.

The grievance is denied for the reasons set out in this letter.

Of the 19 alleged violations raised in grievance FA-22-01-A, 9 were raised in grievance FA-21-06-A. Grievance FA-21-06-A has been referred to arbitration by the Faculty Association. Raising the same alleged violations in grievance FA-22-01-A is duplicative and unnecessary.

The balance of the grievance contains no facts or specific allegations that could reasonably establish a breach of any articles of the collective agreement. Further the grievance does not provide any evidence or accompanying information to support the allegations. Consequently, the grievance is hypothetical, speculative, and inarbitrable. During our grievance meeting on 25 February 2022, I advised that it is very difficult for the University to offer a substantive response without enough information and facts to know and understand the allegations. I requested specific information to allow me to offer substantive responses. I advised that I would be glad to look into any specific information or facts and report back to you, but none were offered. This limits the university's ability to offer a substantive response to the grievance.

If the Association can offer specific allegations or facts to support the general arguments found in the grievance, the University requests that the Association to do so in order to facilitate a more specific response.

The University takes the pandemic seriously and is doing everything that can reasonably be expected in a very difficult circumstances. The University has provided resources, and developed policies, protocols and supports to the campus community under challenging - and constantly changing - conditions.

Other than “a declaration that the Employer has violated the above mentions and any other relevant sections of the UPE/UPEIFA Collective Agreement”, the remaining relief sought in the grievance is beyond the jurisdiction of an arbitrator or otherwise unavailable.

On the basis stated above, it is my determination that the University has not violated the collective agreement. As such, the above-noted grievance is denied and this letter serves as formal notification of my decision at Step 2 of this grievance process.

Sincerely,

Jackie Podger, BA(Hons), MA,MIR, CPA, CMA

Vice-President, Administration and Finance

As noted in the Employer’s March 11, 2022 reply, the two grievances are very similar. It appears that the second grievance was filed primarily to put an express emphasis on campus ventilation systems based on developments which for the most part occurred after the September 7, 2021 grievance was filed. In any event, the Association conceded in its closing argument that it was not seeking any specific relief pursuant to the second grievance that is not covered in the first grievance.

Evidence

The Employer filed will-say statements by Jackie Podger, Vice President, Administration and Finance, and Elizabeth S. Rostant-MacArthur, Manager of Health, Safety & Environment. The Association filed a will-say statement by its President, Dr. Michael Arfken and a second statement

by him in reply to the statements of Ms. Podger and Ms. Rostant-MacArthur. Due to the combined length of these statements they are attached as Appendices 1, 2, 3 and 4 respectively.

As previously mentioned, there was no cross-examination on the will-say statements. However, there is certainly a good deal of conflict between the statements of Dr. Arfken and the statements of Ms. Podger and Ms. Rostant-MacArthur. Likewise, some of the evidence in the will-say statements is not consistent with the documentary record. Having said this, the Board is of the view that the proper disposition of the grievances does not depend on findings of credibility or detailed parsing of the evidence. The basic facts of the case, as opposed to how those facts are characterized, are not really in dispute.

While the grievances are rather prolix, three main issues emerged at the hearing. They relate to the quarantining or self-isolation of international students on campus, the adequacy of the Employer's ventilation systems and the functioning of the Joint Occupational Health and Safety Committee (*JOHSC*). The Association's position is that the Employer's conduct in all three of these areas violated its obligations under *OSHA* and the Collective Agreement. The Employer categorically denies this is so and challenges the arbitrability of the grievances. The relevant facts with respect to each of the three issues are summarized below.

Self-Isolating Students on Campus

The Covid-19 pandemic created an extremely challenging environment for employers and employees. There was a tremendous amount of uncertainty and trepidation. Public health mandates changed frequently and often with little warning. Universities, public schools, and other learning institutions were especially impacted because they were in the business of the educating students.

Like most universities, the Employer quickly pivoted to online teaching for a period of time. As the pandemic wore on and vaccines became available, the Employer decided to revert to classroom teaching in the fall of 2021 and this brought students back to campus. For the many international students attending UPEI, this meant that they were required by provincial regulation to quarantine (self-isolate) for 8 days after arriving on PEI. The Province initially planned to quarantine them in hotels but there was a lack of hotel space available for this purpose in the month of August. Consequently, in July the Province arranged with the Employer to house international students on campus at Bernadine Hall. It is unclear from the record precisely when this arrangement was made. However, based on the following email from the Employer's Director of Ancillary Services, Jonathan Oliver, to Ryan Stevens with the Province, it seems to have been in place by July 29, 2021 and had been under discussion since July 26, if not earlier:

From: Jonathan Oliver <joliver@upei.ca>
 Sent: Thursday, July 29, 2021 9:47:25 PM
 To: Ryan Stevens <rwstevens@lhls.org>
 Cc: Neil Stewart <nmstewart@gov.pe.ca>; Laura O'Laney <lolaney@upei.ca>; Samuel Buchanan <sbuchanan@upei.ca>; Jackie Podger <jpodger@upei.ca>; Fred Horrelt <fhorrelt@upei.ca>; Elizabeth Rostant MacArthur <lrostant@upei.ca>; Donna Sutton <dsutton@upei.ca>;
 Subject: UPEI: Self-Isolating Students

Hi Ryan.

We have gone through the list you passed along on Monday. We will be able to provide accommodations on your list starting August 6. The last arrival date we can accommodate is August 15 (with an 8 day self isolation requirement). This will allow us sufficient time to prepare for our students coming in September.

I am put [sic] of the office tomorrow but back on Monday. I will reach out to discuss additional logistics. In the meantime, feel free to send along any updates to the list.

Thank you Ryan and have a great weekend.

Cheers, Jonathan

It is worth noting that this email was copied to Ms. Podger and Ms. Rostant-MacArthur. Accordingly, they would have been aware of the arrangement to self-isolate students on campus at that time. The same applies to the Associate Vice President of Student Affairs and Registrar, Donna Sutton, and its Manager of Conference Services, Samuel Buchanan. Numerous emails were circulated in the days following July 29 dealing with a variety of logistical issues prior to the students arriving.

The campus unions and their members were not advised about the arrangement. Neither was the *JOHSC* or its members.

For reasons which are not clear from the record, two self-isolating students were housed at Blanchard Hall rather than Bernadine Hall. One of those students arrived on Friday, August 13 and a member of the IBEW bargaining unit, not being aware that the student was self-isolating, assisted her to one of the dorm rooms. On August 17, a complaint was filed with the Workers Compensation Board (*WCB*) which looked into the matter the same day and the OHS officer involved, Joe MacAulay, generated the following Inspection Report dated August 18, 2021:

This Officer was notified that an incident has occurred on site Friday 13th of August, a worker on site assisted a individual to one of the dorm rooms, it was determined that the Government of PEI had contracted the room for individuals arriving to the province to isolate due to COVID19 protocols. The complaint stated that the workers and managers were not made aware that this process was occurring and no formal procedures or protocols were reviewed and brought to the departments. Workers were concerned that potential exposure had occurred, the worker in question assisted the individual and then due to normal processes interacted with

staff. The individual was sent home, staff were concerned that they were not made aware of the protocol and procedures involved with the process of having individuals isolate on campus.

This officer contacted the Public Health Department who stated will be reviewing the situation and informed the worker that any worker can access a rapid COVID 19 test. It was determined the individual had been tested, has been tested prior to arrival and tested negative. This Officer will follow up on site to determine what part of communication process failed and workers, managers were not aware of the PEI Government using the dorms for self-isolation.

Mr. MacAulay visited both Bernadine Hall and Blanchard Hall on August 18 and met with Ms. Rostant-MacArthur. His report of that visit and meeting states:

This Officer was at the location to investigate an incident that occurred when a worker on campus assisted a individual to their assigned room. It was later determined the individual was at the location to complete the isolation process. The incident occurred at Blanchard Hall. This Officer was informed the worker in question was requested to go home receive a COVID test and monitor for symptoms. It was later determined the individual in question had received a negative COVID test.

This Officer met with the individual that informed the Officer the following information, Blanchard Hall was not designated on campus as a location where individuals were required to self-isolate and no protocols were in place at Blanchard Hall. Workers were not informed that individuals were at Blanchard Hall that are required to self-isolate. It was noted that Bernadine Hall was the location on campus that was assigned individuals to self-isolate, and basic protocols were in place at Bernadine Hall.

Upon inspection both Bernadine and Blanchard halls the following aspects were noted:

Workers had access to the halls through each door, no signage was posted at the hall to direct workers to access the main entrance and follow the COVID protocol to assist in tracing, it was also discussed that some workers may not be aware of the protocol to enter the halls.

Security was on site in Bernadine Hall but did not question this Officer and the worker when the building was accessed, this may be that they are not questioning staff when the building is been entered or required to staff to sign in.

The Officer questioned staff on the procedures to enter the hall, and if an issue arises, enter a room the workers question stated they were not made aware of any formal protocols in place to protect the workers.

There was a virtual meeting of the *JOHSC* on the morning of August 18. Dr. Arfken chaired the meeting and Ms. Rostant-MacArthur was in attendance. There was no mention at the meeting of international students self-isolating on campus or of the August 13 incident at Blanchard Hall. It is unclear from the record whether this meeting occurred prior to Ms. Rostant-MacArthur's meeting with Mr. MacAulay the same day.

That evening, Ms. Rostant-MacArthur sent the following email to Ryan Neale, a Provincial Health Official with the Province:

Hi Ryan,

I spoke with Joe MacAulay today regarding the UPEI residence incident. Joe offered your cell phone number and I left a message on your cell; I hope that is okay.

I have some concerns that I would like to address that I feel require immediate attention to help fulfill my OHS obligations with respect to the residence incident and for the safety of the UPEI employees, students, and campus community.

Residents Security:

1. My understanding is that there is one security officer posted in Bernadine. The issue has been that security is not always present when students arrive to quarantine, nor when others enter the building. It is not possible for the officer to monitor the quarantine floors and person that check-in post.
2. Blanchard Hall is currently housing a student in quarantine and there may be others quarantining this month, but no security has been posted in this residence.
3. Joe mentioned today that when he walked out of Bernadine past two security officers chatting, neither officer acknowledged his presence, nor did they question him on why he was entering the building.

I am requesting that the security in Bernadine and Blanchard be increased so that there is one officer per floor and an officer at the check-in desk for the duration of the quarantine period.

Government quarantine protocols:

As the HSE Manager, I am required to provide oversight on all COVID-19 related issues. Do you mind sending me the quarantine protocol/instructions given to students prior to quarantine, please? This will enable me to better understand the process.

Also, can you please send me the schedule of arrival date of students and mode of travel. I should point out that I have received reports of students arriving in residence without masks on, driving around campus asking people for directions to residence (not wearing masks), and security not present when students arrive for entry.

I would enjoy the opportunity to discuss these issues. My cell is 902.213.3183.

Take care,

Liz

On August 19, Ms. Rostant-MacArthur sent Mr. MacAulay the following email:

Hi Joe,

Here is an update on my progress for the quarantine residence complaint OHSU directives:

1. I emailed Ryan Neale with my concerns, and a request for; enhanced security, protocol for students arriving to quarantine, and arrival times of students. Ryan has forwarded the e-mail to his team, and I'm waiting for a response. In the meantime, I contacted the Registrar, and she will cc me on all updates for arrival times.
2. The Registrar will send a campus map to all incoming students with Bernadine clearly marked. Also, she confirmed that students are to use the CO-OP taxi and show proof of UPEI enrollment.
3. I have contacted Jonathan Oliver to send me; a student quarantining protocol that he was developing, and a copy of the government contract for quarantining in UPEI residence. Jonathan is on vacation, so I spoke with his manager, Laura. If Jonathan has not started a protocol, then Laura and I will develop one today

4. Jeremy Dallaire met with his staff this morning and requested sign-in. He will forward me an e-mail with the sign-in sheet and include the topics discussed at the meeting.

As I am waiting for a response from both Ryan and Jonathan, I wanted to know the timeline for my official response to you? Please let me know if I am missing anything.

Thanks,

Liz

On the afternoon of August 19, Mr. Neil Stewart, a Provincial Public Health official, replied to Ms. Rostant-MacArthur's email of August 18 to Mr. Neale as follows:

Liz,

I was forwarded your e-mail below that was sent to Ryan Neale. Ryan passed this along for us to respond to. Below are the actions we propose to take:

- Public Health will be instructing the security company that one guard is to remain at the entrance at all times and the other is to constantly roam the floors. The one at the entrance is to identify anyone entering the building and anyone who is not an isolating student should be informed of the fact that there are students isolating in the building who may be transiting the hallways and to stay at least 6 feet apart. Anyone who doesn't have legitimate business in the building will be asked not to enter.

- Security will inform students entering the building without a mask that masks are mandatory for all who are in isolation while they're in the hallways.

My understanding from speaking to Donna Sutton is the residence management will provide isolating students of policy for Bernadine which indicates:

- Masks are mandatory when outside your room.
- Sanitize hands before using any space other than your room.
- When outside your room, stay at least six feet away from others.
- If using microwave stands or kitchens, sanitize surfaces before and after use
- Only use outdoor spaces defined for your use and stay distant from others while outdoors.

Regarding your request to add more security, we feel the above is sufficient. If you deem more are required, please communicate that to UPEI registrars office. Any additional security would be at UPEI's expense. Regarding the student isolating at Blanchard, we were not involved in placing them in Blanchard other than to approve that isolation location based on the student being in a self-contained unit and that UPEI registrars office was accepting of the student being there. I am not aware of any plan to isolate further students at Blanchard.

Regarding your request "Also, can you please send me the schedule of arrival, date of students and mode of travel. I should point out that I have received reports of students arriving in residence without masks on, driving around campus asking people for directions to residence (not wearing masks), and security not present when students arrive for entry." I have copied Donna Sutton. I don't know how descriptive the instructions provided to incoming isolated students were. I will leave it to Donna to determine if her staff need to send further instructions to incoming students. There are 14 students isolating at Bernadine who are not UPEI students. We will contact these students and provide instructions on how to get Bernadine, to wear a mask while on campus, and to proceed directly to Bernadine upon arrival. Jonathan Oliver at UPEI has a schedule of all arriving students and the dates of their arrival. Virtually all of those students will be arriving by taxi as they are coming in by air.

My point of contact with UPEI is the registrars office with whom we have had extensive, constant communication while trying to manage isolation of hundreds of students during a period when the availability of hotel rooms is extremely low. If you have any other concerns, please be advised we

will be consulting with the registrars office on any of these matters as we must function as a team if we are going to get through to the end of this.

Ryan Stevens and Tyler Ross, copied here, can respond to any future inquiries. They are managing isolation of students. Regards.

Ms. Rostant-MacArthur seems to have been satisfied by Mr. Stewart's explanations and suggestions. She promptly replied as follows:

Hi Neil,

Thank you for responding to my e-mail and providing all this detail. Your solution to enhancing security makes perfect sense and to be honest my biggest concern was that an officer be posted at the main entrance at all times and having another officer to monitor the floors, so this will be great, thank you.

As far as protocols and instructions for arriving students, the Residence Assistant Manager sent along a Self-Isolating Protocol, and I have been chatting with Donna Sutton to help remedy any confusion with how to find Bernardine Hall and to wear a mask upon entering campus grounds. I appreciate that you will be contacting the students that are not attending UPEI to provide instruction.

My apologies with the Blanchard student. I may have misunderstood the details surrounding this. Also, thank you for clarifying that there will not be others self-isolating in Blanchard.

The arrival dates will be shared in these so that issue is resolved.

I am aware of your communication with the Registrar. Donna and I have stayed in close contact throughout the pandemic, and I appreciate your challenges. My e-mail was not meant to offend in any way. I was seeking some clarification to fulfill my OHS obligations. The most important piece was enhancing security and I think that your solution will help ease peoples tension. Again, thank you for your e-mail and providing your support for these incoming students.

Take care,

Liz

Mr. MacAulay met again with Ms. Rostant-MacArthur on August 24 and filed another Inspection Report which reads as follows:

This Officer met with Liz Rostant-MacArthur to follow up on pervious [sic] complaint the following information was revealed.

We met with all the staff this morning; this is what we discussed

- we have instructed all maintenance staff to no longer do any work in residence without the approval of a supervisor. The supervisor will be checking with residences to make sure the room is not a quarantine room. If the room is a quarantine room, we will only be entering if it's an emergency.
- If entry is required, we will put we will put all proper PPE outside the supervisor's door.
- Staff have been instructed to call a supervisor if and after-hour call is necessary in a quarantine room and the supervisor will come in with that employee.

Staff have signed the sheets and I will drop them off shortly.

Staff not present to be made aware Monday and have been instructed to call a supervisor before any after hours calls in residence.

Cleaners have been instructed to continue doing work as usual as we do not under any circumstances enter rooms under normal circumstances.

Security has been informed to only patrol lobbies for the time being and that if an emergency call is needed in a quarantine room I have provided all necessary PPE for safety entry.

We are currently having safety meetings but going forward we will record and get staff to sign our minutes and we will send to you immediately after.

While on site this Officer noted the formal notification on building had not been put in place. Liz immediately address the issue and had notification put placed on all entrances into the building.

It was also discussed a meeting was held with private security company to review the required duties and process for site along with required safe worker procedures. Liz stated that she has direct contact with the security companies manager if any issues arrive on site.

On September 3, 2021, the Employer released its Fall Operational Plan by posting it on the UPEI website. The Operational Plan deals extensively with the safe return of the students to the University and was approved by the PEI Chief Provincial Health Officer (*CPHO*). It had not previously been distributed to or discussed with the *JOHSC* or campus unions.

The Association and other campus unions sent a joint letter to the Employer's President on September 3 expressing their concern about the lack of consultation on the Operational Plan and self-isolation of students on campus. Ms. Podger replied on behalf of the President. Not satisfied with her response, the Association filed the September 7, 2021 grievance.

Dr. Arfken was a co-chair of the *JOHSC* at the time and called a special meeting of the committee on September 14. At that meeting, Ms. Podger took the position that the Employer was not required to consult with the *JOHSC* on the Operational Plan because it was a University policy. With respect to the quarantining of students on campus and the August 13 incident, Ms. Podger is reported in the minutes to have stated, "these incidents of self-isolation have been all closed" and that the *JOHSC* should move forward rather than spend time dealing with "past issues that have been resolved". At the regular monthly *JOHSC* meeting the following day, the same issue came

up again and Ms. Podger reiterated that “all incidents had been successfully resolved “ and stated that “the HSE Manager is being attacked for things that happened in the past”. While Ms. Podger was not a member of the *JOHSC*, she frequently attended its meetings during the period in question and is designated in the minutes as “Employer”.

Ventilation

The adequacy of the ventilation systems in campus buildings had been questioned by the Association before the pandemic and this continued sporadically during the pandemic. On August 3, 2021, Dr. Arfken and the President of CUPE, Local 1870 sent a letter to the University President asking what steps had been taken or would be taken to address ventilation in campus buildings in the context of the pandemic. Ms. Podger responded to that letter by email the next day. Her email contains several reassuring statements about the ventilation systems including the following: “All systems are designed within industry standards and meet or exceed requirements for minimum efficiency reporting value (MERV) ratings for filtration.”. On August 19, Dr. Arfken sent another letter to the University President asking for copies of any ventilation reports, inspections or evaluations which indicated that every reasonable precaution was being taken to address the risk of airborne infection of Covid-19. The letter contained a link to a Covid-19 Ventilation Checklist developed by the Occupational Health Clinic for Ontario Workers. On August 24, the Employer advised the Association that it had commenced the process for reviewing the air quality in University buildings. The Employer promptly retained MCA Consultants Inc., a mechanical engineering firm, to review and report on its classroom ventilation systems. MCA commenced its review on or about September 7 and delivered a draft final report (revision 1) to the Employer on November 26.

Ms. Podger sent a copy of the report to Mr. MacAulay and met with him to discuss it on December 3. Mr. MacAulay's Inspection Report of the meeting reads as follows:

This Officer met with Jackie Podger, VP of Administration to review a UPEI class ventilation study that was completed by MCA Consultants.

MCA Consultants Inc. were contracted to complete an assessment of classroom ventilation systems at the University of Prince Edward Island Charlottetown campus. The study looks at the following aspects,

- Operation and maintenance
- Ventilation
- Filtration.

- It was noted that ASHRAE (American Society of Heating, Refrigerating and Air Conditioning) ventilation Standard 62.1-2019 standards was used.

The scope of the ventilation study focused on seventy (70) classrooms which was identified by UPEI. The report indicated that 18 of the seventy rooms were not meeting ASHRAE standard 62.1-20-19.

It was discussed that the report put in place a number of recommendations to assure that all areas on campus will meet standards.

Jackie stated that all recommendations will be implemented within a time line; currently the time line can be within a year due to a availability of materials and contractors. Jackie stated that the report addressed the area with area of concerns that are to be addressed immediately and this will be done.

It was also discussed that each of the eighteen will have a formal hazard assessment completed, and the engineering controls, administrative controls will be implemented.

This officer informed Jackie that:

Part 11 - Ventilation - Means of ventilation

The employer shall ensure that every workplace shall be adequately ventilated by either

- (a) natural ventilation provided by windows, shutters or louvres which can be opened, having a combined area equal to at least 5% of the floor area; or
- (b) mechanical ventilation, where the minimum amount of outside air introduced into any room is at least 0.45 m³/min. (15 c.f.m.) per person. (EC 180/87)

MCA delivered its final report (revision 2) to the Employer on December 10 and Ms. Podger again forwarded a copy to Mr. MacAulay for his review later the same day. Ms. Podger attended a *JOHSC* meeting on December 15 but the MCA report was not mentioned or disclosed at the meeting.

The day before, Dr. Arfken had written a letter to the University President on behalf of the Association requesting that it be provided with a copy of the MCA report. On December 16th, Dr. Arfken sent a second letter to the University President, this time in his capacity as an employee, requesting that he be provided with, among other things, a copy of the MCA report pursuant to ss. 27(5) of *OHSA*. Neither of these requests resulted in disclosure of the MCA report.

The MCA report was revealed to the *JOHSC* for the first time at a special meeting on January 17, 2022. Representatives of MCA attended the meeting to go through the report and answer questions. On January 19, Ms. Podger sent the following message to all faculty and staff:

Message from the Vice-President, Administrative Administration and Finance: Classroom Ventilation Review

Dear Faculty and Staff,

MCA Consultants, Inc was hired by the University of Prince Edward Island to provide professional engineering services for review of classroom ventilation systems. This comprehensive review encompassed 69 classrooms (any room occupied by student and used for educational purposes) and examined the state of inflation systems with respect to American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards and current best practices during the COVID-19 pandemic. An intensive physical inspection was conducted over the summer and fall to fully assess classroom ventilation so that any required improvements could be implemented expeditiously.

The consultants prepared a written report that was organized into the following categories: Operation and Maintenance, Ventilation, Filtration and Clean Air Delivery, and included recommendations for actions both in the short term and long term.

The report was also reviewed by Mr. Joe MacAulay, Occupational Health and Safety Officer with the Workers Compensation Board of Prince Edward Island (WCB PEI) to ensure that UPEI was also meeting WCB PEI standards. We appreciate Mr. MacAulay's time and expertise in reviewing this report; please find his memo attached. Mr. MacAulay indicated that because UPEI has followed a regular maintenance program, has accepted the recommendations provided by MCA - and is committed to implementing them - UPEI is addressing the intent of Section 11.1 of the PEI Occupational Health and Safety Regulations, which states that the employer must ensure that the workplace is adequately ventilated.

Mr. MacAulay agreed that the report be presented by MCA to the Joint Occupational Health and Safety Committee (JOHSC) as per our health and safety process. MCA reviewed their report, including the short- and long-term recommendation/actions with the JOHSC on Monday, January 17.

Short-term recommendations/actions

Filtration levels at the central air heating systems are MERV 13 or better which means UPEI meets the current ASHRAE standards. However, MCA recommended that UPEI improve all recirculated air filtration levels in terminal fan coil and heat pump units that are currently fitted with 2" MERV

8 filters by upgrading to MERV 13 filters or better if the upgrade is not expected to negatively impact system airflow. The MERV 13 filters have been ordered and expected delivery is mid-March.

It was discovered that nine classrooms that have mechanical ventilation systems do not meet ASHRAE Standard 62.1-2019 and it was recommended that portable HEPA air filtration units be installed. Furthermore, there are several classrooms at UPEI that rely entirely on natural ventilation. In these areas, windows can be opened before, during and after class to improve ventilation; however, in colder weather this is difficult to maintain. Although this complies with ASHRAE standards, UPEI has decided to install portable HEPA units in these classrooms as well to increase ventilation.

Therefore, a total of 16 classrooms will have HEPA units installed. Twenty units have been ordered as four classrooms require two units. Scheduled delivery to UPEI is during the week of January 24, with installation occurring prior to the resumption of in-person learning.

Long-term recommendations

Long-term recommendations included installing new, and upgrading and/or replacing, existing mechanical ventilation systems where required to meet ASHRAE requirements.

The first two capital projects to address these recommendations will be classrooms at Atlantic Veterinary College and the Robertson Library. We have already begun the first phase of these project projects, which is to investigate the best solutions for these classrooms. Phase two will comprise the full design costing, and construction for these solutions.

Subsequent capital projects will also involve SDU Main and Steel buildings with an assessment of the possible solutions, design, costing, and construction.

Should you have any questions regarding this information, please address them via your JOHSC representative.

Sincerely, Jackie Podger

Vice President, Administration and Finance

While ventilation continued to be a subject of discussion at the next *JOHSC* meeting, the implementation of the recommendations in the MCA report and testing of building space other than classrooms are not relevant to the issues raised at the hearing.

JOHSC Functionality

The membership and duties of the *JOHSC* are governed by s. 25 of *OHS Act* which reads in part, as follows:

25. Joint occupational health and safety committee

- (1) At a workplace where 20 or more persons are regularly employed by an employer, the employer
- (a) shall establish and maintain a joint occupational health and safety committee; and

(b) may establish additional such committees.

Members

(5) A committee shall be composed of the number of persons

- (a) agreed to by the workers or their union, and the employer; or
- (b) ordered by the Director.

Membership of committee

(6) Membership of the committee shall be determined as follows:

- (a) one-half of the members shall be selected by the union representing the workers or, in the absence of a union, by the workers that the members represent;
- (b) one-half of the members shall be selected by the employer.

Duties of committee

(7) The committee shall

- (a) cooperate to identify hazards to occupational health and safety in the workplace and effective systems to respond to the hazards;
- (b) receive, investigate and promptly deal with issues respecting occupational health and safety, other than a complaint of workplace harassment;
- (c) participate in inspections, inquiries and investigations respecting the occupational health and safety of workers in the workplace, other than an investigation of a complaint of workplace harassment;
- (d) advise the employer on individual protective equipment, devices and safety features that are best suited to the needs of the workers, within the provisions of this Act and the regulations;
- (e) advise the employer regarding a policy or program required by this Act;
- (f) make recommendations to the employer, the workers and any other persons for the improvement of the occupational health and safety of persons at the workplace; and
- (g) maintain records and minutes of committee meetings in a form and manner approved by the Director and provide an officer with a copy of those records and minutes at the request of the officer.

Meetings

(8) Subject to subsection (9), a committee shall meet at least once each month unless the committee otherwise provides in its rules of procedure.

The parties agreed to have 12 members on the *JOHSC*, six appointed by the Employer and six by the campus unions. There are two co-chairs, one appointed by the Employer and one by the campus unions. Two of the Employer's appointees are selected by the VP Administration and Finance, and the other four are held by the University's Radiation Safety Officer, Biosafety Officer, Director of Facilities Management and Manager of Health, Safety & Environment.

To the extent that the *JOHSC* had rules of procedure they are found in its Terms of Reference (TOR). The evidentiary record includes the *JOHSC*'s 2018 TOR and 2021 TOR. There is not a great deal of difference between the two versions. They both deal with membership, voting rights, quorums, setting of agendas, taking of minutes, conduct of inspections, etc. The 2021 TOR which was approved on July 13, 2021 contains a new provision which states that guests may be requested to attend *JOHSC* meetings from time to time as agreed by the co-chairs. It also adds a provision which stipulates that Robert's Rules of Order will be used to conduct the meetings unless otherwise agreed by resolution.

The development of the 2021 TOR was a source of discord. It was drafted by the Employer or its members on the *JOHSC* and was not a joint effort. Various concerns were raised about it, one of the most contentious being a proposed confidentiality clause which was broader than the one in the 2018 TOR. Dr. Arfken and Ms. Podger were the primary protagonists on this issue and at the March 17, 2021 meeting of the *JOHSC* DR. Arfken made a comment to the effect that the presence of the VP Administration and Finance at *JOHSC* meetings could have a "chilling effect" on discussion. Ms. Podger took umbrage at the comment and asked Mr. MacAulay, who was there as a guest at her invitation, whether she could attend *JOHSC* meetings. Mr. MacAulay replied to the effect that he would encourage her to attend for the purpose of clarifying University policies but she was not entitled to vote. The issue concerning the proposed confidentiality clause was ultimately resolved by modifying it to exclude any reference to collective agreements.

As previously indicated, the Employer did not advise the *JOHSC* that international students would be self-isolating on campus in August 2021, or that there had been an incident with one such student at Blanchard Hall. Likewise, it did not consult with the *JOHSC* when developing the

2021 Fall Occupational Plan. Finally, it did not disclose the MCA report to the *JOHSC* for more than a month after receiving same.

Ms. Rostant-MacArthur's will-say statement deals with the issue of the Operational Plan as follows:

46. There was also a discussion during this meeting as to whether the Employer had a duty to consult the JOHSC on the Operational Plan under PEI's Occupational Health and Safety Act.
47. It was determined that a document such as an Operational Plan would fall under the University's policies, which are not the responsibility of the JOHSC.
48. To be clear, it is not within the mandate of the JOHSC to review or participate in the development of a COVID-19 operational plan, or any other workplace policy. The proper role of a workplace health and safety committee, as confirmed by Joe MacAulay at WCB, is to identify workplace hazards and issue recommendations to the employer so these hazards may be addressed.
49. It was determined that in the event the JOHSC determines a gap in a policy, then a recommendation can be made to the Employer.

Employer's Position – Preliminary Issues

The Employer raises two preliminary issues. First, it says that the grievances should be dismissed because they are completely lacking in particulars. Second, it asserts that this Board lacks the jurisdiction to overrule the decisions made by WCB officers in the present case.

Elaborating on the first issue, the Employer argues that the grievances were speculative when they were filed and were nothing more than fishing expeditions. It says that providing particulars later through document disclosure and will-say statements does not solve the problem. In its view, the obligation to provide particulars arose when the grievances were filed and it notes that Ms. Podger asked the Association for particulars at the time of the initial grievance meetings. It alleges that it has been put to a lot of unnecessary effort due to the lack of particulars.

Accordingly, it submits that the grievances should be dismissed. In support of this position, it refers to the following authorities: *Rio Tinto Alcan Primary Metal v. CAW-Canada, Local 2301*, 2012 CarswellBC 955; *IBEW, Local 424 v. Devonian Electrical Services Ltd.*, 1971 CarswellAlta 161; *Dunphy v. SEIU Local 1*, 2008 CanLII 44580 (ON LRB)

With respect to the Employer's second issue, it contends that the central allegation in both grievances is that the University violated *OHS*A. It maintains that enforcement of *OHS*A falls within the exclusive authority of the Workers Compensation Board and, more specifically, its Director and officers of occupational health and safety.

The Employer acknowledges that the Collective Agreement contains a provision recognizing its *OHS*A obligations. However, it argues that where, as here, the "essential nature of the dispute" relates to the enforcement of *OHS*A, arbitrators have no jurisdiction to decide the matter. It says that WCB officers were heavily involved with the issues that arose in connection with the self-isolation of international students on campus and with the MCA ventilation study. The Employer emphasizes that at no time did the WCB officers issue any orders or make any findings of non-compliance. In the Employer's view, the absence of any such order or finding is tantamount to an affirmative finding of compliance. Putting the point more bluntly, the Employer asserts "The present case is all about whether WCB officers can have their decisions overruled by arbitrators." It submits that this Board lacks the jurisdiction to do so and, consequently, requests that the Grievances be dismissed.

In support of the latter proposition, the Employer, cites the following authorities: *Weber v. Ontario Hydro*, 1995 CarswellOnt. 240; *Regina Police Assn. v. Regina (City) Police Commissioners*, 2000 SCC 14; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42; *Health of Employers Assn. of British Columbia and BCNU, Re*, 2021, BCLRB 140; *Ottawa Hospital and ONA (Cudrasov), Re*, 2022 CarswellOnt 3698; and *McKnight and CUPE, Re*, 2016 CarswellSask 449.

Association Position – Preliminary Issues

The Association argues that there is no merit to the Employer's argument based on the alleged lack of particulars. It says that lack of particulars is not a jurisdictional issue and, if the grievances were lacking in particulars, it was open to the Employer to bring a motion to the Board for particulars. On this point, the Association refers to Brown and Beatty *Canadian Labour Arbitration*, 5th Edition at paragraph 3:8. It also notes that two of the authorities relied on by the Employer were actually cases in which orders to provide particulars were granted. Only in the other case, where the applicant had been given previous opportunities to provide particulars, was her application dismissed.

With respect to the Employer's jurisdictional argument, the Association relies heavily on the Supreme Court of Canada's recent decision in *Northern Regional Health Authority and Horrocks, et al (Horrocks)*, 2021 SCC 42 (CanLII). The Association interprets this decision to mean that arbitrators who draw their authority from labour legislation which includes a mandatory dispute resolution clause, such as that found in s. 37(1) in PEI's "*Labour Act*", have exclusive jurisdiction unless the competing statute expressly states otherwise. Here however, the Association says it is not necessary to decide whether the Board has exclusive or concurrent jurisdiction

because either is sufficient. In this connection, the Association points out that the Collective Agreement includes an express reference to the Employer's obligations under *OHSA* and that the *Act* does not confer exclusive jurisdiction on WCB officers. It also notes that the powers of WCB officers to issue orders are discretionary in the sense that officers "may" issue orders if they determine that there has been a breach of *OHSA*.

By way of additional arbitral authority, the Association cites the *Viterra Inc. and Grain Workers' Union, Local 333 et al (Viterra)* 2018 BCCA 455 (CanLII) where the British Columbia Court of Appeal rejected the Employer's argument that inspectors with a mandate under the *Canada Labour Code* had exclusive jurisdiction over the enforcement of statutory remedies in the *Code*.

The Association distinguishes the authorities upon which the Employer relies on the basis that the competing legislation in those cases, unlike *OHSA*, established an exclusive jurisdiction.

For the above reasons, the Association submits that both of the Employer's preliminary objections should be dismissed.

Decision – Preliminary Issues

Lack of Particulars

Both grievances contain numerous allegations that the Employer violated the Collective Agreement and *OHSA*. Some of those allegations are very general while others are more specific.

In such circumstances, the Employer may well have been justified in seeking an order from the Board requiring the Association to provide particulars with respect to the more general allegations. However, the Employer did not do so.

It is clear from the authorities cited by both parties on this issue that lack of particulars in a grievance does not render the grievance invalid. It is not at all uncommon for a party to seek particulars. However, if a party chooses not to do so, it cannot succeed on a motion to dismiss the grievance on the ground that it is too general or vague. It is only where the grieving party has been ordered to provide particulars and fails to do so without legitimate reason that dismissal would be an appropriate remedy.

In the present case, the parties agreed to adjourn the hearing for the purpose of preparing and exchanging will-say statements and preparing books of documents. The Employer also applied to the Board for a production order which was granted in part. In the Board's view, the relevant facts, documents, and issues were clarified through the pre-hearing process. The Employer did not claim to be caught off guard at the hearing and did not ask for an adjournment.

For these reasons, the Board is not prepared to dismiss the grievances based on lack of particulars.

Jurisdiction

The Board is satisfied that it has jurisdiction to decide whether the Employer breached its health and safety obligations under the Collective Agreement and *OHSA*. The Board derives its authority from s. 37 of the *Labour Act*. Subsection 37(1) states:

“Every Collective Agreement shall contain a provision for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration, operation or alleged violation of the Agreement, including any question as to whether a matter is arbitrable.”

This is a standard mandatory dispute resolution provision found in provincial and federal labour legislation. In *Horrocks*, the Supreme Court of Canada commented on such provisions as follows:

“[17] This Court has interpreted such mandatory dispute resolution provisions as conferring an exclusive jurisdiction on the decision-maker appointed thereunder – typically a labour arbitrator.”

Later in the decision, the Court dealt specifically with the issue of competing jurisdiction, stating:

[39] To summarize, resolving jurisdictional contests between labour arbitrators and competing statutory tribunals entails a two-step analysis. First, the relevant legislation must be examined to determine whether it grants the arbitrator exclusive jurisdiction and, if so, over what matters (*Morin*, at para. 15). Where the legislation includes a mandatory dispute resolution clause, an arbitrator empowered under that clause has the exclusive jurisdiction to decide all disputes arising from the collective agreement, subject to clearly expressed legislative intent to the contrary.

[40] If at the first step it is determined that the legislation grants the labour arbitrator exclusive jurisdiction, the next step is to determine whether the dispute falls within the scope of that jurisdiction (*Morin*, at paras. 15 and 20; *Regina Police*, at para. 27). The scope of an arbitrator's exclusive jurisdiction will depend on the precise language of the statute but, in general, it will extend to all disputes that arise, in their essential character, from the interpretation, application, or alleged violation of the collective agreement. This requires analysing the ambit of the collective agreement and accounting for the factual circumstances underpinning the dispute (*Weber*, at para. 51). The relevant inquiry is into the facts alleged, not the legal characterization of the matter (*Weber*, at para. 43; *Regina Police*, at para. 25; *Quebec (Attorney General) v. Quebec (Human Rights Tribunal)*, 2004 SCC 40, [2004] 2 S.C.R. 223 (“*Charette*”), at para. 23).

[41] Where two tribunals have concurrent jurisdiction over a dispute, the decision-maker must consider whether to exercise its jurisdiction in the circumstances of a particular case. For the reasons given below, concurrency does not arise in this case. I would therefore decline to elaborate here on the factors that should guide the determination of the appropriate forum.

In *Viterra*, the issue was whether an arbitrator had jurisdiction to hear grievances which alleged that the employer had breached provisions in the *Canada Labour Code* dealing with maximum hours of work in Part III. The employer argued that the arbitrator lacked jurisdiction because the *Code* conferred exclusive jurisdiction on inspectors appointed under the *Code* to enforce Part III. The arbitrator rejected this argument and assumed jurisdiction. The employer's application for judicial review was dismissed by the British Columbia Supreme Court. The employer appealed to the British Columbia Court of Appeal and argued that the grievances “were in essence complaints that the employer contravened Part III ... and that such complaints had been assigned exclusively to inspectors” appointed under the *Code*. The Court rejected this argument stating the *Code* did not confer exclusive jurisdiction on the inspectors and that it would have been easy for Parliament to do so. Instead, the Court held that the enforcement of employment rights under the *Code* for unionized employees was a matter of shared jurisdiction between inspectors and grievance arbitrators. In reaching this conclusion, the Court distinguished “*Regina Police*” on the basis that the Supreme Court of Canada there found that the *Police Act* provided “a complete code for the resolution of disciplinary matters involving members of the police force”.

Such is not the case here. The language conferring authority on WCB officers is not expressed to be exclusive. The officers “may investigate and determine compliance with the *Act* and the *Regulations*” [ss. 7(1)]. Where officers determine that there has been non-compliance, the officers “may issue an order” to rectify the non-compliance [ss. 8(1)], including a stop work order when the officer “finds that the contravention ... is a danger or hazard to the occupational health or safety of a worker” [ss.8(4)].

The Board does not interpret *OHSA* as conferring exclusive jurisdiction on WCB officers. It is clear from well-established arbitral and judicial authority that labour arbitrators have the jurisdiction to interpret and apply legislation which confers substantive rights and obligations of employment on unionized employees. That jurisdiction is only lost where the statute in question either expressly or by necessary implication confers exclusive jurisdiction on another decision-maker. In the present case, there is no expressed intent to confer exclusive jurisdiction on WCB officers. Neither is there any necessary or reasonable basis for implying such an intent.

The Board recognizes that the decision in *Abbotsford Regional Hospital* by the British Columbia Labour Relations Board seems to have reached a contrary conclusion. However, in our view that decision was based on different statutory language which was interpreted to confer exclusive jurisdiction on WorkSafeBC with respect to health and safety matters. We have reached the opposite conclusion with respect to *OHSA*. We also note that *Abbotsford* was decided prior to *Horrocks* which provides greater clarity on the issue of competing jurisdiction as between labour arbitrators and other statutory decision-makers.

To be clear, this is not a case where the Board is being called upon to overrule any decision or directive by WCB officers. In such a case, considerations of comity and double jeopardy would come into play. However, those considerations are not engaged here because no orders were issued by WCB officers. Mr. MacAulay conducted inspections and those inspections revealed deficiencies with respect to the housing of international students on campus and the incident which occurred at Blanchard Hall. His Inspection Reports revealed that the procedures initially put in place by the Employer for the safety of workers were deficient in several respects and that appropriate protocols and related safety measures were not fully in place for several days after the international students arrived on campus. His Inspection Report of August 18 indicates that even as of that date employees had not been made aware of any formal protocols in place to protect them. Mr. MacAulay also noted that security personnel were not assigned to Blanchard Hall and that appropriate signage was not posted at Bernadine Hall. Mr. MacAulay was satisfied with the Employer's response in remedying these problems and did not issue any order with respect thereto. However, this by no means constitutes an affirmative finding that the Employer initially met its obligation under ss.12(1)(a) to ensure that every reasonable precaution was taken to protect the occupational health and safety of persons at or near Blanchard Hall or Bernadine Hall.

Having regard to the foregoing, the Board finds that it has jurisdiction to determine whether the Employer failed to comply with its obligations and responsibilities under *OHS*A and the Collective Agreement.

Association Position – Merits

The Association contends that the Employer did not meet its obligations under *OHS*A in three respects – namely, by not ensuring every reasonable precaution was taken to protect the health and safety of workers in relation to the self-isolation of international students on campus; by not disclosing the MCA Report in a timely manner; and by not consulting and cooperating with the JOHSC with respect to the self-isolation of international students, the 2021 Fall Operational Plan and the MCA Report.

The Association emphasizes that the Employer did not consult or advise the JOHSC, the union or workers about the arrangements it made with the Province to quarantine international students on campus. It points out that this arrangement was made before the end of July, and the Employer had ample opportunity to consult with the JOHSC and inform the unions and workers before the students arrived on campus. However, the Employer did nothing, so the Association says, to communicate what was happening until after the students arrived on campus and the August 13 incident occurred at Blanchard Hall.

The Association notes that Mr. MacAulay's inspection reports reveal he found gaps in communication and that workers in Bernadine Hall and Blanchard Hall had not been advised in advance of the quarantine arrangement. They also indicate that no protocols were in place when the students arrived and that proper signage had not been placed on the buildings. The Association asserts that Mr. MacAulay's investigation reports were improperly withheld from the JOHSC at the time and were only obtained at later as a result of a FOIPOP application.

The Association argues that the Employer did nothing to prepare for the self-isolation of students on campus until after the August 13 incident at Blanchard Hall. It says following that incident the Employer was playing catch-up and trying to put out fires due to the lack of pre-planning. In this connection, the Association points out that the Employer's 2021 Fall Operational Plan, which provides very specific guidance on Covid-related health and safety issues, was not posted on the University's website until September 3, 2021, by which time all the international students were no longer self-isolating in Bernadine, Hall.

The Association also contends that not only did the Employer violate its duty to inform the JOHSC about the quarantine arrangement, it refused to discuss the situation when it was raised by worker representatives at JOHSC meetings in September. It says the Employer shut down the discussion and accused the worker representatives of attacking the Manager of Health and Safety, Ms. Rostant-MacArthur.

With respect to the MCA Report, the Association maintains that the Employer tried to control the health and safety issues about the ventilation systems in campus buildings. It observes that the Employer made representations in August of 2021 that all of the ventilation systems met or exceeded applicable standards. It says the Employer learned in November that its earlier representation was not true. However, it withheld the MCA Report from the JOHSC, the unions and their members for nearly two months.

Regarding the JOHSC itself, the Association alleges that the Employer was attempting to control it. The Association says this is evident from the Employer's attempt to impose a new TOR

on the JOHSC which contained an overly broad confidentiality provision. In the Association's view, the proposed provision was antithetical to the purpose of health and safety legislation. As authority on this point the Association refers to *Perry North Region and CUPE, Local 5111*, 264 LAC (4th) 16 (Ponak); and *Liquor Control Board of Ontario v. Ontario Public Service Employees Union* 2021 CanLII 15607 (ON LRB).

Having regard to the foregoing, the Association submits that both grievances should be allowed. By way of remedy, it requests that the Board issue an order declaring breaches of the Collective Agreement and OHSA as set out in the September 7, 2021 grievance, namely:

- A declaration that the Employer has violated the above mentioned and any other applicable articles and sections of the UPEI/UPEIFA Collective Agreement and the PEI Occupational Health and Safety Act.
- A declaration that the Employer failed to take every reasonable precaution to protect the occupational health and safety of our members at or near the workplace.
- An order requiring the Employer to cease interfering with the operations of the UPEI JOHSC.
- An order requiring the Employer to cease intimidating and/or coercing FA members who are seeking the enforcement or acting in compliance with PEI-OHSA.
- An order requiring UPEI senior administration to undergo training on their obligations/ responsibilities under PEI-OHSA.
- An order requiring the Employer to consult and cooperate with UPEI JOHSC on the development of policies and procedures for protecting and improving the occupational health and safety of our members.
- An order requiring the Employer to regularly provide UPEI JOHSC with reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace.

Employer Position – Merits

The Employer argues that the applicable standard under *OHSA* is reasonableness, not perfection. It acknowledges that there was a lapse of communication in connection with the self-isolation of international students. However, it says that the situation was quickly rectified and no one was infected with Covid. It also points out that none of the Association's members would have occasion to enter Blanchard Hall or Bernadine Hall.

With respect to the MCA Report, the Employer denies withholding it from the JOHSC, pointing out that it was provided to the JOHSC on January 17, 2022 and to the entire campus community two days later. The Employer also asserts that the MCA Report supports Ms. Podger's statement in her August 4, 2021 email that "all systems are designed within industry standards and meet or exceed requirements for Minimum Efficiency Reporting Value (MERV) ratings for filtration."

Regarding the Association's concerns about the functioning of the JOHSC, the Employer asserts that Ms. Podger was entitled to attend committee meetings on its behalf even though she was not a member. It says Mr. MacAulay addressed this issue at the March 17, 2021 JOHSC meeting, the same meeting at which the impasse concerning the proposed confidentiality clause in the new TOR was resolved as a result of Ms. Podger's participation.

In relation to the 2021 Fall Operational Plan, the Employer contends that the 2021 Winter Operational Plan remained in effect until the 2021 Fall Operational Plan was finalized and posted on the University website. Thus, the Employer says there was no gap between the sequential

Operational Plans. The Employer views the Operational Plans as being policies it was required to develop by the Province under the guidance of the Chief Public Health Officer. Consequently, the Employer rejects the Association's argument that it was obliged to consult with the JOHSC on the Plan.

For the above reasons, the Employer submits that it acted reasonably in meeting its obligations under *OHS*A and requests that the grievances be dismissed. In the event that some breach is found to have occurred, the Employer argues that declaratory relief would be the only appropriate remedy. It says the mandatory orders sought by the Association would not be warranted and, in any event, would not be within the Board's authority to grant.

Decision – Merits

Self-isolation of Students

Subsection 12(1)(a) of *OHS*A requires the Employer to “ensure that every reasonable precaution is taken to protect the occupational health and safety of persons at or near the workplace”. In July 2021 the Employer agreed to the Provincial Government’s request to allow international students to self-isolate on campus. That decision involved a heightened risk to workers on campus of being exposed to persons infected with Covid-19. One rather obvious way of mitigating that risk was to inform all workers on campus about the arrangement with the Province, when the students were arriving, where they would be housed and what precautions or

protocols were in place to avoid or respond to unintended exposures. Given that the first students did not arrive until the second week of August, there was ample time for the Employer to make sure all campus workers were informed. However, based on the record, it appears that the Employer took no steps to inform workers, including those who worked in the buildings where the self-isolating students were to be housed. As a result, there was an unfortunate exposure when the first students arrived.

The Employer acknowledges that there was a “lapse in communication”. It would be fair to say that there was a complete failure of communication with workers prior to the arrival of the international students on campus. There is no indication that the Employer turned its mind to the issue until after the August 13 incident occurred. Even then, it did not inform or otherwise involve the JOHSC.

Apart from the communications issue, it is apparent that from Ms. Rostant-MacArthur's emails and Mr. MacAulay's Inspection Reports that there were still unresolved problems relating to security practices, signage and protocols in the third week of August. To its credit, the Employer attempted to rectify those problems as quickly as it could. Happily, in the end, no one was infected by Covid as a result of the international students isolating on campus

The Board recognizes that the Employer had a lot on its plate at the time and felt obliged to accede to the Provincial Government's request on short notice. However, we find that the Employer could and should have informed all its workers in advance that international students

would be self-isolating on campus. We also find that the Employer should have given advance notice to the JOHSC because of its role in occupational health and safety issues on campus.

Accordingly, the Board allows the grievances on this ground and declares that the Employer breached the *OHSA* and the Collective Agreement by not giving campus workers and the JOHSC advance notice of the self-isolation arrangement with the Province, including details of when the students would be arriving, where they would be housed and what measures would be in place to minimize the risk of workers being infected.

Ventilation

After some pressure by the Association and one of the other campus unions in August of 2021, the Employer engaged MCA Consultants to conduct the study of its classroom ventilation systems. The study commenced in early September and was completed in November. MCA forwarded a copy of its final Report in draft form to Ms. Podger for her review on November 26, 2021. The covering email stated: "If there are no additional comments, please advise and we will remove the [draft] watermark and reissue."

Ms. Podger sent the Report to Mr. MacAulay for his review on November 30 and met with him to discuss it on December 3. MCA subsequently made a few minor changes and delivered the final Report to Ms. Podger on December 10. Once again, Ms. Podger sent it to Mr. MacAulay for his review.

On December 14, Dr. Arfken requested that the Employer provide a copy of the Report to the Association. That request went unanswered. A JOHSC meeting was held on December 15 but the Employer did not mention that it had the final MCA Report. On December 16 Dr. Arfken made a request in his personal capacity as a worker that he be provided with a copy of the Report. This request also went unanswered. The Report was finally presented to the JOHSC at a meeting on January 17, 2022.

It is common ground that the MCA Report concluded that the ventilation systems in nine classrooms did not meet ASHRAE standards and several more which relied entirely on natural ventilation (i.e. open windows) to meet ASHRAE standards, which is not practicable in winter. As a result, MCA recommended that HEPA units be installed in these classrooms. According to Ms. Podger's January 19, 2022 message to faculty and staff, the Employer decided to install HEPA units in 16 classrooms.

The only issue with respect to the MCA Report is the Employer's delay in providing a copy of it to the JOHSC. The JOHSC's mandate as set out in ss. 25(7) of *OHSA* includes the following responsibilities:

- (a) Cooperate to identify hazards to occupational health and safety in the workplace and effective systems to respond to hazards;
- (b) Receive, investigate, and promptly deal with issues respecting occupational health and safety, ...;
- (c) Participate in inspections, inquiries and investigations respecting the occupational health and safety of workers in the workplace...

Subsection 12(2)(a) of *OHS*A requires the Employer to consult and cooperate with the JOHSC. Subsection 27(4) contains specific guidance with respect to the Employer's obligation to provide the JOHSC with reports pertaining to health and safety issues. It reads as follows:

An Employer shall notify the committee or representative of the existence of reports of occupational health and safety inspections, monitoring or tests undertaken at the workplace by, or at the request of, an officer or the Employer and the Employer shall make the reports available on request to the committee or the representative.

The MCA Report was clearly a report of monitoring or testing undertaken at the request of the Employer by MCA for the purpose of determining whether the University's classroom ventilation systems met occupational health and safety standards. The Report raised health and safety concerns which fell within the JOHSC's mandate. Presumably that is why the Employer presented the Report to the JOHSC two days before it communicated it to all faculty and staff. However, the Employer had received the final draft of the Report on November 26 and the final Report on December 10th. It promptly shared both Reports with Mr. MacAulay but not with the JOHSC. It did not even notify the JOHSC that it had the Report until or shortly before the January 17 meeting where it was presented.

The Board finds that the Employer did not meet its obligation under ss. 27(4) by failing to provide the MCA Report to the JOHSC, or at least notifying it of the existence of the Report, on a timely basis. It should have done so by December 10 or 11 at the latest. There was no legitimate reason to keep the JOHSC in the dark about the Report for an additional five weeks. The Board hereby so declares.

JOHSC Functionality

It is apparent from the record that the JOHSC was experiencing difficulties. The Employer's will-say statements blame those difficulties largely on what they characterize as Dr. Arfken's adversarial approach and his relentless pursuit of union issues at JOHSC meetings. The Association, on the other hand, maintains that the Employer was the source of the problem because it was trying to control the JOHSC by having Ms. Podger attend its meetings, unilaterally drafting a new TOR, and shutting down discussion of legitimate health and safety issues.

This is a most undesirable state of affairs. The JOHSC is a statutory committee under *OHS Act*. It performs an important role in the workplace and is intended to operate impartially in dealing with issues of health and safety. It is not a body where partisan labour issues should play a significant role. Neither is it a place for personal bickering.

It seems that part of the problem here is that the JOHSC has operated for a considerable period of time without formal rules of procedure. Subsection 25(12) of *OHS Act* states that the JOHSC shall establish its own rules of procedure. The TOR adopted by the JOHSC on July 13, 2021 includes a new provision which stipulates that *Robert's Rules of Order* will be used to conduct meetings unless otherwise agreed by resolution. This should assist in keeping meetings on track and, if necessary, civil.

The Board notes in passing that Dr. Arfken resigned from the JOHSC in September of 2021 and, as of the date of the hearing, had not rejoined the Committee. Consequently, if he had a negative impact on the work of the JOHSC, as the Employer alleges, that is not a matter of ongoing concern.

Another source of friction at the JOHSC meetings was Ms. Podger's attendance and active participation even though she is not a member of the Committee. The TOR provides that "Guests may be requested to attend the meetings from time to time as agreed by the Co-Chairs." This provision would certainly seem to indicate that guests cannot attend at JOHSC meetings as of right, but only if the Co-Chairs agree that they do so. In this context, it is important to remember that JOHSC meetings are not public. They may often entail discussion of the specific workplace incidents and the persons involved in those incidents. More importantly, the *OHSA* requires that employers and unions have an equal number of members on the committee. Neither the Employer nor the Association can unilaterally interfere with that 50/50 balance by having "guests" attend and actively participate in JOHSC meetings. Otherwise, for example, all four union presidents could attend and participate in JOHSC meetings as guests. While they would not be able to vote, of course, they could substantially influence the conduct of meetings.

The Board has no knowledge of whether Ms. Podger was initially asked to attend JOHSC meetings by agreement of the Co-Chairs and we make no finding in that regard. Going forward, however, guests should only attend JOHSC meetings if the Co-Chairs agree.

We recognize that Mr. MacAulay encouraged Ms. Podger's attendance at JOHSC meetings as the voice of senior management. However, it seems unlikely Mr. MacAulay was aware of the guest provision in the TOR. Moreover, Ms. Podger has the authority under the TOR to appoint two members to the JOHSC and can thereby ensure that senior managers are members of the committee.

Finally on this point, the Board has some concern about the Employer's understanding of the JOHSC's mandate. This concern arises out of the following previously-quoted paragraph in Ms. Rostant-MacArthur's will-say statement:

48. To be clear, it is not within the mandate of the JOHSC to review or participate in the development of a COVID-19 operational plan, or any other workplace policy. The proper role of a workplace health and safety committee, as confirmed by Joe MacAulay at WCB, is to identify workplace hazards and issue recommendations to the employer so these hazards may be addressed.

With respect, the JOHSC's duties as set out in ss. 25(7) are much broader than this. For convenient reference, ss. 25(7) is reproduced again below:

25 (7) The committee shall

- (a) cooperate to identify hazards to occupational health and safety in the workplace and effective systems to respond to the hazards;
- (b) receive, investigate, and promptly deal with issues respecting occupational health and safety, other than a complaint of workplace harassment;
- (c) participate in inspections, inquiries and investigations respecting the occupational health and safety of workers in the workplace, other than an investigation of a complaint of workplace harassment;
- (d) advise the employer on individual protective equipment, devices and safety features that are best suited to the needs of the workers, within the provisions of this Act and the regulations;
- (e) advise the employer regarding a policy or program required by this Act;
- (f) make recommendations to the employer, the workers and any other persons for the improvement of the occupational health and safety of persons at the workplace; and
- (g) maintain records and minutes of committee meetings in a form and manner approved by the Director and provide an officer with a copy of those records and minutes at the request of the officer.


In the Board's view, the Employer's overly narrow interpretation of ss. 25(7) may well explain not only why the Employer did not consult with the JOHSC when developing the Fall 2021 Operational Plan, but also why it did not see any need to inform the JOHSC that international students will be self-isolating on campus or to promptly notify the JOHSC when it received the MCA Report.

Having said this, the Board does not make any specific finding with respect to the 2021 Fall Operational Plan. Based on our review, that Plan is very similar to its two predecessors and really represents an update of the 2021 Winter Operational Plan which was also developed on the assumption that students would be returning to the classroom. We do not know what consultations, if any, may have taken place with respect to the previous Operational Plans, but the issue of consultation should have been resolved in connection with the first Plan which established a substantive precedent for the subsequent Plans.

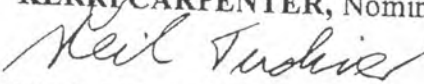
Conclusion

In a result, the grievances are allowed to the extent indicated earlier herein. Apart from declaratory relief, no other remedy is appropriate.

DATED this 26th day of September, 2023.


BRUCE OUTHOUSE, K.C., Chair


KERR CARPENTER, Nominee


NEIL TUDIVER, Nominee

APPENDIX 1

IN THE MATTER OF the Labour Act, R.S.P.E.I. 1988, cap. L-1

- and —

IN THE MATTER OF AN ARBITRATION between The University of Prince Edward Island Faculty Association and The University of Prince Edward Island regarding Grievances FA-21-06-A and FA-22-01-A.

WILL SAY STATEMENT — JACKIE PODGER

BACKGROUND

1. I am the Vice-President Administration and Finance with the University of Prince Edward Island (the "University"). I have worked in this position since 2012.
2. Occupational health and safety at the University falls under my responsibility.

THE UNIVERSITY OF PRINCE EDWARD ISLAND - BACKGROUND INFORMATION

3. In 2021, UPEI had a total of 5,419 students registered in undergraduate, graduate, and professional programs. The University offers programs in arts, science, business, nursing, sustainable design engineering, education, veterinary medicine, and various masters and doctoral programs.
4. Many UPEI faculty members participate in research. In 2021, the University had 8 research chairs, and 9 Research Institutes, Centres, and groups.
5. UPEI has a robust athletics program, and in 2021 had a roster of 196 varsity athletes.
6. In 2021, UPEI had 828 employees, consisting of 301 faculty members and 527 staff. For the most part, staff are members of one of three bargaining units: CUPE 1870 (the general staff union), CUPE 501 (security police and attendants), and IBEW 1928 (facilities management).
7. The main campus in Charlottetown sits on 136 acres of land. There are 30 buildings on campus. There are 440 student residence spaces. The University also has operations in Morell and St. Peter's Bay. Academic / research / administrative / recreational / miscellaneous spaces occupy 1,111,139 square feet of building space. Residences occupy an additional 197,689 square feet.
8. All of this is to say that the University is a large, complex institution.

THE UNIVERSITY'S RESPONSE TO THE COVID-19 PANDEMIC

9. The University, like all other organizations, had never experienced anything like the COVID 19 pandemic. Also, like other organizations, the University had to adapt quickly, and on an ongoing basis to public health guidance that changed often. The fact that the University is a large, complex institution made the situation difficult at times.
10. In summary, I can attest to the following:
 - (a) The University, at all times, worked closely and in concert with representatives of the Chief Public Health Office ("PEI-CPHO") in formulating the University's pandemic response.
 - (b) University representatives, including myself, were in constant contact with PEICPHO representatives.
 - (c) The University, at all times and to the best of everyone's abilities, maintained compliance with public health orders, and directions and guidance from PEICPHO.
 - (d) The University was never cited for non-compliance with public health orders or directions of PEI-CPHO.
11. The University's diligent and careful pandemic response is evidenced by the following:
 - (a) There were no instances of declared COVID-19 outbreaks at the University;
 - (b) There were no directions issued by CPHO to close any buildings at the University as a result of a COVID-19 exposure; and
 - (c) There were only two instances when the University was declared a COVID-19 exposure site.
12. In March 2020, to align with guidance from PEI-CPHO, the University moved to an essential services model and, for the remainder of the 2020 Winter Academic Semester, ceased in person course delivery, pivoting to online and virtual formats.
13. UPEI worked closely with the PEI—CPHO and referred to the Guidance for post-secondary institutions during the COVID-19 pandemic that was published by the Government of Canada on July 24, 2020, in the development of the UPEI Operational Plan for the 2020 Fall Academic Semester.
14. A copy of the University's Operational Plan for the 2020 Fall Academic Semester is contained at pages 67 - 100.
15. At the September 18, 2020 meeting of the University Senate, it was unanimously decided that UPEI would continue with a blended delivery model for the 2021 Winter Academic Semester (January to April 2021).
16. A copy of the University's Operational Plan for the 2021 Winter Academic Semester is contained at pages 101 - 132.

17. In early 2021, in keeping with PEI-CPHO guidance as a result of anticipated availability of COVID-19 vaccines, the University Senate approved a motion that UPEI would offer as much in-person, on-campus learning as possible.
18. On August 25, 2021, to safeguard the health and well-being of all members of the University community, and the community at large, the University adopted a mandatory vaccination policy. That policy was supported by campus unions, including the Faculty Association.
19. A copy of the University's Operational Plan for the 2021 Fall Academic Semester is contained at pages 133 - 160.
20. The University's Operational Plan for the 2021 Fall Academic Semester meets or exceeds all guidance set out in the memo titled Return to In-Room Learning for PEI Post-Secondary Institutions (Fall 2021) contained at pages 55 - 56 and updates to the PEI-CPHO's memo contained at pages 57 - 60.
21. In November 2021, in keeping with PEI-CPHO guidance in place at the time, the University confirmed that it would return to a pre-pandemic level of in-person activities for the 2022 Winter Academic Semester, meaning that UPEI would resume in-person course delivery methods and classes across all faculties, with limited exceptions, beginning on January 10, 2022.
22. In December 2021, due to the arrival of the Omicron variant and a significant increase in the number of COVID-19 cases on PEI, the University Senate endorsed a return to online teaching and learning for the beginning of the winter semester.
23. A copy of the University's Operational Plan for the 2022 Winter Academic Semester is contained at pages 161 - 189.
24. The University's operations at the beginning of the 2022 Winter Academic Semester were consistent with guidance set out by the PEI-CPHO in the memo titled Public Health Measures for PEI Post-Secondary Education contained at pages 61 - 62 and addendum thereto contained at pages 63 - 64.
25. On February 28, 2022, in accordance with updated guidance from PEI-CPHO as contained at pages 65 - 66, the University resumed in-person teaching and learning for the 2022 Winter Academic Semester for classes of 100 students or less. Heightened measures remained in place relating to: physical distancing; screening and testing; vaccination; masking; personal hygiene and cleaning and disinfection.
26. In addition to the above referenced Operational Plans. The University adopted further measures to ensure the health and safety of the University community including:
 - COVID-19 Pandemic Outbreak Plan and update thereto (contained at pages 29 34);
 - Directive on In-Room Learning (contained at pages 35 - 36);
 - Return to Laboratory Work Plan (contained at pages 37 - 41);
 - • Return to Field and Off-Site Work Plan (contained at pages 42 - 45);
 - Classroom Protocol for Students (contained at page 46);

- Laboratory Protocol for Students (contained at page 47); and
 - COVID-19 Pandemic Cleaning Protocol (contained at pages 48 - 50).
27. Throughout the COVID-19 pandemic, the University met or exceeded all standards and guidance set out by the PEI-CPHO.

AGREEMENT WITH THE PROVINCIAL GOVERNMENT FOR SELF-ISOLATION OF STUDENTS AT BERNARDINE HALL

28. The University has a diverse student body with a high proportion of international students.
29. The University's self-isolation plan for each academic semester is comprehensively outlined in the relevant semester's operational plan.
30. In August 2021, due to the unavailability of hotel rooms in August, the University was approached by the Government of Prince Edward Island to help with quarantining international students.
31. I concede that, in implementing this arrangement, there was a gap in communication between residence officials who made the arrangements with Government, and other members of the University community. As a result of the communication gap, some members of the University community did not learn about the isolation facility until its implementation was underway. For example, employees in the University's Facilities Management department were not immediately notified.
32. Elizabeth Rostant MacArthur, the University's Manager of Health, Safety & Environment, and I met with Facilities Management to take ownership of the lapse in communication that led to their unawareness of the isolation arrangement in Bernardine Hall.
33. IBEW 1928, the union that represents Facilities Management employees, did not file a grievance respecting the isolation arrangements.
34. To the best of my knowledge, no member of the Faculty Association entered Bernardine Hall or had contact with any of the students during their self-isolation period.

OCCUPATIONAL HEALTH & SAFETY COMPLIANCE

35. I can attest to the following:
- (a) University representatives, including myself, worked closely with, and were in constant contact with WCB PEI representatives, including Joe MacAulay, about the University's OHS obligations in the context of the COVID-19 pandemic.
 - (b) The University, at all times and to the best of everyone's abilities, maintained compliance with the Occupational Health and Safety Act, and directions and guidance from WCB PEI.
 - (c) The University was never cited for non-compliance with the Occupational Health and Safety Act or directions of WCB PEI.

- (d) WCB PEI did not issue any orders or directions to the University respecting noncompliance with the Occupational Health and Safety Act.
- (e) WCB PEI did not issue any findings that the University was not in compliance with the Occupational Health and Safety Act.
- (f) No WCB PEI representatives, including Joe MacAulay, ever advised me that the University was not meeting its occupational health and safety obligations. In fact, Mr. MacAulay consistently advised me that the University was meeting its obligations. This is confirmed by the OHS records, and communications with Joe MacAulay and other WCB PEI representatives, that have been entered into evidence.
- (g) The standard of OHS compliance is reasonability, not perfection.

THE UNIVERSITY'S JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEE

- 36. The JOHSC has representative members of the University's management and employees with an aim to collaboratively identify and help resolve health and safety issues at the University.
- 37. While I have not attended all meetings since the JOHSC's inception, I began attending JOHSC meetings prior to the COVID-19 pandemic to promote this objective and to provide additional background and history around a variety of occupational health and safety issues. The University's Manager of Health, Safety & Environment, Elizabeth Rostant MacArthur, was relatively new in the position, and I believed that my attendance at meetings would assist her.
- 38. On various occasions my presence was met with opposition by Dr. Arfken. My presence appeared to be wholly unwelcomed by Dr. Michael Arfken.
- 39. The tone struck by Dr. Arfken during JOHSC meetings at times surpassed that of respectful discourse, often becoming aggressive and confrontational.
- 40. Dr. Arfken's tone was particularly disrespectful toward Ms. Rostant MacArthur.
- 41. On October 27, 2020 Dr. Arfken wrote to WCB PEI raising concerns with the JOHSC's terms of reference and specifically the confidentiality provisions of the terms of reference.
- 42. WCB PEI responded to Dr. Arfken's letter on November 6, 2020 advising that:
 - ...the OHS division of the WCB does not typically direct the committee with respect to the specifics of its rules of procedure...*
 - ...Without seeing the rules of procedures you are referring to, it is difficult to determining next steps, if applicable. Therefore, I am asking you to either provide me with a copy of the committee's rules of procedure or you facilitate having a copy forwarded to me. I will forward the information on to an OHS Officer to follow up on this matter.*
- 43. I asked Joe MacAulay, OHS Officer with WCB PEI, to attend the JOHSC meeting on January 20, 2021 to provide a presentation to the JOHSC.
- 44. Mr. MacAulay presented on a range of topics including his role as an OHS Officer with WCB PEI, proper JOHSC meeting agenda items, and the role of the JOHSC.

45. A transcript of Mr. MacAulay's presentation is contained at pages 199 - 209.
46. The terms of reference of the JOHSC and privacy/confidentiality obligations of the JOHSC continued to be significant areas of dispute during the meetings which detracted from substantive discussions around issues of health and safety.
47. The following excerpt from the meeting minutes from the March 17, 2021 JOHSC meeting illustrates but one example of this (March 17, 2021 JOHSC Meeting Minutes attached at pages 215 - 220):

It was clarified that in the current 2018 Terms of Reference (2018 TOR) under the Review of Terms of Reference Clause, "Amendments: Any modifications, deletions, or additions to these terms of reference must have the consensus of the JOHSC; be set out in writing and signed by the co-chairs. "It was asked, "what's the difference between consensus and unanimous?" A member stated that as per Robert's Rules of Order (RRO) consensus generally means that there are no negative votes. One of the members, who voted nay, expressed disappointment that it is after the vote that the JOHSC is deciding what is meant by consensus. Joe (WCB Representative) said that the standard rules of procedure used by most committees is RRO. That is the normal process. Joe recommended using standard procedures. The same member who voted nay expressed that they do not object to RRO but objects to the change from consensus to majority. Joe stated that it is wordplay: consensus/majority. The Committee needs to get the process done. We don't want the Committee to stall. Respect workers in a healthy JOHSC Committee. I don't want to get involved but you need to adopt so you can proceed...

48. Despite Mr. MacAulay's reminder of the mandate of the JOHSC, the meeting continued to devolve into a debate around matters unrelated to the JOHSC's mandate:

The same member who voted nay commented that the Vice President Administration and Finance (VPAF) unilaterally changed the Confidentiality Clause in the draft TOR. This member believes that this is a problem under Legislation. Joe stated that a Confidentiality Clause is required to protect people by law. To be employed, we must abide by it.

The VPAF did not understand the issue with the Confidentiality Clause. The VPAF said that when they read over the draft TOR, they believed that Administration has the responsibility to determine what confidentiality would be. Joe said that JOHSC can't overwrite the UPEI Confidentiality Policy and that the Employer has the right to compose and insert the Confidentiality Clause into the draft TOR and if you abide by the rules, policy, legislation and the Collective Agreement (CA), you are still able to have discussions if you are in compliance.

The same member who voted nay responded to the VPAF, that the concern with the Confidentiality Clause is that there is no Confidentiality Clause in the other CAS so the Faculty Association (FA) CA could be used to severely restrict information that can be shared. The VPAF stated that this is not a JOHSC issue, this needs to be

addressed in CA negotiations. As Administration, the VPAF trusts that everyone knows what you can and can't say. The Clause is not offensive; everyone knows right from wrong and trusts in one another. CA issues should not be brought to this table. Joe then stated that it is critical that everyone understand privacy. If information should go in the wrong file, the Privacy Commissioner would hold you accountable. This is JOHSC's responsibility not the CA. As long as it is in the privacy realm, Joe encouraged JOHSC to maintain privacy.

The VPAF asked if the draft TOR would then be sent to Administration? Joe said that Administration is the Employer and everything goes to the Employer. The VPAF asked why it comes to Administration? Joe confirmed that it comes for review and to understand the scope of minutes. All minutes are to be posted. The VPAF asked if the Employer can change the ToR? Joe said that changes can go to the Committee. Certain policies and procedures must be enacted at the Committee level.

The same member who voted nay said that with the CA being the hold up, they suggested we remove CAS from the clause. The VPAF reviewed the Confidentiality Clause and confirmed there is no issue with removing CA from the clause and asked if the removal of CAS from the Confidentiality Clause would then be acceptable to the members who had voted nay. The same

member who voted nay still had a problem with the VPAF imposing language. VPAF responded that it was a moot point as it is allowed according to WCB.

49. During this same meeting on March 17, 2021, Dr. Arfken asserted that my presence can have a "chilling effect" on discussions. This assertion by Dr. Arfken was met with commentary by Mr. MacAulay, that he would encourage my attendance to remain connected to the process and to assist in clarifying policy.

50. Below is an excerpt from this exchange from the March 17, 2021 JOHSC Meeting Minutes:

This same member who voted nay commented that as a worker representative, the VPAF being present can have a chilling effect. The VPAF asked Joe if they can attend the JOHSC meetings anytime? Joe said that he would encourage attendance. The VPAF can clarify policy but not vote. They can sit in and he encourages that. It is better that they are connected to the process, not disconnected. Some Employers don't value these committees. It is not just because of legislation but that they want the JOHSC to have a role in the workplace. Joe mentioned that if you aren't supported in getting responses from the Employer within 30 days, he would support the JOHSC in getting the response.

This same member who voted nay said that if a modification can be made to the Confidentiality Clause, "Committee members are bound to maintain confidentiality in accordance with all privacy legislation, and UPEI policies and collective agreements" the words "and collective agreements" be removed, and that any change to the draft TOR can be

made by consensus, that the member would support the amended draft TOR. (Motion B)

The second member to oppose the original motion (Motion A) was then asked by the Chair, why they had voted nay. They stated that they were concerned with Confidentiality. When the second member who voted nay did their research and spoke with their Union Business Manager, they were told that the minutes should be publicly posted so they could be freely discussed. Joe confirmed that they are posted publicly. Joe also stated that you can't talk about individuals. As an OHS Officer, he doesn't get confidential information but they are posted and available for everyone. No names are posted. It was confirmed by a JOHSC member that the minutes are posted and information on an investigation isn't divulged until it is completed. Minutes are posted at Kelley Memorial Building and will be on the HSE Intranet when it is available. Members are free to discuss the posted minutes. Incident reports are condensed down to ensure privacy.

The second member who voted nay also questioned why the Confidentiality Clause should be changed? The VPAF said that it clarifies that everyone falls under the same set of rules. The VPAF encouraged everyone to share information with their members, that under the laws of PEI, everyone must be accountable. The VPAF then asked Joe about other JOHSC Committee's ToR? Joe responded that they are general enough to understand that you cannot go public. Rights must be protected. If this is lost then we lose people's trust and people won't come in. Especially with the new legislation around Harassment. Now, we can deal with issues that far out scope what we normally deal with. You can share information but only what you are comfortable with. This is above the VPAF, it is the Privacy Commissioner.

Another member added that the Health Information Act came into after the initial 2018 TOR were signed off. This is very important as when we submit an Incident Report, it has to be completely confidential. This was not law when the 2018 TOR were signed off. To build a just culture, they fill out overall Incident Report but names- theirs and patients- are not reported.

51. Given the time devoted to the above excerpted exchange, substantive OHS issues were given little attention by the JOHSC during this meeting:

COVID 19 Update — deferred due to time constraints

Roundtable - deferred due to time constraints

52. It was determined that in the event the JOHSC determines a gap in a policy, then a recommendation can be made to the Employer.
53. It was also raised during this meeting that the University was housing persons completing isolation. It was clarified that University and Holland College students and spouses were being housed at UPEI from August 15 - August 30, 2021.
54. As indicated above, this information was not disseminated as a result of a brief lapse in communication. As I was unable to provide further explanation I recommended that it would be more productive for the meeting to move forward.

55. During the September 15, 2021 meeting Mr. MacAulay attended and provided further information on the role of the JOHSC.
56. What follows is an excerpt from the September 15, 2021 JOHSC Meeting Minutes:

In the duties of Workers, the basic thing is to cooperate. There is an idiom that states " Where a worker believes that any item, device, material, equipment or machinery, condition or aspect of the workplace is or may be dangerous to the worker's occupational health or safety or that of other persons at or near the workplace, the worker (a) shall immediately report it to a supervisor; " If the supervisor, then deems it to be safe, there is a discussion on it, who is next in line for a discussion on it? The Committee. Committees will be required and can be called in to make those decisions. Joe confirmed that everyone is comfortable with making decisions. That's where education, training and awareness. That is what we are going to get into more down the road on some of this stuff. If the Committee can't resolve the issue, the next stage is WCB, OHS Officer.

The duties of the Committee come down to this: you, as a Committee, have to cooperate to identify hazards to the Occupational Health and Safety in the workplace and an effective way to respond to hazards. When an incident happens, the Committee is called in, there is an investigation and determinations are made. It is the Committee's responsibility to communicate to the workplace with the Employer. All members are required to participate and be involved in inspections. Under the Legislation, you are required. You are also required to investigate Occupational Health and Safety issues at the workplace..

... The key point of the Committee is to make recommendations to the Employer, the workers and any other persons for the improvement of Occupational Health and Safety on Campus.

...The committee speaks as a whole, cooperatively. It works together with proper communication. If something is brought to the table and a vote is taken on it, and it does not meet the vote, that's it, it is done...

57. After Mr. MacAulay's direction that JOHSC meetings be held in person, Dr. Arfken left the JOHSC.

FACULTY ASSOCIATION CONCERNS WITH UNIVERSITY VENTILATION

58. As a result of public health discourse, COVID-19 has brought an increase in awareness and emphasis on improving indoor ventilation.
59. On August 3, 2021, a letter was sent to the University's now former President, copying myself, expressing concerns with the University's ventilation strategy. A copy of the letter is contained at pages 471 - 475.
60. On August 4, 2021, I responded to Dr. Arfken's letter providing an overview of the University's ventilation strategy at that time. A copy of my email correspondence is contained at pages 476 - 478.
61. Within this correspondence I outlined various details of the University's maintenance and monitoring of the University's HVAC systems, frequency of air filter changes, specifications of

the University's air filters, and additional information all of which forms part of University's ventilation strategy. Records kept by the University's Facilities Management department which in part informed this correspondence are contained at pages 532 - 603.

62. On August 30, 2021 , I spoke with a mechanical engineer to discuss necessary testing of the University's HVAC systems.
63. On September 5, 2021, Dr. Arfken requested an urgent meeting to discuss health and safety concerns. A copy of this correspondence is contained at page 495.
64. On September 6, 2021 I responded to Dr. Arfken advising him of the measures the University had undertaken to ensure the safety and well being of all members of the University community.
65. Within this correspondence, I advised Dr. Arfken that the University had hired MCA Consultants Inc. to provide professional engineering services for a review of classroom ventilation systems. A copy of this correspondence is contained at pages 493 - 495.
66. My decision to hire MCA Consultants Inc. was in light of their considerable expertise and experience in this area.
67. The existence of the report completed by MCA Consultants Inc. (the "Report") was disclosed as soon as I received it from MCA Consultants Inc.
68. On December 20, 2021, I wrote to University Faculty and Staff advising that MCA Consultants Inc.'s ventilation study was complete and I had provided it to Mr. MacAulay for his review. On December 16, 2021 , Mr. MacAulay advised that:

While I am pleased the report states that the ventilation systems are in very good condition, I am requesting more time to fully review the report's findings with the consultants.

A copy of this correspondence is contained at pages 503 - 504.

69. On January 17, 2022, a special meeting of the JOHSC was held for the purpose of reviewing the Report, following which the Report would be shared with the campus community. Ross Wheatley and Jeffery Whitrow from MCA Consultants attended the JOHSC meeting as guests and reviewed the entire Report section by section. A copy of the minutes of the JOHSC special meeting is contained at pages 257 - 261.
70. During the January 17, 2022 JOHSC special meeting, there was a discussion about ongoing maintenance of the University's ventilation systems, including filter replacement, This discussion is captured in the minutes, at page 258, as follows.

Operation & Maintenance: The Facilities Management Department was asked for information relating to the schedule already in place for system checks and regular filter changes. The systems are being maintained well. MCA did an inspection and generally speaking, the results were good Some components have failed (not many, perhaps half a dozen) and these systems were fixed as they went along.

71. On January 18, 2022, Mr. MacAulay reviewed the Report. Mr. MacAulay's inspection report drafted following his review of the Report is contained at page 400.

72. He notes that:

The recommendations identified in this report, as referenced to meeting ASHRAE standard, including recommendations for COVID-19 protocols, address the intent of Section 11.1 — Adequate ventilation, which states that the employer must ensure that the workplace is adequately ventilated.

73. Mr. MacAulay further notes that:

Short-term and long-term action plans have been developed. Ms. Jackie Podger, Vice-President Administration and Finance, informed this Officer that all the recommendations, as outlined in the report, will be implemented. Ms. Podger stated that short-term recommendations will be addressed and an action plan is in place to have required short term recommendations implemented, this included HEPA filtration units for non-ventilated classrooms, the filtration units have already been ordered with a scheduled delivery date set for the end of January. An action plan to implement all long term recommendations will involve the procurement of equipment, as well as the contracting of engineering and other service providers...

...Ms. Podger also informed this Officer that prior to the release of report the Occupational Health and Safety Committee will hold a special meeting to review the report. A representative from MCA Consulting Inc. will attend the meeting to review the report and answer any question the committee members may have. Once the committee has reviewed the report, it will be made available to all workers on campus.

74. On January 19, 2022, the Report was circulated to the University's Faculty and Staff. A copy of this correspondence is contained at pages 382 - 399.
75. The Faculty Association was advised on a number of occasions to convey any areas of specific concern such that these particulars could be incorporated into MCA Consultants Inc.'s review.
76. I was not provided with specific concerns on behalf of the Faculty Association despite my attempts to elicit them.
77. MCA Consultants Inc.'s comprehensive review encompassed 69 classrooms (any room occupied by students and used for educational purposes) and examined the state of ventilation systems with respect to American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standards and current best practices during the COVID-19 pandemic.
78. An intensive physical inspection was conducted over the summer and fall to fully assess classroom ventilation so that any required improvements could be implemented expeditiously.
79. With respect to Operation & Maintenance, the Report confirms the University's completion of regular maintenance and monitoring of the University's HVAC systems:

Equipment maintenance was found to be very good overall with regular routine maintenance and filter replacement. Equipment interiors were generally free of excessive dirt or debris. The field reviews conducted by MCA did reveal a few operational issues with

equipment that required corrective action. These corrective measures were completed prior to the issuing of this report.

80. With respect to ventilation at the University, the Report confirms:
- The vast majority of classrooms on campus meet current code ventilation requirements as prescribed in ASHRAE Ventilation Standard 62.1-2019.*
81. With respect to air filtration at the University, the Report confirms:
- Current filtration levels at the central air handling systems are predominantly MERV 13 or better which is in accordance with the latest ASHRAE COVID-19 guidance.*
82. The University has prioritized the recommendations as outlined in the Report based on the occupancy levels of the various spaces reviewed by MCA Consultants Inc.
83. Any areas of concern as outlined in the Report requiring immediate attention have been rectified.
84. During a Grievance Meeting held on February 25, 2022, I asked Dr. Arfken what it was that he was alleging the University has not done in relation to the maintenance of the University's HVAC systems.
85. In response, Dr. Arfken indicated:
- we have no information about whether you have or have not done that. In the absence of information, we have to assume you haven't done it.*
86. In response to Associate Vice-President, Human Resources, Susan Connolly's, comment that the FA-22-01-A lacks specificity, Dr. Arfken asserted:
- In lead up to the Fall 2021, UPEI was giving assurances with respect to air quality. We'd like to know what the basis of those assurances. We can't uncover anything that would have formed the basis for that assessment, which was being used to encourage people to come back to campus in the fall. In the absence of being provide evidence, we have to assume those assurances were being made without basis. In the absence of information we have to assume there is an issue.*
87. I, and other University representatives, worked in close consultation with Joe MacAulay at WCB PEI to ensure that ventilation issues at the University are appropriately addressed.
88. I reiterate that WCB PEI, at no time, issued any orders or directions, or made any findings of non-compliance, respecting ventilation at the University.
89. Recall that there are there are 30 buildings on campus comprising a total of 1,308,828 square feet Of building space. Some of these buildings are old. It will take a significant period of time to address all ventilation concerns on campus. This is why the University's response has been

prioritized. The University has made the commitment to ensure that all concerns are addressed, and has developed short- and long-term plans.

Dated this 9th day of January, 2023 in the
Province of Prince Edward Island



Jackie Podger

APPENDIX 2

IN THE MATTER OF the Labour Act, R.S.P E.I. 1988, cap. L-1

- and —

IN THE MATTER OF AN ARBITRATION between The University of Prince Edward Island Faculty Association and The University of Prince Edward Island regarding Grievances FA-06-A and FA-22-01-A.

WILL SAY STATEMENT - ELIZABETH ROSTANT MACARTHUR

BACKGROUND

1. I am the Manager of Health, Safety & Environment with the University of Prince Edward Island (the "University"). I have worked in this position since December 9, 2019.
2. Before taking on this role, I served on the University's Joint Occupational Health and Safety Committee ("JOHSC") as chair of the Atlantic Veterinary College Health & Safety Working Group.
3. My Curriculum Vitae is contained at pages 2 - 6.

AGREEMENT WITH THE PROVINCIAL GOVERNMENT FOR SELF-ISOLATION OF STUDENTS AT BERNARDINE HALL

4. In August 2021, due to the unavailability of hotel rooms, the University was approached by the Government of Prince Edward Island to help with quarantining international students. The University felt obliged to support the Province of Prince Edward Island however it could during this difficult time.
5. The University's self-isolation plan for each academic semester is comprehensively outlined in the relevant semester's operational plan
6. The arrangement was proposed by the Government of Prince Edward Island to the University's Ancillary Services department.
7. The arrangement proposed by the Government of Prince Edward Island for the use of Bernardine Hall during the students' self-isolation period was initiated with minimal notice to the University. If the University had chosen not to participate, many students would have missed the opportunity to participate in in-person learning.
8. The quarantining students were confined to three floors of Bernardine Hall from August 15 - August 30, 2021.
9. The quarantining students were supervised at all times including when they stepped outside of Bernardine Hall for purposes of getting fresh air. To the best of my knowledge, at no point did the quarantining students leave the immediate surrounding area of Bernardine Hall.
10. The individuals quarantining at Bernardine Hall were exclusively international students at UPEI or Holland College and their spouses. There were no temporary foreign workers or other individuals completing their self-isolation at the University. I became aware of the arrangement between the University and the Government of Prince Edward through Blair Somers who works in the

University's Facilities Management department. I understand that Facilities Management staff were not made aware of the self-isolation arrangement.

11. Upon becoming aware of the arrangement, I immediately contacted PEI-CPHO as well as Joe MacAulay, Occupational Health and Safety Officer with the Workers Compensation Board of PEI (WCB PEI).
12. I immediately met with Joe MacAulay who provided guidance in my development of protocols to protect the health and safety of University employees during the period of the students' self-isolation at Bernardine Hall. The protocols adopted in collaboration with Mr. MacAulay were implemented within 12 — 14 hours upon my first becoming aware of the self-isolation arrangement. These protocols can be found at pages 9 and 10 of the 2021 Fall Academic Semester Operational Plan contained at pages 133 - 160.
13. The Government of Prince Edward Island hired a security force to monitor the students during the period of their self isolation in Bernardine Hall.
14. I was in constant communication with members of the security force, often many times a day.
15. At all times, two security guards were working with one tasked to monitor the front door and the other to circulate throughout Bernardine Hall.
16. I discussed the quarantine arrangement generally and the logistics of the protocols with the individuals performing security services every morning.
17. I was in constant communication with all stakeholders including WCB and Facilities Management during the isolation period.
18. Jackie Podger, the University's Vice-President Administration and Finance, and I met with Facilities Management to take ownership of the lapse in communication leading to their unawareness of the quarantine arrangement in Bernardine Hall
19. The IBEW 1928 Union which represents Facilities Management employees did not file a grievance as a result of the lapse of communication
20. No University employees were diagnosed with COVID-19 as a result of contact with quarantining students while this arrangement was in place.
21. I spoke to Joe MacAulay daily. WCB PEI was not required to investigate, or make any orders in relation to this arrangement or any alleged COVID-19 exposures resulting from this arrangement
22. Mr. MacAulay advised me of any concerns raised to him and I addressed them immediately. Concerns raised are described in WCB PEI incident reports found at pages 288 - 292.
23. All incidents relating to residence self-isolation were investigated by HSE and included in the incident reports as per JOHSC monthly agenda for Sept 2021. Some incidents were not submitted by the parties involved but HSE were made aware and took it upon themselves to write incident reports for awareness and transparency even though the incident reports are supposed to be submitted by those involved in the incident. A copy of the relevant incident reports is found at pages 604 — 606.
24. There is no affiliation between the Faculty Association and the University's various Residence buildings that I am aware and therefore no member of the Faculty Association would have had a reason to enter Bernardine Hall.
25. To the best of my knowledge, no member of the Faculty Association entered Bernardine Hall or had contact with any of the students during their self-isolation period.
26. Clear messaging to all stakeholders was provided) and signage on all Bernadine entrance and exits explained to anyone approaching the residence that self-isolation was in progress and to not enter unless authorized. In addition, the UPEI Operational Plan was available on the website for anyone

to view at any time if they had questions about residence or they could contact HSE if concerned. In other words, all measures were taken to promote communication and ensure the safety of the campus community.

THE UNIVERSITY'S JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEE

27. In compliance with Prince Edward Island's Occupational Health and Safety Act, the University's JOHSC addresses health and safety issues at the University.
28. The Terms of Reference of the JOHSC are attached at pages 193 — 198.
29. The stated purpose of the JOHSC is as follows:

The Joint Occupational Health and Safety Committee (JOHSC) at UPEI is a committee of worker and employer representatives that will work together to follow and monitor the regulated Internal Responsibility System (IRS) that follows the Occupational Health & Safety Act and Regulations of PEI (ACT) as well as the obligations outlined in the UPEI Health, Safety and Environment Policy. Our role in the IRS is to identify, report and recommend corrective action on any hazards or potential hazards which may cause harm to people, property, or the environment. By promoting communication and collaboration of all workplace parties on health and safety issues, the JOHSC will ensure UPEI is healthy and safe to study, visit, and work.

30. The JOHSC was collaborative, functional and productive prior to February 2020 when Dr. Arfken brought forward a report that he wrote about Steel Building. From this time forward meetings became more contentious.
31. Despite the JOHSC's mandate, Dr. Arfken often advanced issues not of an occupational health and safety nature during meetings, detracting from the JOHSC's mandate.
32. Dr. Arfken continued to advance issues unrelated to the JOHSC's mandate despite Mr. MacAulay's attendance at JOHSC meetings where Mr. MacAulay explained the JOHSC's role and functions and the nature of issues properly discussed in this forum.
33. Minutes of the January 20, 2021 meeting wherein Mr. MacAulay attended to explain the purpose, goals, and scope of the JOHSC from the WCB PEI perspective are attached at pages 199-209.
34. Dr. Arfken failed to submit agenda items any earlier than the day of or day before JOHSC meetings such that JOHSC members would not have ample time to consider them despite the Terms of Reference providing that:

Any member can add items to the meeting agenda; all agenda items must be submitted to the Health, Safety, and Environment Department no later than five working days before the meeting. Any items submitted less than 5 days before the meeting, will be at the discretion of the Co-Chairs. Any discussion that will require members to vote must be on the current agenda.

35. Despite Mr. MacAulay's comments that the JOHSC is intended to be a collaborative group where the employer and employee representatives work together on issues related to occupational health and safety of the University, Dr. Arfken relentlessly and aggressively pushed union issues.
36. I at times felt intimidated and bullied by Dr. Arfken. I felt afraid, anxious, and experienced difficulty sleeping as a result of Dr. Arfken's behaviour.

37. I observed Jennifer Prinz, Chair of the JOHSC, cry during a JOHSC meeting as a result of Dr. Arfken's behaviour.
38. I received telephone calls following JOHSC meetings from concerned members of the JOHSC with their observations that I was being bullied by Dr. Arfken.
39. I was encouraged on a variety of occasions to make a complaint under the University's Fair Treatment Policy, though I refrained from doing so as I did not wish to detract from substantive occupational health and safety issues or to compromise the JOHSC's productivity.
40. Members would call or come see me after JOHSC meetings to express their desire to leave the group because of the contentious environment that Dr. Arfken had created.
41. During the COVID-19 pandemic JOHSC were at times held remotely,
42. Engagement was limited during remote JOHSC meetings when compared to those held in-person.
43. Dr. Arfken remained an advocate for remote meetings despite Joe MacAulay's comments that in-person meetings were critical for JOHSC productivity and engagement.
44. During the September 14 2021 a discussion ensued over whether JOHSC meetings should be held in person.
45. Below is an excerpt from this exchange from the March 17, 2021 JOHSC Meeting Minutes:

WCB has asked, not directed, that JOHSC meetings be held in person. Some members expressed that the meetings would be more efficient in person with better communication
46. There was also a discussion during this meeting as to whether the Employer had a duty to consult the JOHSC on the Operational Plan under PEI's Occupational Health and Safety Act.
47. It was determined that a document such as an Operational Plan would fall under the University's policies, which are not the responsibility of the JOHSC.
48. To be clear, it is not within the mandate of the JOHSC to review or participate in the development of a COVID-19 operational plan, or any other workplace policy. The proper role of a workplace health and safety committee, as confirmed by Joe MacAulay at WCB, is to identify workplace hazards and issue recommendations to the employer so these hazards may be addressed.
49. It was determined that in the event the JOHSC determines a gap in a policy, then a recommendation can be made to the Employer.
50. At the September 15, 2021 JOHSC meeting, there was a further discussion as to whether JOHSC should be held in person. What follows is an excerpt from the September 15, 2021 JOHSC Meeting Minutes:

Discussion was had if the JOHSC meetings should be in person. Joe commented that all things that the Committee members are required to do, it means that you need to be here on Campus: inspections, incident investigation. You need to be available to represent your individual groups. If there is an issue and Committee members are not available, that is an issue. You won't always be available, you have Alternates. Even if the Alternates are on holidays and you are sick, someone will provide the information. In your leadership role as the members of the Committee doing this, the Legislation requires it.

Joe spoke of major communications issues on this Campus. When he was investigating certain things, he found out that individuals'

representatives are not even on Campus. Legislation identifies the roles of the Committee very clearly. How do you identify hazards if you are not on Campus? How can we communicate hazards if you are not? He will let the Committee decide that.

Joe requested that a response be sent as to what are the reasons that the Committee members are not here doing their leadership role on Campus? If this Committee does not feel safe to be on Campus or in the meeting room, then that needs to be addressed. Put it to the Employer to make it safe. He directed the Committee to talk about this in the next few days, send the response within the next ten days why people aren't in person to the WCB Officer and make a recommendation to the Employer for a response within 30 days if there are safety issues why people are not here. It will be made safe.

He asked the Committee to have an effective Communication system to be in place within the next month and put recommendations to the Employer that the system is going to work. Then the Employer will need to ensure that these things are put in place. That is the process. NOTE: the process to report is to submit an Incident report within 24 hours of an Incident. If you have an issue report to your supervisor, then submit an incident report to Health, Safety and Environment through incident@upei.ca within 24 hours; this will then go to JOHSC. If necessary, a recommendation can then go to Employer. If the Employer does not respond within 30 days, then WCB can be brought in.

Joe commented that if the system was working perfect, he would not be here reviewing the Legislation, reviewing requirements and reviewing what he is seeing.

JOHSC then discussed the members attending the meeting virtually felt that they could not attend in person, It was asked if the members felt that there was a safety reason why they could not be in the room. The following reasons were given:

One member stated that they are the unofficial technical person for their department and felt that with the start of school they needed to be in their building in case anyone had technical difficulties that they would need to run to resolve. It was agreed by the individual that this was unique to the start of school and would not affect future meetings.

Another member was in quarantine until they received a negative test result. They wished to speak with their membership as to whether JOHSC should meet in person.

Another member was working from home full time while writing their thesis so could attend future meetings. Need confirmation from boss that they can attend the meeting.

Another works shift work and found it very difficult to attend if not on Campus for their shift. If at home or if someone is isolating, they could attend via Zoom. This member has since left JOHSC and been replaced.

Another member was working on Campus and found it convenient to stop in at the workplace and join other members already on the Zoom meeting.

The final member would not respond during the meeting stating that this was not an agenda item and that it would be inappropriate to deal with it. NOTE: The JOHSC Recorder sent an email to the individual on Tuesday, September 21 requesting the information to be sent to the OHS Officer. To date there has been no response to the query. However, on September 24th, this member resigned from the JOHSC has been replaced.

51. Dr. Arfken left the JOHSC after Mr. MacAulay's direction that JOHSC meetings be held in person.
52. The Meeting Minutes from all subsequent meetings (October 20, 2021, November 10, 2021 , December 15, 2021, January 17, 2022, and January 25, 2022) are contained at pages 249 — 264 detailing the return to discussion of substantive OHS issues.
53. I consulted with Mr. MacAulay regarding the University's compliance with section 23 of the Occupational Health and Safety Act He advised that the University was in compliance with the Occupational Health and Safety Act and that JOHSC meetings were best spent discussing substantive occupational health and safety issues during a global pandemic.

FACULTY ASSOCIATION CONCERNS WITH UNIVERSITY VENTILATION

54. The Faculty Association's concerns with Steel Building ventilation were first mentioned to me during a Joint Occupational Health and Safety Committee meeting in January, 2020.
55. Dr. Arfken authored a document on February 19, 2020 as a last minute add on agenda item at the meeting setting out various concerns he had with the ventilation of the Steel Building at the University.
56. The document submitted by Dr. Arfken contained no objective data.
57. The University investigated Dr. Arfken's concerns and I discussed the outcome of the University's investigation with Dr. Margot Rejskind, Vice President of the Faculty Association, who appeared to be satisfied with the steps taken by the University.
58. I presented the findings of the University's investigations at the JOHSC's meeting in April, 2020. Dr. Arfken remained silent and provided no comments on my presentation.
59. In July 2021 , discussions resumed around the University's indoor ventilation.
60. MCA Consultants Inc. was hired by UPEI in 2021 to provide professional engineering services for a review of classroom ventilation systems in light of their considerable expertise and experience in this area.
61. The focus of MCA Consultants Inc.'s review was on classrooms given that they are high occupancy areas at the University.
62. An intensive physical inspection was conducted over the summer and fall to fully assess classroom ventilation so that any required improvements could be implemented expeditiously.

63. MCA Consultants Inc. prepared a written report (the "Report") which was circulated on January 19, 2022 after receiving approval by the Workers Compensation Board of Prince Edward Island and the University's Joint Occupational Health and Safety Committee.
64. The Report was organized into the following categories: Operation and Maintenance; Ventilation, Filtration, and Clean Air Delivery; and included recommendations for action both in the short term and long term.
65. The University has prioritized the recommendations as outlined in the Report based on the occupancy levels of the various spaces reviewed by MCA Consultants Inc.
66. The JOHSC has a standing agenda item dedicated to the University's progress in adopting the recommendations outlined in the Report
67. The University has addressed all immediate concerns raised in the Report and has installed 20 new HEPA filters to date as a result of the Report's recommendations.

Dated this 9th day of January, in the
Province of Prince



Elizabeth Rostant MacArthur

APPENDIX 3

IN THE MATTER OF: Occupational Health and Safety Grievances (FA-21-06-A
and FA-22-01-A)

BETWEEN:

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION

The Association

-and-

THE UNIVERSITY OF PRINCE EDWARD ISLAND BOARD OF GOVERNORS

The Employer

WITNESS STATEMENT OF DR. MICHAEL ARFKEN

1. I, Michael Arfken, of the Province of Prince Edward Island, say that, if called upon to testify at the Arbitration hearing between the Association and the Employer regarding occupational health and safety issues that is scheduled to begin January 10, 2022, my evidence will be as follows:

Background

2. I have been an Associate Professor in the Department of Psychology at the University of Prince Edward Island since 2012. I began my employment at UPEI in 2006 as an Assistant Professor in the Department of Psychology. I earned my Bachelor of Arts (Honours) from Texas State University and my Doctorate in Experimental Psychology from the University of Tennessee. I completed my Doctorate Degree in 2006.
3. I have been a member of the Association since I began my employment at UPEI. I have filled various roles within the Association since 2014. I have been a Grievance Officer since 2014, the Chief Grievance Officer since 2016, served as Vice-President from 2018 to 2020 and President since 2020.
4. I became a worker member of the Joint Occupational Health and Safety Committee (JOHSC) at UPEI as the Faculty Association representative starting in 2019. I served as the JOHSC worker co-chair from 2020 to 2021. I remained in this role until I resigned from JOHSC on or about September 22, 2021.

COVID-19 Quarantining Students at UPEI (Grievance FA-21-06-A)

5. In August 2021, I learned that the Employer was using campus housing as a designated COVID-19 isolation location for students, temporary foreign workers, and other travelers entering the Province.
6. The Employer had not advised the Association, our members, or JOHSC that it was using campus housing as an isolation facility.
7. I further learned that, on more than one occasion in or about August 2021, a UPEI employee entered campus housing and inadvertently and unknowingly came into direct contact with persons who were quarantining in UPEI campus housing and should have been in self-isolation. I understand that the Employer placed security staff at one entrance to the student residence but otherwise took insufficient steps to either prevent self-isolating persons from moving about on campus or to prevent employees or others from entering student residences where self-isolating persons were moving about.
8. I understand that the Worker's Compensation Board was called in multiple times to respond to complaints and investigate possible COVID-19 exposures on UPEI campus. The Employer did not provide JOHSC with copies of any records or reports in relation to the WCB response to this issue.
9. The Employer did not provide the Association or JOHSC with a copy of its Operational Plan as approved by the Chief Public Health Officer for dealing with individuals who were in self-isolation on UPEI campus.
10. The Employer did not consult generally with JOHSC with respect to UPEI's Fall 2021 Operational Plan in relation to COVID-19. When I asked, the Employer claimed it was a matter between the CPHO and the Employer and they had no obligation to consult with JOHSC.
11. On September 3, 2021, I wrote to then President of UPEI, Alaa Abd-El-Aziz about these concerns, together with Tracy Carmichael, President of CUPE, Local 1870; Jim Spongale, Business Manager/Financial Secretary of IBEW, Local 1928; and Crystal Squires, Shop Steward with CUPE, Local 501.
12. President Abd-El-Aziz forwarded my email to Ms. Jackie Podger, the Vice President Administration and Finance of UPEI for a response. Her response failed to adequately address the serious concerns we had raised.
13. Moreover, at the height of the quarantine issue, Ms. Podger began attending JOHSC meetings on a regular basis and - on one occasion - installed herself as Chair. She did not attend these meetings at the invitation of JOHSC.

14. Ms. Podger's presence at the meetings had the result of stifling discussion of health and safety issues that workers brought forward, including myself.
15. Ms. Podger's presence at these JOHSC meetings must be understood in the context of the events that came before this, including her letter of December 15, 2020 to JOHSC in response to me drawing attention to a health and safety issue, and the unilateral imposition of a confidential clause in which perceived breaches of the clause could result in disciplinary action. These together constituted intimidation and coercion of a worker because I had sought enforcement of the Act and/or had acted in compliance with the Act.

Ventilation and COVID-19 (Grievance FA-22-01-A)

16. On August 3, 2021, I sent a letter on behalf of the Association, together with Tracy Carmichael, President of CUPE, Local 1870 to then President Abd-El-Aziz asking about what steps the Employer had taken and was prepared to take to address ventilation in campus buildings in the context of COVID-19. A copy of this letter was shared publicly and sent to all Association members, as well as other employees.
17. Ms. Podger, on behalf of the Employer, sent an email in response on August 4, 2021. Among other things, Ms. Podger said that:
 - The University's ventilation systems "meets and/or exceeds standards for air exchange and filter effectiveness."
 - "UPEI Facilities Management conducts regular and preventative maintenance on the mechanical heating, ventilation, and air condition (HVAC) units in all campus buildings as indicated below."
 - "Our HVAC systems [over 619 HVAC units on campus] are maintained by three (3) dedicated UPEI HVAC staff, in addition to outside contractors that specialize in this type of equipment and controls."
 - "our systems are monitored daily, and filters are changed as recommended by the manufacturer, or more frequently if required."
18. Ms. Podger's email was likewise sent to all University Faculty and staff.
19. I wrote again to then President Abd-El-Aziz on August 19, 2021 to restate the Association's concerns about ventilation in campus buildings.

20. The Employer ultimately agreed to retain an outside contractor to conduct ventilation testing. Ms. Podger confirmed on September 6, 2021 that the Employer had retained MCA Consultants Inc. to do this work.
21. In or about November 2021, the Employer received the ventilation report from MCA Consultants. The Employer, however, refused to provide a copy of the report to JOHSC.
22. On December 16, 2021, I made a request to the Employer in my capacity as a worker and Faculty member at UPEI for a copy of “any and all reports of occupational health or safety inspections, monitoring or test undertaken at the workplace within the last five (5) years by, or at the request of, an officer or the employer for the purposes of evaluating, assessing, maintaining, or improving the indoor air quality or ventilation systems of UPEI campus buildings. This includes (but is not limited to) the recent air quality / ventilation evaluation conducted by MCA Consultants.” I asked for the information to be provided by December 20, 2021.
23. The Employer did not provide me with the information requested.
24. The Employer provided a revised version of the MCA Consultants report to JOHSC in January 2022.
25. The Employer provided a copy of the November 2021 report to the Association in response to a request for production in preparation for this grievance arbitration.
26. It is apparent that the Employer had inadequate evidence to support the statements made and assurances it gave to the Association, its members and the broader campus community in Ms. Podger’s August 4, 2021 email. Subsequent tests show that these statements were not correct. Ventilation tests that were withheld from the campus community and JOHSC confirm that some campus spaces were not properly maintained. The Employer has yet to provide any evidence that ventilation systems had been properly maintained despite requests for these records.
27. JOHSC did not have an opportunity to participate in any aspect of the ventilation investigation or deal with issues raised in the November 2021 report which were not released until January 2022. The Association’s members continued to work in spaces that were identified as problematic and had not yet been remediated by short or long term mitigation measures

UPEI Joint Occupational Health and Safety Committee

28. In addition to the concerns with the functioning of JOHSC outlined above, the Employer has failed to review on an annual basis and in consultation with JOHSC its written occupational health and safety program. The Employer’s health and safety

program does not comply with the requirements in section 23 of the Occupational Health and Safety Act.

- 29. Because workplace policies/procedures were not brought up for the legislated annual reviews, JOHSC was not in a position to advise the Employer regarding a policy or program required by the Act.

Witness Statement signed this day of December, 2022.

Witness

Michael Arfken

APPENDIX 4

IN THE MATTER OF: Occupational Health and Safety Grievances (FA-21-06-A and FA-22-01-A)

BETWEEN:

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION

The Association

-and-

THE UNIVERSITY OF PRINCE EDWARD ISLAND BOARD OF GOVERNORS

The Employer

REPLY WITNESS STATEMENT OF DR. MICHAEL ARFKEN

1. I, Michael Arfken, of the Province of Prince Edward Island, say that, if called upon to testify at the Arbitration hearing between the Association and the Employer regarding occupational health and safety issues that is scheduled to begin January 10, 2022, my evidence will be as follows:

UPEI Joint Occupational Health and Safety Committee

a. Steele Building Report

2. The following is in reply to statements in the will-say of Ms. Rostant-MacArthur at paragraph 30 and paragraphs 54 to 58 with respect to air quality issues at the Steele Building at UPEI.
3. The air quality issues at the Steele Building pre-date the COVID-19 pandemic and are not part of the issues the Faculty Association raises in these Grievances.
4. In February 2020 I was a worker representative on JOHSC as well as Vice-President of the Faculty Association. (I became President in Fall 2020).

5. I contacted Ms. Rostant-MacArthur on February 12, 2020 and asked to meet about concerns the Association's members had raised about the Steele Building. On February 13, 2020 I advised Ms. Rostant-MacArthur that I would raise the issues at the JOHS meeting scheduled for February 19, 2020.
6. At JOHSC, I presented a report summarizing the concerns raised by the Association's members as well as recommendations on steps that could be taken.
7. This was an important and timely occupational health and safety issue impacting the Association's members. I raised it in a productive and appropriate way and the Employer took steps in response to my report.
8. In the Employer's subsequent meeting with Dr. Margot Rejskind, Ms. Rostant-MacArthur advised that the Department Chair would take it from there in terms of further follow-up.
9. There is no basis to attribute problems with the functioning of JOHSC during the COVID19 pandemic to my presentation of the Steele Building report in February 2020.

b. JOHSC Meetings

10. In Reply to paragraphs 31 and 32 of Ms. Rostant-MacArthur's will-say, I note that Ms. Rostant-MacArthur has provided no examples in her will-say of what she considers to be "not of an occupational health and safety nature". In fact, I consistently advocated for health and safety issues to be dealt with at JOHSC.
11. I have raised issues that the Employer has denied being related to occupational health and safety. This included the Employer's COVID-19 Operational Plan.
12. I also raised an issue at the outset of the pandemic about staff access to sick leave. My concern was that staff who do not have adequate sick leave may need to self-isolate or stay home with symptoms but choose to come to work posing a risk to those on campus. I felt we needed to get out in front of that issue and conveyed my concerns to Ms. Rostant-MacArthur. The Employer took the position that it was a Human Resources issue.
13. With respect to statements in both of the Employer's will-says about the confidentiality provisions under the JOHSC Terms of Reference, the Employer initiated the review of the Terms of Reference at JOHSC. The Employer chose to focus almost exclusively on this review in the midst of the COVID-19 pandemic despite there being many issues deserving of JOHSC's attention.
14. The Employer through that process proposed a change to the existing confidentiality language. The effect of the change would be to further restrict the ability of JOHSC members to deal with issues outside JOHSC, including the ability of worker representatives to consult with their constituent unions. I advocated for maintaining the existing language.

15. In response to the allegations at paragraphs 36 to 40 of Ms. Rostant-MacArthur's will-say and paragraphs 39 and 40 of Ms. Podger's will-say, neither Ms. Podger nor Ms. Rostant-MacArthur have ever made these allegations to me before these will-say statements. No examples are provided in the will-says of the type of behavior they are referencing.
16. I have never engaged in bullying behaviour at JOHSC. I have never made disparaging remarks to Ms. Rostant-MacArthur or others in JOHSC. I have never shouted or otherwise acted in a way that could be considered "aggressive". All of the meetings I attended during the pandemic were virtual meetings. I have never seen Jennifer Prinz, who is a member of the Employer's Human Resources staff, cry in a JOHSC meeting.
17. I was a committed member of JOHSC during my time as a worker representative. I pursued issues I considered important in fulfilling my role and held the Employer to account.
18. In response to the allegation at paragraph 34, I was diligent about submitting agenda items in accordance with the timelines.

Virtual Meetings

19. The following is in response to paragraphs 41 to 45 of Ms. Rostant MacArthur's will-say and statements in the will-says generally about the Employer's wish to return to in-person JOHSC meetings.
20. In August 2021, JOHSC voted unanimously to continue holding meetings online.
21. The Employer sought to get around JOHSC's right to determine its own procedure by pressuring JOHSC to resume in-person meetings.
22. Other campus groups, including the University Senate, continued to meet online during this period.
23. In the meeting with WCB referenced in the Employer's will-say statements, Ms. Podger said she did not like the optics of continuing online meetings for JOHSC while telling students and staff to come back to campus. In my view, this question of optics accounts for the Employer's desire to resume in-person JOHSC meetings, rather than a concern about the functioning of JOHSC itself.

COVID-19 Quarantining Students at UPEI (Grievance FA-21-06-A)

24. In reply to paragraphs 4 and 10 of the will-say of Ms. Rostant-MacArthur and para. 30 of Ms. Podger's will-say, correspondence shows that the Employer knew by at least July 2021 that its student residence would be used as a quarantine facility.

25. Several statements by Ms. Rostant-MacArthur in her will-say are contrary to the WCB inspection reports, incident reports and correspondence during this period, including her statements that:
 - a. the quarantining students were “supervised at all times” (para. 9);
 - b. when she became aware of the quarantining she “immediately contacted” CPHO and WCB (para. 11); and
 - c. protocols from WCB were implemented “within 12 – 14 hours” upon Ms. Rostant-MacArthur learning about the quarantining situation (para. 12);
26. In reply to paragraphs 24 and 25 of Ms. Rostant-MacArthur’s will-say and paragraph 34 of Ms. Podger’s will-say, the Association’s concern is that there was an occupational health and safety hazard on campus – i.e. students quarantining – and the Employer did not inform the Association, its members, JOHSC, or the campus community generally. This failure to inform directly resulted in Facilities Management staff being exposed to students in quarantine. Facilities staff work throughout the campus and enter every building. In the case of a highly contagious infectious disease, what impacts one person has the potential to impact the whole campus.
27. Ms. Rostant-MacArthur says at paragraph 26 of her will-say statement that, “Clear messaging to all stakeholders was provided, and signage on all Bernadine entrance and exits explained to anyone approaching the residence that self-isolation was in progress and to not enter unless authorized.” In fact, communication with stakeholders and signs posted at Bernadine Hall only happened after the campus unions found out about the quarantining and WCB intervened.
28. In reply to Ms. Rostant-MacArthur’s statement at paragraph 26 that, “the UPEI Operational Plan was available on the website for anyone to view at any time if they had questions about residence”, the Association discovered that the UPEI Operational Plan was posted to the Employer’s website the Friday before classes started in September 2021, after quarantining was underway. The Association took it upon itself to distribute the Operational Plan to its members. It had not been distributed to staff and would only have been discovered if someone happened to come across it on the website.

Ventilation and COVID-19

29. In response to Ms. Podger’s description of the correspondence from WCB at paragraph 68 of her will-say statement, it should be noted that the Employer guided the drafting of this correspondence.

The Employer's COVID-19 Vaccination Policy

30. At paragraph 18 of Ms. Podger's will-say, she says that the Employer's August 25 2021 mandatory vaccination policy was supported by the campus unions. To clarify, the Association and the other campus unions pushed the Employer to adopt a mandatory vaccination policy. The Employer's initial policy of August 25 would have required only that students and staff attest that they were fully vaccinated without providing proof. The Association and other campus unions refused to support this policy and lobbied the Employer to require proof of vaccination. The Employer ultimately acceded to the unions' request.

Witness Statement signed this day of January, 2023.

Witness

Michael Arfken