

MEMORANDUM OF SETTLEMENT – March 5, 2002
Appeal Procedure of Hours of Work of Sessional Lecturers for the purposes of Eligibility for Employment Insurance

BACKGROUND:

In 1997, the Employment Insurance Act (“EI Act”) was amended so that it changed how insurable employment was to be measured for the purposes of an applicant qualifying for EI benefits. Previously the measurement recorded on a Record of Employment was number of weeks of insurable employment. The EI Act now requires applicants of EI benefits to have worked at least a specific number of hours of insurable employment in the preceding 52 week period. The number of hours of insurable employment required to qualify for benefits varies by the applicant’s place of residence and the unemployment rate of their region. This change was made to ensure that successful eligibility for EI benefits reflected actual time that was worked.

As a result of the above amendment to the EI Act, the number of hours recorded as worked on a Sessional Faculty’s Record of Employment became an issue. In 1997, CUPE filed a policy grievance on this matter. Clearly, the greater number of worked hours recorded on the Sessional Faculty’s Record of Employment, the higher the likelihood that s/he would reach the threshold required in their region and so qualify for EI benefits. However, the difficulty lay in the fact that Sessional Faculty are paid in lump sum amounts for the preparation and delivery of a course and their hours of work are not recorded by the University.

While the University met with CUPE on more than one occasion (including the exchange of documents), an agreement could not be reached as to how the number of worked hours would be recorded on a Sessional Faculty’s Record of Employment.

A formula was implemented by the University whereby a Sessional Faculty would be credited with 4 hours of time spent outside the classroom for each hour in the classroom, plus 2 hours of office time each week (i.e., $\{(4+1) \times 3 \text{ classroom hours} + 2\} \times 14 \text{ weeks} = 238 \text{ hours}$ for a 3 unit course). This formula continues to be applied. For courses that are not 3 or 6 units, or in the case of a Sessional Faculty with a partial appointment (having responsibility to teach a portion of a course) the number of hours are pro-rated based on the number of units taught, as specified in the employee’s letter of appointment.

APPEAL PROCEDURE:

The number of worked hours recorded on a Sessional Faculty’s Record of Employment will continue to be 238 hours for a 3 unit course. However, an **appeal procedure (see attached)** is now in place whereby a Sessional Faculty can challenge the 238 worked hours so recorded. This appeal procedure does not form part of the collective agreement (i.e., if this appeal is not successful, the Sessional Faculty must pursue his/her case with Human Resources Development Canada and Revenue Canada).

Given the purpose of the amendment of the EI Act, the appeal procedure requires two levels of approval before increasing the number of worked hours recorded and adequate documentation must be provided which supports the finding that more than 238 hours has been worked (including the number of worked hours claimed). A decision must be made within 10 days of filing the Appeal. As 238 worked hours is the norm, such approval should only be given where distinguishing circumstances have been proven (but approval should not be unreasonably withheld) and where such approval could be defended to the HRDC/Revenue Canada, if necessary. The written decision must be sent to the Sessional Faculty, CUPE Local 3906, Unit 2 and the HR Service Centre (Human Resources Services).

If you receive an Appeal, you are encouraged to call your Employee / Labour Relations Advisor for assistance.

Memorandum of Settlement

March 5, 2002

Appeal Procedure on Hours of Work of Sessional Lecturers for the purposes of Eligibility for Employment Insurance

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The Parties hereby agree:

1. It is understood that the University currently determines that a 3-unit course requires no more than 238 hours of work in the performance of a Sessional Lecturer's duties. The parties agree that this is solely a determination of the Deans and not that of the Union. Accordingly, all Sessional Lecturers' Records of Employment will reflect no less than 238 hours per 3 unit course.
2. Sessional Lecturers claiming that the time necessary to carry out the duties of a particular 3 unit course required more than 238 hours shall be permitted to request (through the Chair or Director) that payroll ensures reflection of those increased hours on his/her record of employment. Documentation supporting such claims shall be approved and signed by both the Chair or Director and the Dean or appropriate Vice-President before this request can be approved. For clarity, should the Chair or Director give such approval, it is expected that the Dean or appropriate Vice-President will normally confirm this approval. Should the Chair or Director not give such approval, the Dean or appropriate Vice-President's role is to review that decision.
3. ~~The Sessional Lecturer shall inform the Supervisor no later than sixty days after the first day of the commencement of classes in the relevant course that the Lecturer will require more than 238 hours per session to prepare and deliver the course.~~
4. The Sessional Lecturer shall submit the documentation no later than 30 days after the last day of classes in which the Sessional Lecturer has delivered the course.
5. The Union withdraws the Policy Grievance dated March 14, 1997.

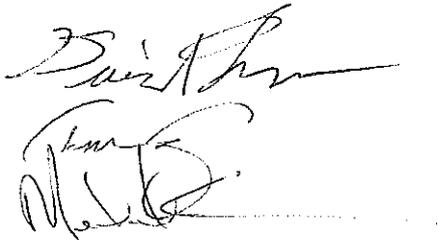
Requests, will be reviewed by the Chair or Director and the Dean or appropriate Vice-President and they will make a decision based on the merits of each particular case within ten days of the receipt of the request. Such requests shall not be unreasonably withheld. A written decision will be sent to the appellant and a copy will be forwarded to the CUPE Office as well as to the Human Resources Services Department.

The number of hours of work recorded on an employees' Record of Employment ("ROE") is not a matter that forms part of the collective agreement. A grievance may not be submitted as a result of the University's decision regarding the number of hours of work to be recorded on an employee's ROE. An arbitrator does not have jurisdiction to determine this issue. Accordingly, should the request to record more than 238 hours of work on the ROE not be approved by the University, the next step in the appeal process is through Human Resources Development Canada and Revenue Canada.

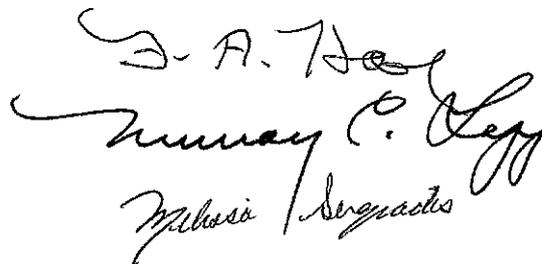
The implementation of this agreement is without prejudice to the rates provided for under any collective agreement. Without prejudice to the Union's right to negotiate further amendments to the collective agreement, the number of hours reflected on the appellants' ROE are to be used for Employment Insurance eligibility purposes only.

Signed in Hamilton on March 5, 2002.

FOR THE UNION:

Two handwritten signatures in black ink, one above the other, representing the Union.

FOR THE UNIVERSITY:

Three handwritten signatures in black ink, stacked vertically, representing the University.

**AGREEMENT TO MODIFY SECTION 3
OF
MEMORANDUM OF SETTLEMENT
signed March 5, 2002,
and titled,
*“Appeal Procedure of Hours of Work of Sessional Lecturers for the purposes of Eligibility for
Employment Insurance”***

Section 3 of the Memorandum of Settlement between the Parties, dated March 5, 2002, titled, “Appeal Procedure of Hours of Work of Sessional Lecturers for the purposes of Eligibility for Employment Insurance” has been modified by the Parties, as described in Article 8.05(b) of the 2010-2013 collective agreement between McMaster University and CUPE Local 3906 Unit 2, as follows:

3. The Sessional Lecturer shall inform the Supervisor no later than 30 days after the last day of classes in the relevant course that the Lecturer required more than 238 hours per session to prepare and deliver the course.