IN THE MATTER OF AN ARBITRATION

BETWEEN:

Carleton University

And

CUASA

(Implementation Dispute)

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: Michael Kennedy
Hicks Morley
Barristers & Solicitors

For the Association: Christal Cote
Senior Grievance & Arbitration Officer
CUASA

This implementation dispute proceeded by way of written submissions.

Award

On May 27, 2018, Carleton University and CUASA (hereafter "the University" and "the Association") entered into Minutes of Settlement resolving the terms of their successor collective agreement; one with a term of May 1, 2017 to April 30, 2021. The Minutes of Settlement stated that unless otherwise specified, "this agreement shall be retroactive to the date of ratification." The date of ratification was June 12, 2018. As the mediator in this round of collective bargaining, and at the request of the parties, I remained seized to hear and decide any implementation issues that arose. As it happens, an implementation issue did arise, and it proceeded first to a conference call held on November 15, 2018 and then by way of written submissions, a process that was completed on December 21, 2018.

Issue in Dispute

In the Association's submission, the question to be determined is whether Article 13.4(b)(i) should be implemented in accordance with the Minutes of Settlement, i.e. the ratification date, or whether it should be governed by Article 33 (to be renumbered Article 32 in the 2017-22 collective agreement). This is important because Article 13.4(b)(i) contains provisions dealing with instructor workload averaging. Accordingly, if the University's position was maintained, instructors would lose the benefit of the provision. For its part, the University takes the position that the Minutes of Settlement and its specific retroactive date are crystal clear and governing.

Decision

Having carefully considered the written submissions of the parties, I am of the view that the Association is correct. The Minutes of Settlement are, obviously, important, but so too are other provisions of the collective agreement including Article 33 which explicitly provides for the result reached here. Moreover, and of legal and factual significance, when the parties agreed on instructor averaging it was necessarily in their contemplation that it was a continuing process. This is not so much retroactivity but ensuring that the provision is given its intended effect: averaging instructor workload from one year to the next. The only way that provisions like these can work is if they straddle collective agreements (unless the parties clearly indicate otherwise). There is no basis to begin fresh where, and if, doing so would be to actually deprive an instructor of the negotiated benefit of the provision by creating an overload in one year that could not be accounted for in the next (and presumably vice versa). Accordingly, the 2017-22 collective agreement should, for instructor averaging, be retroactively applied to May 1, 2017.

At the request of the parties, I remain seized with respect to the implementation of this award.

DATED at Toronto this 7th day of January 2019.

"William Kaplan"

William Kaplan, Arbitrator