BUFA Forum

MAY 2011

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Of Collegiality and Self-Governance

President's Message

Hans Skott-Myhre BUFA President

Over the past year in this column I have spent a good deal of time taking the Brock Administrative team to task on a range of issues. The tone and tenor of my remarks have been sharply critical. However, while the administration continues to engage in practices and policies that I believe to be detrimental to the BUFA membership, I want to step back and think out loud for a minute about what sort of university might constitute an alternative.

In my mind, the alternative vision of the university would be based on the values of intellectual inquiry, pedagogical excellence, and collegial relations. It would be a place in which the primary function of the administration would be to support the development of faculty and students. This would mark a turn towards the enduring qualities that make the academy a unique institution in civil society. In such an institution we would explore how we might expand our existing resources and build on our historical strengths. Progress would be measured by the level of engagement by students and faculty in our shared intellectual life. Students, faculty, and librarians would work together supported by the administration in developing and implementing common projects and goals. Unfortunately, I don't see much of this at Brock currently, so the questions become how might we think about what has happened and what might we do to reach a more powerful consensus on the future.

To address these questions I want to return to a theme from my first BUFA column. In that column I referenced Michael Hardt's contention that under late stage capitalism the structures of civil society are emptied of their social

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President's Message cont'd

function and opened to pure appropriation as vehicles for making money. To set the context for Hardt's remarks, we can assume that human beings create social institutions to meet their needs at any given historical moment. Of course, those needs change over time and, as Marx pointed out, as human beings creatively engage the problems of sustenance and well being, the social structures will shift and change accordingly. Civil society comprises those social forms designed organizational needs the of human procuring sustenance and assuring well being. What is important about this is that the role that human beings play in creating and engaging with the institutions of civil society is premised on the institution being responsive to their actual material needs. Problems arise when the institution loses this focus and becomes engaged in either self-valorization or service to a transcendent system of practices, values, or ideas. Put in other terms, when an institution prioritizes its own continuance over the well being of the living beings that created it there is a problem. Similarly, if the institution prioritizes anything outside of the material well being of its living members it risks placing itself at odds with those who create and sustain it.

What Hardt is suggesting is that under the regimes of late stage capitalism the institutions of civil society such as the academy, the family, the church, and the government are emptied of their relation to the material needs of the humans who created them and re-directed to the abstract values of creating capital. Obviously, this is a complicated and nuanced argument that I am simplifying here to make a point. And that point, in my view, is that social institutions like the university serve social functions that should be directly related to the needs of the human beings that create, sustain, and are serviced by them. Critical to assuring that this is the case is the direct involvement of those who create and produce the institution in its governance. That is to say, that the institutions of civil society should be functionally democratic and decentralized.

What does this have to do with Brock, BUFA, and the upcoming contract negotiations? If we accept the premises above, then Brock as an institution of civil society should be democratically organized so that faculty, librarians, staff, and students are the driving force for innovation, creativity, and changes in organizational structure. This means that the governance structures of the institution should be driven from the ground up through a process of self-governance. There should be actual, not token, representation and input from these groups in all decision-making at Brock. Any effort to centralize power and the distribution of resources away from democratic oversight and control therefore should be resisted. The university should be driven by its civil function, which is as a site for producing thought, creativity, and knowledge that can be deployed in the service of the material needs of the larger social.

While there are several mechanisms for assuring democratic control of the institution at Brock, including departmental and program self-governance, academic freedom to control one's own research agendas, faculty control of curriculum development and teaching, and the

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President's Message cont'd

protections of tenure, I would argue that each of these is under assault and is at risk of being seriously eroded. Of course, we have the Senate as an avenue for assuring faculty input, but as we know the composition of that body is increasingly weighted towards administrative representation. These threats to self-governance through the centralization and valorization of bureaucratic and administrative control of Brock need to be challenged and a more equitable balance struck between reasonable administrative needs and self-governance. My argument is that the administrative arm of the university should serve the needs of those people actually creatively producing the institution--not the other way around. This is perhaps the singularly most important shift in creating the university as I proposed it at the beginning of this piece.

As we enter into our contract negotiations, it might be useful to reflect on the role that collective bargaining has in redressing any imbalances in function and control that may have occurred since we last sat at the table. Collective bargaining is indeed a process of self-governance in which BUFA represents the interests and desires of those who provide the creative, intellectual force of the academy. We believe that in representing nearly 600 faculty and librarians we should be accorded significant weight at the bargaining table. This is the true realm of what might be termed collegiality. That is, the ability to work together between the need to administer and the creative and intellectual capacity to produce. It is my hope that we will be met with full collegiality by the administration and that the functions of self-governance will be respected, acknowledged, and accorded their rightful place within the civil institution of the academy we call Brock University.

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RUMOUR MILL

Who at Brock decides on the salaries of senior administrators?

Rumour has it that it's not the Board of Trustees.... It's Human Resources who decides this.... *Hmmm.*

Who knew?!

Report of the Chief Negotiator

Dave Whitehead BUFA Chief Negotiator

Question: Who decides what the terms and conditions of work for the faculty members and professional librarians at Brock University will be next year and beyond, and how do they decide this?

<u>Answer</u>: The faculty members and professional librarians in the Brock bargaining unit will, through BUFA, their certified bargaining agent, and its representatives, bargain collectively under the provisions of the Ontario Labour Relations Act with the representatives of the Administration and the Board of Trustees to determine the terms and conditions of the renewal collective agreement to become effective on July 1, 2011.

In my first report as BUFA Chief Negotiator in the February BUFA Forum, I discussed the 33 department meetings that BUFA reps attended in fall term as part of BUFA's efforts to survey the problems experienced by members in our incredibly diverse bargaining unit that need to be addressed in collective bargaining. In my March BUFA Forum report, I described the work the BUFA Bargaining Team did to fashion our bargaining goals to address the problems identified leading up to the special BUFA general membership meeting where the membership discussed and approved the mandate for the BUFA Bargaining Team.

In this report I will

- describe the bargaining teams for BUFA and the Administration,
- review what our team has done since we received the mandate from the membership, and
- review the ground rules for the collective bargaining that will soon begin.

Who are the members of the BUFA Bargaining Team?

Let me begin by reminding you all of your representatives on your BUFA bargaining team. You met your representatives first hand at the mandate setting special general membership

Report of the Chief Negotiator cont'd

meeting and heard each of them report on the major issues for BUFA in this round of bargaining. Your 2011 BUFA COLLECTIVE BARGAINING TEAM is as follows:

- David Whitehead, Business/OBHREE, BUFA Chief Negotiator
- Linda Rose-Krasnor, Social Sciences/Psychology, BUFA Deputy Chief Negotiator
- Jeffrey Atkinson, Mathematics & Science/Chemistry, BUFA Negotiator
- Hilary Findlay, Applied Health Sciences/Sport Management, BUFA Negotiator
- Neta Gordon, Humanities/English, BUFA Negotiator
- Coral Mitchell, Education/Graduate & Undergraduate Studies, BUFA Negotiator
- Jonathan Younker, Library/Systems & Technologies, BUFA Negotiator
- Felice Martinello, Economics, Chair of Collective Agreement Committee, Ex Officio
- Hans Skott-Myhre, Child and Youth Studies, BUFA President, Ex Officio

Your BUFA Bargaining Team brings a wealth of knowledge with them from the library and from every teaching faculty at Brock, and has as a group a great deal of experience in collective bargaining and dispute resolution here at Brock and elsewhere.

Felice Martinello and Hans Skott-Myhre will not normally be at the table with the BUFA Bargaining Team during bargaining sessions but they will be available for the team as required. Felice Martinello is widely acknowledged to be a leading expert on university compensation plans.

The BUFA bargaining team also relies heavily on expert advice received on research matters from staff at OCUFA in Toronto and on collective bargaining and research questions from CAUT in Ottawa.

BUFA also has retained union legal counsel, Mr. Michael Mitchell, a partner with Sack Goldblatt Mitchell (SGM) LLP. His practice areas are in labour law, mediation and alternate dispute resolution. He served as Managing Partner of the law firm from 1983 to 2006, and is the co-author of *Ontario Labour Relations Board Law and Practice*, SGM's leading text on labour law in Ontario. You can find out more about Mr. Mitchell at the following SGM site: http://www.sgmlaw.com/en/Lawyers/detail.cfm?lawyerid=36

Who are the members of the Administration Bargaining Team?

The Administration has also advised us that the members of the Administration's collective bargaining team for 2011 will be the following:

Report of the Chief Negotiator cont'd

- Michael Kennedy, legal counsel, Partner, Hicks Morley, and Chief Negotiator for the Administration
- Margaret Grove, University Librarian
- Barry Wright, Associate Professor, OBHREE Department, and former Associate Dean, Faculty of Business, currently seconded to the office of the V.P. Academic for special projects
- Varujan Gharakhanian, Director Faculty Relations, Human Resources and Environment, Health and Safety
- Dean Douglas Kneale, Faculty of Humanities

For some more information on Michael Kennedy, the Administration Chief Negotiator, see the following page at his law firm: http://www.hicksmorley.com/index.php? name=News&file=ourpeople&sid=182&catid=2&profile=yes

We have also been advised that Professor Murray Knuttila, Vice-President/Academic and Provost, will be the chair of their collective bargaining committee and that he will not normally be at the bargaining sessions. We have also been told that Mr. Darren Harper, Associate Vice-President, Human Resources and Environment, Health and Safety, will be a resource for their negotiating team but he will be at the bargaining sessions only when required.

Three BUFA reps, namely Hans Skott-Myhre, David Whitehead and Linda Rose-Krasnor, met informally with three Administration reps, namely, Murray Knuttila, Michael Kennedy, and Varujan Gharakhanian, on two occasions to discuss negotiating ground rules. We have jointly agreed to have our first formal collective bargaining session on Thursday May 12, and we have agreed to a schedule of bargaining sessions between May 12 and June 30, 2011 when the current Collective Agreement will expire. Both teams have indicated that they are committed to work very hard to conclude a renewal Collective Agreement by June 30.

What has your BUFA Bargaining Team been doing since you met us at the special general membership meeting to approve the bargaining mandate?

Your team has been studying the problems the membership identified as key for this round of bargaining, conducting extensive research on possible solutions for those problems, and drafting language for collective agreement provisions that would address those problems.

As directed by the membership, we have been focusing our attention on key issues, including, but not limited to, the following:

Report of the Chief Negotiator cont'd

- e-learning and emerging technologies
- workload and complement of faculty members and librarians, including the research component of librarian workload
- governance of departments, centres, and committees
- tenure, promotion, and permanency criteria and procedures, and the appeals process for faculty members and librarians
- language parity of collective agreement provisions for librarians, including the application of equity policies
- compensation, including salaries, benefits, and leaves
- banking of course releases for union service and other reasons

In the weeks and months ahead, we will be communicating about each of the key issues for faculty members and librarians in this round of bargaining.

As of the writing of this column, BUFA has not yet been advised of the issues the Administration intends to open in this round of bargaining but the parties have agreed to exchange their lists of issues at their first bargaining session on May 12.

How will the BUFA Bargaining Team work with the Administration Bargaining Team to obtain a renewal Collective Agreement that meets our needs?

Because the faculty members and professional librarians chose BUFA as their certified bargaining agent in the mid-nineties, we are legally entitled to bargain our terms and conditions of work with the Administration with all the rights, powers, protections, and responsibilities provided under the Ontario Labour Relations Act, and we are provided with access to the Ontario Labour Relations Board for remedies for violations of provisions of the Ontario Labour Relations Act. The full text of the Act can be found at

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95101_e.htm

Under the provisions of the Ontario Labour Relations Act, BUFA and the Administration are able to freely and voluntarily and collectively determine the "law" that will govern their local workplace.

The Act is very long and detailed and includes many words and clauses in 168 different sections, many of which apply only to the construction industry; however, the provisions that

Report of the Chief Negotiator cont'd

deal directly with the giving of notice to bargain and with the conduct of collective bargaining are very short and to the point.

Notice of desire to bargain for new collective agreement

59. (1) Either party to a collective agreement may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

Obligation to bargain

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

Under these provisions of the Act, according to the commentary and analysis set out in *Ontario Labour Relations Board Law and Practice* co-authored by BUFA's legal counsel, the parties

- must meet in a timely way after the giving of notice to bargain a renewal agreement
- must bargain in good faith, and
- must make every reasonable effort to make a collective agreement

The Administration is required under s. 17

- to bargain only with BUFA, the exclusive bargaining agent of faculty members and professional librarians at Brock,
- to approach bargaining with the object of entering into a collective agreement,
- and to disclose information, including detailed financial information, to BUFA that BUFA
 has requested and that BUFA requires in order to understand positions taken by the
 Administration.

The parties are required under s. 17

- to attempt to settle our differences "through a rational, informed process in order to minimize the extent to which it is necessary . . . to resort to economic sanctions,"
- "to communicate with each other and to have a full, free, honest and rational discussion of the issues,"
- although "occasional gaucherie and inadvertent slips are inevitable and must, with reason, be tolerated."

Report of the Chief Negotiator cont'd

The parties are

- "free to agree that any matter may become part of their collective agreement," and
- free to table all such matters for discussion.

In summary your BUFA Bargaining Team is committed to representing our members, solving our problems, reaching our goals, and respecting our obligations under the Act by

- bargaining in good faith
- making every reasonable effort to make a collective agreement
- attempting to settle our differences "through a rational, informed process in order to minimize the extent to which it is necessary . . . to resort to economic sanctions," and
- having a full, free, honest and rational discussion of the issues."

The BUFA Bargaining Team knows, however, that, in spite of the best efforts of all concerned, sometimes voluntary agreements without economic sanctions and the other impasse resolution procedures set out in the Act are simply not possible in some circumstances. The Act requires that the parties meet, discuss the issues between them reasonably, rationally, in good faith, and using an informed process, but the Act does not require that the parties reach an agreement voluntarily or otherwise. The Act expressly recognizes that impasse will on occasion occur and specifies the procedures to be followed, including economic sanctions and other expressions of bargaining power, to break impasses. However, we will leave a review of those matters to another day if needed, and concentrate now instead on achieving a voluntary settlement with the Administration that fully meets BUFA's goals as mandated by the membership by June 30 and the expiry of the current Collective Agreement.



BUFA Annual General Membership Meeting

Friday, May 27, 2011 12:00 noon to 2:00 p.m. Taro 303

Refreshments are served at all General Meetings
In the interest of sustainability feel free to bring your own beverage cup.
We look forward to seeing you there.

As suggested in the president's column in this issue of the Forum, BUFA holds a vision of the university as an institution where our members have a relationship with the administration that is transparent, collegial, and consultative. A working environment that is composed of full time continuing members developing courses, revising courses, teaching courses and owning courses. Unfortunately, over the past six weeks or so, there has been a flurry of activity from the administration that would seem to trend in a very different direction. They have launched a series of initiatives at both Senate and directly from the Provost's office that have broad consequences for teaching and research at Brock.

While BUFA is not opposed to the activities proposed here (e-learning, trans/inter-disciplinary research, accountability, fiscal responsibility), we are quite concerned about the manner and form of these proposals. In particular, we are concerned that these initiatives centralize governance at the administrative level as well as centering profit as a driving motivation for change. We would suggest that these initiatives form a pattern of dangerous trends that seem to accelerate the commercializing and corporatizing of Brock University.

At a minimum we would assert that these proposals need to be negotiated with BUFA in terms of the ways that they impact on the terms and conditions of work for faculty. We have communicated this to the administration and are awaiting a response. While we remain expectant that the problematic top-down approach taken to these initiatives will be remedied in the current round of bargaining, we will continue to respond to these trends under the current Collective Agreement until a new Agreement is ratified.

e-learning proposal

♦ This proposal below is problematic for BUFA in that it impacts on faculty ownership of their own intellectual property while opening the door for an increasing complement of non-tenure track part time faculty. This has the possibility of significantly eroding faculty control of teaching and intellectual property rights.

The Provost recently announced that the university administration will be providing course release to eight faculty members chosen to develop online courses as part of Brock's e-learning initiative.

What the Provost did not explain, however, is that the university intends to claim ownership over any course developed as part of the e-learning initiative. If a faculty member accepts "significant resources" (i.e. course release) in order to develop an online course, the member risks forfeiting ownership of that course in accordance with Article 39 of the Collective Agreement.

Faculty members who are offered course release as part of the e-learning adjudication process will be asked by the University to sign an "online course development contract" outlining the terms of the exchange.

Under the terms of the online course development contract, "the university, retains the right to the on-line course materials, to have access to them, to give other instructors access to them, to schedule and offer the course at any time, to let other instructors modify and add to it, and to let other instructors teach the course or sections of it." Under these terms, the university could (and likely would) hire part-time instructors to deliver the courses. These part-time instructors are a source of cheap labour for the university and are better positioned to help university administration achieve one of its primary goals in relation to e-learning: to generate a profit.

The online course development contract also offers the possibility for royalties, but leaves it open for members to bargain their own individual deals with university administration. Thus, one member developing an online course might be able to pen a deal which guarantees him or her a significant windfall, while another member may only be able to conclude a negotiation that does not involve any royalties whatsoever.

In discussions at the Joint Committee on the Administration (JCAA) of the Agreement, BUFA raised these concerns and recommended that the course releases being offered to faculty members in exchange for developing e-learning courses be nixed and replaced with course releases in exchange for professional development aimed at teaching faculty members how to create and deliver online courses. This proposal would guarantee that faculty members retain ownership of the courses they eventually develop by directing the university's "significant resources" to professional development rather than the actual end product. The Provost did not even bother to respond to this recommendation and instead pursued the current initiative that seeks to gut copyright and ownership rights for faculty members and open the door to an army of part-time instructors to deliver online courses developed

by full-time faculty members.

BUFA strongly recommends that you do not sign away your copyright, intellectual property, or ownership rights in exchange for a course release. BUFA also strongly recommends that you do not sign a contract without knowing what royalty packages have been offered to other faculty signing similar agreements.

Graduate supervision

This is a proposal that has significant implications for faculty control in the area of graduate supervision. It layers in a level of bureaucratic control that has the possibility of interfering in faculty research and teaching. The proposal currently being brought forward from the Graduate Committee at Senate would set a system of core faculty and affiliated faculty with membership criteria determined by each Faculty. Under this proposed structure the category of faculty who can currently supervise graduate students might be restricted from doing so in the future. We consider this a change in the terms and conditions of work and have told the senate Graduate Committee that prior to implementation this proposal needs to go to JCAA

• BRAM request for data:

The BRAM initiative is possibly the most serious assault on faculty self-governance the administration has mounted yet. BUFA has been alerting the membership to the implementation of BRAM, which Dr. Lightstone assured us, in the last town hall, was not on the horizon. Nonetheless, without any notice to either the faculty or the union, BRAM is quietly being set in place. The first indication of this was a notice on the MyBrocku page that laid out a plan for implementation. BUFA sent out an alert to members when this occurred. The second was a recent request for information to chairs and directors which went as follows:

As a starting point, we ask that each TGGU (tuition/grant-generating units--aka departments) develop three or four measures that they feel best capture measures of quality in: Instruction, Research, Scholarship and Creativity, and Service. We would request that each "TGGU's" ideas be sent to the Resource Allocation sub-committee (bwright@brocku.ca) by 11:30am on May 13th.

In the broader document relating to this request, activities of faculty are tied directly to the University's strategic plan. Further, we are told that the correlation between faculty activities (research/teaching) and the strategic plan will be used in determining the level of resources a department might receive.

- A paper being floated at Senate: COU Academic Colleague paper on Teaching-Only Posts
 - This initiative, if it gains traction, has the possibility of significantly altering the undergraduate teaching landscape at Brock. It would impact both workload and faculty self-governance. While this has not reached the proposal stage, the fact that it has been introduced at Senate signals the administration's intention to explore it as an option. At a minimum, since this would involve creating a new category of faculty, consultation with BUFA prior to proceeding is a necessity. We have not heard anything from the Provost's office on this possibility.
- RFP for Transdisciplinary research
 - Since we already have a number of interdisciplinary programs and transdisciplinary research initiatives, one might wonder why the administration is essentially reinventing the wheel. From BUFA's perspective, the key issue is one of governance and control over research initiatives at Brock. This proposal put forward by the Provost is the first initiative to centralize research funding in the Provost's office. If we track the BRAM initiative above, we might note that it calls for funding to be centralized and applied for by Deans and Departments. If your research or teaching fits in well with the administration's academic or fiscal trend of the moment, then you stand a good chance of being funded. If not, then you will be marginalized until you come into compliance with the strategic plan as outlined by the Provost's office. We consider this an extremely dangerous trend.

To reiterate, BUFA is not necessarily opposed to any of these initiatives conceptually. Rather, what we are concerned with is the unilateral manner in which they are being developed and with the apparent centralization of governance at the administrative level. Each of these initiatives strikes at the elements of Brock that we at BUFA find most valuable; that is, the ability of faculty to control the terms and conditions of their workload, teaching, and research. We are making every effort to collegially engage the administration on these issues. Unfortunately, this has been an uphill battle. We remain hopeful that with persistence BUFA can open a useful dialogue with the administration that will lead to increased faculty and librarian input into issues, such as the above, that directly impact on the terms and conditions of our work here at Brock University.



TRANSITION

Spring is here, the grass is riz, I wonder where the thoughtfulness is It used to show its open arms and nurture difference, free from harm And now I hear a warning hiss

Foretelling creeping Animal Farm

Not strange the changes stalemate makes I'm stumbling over ladders and snakes Especially with so much at stake But what the hell, folks, them's the breaks

I wonder if I need the night
To train discernment without light
Or if I need a light at all
To feel my way along this wall

Perhaps it's light that plays me false
I need to lean into the fall
And when I reach and seek a pulse
I hope to recognize its call
Before its decency has faded
Before I get too mean and jaded

Spring is here and summer's soon
Civility is free, a boon
And thoughtfulness, a twilight sigh,
Awaits, just nigh
Where also lurks a snarling, feral
And we ignore these at our peril

COMMUNICATIONS COMMENTARY

In keeping with a theme of transition, I'll say, briefly, how much I've enjoyed engaging with and learning from my colleagues on the BUFA executive as Communications Officer, and what a delight it has been to work with Leslie Dick on the organization of the newsletter. I am also grateful to the many colleagues who have commented on the tone and quality of the newsletter. That said, I've had important insights this year serving my faculty association in an executive capacity, chief among them that my best way to serve is NOT on the executive... I have realized that the one to one work on P&T, my ability to facilitate workshops on various areas of professional development, and my general disposition as an irritant are the sites in which I am most effective and that give me joy, and, given other developments in other departments of my life (no pun intended!!), I'm going with the wisdom of the insight that if a thing does not gladden my heart, I'm going to have to lay it down. The other important insight is this: your BUFA executive works with amazing vigilance in ongoing ways, and is genuinely committed to representing your interests, even (and especially!) when those interests might be different from their own conventional wisdom. I urge you to be in touch with your elected representatives and to be aware of the many sides of the many issues that face us in the months ahead.

I wish you open minds and open hearts and a next several months of reflection and some opportunity for rest and rejuvenation. Nurture hope; nurture trust; sometimes, they're all we've got.

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