

Draft Minutes
YUFA General Membership Meeting
Thursday, 5 February 2013
Vari Hall D
Minutes taken by Heather Campbell

The meeting began at 11.37 am.

Agenda Approval: Executive Resolution that the agenda be approved. Carried.

1. Google Email

Arthur Hilliker introduced Dr. James Turk, Executive Director of CAUT, to address the meeting on the implications of the Employer's proposal to outsource York's student email to Google or Microsoft.

Dr. Turk's presentation was supported by a PowerPoint presentation that is linked to the website, along with the article from the Ottawa Citizen, the Lakehead arbitration, : <http://www.yufa.ca/email-privacy>

Dr. Turk reviewed the history of outsourcing email to Canadian and US universities. Google approached several universities in the 1990s offering a "no cost deal", which was refused. By 2006-07, Google announced that several universities had signed contracts for student email but no faculty. The first university in North America to outsource their faculty email was Lakehead, followed by New York University and Alberta, who did so without consulting faculty. Ryerson University considered it, but decided against. York in considering contracts with Google and Microsoft, which are precisely similar to each other. They have mentioned only student email, but have not ruled out faculty.

Because Google and Microsoft are US companies, all documents that pass through their systems fall under the application of US law, including the US Patriot Act. This includes all email messages sent and received, all attachments and all links. The US Patriot Act allows for surveillance with no probable cause, no requirement for a warrant, and no suspicion of criminality. Emails may be searched for key words and documents surrendered, without the necessity of advising the individual that their records have been requested. He referred to an article in the Ottawa Citizen, which outlines several of the issues.

Dr. Turk pointed out that in terms of the contract language, "you" refers to the university, "end users" are those who are using the service, in the case of York's proposal that means students, and "customer data" means all email traffic including links and attachments. "End user consent" is basic to the contract, and permits Google to "access, monitor use or disclose" absolutely all data. The contract gives the university custody and control over faculty communications that it doesn't presently have. Under Canadian access laws, within the university records created by faculty, including email, are protected from university control and access. The contract would override that

freedom, with troubling implications for academic freedom. Compliance with the contract includes an “acceptable use policy”, which states that emails and related data can be mined for indications of “unlawful, invasive, infringing, defamatory or fraudulent purpose”, but does not indicate who has set the standards for such ‘transgressions’, so the assumption must be that the US law prevails.

The contract states that “the customer”, which is the university and not the individual, owns all intellectual property rights in the customer’s data, which would necessarily include all email and related matter. Data is stored, but there is no guarantee of its safety, and the company explicitly takes no responsibility for its loss or destruction. Any individual who wishes may challenge or take legal action against the company, but because it is a US company based in California, the case would be heard in Santa Clara, CA, and a US lawyer would have to be hired.

In terms of cost, the initial contract would be at no cost, but very shortly there would be invitations to upgrade to a “premium version” at significant cost, and many features will likely be moved to the premium version.

In response to a question from Michael Gilbert, Dr. Turk confirmed that Google would have access to any attachment sent or received, so that if a faculty member sent, for example, a set of slides to a student, Google would have access to the slides. Nicola Short asked for advice for unions who want to resist. Dr. Turk advised that the union pay close attention to the arbitration of Lakehead University’s case. Lakehead Faculty Association sought to prove that the university had given away access beyond its powers under Canadian privacy laws. The arbitrator agreed that there was a problem, but the language in their Collective Agreement was insufficiently robust to protect them. We are not constrained by this decision, but we need very strong language in our Collective Agreement. In response to an observation by John Bell that the Google contract would violate our Collective Agreement and that the right to discriminate in favour of US citizens violates Canadian law, Dr. Turk noted that the Privacy Commission have suggested that the solution is to make it illegal in Canada for Google to disclose information to the US Government. However, Google has no need to disclose that it has done so, so there is no effective way to police such a law, and little chance that Google would observe it. In response to an inquiry, he clarified that students would include Masters and doctoral students.

In terms of cost, he reminded members that the university would still need to pay for other IT services. Craig Heron noted that the current cost of the student email service is approximately \$50,000.00, but it is a poor service, and would be costly to upgrade, and this is clearly an inducement to the university and to students, since Google offers a much more sophisticated service. Dr. Turk further reminded members that emails have a permanency, even when they seem to have been deleted, that everything goes through algorithms to raise names, and that Maher Arar’s name was on the list that resulted in his wrongful rendition because of an email correspondence. Those who have gmail accounts are already in this situation, and Canadian companies are fast

disappearing, and can be bought up at any time: Rogers, for example, is now owned by Yahoo.

On behalf of the members, Arthur Hilliker thanked Dr. Turk for his time and expertise.

2. Pensions

The presentation on pensions was led by Brenda Spotton Visano with Al Stauffer, both members of the York University Pension Group, along with Walter Whiteley who could not attend; and Darrell Brown, from the law firm Sack, Goldblatt and Mitchell.

Brenda Spotton Visano introduced the presentation by reviewing the process to date. She reminded members that the current YUFA pension plan is a hybrid plan: part defined benefit, which includes the minimum guarantee, and part defined contribution, which includes the money purchase element.

The groups represented by the YUGP are CUPE 1356 and 3903, 100E 772, OHFA (Osgoode Hall Faculty Association), YUSA and YUFA. YUFA also employs a firm of actuaries independently of the university, and has sought advice from CUPE National.

The situation concerns the deficit in the pension fund relative to pensions being paid out, due to the failing economy of the past several years, provincial pension legislation and the government's solvency relief programme. The university applied for solvency relief. They did not consult YUFA on this because they were not required to do so.

According to the most recent actuarial evaluation, based on an average for 2005, 06, 07 and 2010, the fund is presently 87.5% funded and 17.5%, giving an underfunded ratio of 5.1%. The Employer needs to fix the 5.1% in order to secure solvency relief. Meetings have taken place with representatives from all employee groups and a representative from Mercer, the actuary for the plan. The firm of Aon Hewitt was hired by the university to advise them on the application for solvency relief, and they have proposed changes to the plan. It has been agreed by the employee groups that all unionized pension groups should present a united front, and to accomplish this have employed the actuarial firm of Eckler Ltd. The primary objective is to consider carefully all the principles, to cost all possible changes and to seek a mutual agreement with the Employer. She further reminded members that when interest rates were very high, the government gave the Employer, but not the employees, a contribution holiday.

The guiding principles of the Employer's discussions have been sustainability and affordability, although these may be slippery terms, and they have not been clearly defined. It would benefit the employer to move the risk from the Employer to the Employees, by moving to an entirely defined contribution plan, although they have not suggested this. The YUGP is anxious to protect benefits rather than the low contributions (relative to other Ontario universities) that we currently make. Aon Hewitt and Eckler have each suggested and costed possible changes to the plan. The Queen's University plan is consulted for purposes of comparison.

At this moment in the YUPG deliberations, the main question is whether to rely primarily on increased contributions, which could be substantial, or to make changes that will affect future generations. Spousal benefits are under discussion by both parties. By law they cannot be eliminated, but the ones we have in the current plan are generous. The ratio of benefits applicable to those with or without spouses was explained in some detail, and is available on the PowerPoint slides, attached.

Motion: that the YUPG mandate from YUFA include no change to be negotiated that would alter the normal form or create an equivalent reduction in benefits.
Moved by Richard Wellen, seconded by Carla Lipsig-Mummé. Carried.

Darrell Brown advised that care be taken to define “normal form” and its calculation in very precise terms.

Robert McDermid noted that the Fund Manager had reported a return of 12.5% this year, and wondered whether a delay would be in order, as a 2% increase in interest rates would make the plan solvent. He recommended clear language to the effect that increased contributions would be reduced in the event of a new solvency. Darrell Brown noted that there would be a sunset clause to cover this situation. Al Stauffer observed that while a few years ago many faculty members were retiring under the money purchase provision, almost everyone for the foreseeable future would be retiring under the minimum guarantee, so that preservation of the hybrid form was important. Kelly Thomson expressed concern that we could be making important decisions with inadequate knowledge, and advised caution. Louise Ripley expressed thanks to those who have dedicated time and energy to looking after the membership’s retirement situation.

In response to a query from the floor, Darrell Brown responded that the delay in changing the mortality tables had indeed had a significant effect on the deficit, so that in his opinion the underfunding was largely the fault of that decision on the part of the Employer. The question arises, then, of how much each party should be responsible for in solving the problem.

Discussion continued in an informal way through the adjournment.

The meeting adjourned at 1.37pm.