

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

The University of Toronto

and

The University of Toronto Faculty Association

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: John Brooks
Hicks Morley
Barristers & Solicitors

For UTFA: Emma Phillips
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded by written submissions.

Introduction

This is an interest arbitration to settle certain outstanding issues in dispute between the University of Toronto (hereafter “the University”) and the University of Toronto Faculty Association (hereafter “the Association”). The Association represents full-time tenured and tenure-track faculty members, full- and part-time teaching stream faculty members, non-teaching stream faculty, CLTA’s and librarians. Under Article 6 of the Memorandum of Agreement between the University and the Association (hereafter “*The MOA*”), the parties negotiate salary, benefits and workload. *The MOA* provides for interest arbitration absent agreement. This has been the process for more than four decades.

On April 25, 2018, the parties were able to resolve most issues in dispute between them for the two-year period beginning on July 1, 2018 and ending on June 30, 2020. Left unresolved, even after further mediation, were outstanding Association proposals for changes to (i) *The University of Toronto Workload Policy and Procedures for Faculty and Librarians* (hereafter “*The WLPP*”), (ii) *The Academic Administrators Procedures Manual* (hereafter “*The AAPM*”) and (iii) *The University’s Policy Regarding Salary Adjustments and Determination of Starting Salary for New Faculty* (Salary Anomaly”). The Salary Anomaly issues have been placed in abeyance pending agreement, or the conclusion of the litigation of the Association’s salary discrimination grievance scheduled to proceed in due course before the Grievance Review Panel (although either party may refer these issues back to interest arbitration before that if they so desire). Should that occur, the University has

reserved its rights to argue that Salary Anomaly issues are not arbitrable under Article 6 of the MOA. Arbitrability issues also arise insofar as *The AAPM* is concerned. There is no dispute about arbitrability of *The WLPP* under *The MOA*.

The University has consistently taken the position that *The AAPM* is not arbitrable under Article 6 of *The MOA*. However, in recognition of the fact that there are very few remaining unresolved issues, the parties have agreed, without prejudice to the University's position that these issues are not arbitrable, and the Association's that they are, that the Association proposals can nevertheless, and without precedent or prejudice, be determined in this proceeding. Put another way, *The AAPM* issues are being decided but outside of *The MOA* and Article 6.

In determining the outstanding issues, all of the usual criteria have been taken carefully into account, most especially replication: the replication of free collective bargaining. It is noteworthy that Article 6(16) of *The MOA* requires the award of an interest arbitrator to "attempt to reflect the agreement the parties would have reached if they had been able to agree."

Gradualism is also relevant. In general, and absent exceptional circumstances, interest arbitrators do not award breakthrough proposals, particularly in mature bargaining relationships. Breakthroughs are best left for the parties to reach on their own, without arbitral intervention absent exceptional circumstances justifying a deviation from this well-established principle. Also relevant is demonstrated need.

That important factor requires some brief elaboration. Demonstrated need establishes that sought-after changes are required to meet real and pressing problems, particularly where one party seeks to change the long-standing status quo – representing, after all, decades of free collective bargaining.

The Outstanding Issues

The Association makes two proposals to amend *The WLPP* and two proposals to amend *The AAPM* relating to the *Progress Through the Ranks Policy* (hereafter “*The PTR Policy*”). These proposals are informed by its view that change is required to address significant and well-established problems of both over-work and inequitable distribution of work. In the Association’s submission, clear and transparent workload norms are necessary to address the myriad problems identified and discussed in detail in its written submissions. Excessive and inequitable workload, the Association argues, affects everyone but disproportionately impacts Association members who identify as women or who are racialized and especially as it is experienced by members of the Teaching Stream. Pre-tenure status and employment precarity, not to mention an overall lack of workload transparency, inhibit and discourage filing of workload complaints, formal and informal. In the Association’s view, its proposals are fully justified when all of the criteria are examined: its proposals reflect university norms across the country, are justified by evidence of demonstrated need and, considered in the overall, are incremental, conforming to the gradualism principle and cannot properly be fairly characterized as breakthrough. Moreover, the Association

observes, the University of Toronto has staked and maintained a position at the top of the market in salaries, and a corollary of that is that working conditions need to catch up.

For its part, the University submits that when the outstanding Association proposals are seen through the lens of the governing interest arbitration criteria, none of them are justified or should be awarded. It was inconceivable that more than two thousand tenured and tenure track faculty and librarians would go on strike when three of the four outstanding issues relate exclusively to the teaching stream. The case could be, and should be, justified, the University submitted, on the basis of replication alone with the Award incorporating the University's proposals.

Application of the other factors confirmed this conclusion. The Association's WLPP proposal – through mandatory inclusion of respective weightings and a cap on the assignment of teaching to teaching stream members – in other words, rigid workload formulas, was not gradual; rather it represented a fundamental change to the long-standing status quo, and it was a proposal made with scant evidence, at best, of demonstrated need.

Reasons for Decision

Having carefully considered the submissions of the parties, along with the relevant criteria, it is my view that some changes are in order, particularly with respect to workload transparency. Association members should have their workload written down and available for review and comparison, subject to confidentiality

requirements such as, for example, where an accommodation plan is in place. It is only fair that faculty members know how workload is distributed, particularly where it is asserted that workload distribution has a negative impact on members of equity-seeking groups. The change awarded here, together with what was agreed upon at mediation for electronic access to all written assignments within an academic unit (subject to any confidential accommodation agreements), will provide full transparency on individual and relative workloads.

The evidence, however, does not make out a case for the Association's proposed rigid workload formula, or for limitations on the teaching of teaching stream members. As the Association observes in its brief, the workload of faculty and librarians is inherently fluid and cannot be rigidly quantified or measured according to units of time. It evolves within a year and over years. Experience indicates that faculty have a very clear idea of expectations, especially for PTR evaluation.

Consistent with the replication principle, this award attempts to achieve the outcome that would have been arrived at had this dispute run its course and that does not encompass awarding these Association proposals. Moreover, while the Association describes its proposals as modest and gradual, the changes sought are major. They are just the sort of significant changes that the parties should reach voluntarily. Demonstrated need, an effective counterpoint to gradualism, and a factor that can lead to a breakthrough, has also not been established. Approximately 3400 faculty workload assignments are made annually. Since 2011, there have only

been *two complaints* referred to the Workload Adjudicator under *The WLPP*. While there is survey evidence in the Association's brief pointing to problems, the conclusion is inescapable that this is not a pressing issue requiring arbitral attention. This remains an issue best left to the parties to resolve. Accordingly, the Association's proposals for major change are rejected. However, I am persuaded by the submissions that change is appropriate to the PTR Policy.

Any outstanding proposal not addressed in this award is dismissed (although presumably can be raised in the current bargaining round).

Award

Amend Article 2.18 (currently Article 2.14 of the WLPP) as follows:

Written assignments of workload. Each member will be provided with a written assignment of their workload duties on an annual basis that includes the member's percentage appointment and details of teaching and service or, in the case of librarians, professional practice and service, by no later than June 30th. Where an individual member's assignment is materially different from the unit's workload norms, standards or ranges, the variation and the reason for it should be identified in the individual member's written assignment of workload, subject to any accommodation agreements. All written assignments....

As noted at the outset, the following part of this award, under *The AAPM*, is made outside of Article 6 of *The MOA*.

Amend PTR Policy as follows:

The Balance of Teaching, Research and Service

A separate weighting of teaching, pedagogical/professional development and service should be made for teaching stream faculty. Teaching stream faculty members shall be evaluated on their pedagogical and/or discipline-based scholarship in relation to the field in which they teach and/or creative/professional activity that allows the faculty member to maintain a mastery of their subject area¹ and this evaluation will be appropriately weighted in the PTR assessment.

Weighting of faculty members on research and study leave should reflect the research or pedagogical/professional development and/or discipline-based scholarship in relation to the field in which they teach and/or creative professional activity that allows the faculty member to maintain a mastery of their subject area² and services duties undertaken during their leave.

¹ See PPAA section 30(x)(b): "...e.g. discipline-based scholarship in relation to, or

² Ibid.

Conclusion

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

DATED at Toronto this 29th day of June 2020.

“William Kaplan”

William Kaplan, Sole Arbitrator