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Executive Summary - September 6, 2023 Interest Arbitration Award

UTFA / Administration Interest Arbitration Award: Executive Summary

OVERVIEW

As we announced last week, Arbitrator Eli Gedalof recently issued his arbitration award. UTFA was awarded a **7% Across-The-Board (ATB)** pay increase retroactive to July 1, 2022. This increase is on top of the 3% ATB increases achieved during the three years of the 2020-2023 Agreement with the Administration, resulting in **a total of 10% ATB**.

Although this pay increase is now more than a year overdue, the earliest the Administration would commit to implementing the award was November 28th.

In addition, Arbitrator Gedalof awarded:

- A 7% increase to the Per Course Stipend (overload course rate); and
- Two very modest Workload Policy (the WLPP) changes, including: An amendment that "considers" the level and/or hours of technical and/or pedagogical support for teaching as a relevant factor in workload; and a requirement that all units share by June 30 an Annual Workload Document that provides greater transparency around assigned workloads (subject to any confidential accommodation agreements).

Arbitrator Gedalof declined to award all of UTFA's other proposals, often citing the constraints imposed upon him as a result of the parties' Memorandum of Agreement (MOA) that limits the capacity of the Association to achieve improvements to your working conditions and compensation.

These significant salary and very modest workload improvements are in addition to the healthcare benefits improvements that UTFA negotiated in September 2022 for the 2020-2023 period. Despite the Administration's original proposal to create a two-tiered system of provision, UTFA was successful in maintaining equal access to benefits for both UTFA members and retirees.

As members are aware, these proceedings have been unusually lengthy, in part because of the decision by the Superior Court finding Bill 124 unconstitutional and re-opening ATBs. Nevertheless, the length of these proceedings stand in stark contrast to the Administration's dealings with CUPE 3902 and other units on campus, all operating under the *Labour Relations Act*, which have been able to achieve much quicker outcomes.

We provide a summary of the parties' respective positions and Arbitrator's Gedalof's decision on key issues below.

SALARY

UTFA's and the Administration's contrasting positions

On top of the 1% pay increase previously awarded*,* UTFA proposed an ATB increase of 12.75% effective July 1, 2022, and an equivalent increase to the per course stipend rate. Our argument centered around the "triple whammy" of record inflation, skyrocketing housing costs, and the need for "catch up" to maintain our "top of market" position, which has been substantially eroded by Bill 124's unconstitutional 1% cap on compensation increases. Median salaries for UTFA faculty had fallen behind McMaster faculty. While the Administration was refusing to negotiate meaningful pay increases for you, they voluntarily negotiated total pay increases of 11% over the same three-year period for lecturers unionized with CUPE 3902.

The Administration raised several procedural objections arguing that the Arbitrator lacked the power to award UTFA members *any* increase at all, and alternatively, that if any increase was warranted, it should be no higher than 1.75% ATB increase (for 4.75% over 2020-2023). Despite the unconstitutional wage constraints imposed by Bill 124, the Administration also argued that prior pay increases were made freely and voluntarily, and so there was no cause for faculty and librarians to seek to "catch up" in the third year of the agreement.

Arbitrator Gedalof's award

In awarding a 7% ATB increase Arbitrator Gedalof soundly rejected the Administration's arguments. Instead, he accepted UTFA's submission that faculty and librarians had suffered substantial erosion of real wages through inflation and sub-normative ATB increases under Bill 124, and that the University Administration had enjoyed corresponding savings over those years in comparison to other universities and employers more broadly.

As a result of the years of hard and skilled work your Negotiating Team invested in this process, and the Team's willingness to stand up to the Administration's disrespectful salary and policy proposals, UTFA members have secured the highest ATB increases in the university sector for the 2020-2023 period.

WORKLOAD

UTFA's and the Administration's contrasting positions

UTFA pushed hard at arbitration for important workload improvements, emphasizing that changes were necessary to address the crushing, inequitable workloads many of our members experience. These proposed changes would address the need for consistent TA support, equitable course release, clarity and transparency in the weighting of workload assignments, reasonable Teaching Stream teaching loads, protections for librarians' research contributions, and more.

UTFA argued that baseline protections in the Workload Policy (the WLPP) are critical, especially so for the 800 faculty who are not appointed to full-time tenured or Tenure Stream appointments with a clear "distribution of effort" (DOE), i.e. the typical Tenure Stream DOE of '40/40/20'. The DOE sets clear expectations around the proportion of effort or emphasis faculty are expected to invest in the three principal components of their work: teaching, research/scholarship, and service. Without clear expectations, Teaching Stream and part-time faculty are vulnerable to the piling on of excessive course and service workloads that do not allow reasonable or sufficient time for scholarship and professional growth.

UTFA argued that the current WLPP does not protect members from excessive and inequitable workloads. Concrete parameters for assessing and assigning work and transparency around those assignments are *necessary* to address the longstanding inadequacies in the workload protections available to our members. Other associations have successfully addressed similar issues in collective bargaining. In particular, DOE workload protections have become commonplace and foundational to the way other universities assign teaching and service workloads for faculty and some units at UofT already assign workload for faculty members and librarians.

The Administration argued strenuously against all of UTFA's workload proposals but one (the Administration agreed to recognize the impact of technical support on workload), insisting that UTFA's proposed improvements were unnecessary. Our proposals would have established workload norms across the University much like those that have existed at other Ontario and Canadian universities for decades. The Administration denied our proposal on the basis that they were inconsistent with Article 8 of the MoA, which states that workload is assessed at the local unit level.

Throughout its submissions, the Administration made a number of outrageous arguments about the nature of teaching and research that UTFA strongly objected to, and the Arbitrator did not ultimately adopt. **Incredibly, the Administration argued that time spent on "teaching" could be calculated based largely on time spent in the classroom, grossly underestimating the work and time involved in teaching a course**[1], including the hours of work that are required for the design, preparation, and delivery of a course, student contact hours, meeting student accommodation needs, and the evaluation of assignments and exams.

The Administration further argued, contrary to long-standing University policy and the academic freedom protections in the MoA, that Teaching Stream faculty may only engage in research activities "directly tied" to their teaching. The Administration also asserted that scholarship is "built-in" to teaching for Teaching Stream faculty, which wrongly suggests that teaching a course is somehow different for Teaching Stream faculty than for Tenure Stream faculty.

The Administration also argued that it was "inconceivable" that UTFA members would stand in solidarity over proposals that affect workload, and in particular workload for Teaching Stream faculty, and therefore that the Association's proposals should be rejected.

Arbitrator Gedalof's award

Arbitrator Gedalof ultimately accepted two of UTFA's workload proposals. He held that there was no "compelling demonstrated need" (normally shown by unresolved member grievances) for the remaining proposals, which he characterized as "a significant alteration to the status quo" between the parties as reflected in the MoA and the existing Workload Policy. Unfortunately, the MoA does not afford UTFA the tools needed to meaningfully negotiate workload and other significant terms and conditions of employment with the Administration. What we have instead is a vague policy with few enforceable provisions, making it nearly impossible for UTFA members to assert their individual and collective right not to be overworked.

ARBITRATOR'S JURISDICTION

UTFA's and the Administration's contrasting positions

Finally, the Association proposed a number of important improvements that the Administration argued were outside of the Arbitrator's jurisdiction under the MoA. These included proposals to establish: a joint central health and safety committee; a central fund to provide research and teaching support to members taking pregnancy, parental, adoption, or primary caregiver leave; and a mechanism for reporting on leaves taken by, or accommodations given to, faculty and librarians to care for family members.

Freeze Provision

Importantly, UTFA also proposed to change the structure of our bargaining framework with the senior Administration to include a "freeze" provision, namely a provision that would maintain our members' salary, benefits, and workload protections during negotiations, including arbitration. The "freeze provision" would therefore protect us from the Administration's current unilateral right to alter terms and conditions of employment that were previously negotiated with UTFA.

Without a freeze, UTFA's ability to improve the terms of your employment is materially impaired because even matters that have already been negotiated and agreed on can be taken away by the Administration. Without a freeze, we are pressured during bargaining to make concessions (or lower our demands) only to maintain the *status quo*. If UTFA had a freeze provision in 2020, faculty members and librarians would have been protected from the Administration's refusal to pay PTR (merit pay) in the normal course during our negotiations. A freeze provision is also beneficial because it levels the playing field, encourages cooperative bargaining practices, allows for more timely (and less costly) resolution, and facilitates stability and predictability in our working conditions and pay.

Arbitrator Gedalof's award

Arbitrator Gedalof accepted the Administration's argument that UTFA's proposed "freeze" provision was outside of his jurisdiction under the MoA, and so could not be awarded. Arbitrator Gedalof recognized the importance of freeze provisions and noted that the freeze provision "forms an integral part of the [*Labour Relations Act*'s] legislative framework. " Nevertheless, he rejected UTFA's proposal given that the parties "do not participate in that framework" and instead operate under the "unique bargaining framework" provided for under the MoA.

Freeze provisions are a norm in the Canadian university sector. Because the MoA places UTFA members outside the protections of the Ontario Labour Relations Act, at UofT we are some of the very few Canadian faculty and librarians who are not afforded freeze protections.

[1] The Administration estimated that a Teaching Stream faculty member teaching three 3-hour lectures a week would have 9 hours of in-class teaching time, leaving 31 hours of an assumed 40-hour work week with more than enough time to prepare for teaching, hold office-hours, carry out service, and engage in pedagogical and professional development, including discipline-based research.

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