

IN THE MATTER OF AN ARBITRATION BEFORE ARBITRATOR GEDALOF

BETWEEN:

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION (UTFA)

Association

and

GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Employer

**ARBITRATION BRIEF OF THE ASSOCIATION ON THE APPLICATION
OF ATB
SUBMITTED ON OCTOBER 31, 2025**

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INTRODUCTION

On July 3, 2025, Arbitrator Gedalof issued his final determination on salary, benefits, and workload for a term beginning on July 1, 2023, and ending on June 30, 2026 (the “Gedalof Award”).¹ The award was issued pursuant to Article 6 of the Memorandum of Agreement (“MoA”) between the Governing Council of the University of Toronto (the “Administration” or “University Administration”) and the University of Toronto Faculty Association (“UTFA” or the “Association”).²

Per the Award and the agreement between the parties, two issues remain for determination:

1. The application of the across the board (“ATB”) percentage salary increase to new and former faculty members and librarians (other than members who retired); and
2. The ATB percentage salary increase and any salary related increases for July 1, 2025, to June 30, 2026 (“Year 3”).

This brief addresses the first issue. Arbitrator Gedalof is seized of this matter by paragraph 106 of his award.

The across-the-board increase must be paid **across the board**. There is no basis to conclude that it should not be paid to all members.

The parties and their bargaining history

The parties, their history, and their bargaining relationship, are outlined in detail at pages 5-8 of UTFA’s brief, dated March 7, 2025.³

Beyond the bargaining history outlined in that brief, the parties engaged in without prejudice discussions in September 2025 on ATB and related increases for the period of July 1, 2025, to June 30, 2026 (Year 3). They were unable to reach an agreement. The issue of salary for the third year of the renewal agreement has been referred to interest arbitration and will be addressed in a further brief.

¹ *Governing Council of The University of Toronto v University of Toronto Faculty Association*, [2025 CanLII 65826](#) [“Gedalof Award”].

² *Memorandum of Agreement between the Governing Council of the University of Toronto and the University of Toronto Faculty Association* at Article 5 [“MoA”].

³ Arbitration Brief of the Association, Presented on March 16, 2025, dated March 7, 2025, Association’s Book of Documents (“BOD”), Tab 1, at 5-8.

APPLICATION OF ATB INCREASES TO ALL CURRENT AND FORMER MEMBERS

On July 3, 2025, Arbitrator Gedalof ordered the following with respect to ATB increases:

1. Wages

Effective July 1, 2023-ATB increase of 3.5%

Effective July 1, 2024-ATB increase of 2.5%

ATB increases are retroactive and applied to base salary, salary minimums, per course stipends/overload and PTR increments and break points.⁴

The increases apply to base salary, without exception or exclusion.

Despite the clear language of the award and the common understanding of the words “across-the-board”, the Administration has advanced the position that across-the-board entails a series of exceptions and exclusions that it has arbitrarily determined. More specifically, following the Gedalof Award, UTFA learned that the Administration was not adjusting salaries retroactively for newly hired members or members who ceased employment in the following circumstances:

1. For the period of July 1, 2023, to June 30, 2024
 - a. Faculty and Librarians hired on or after July 1, 2023, and before June 30, 2024, who have accepted a “firm salary offer” in their letter of offer, would not be eligible for any increases for this period.
 - b. Faculty or Librarians who resigned, ceased employment for any reason other than retirement or died before June 30, 2025, would not be eligible for any increases for this period.
2. For the period of July 1, 2024, to June 30, 2025
 - a. Faculty and Librarians hired on or after July 1, 2024, and before June 30, 2025, who have accepted a “firm salary offer” in their letter of offer, would not be eligible for any increases for this period.
 - b. Faculty or Librarians who resigned, ceased employment for any reason other than retirement or died before June 30, 2025, would not be eligible for any increases for this period.

⁴ Gedalof Award, *supra*, at para [105](#).

The Administration has confirmed that the ATB increases awarded by Arbitrator Gedalof apply retroactively to all overload stipends and to all stipends for courses taught by retirees paid during the relevant period, without exception. Therefore, it is only the salaries of newly hired members and members who ceased employment that the Administration says are excluded from the application of the ATB increase.

The Administration's list of exclusions, however, contradicts the unambiguous language of the Gedalof Award and the provisions of the MoA. It is untenable for three reasons.

First, the Administration's position is contrary to the commonly understood and unambiguous meaning of the words "across-the-board". There is no basis on which to conclude that Arbitrator Gedalof ordered that ATB increases only be paid to some members.

Second, the Administration's position is contrary to the well-established principle that, unless the presumption is clearly rebutted, salary increases are to be paid retroactively to all individuals who worked during the period subject to a salary increase, including to former employees.

Third, with respect to new members, the Administration's position is simply an attempt by the Administration to skirt its obligations under the MoA. It violates the unequivocal language of the MoA to provide "minimum" entitlements to all UTFA members.

As stated above, there is no basis to distinguish between current, new, and former members who worked at any time during the relevant term. The ATB simply applies to all members.

ATB increases apply to everyone

The words “across-the-board” have a well-defined meaning:

- “affecting everyone or everything in a group”;⁵
- “embracing or affecting all classes or categories”;⁶
- “affecting everyone or everything within an organization, system, or society”.⁷

In collective bargaining and interest arbitration, the words “across-the-board” have the same meaning, consistent across decades of use in practice and in arbitration. In 2001, Arbitrator Etherington reasoned:

If one gives “across the board” its plain everyday meaning, as revealed by the dictionary definition submitted by the union, it simply refers to a requirement that the 1 per cent increases be all inclusive, apply to all employees in all classifications and increments, without allowing for differential increases for particular employees or classifications. For the reasons given above, I find that the parties intended that these increases were to be made on all existing rates of pay, for all existing job classifications and all increments within classifications.⁸

Arbitrator Etherington concluded that, in the absence of anything in the parties’ negotiating history that would suggest otherwise, this plain and ordinary meaning applied.

More recently, in *BCTF*, Arbitrator Hall defined an “across the board” increase as “applicable to all employees covered by the collective agreement”, following a “consistent arbitral approach” to all the ways that unions and arbitrators have articulated the concept, including “general increase”, “general wage increase” and “general salary increase”.⁹ Similarly, in *Dare Foods*, the employer had argued that “the board” only included permanent employees and sought to exclude non permanent employees from the ATB increase. The argument, however, was inconsistent with the meaning of ATB:

Having regard to the structure of Schedule 'A' of the 2012-2015 collective agreement, it is my view the words “Increase all wages across the board” in the MoA for the current collective agreement read objectively on their face

⁵ *The Britannica Dictionary*, sub verbo “across-the-board”, online: <https://www.britannica.com/dictionary/across%E2%80%93the%E2%80%93board>.

⁶ *Merriam-Webster Dictionary*, sub verbo “across-the-board”, online: <https://www.merriam-webster.com/dictionary/across-the-board>.

⁷ *Cambridge Dictionary*, sub verbo “across-the-board”, online: <https://dictionary.cambridge.org/dictionary/english/across-the-board>.

⁸ *Central Park Lodges and SEIU, Loc 210 (Re)* (2001), [2001 CanLII 62002](#) at 247-248.

⁹ *British Columbia Public School Employers’ Association / SD No 39 (Vancouver) v British Columbia Teachers’ Federation / Vancouver Teachers’ Federation (VESTA Adult Educators’ Sub-local)*, [2024 CanLII 57517](#).

from a labour relations perspective presumptively denote the starting rate, the wages of the Non-Permanent Rate Employees and Permanent Rates.¹⁰

Again, nothing in the parties' negotiating history led to any interpretation other than the plain meaning of ATB.¹¹

The exact same conclusion is warranted in this case. There is nothing in Arbitrator Gedalof's award that suggests, explicitly or implicitly, any notion that "the board" does not include all members. Arbitrator Gedalof simply refers to ATB increases, without distinction.

Further, nothing in the parties' bargaining history preceding the Gedalof Award suggests any other interpretation. This history includes:

- The agreement between the parties to appoint Arbitrator Gedalof to hear these matters;
- The Memorandum of Agreement Regarding Unresolved Salary, Benefit and Workload Issues Pursuant to Article 6 of the Memorandum of Agreement, executed February 20, 2025;¹²
- The proposals exchanged by the parties February 24, 2025;¹³
- The briefs and reply briefs of the parties, submitted to Arbitrator Gedalof on March 7 and 18, 2025;¹⁴
- The parties' oral submissions before Arbitrator Gedalof on March 21, 2025;

While the parties spent a significant portion of their arguments debating the items to which ATB applies, they never questioned to whom it would apply. While the Association sought to include all forms of compensation in ATB, the Administration argued that ATB increases should be limited to base salary, salary floors, per course stipend/overload, and PTR.

Indeed, the limitation of ATB increases to those categories of compensation was a core portion of the Administration's argument on ATB. Arbitrator Gedalof explicitly noted that the Administration was "strenuously" opposing the Association's proposal on the issue.¹⁵ Yet, while arguing about the proper scope of ATB, the Administration never suggested that it should only apply to certain members. Prior to the Gedalof Award, the Administration never advised the Association that it would seek to exclude

¹⁰ *Dare Foods Ltd. and BCTGM, Local 264 (Wages)*, Re, 2017 CarswellOnt 18895, BOD Tab 2 at para 24; see also *Tapestry WV Limited Partnership (Tapestry At Wesbrook Village) v Hospital Employees' Union*, [2020 CanLII 108877](#) (BCLA): "It was not an across the board increase as some employees did not receive a minimum increase of 2%."

¹¹ *Dare Foods*, *supra*, BOD, Tab 2 at para 25.

¹² February 21 2025 Memorandum of Agreement regarding Unresolved Salary Benefit and Workload Issues for the period July 1, 2023 to June 30, 2026, BOD, Tab 3.

¹³ February 24, 2025 Arbitration Proposals of the Administration, BOD, Tab 4; February 24, 2025 Arbitration Proposals of the Association, BOD, Tab 5.

¹⁴ Arbitration Brief of the Association, dated March 7, 2025, BOD, Tab 1; Arbitration Brief of the Administration, dated March 7, 2025, BOD, Tab 6; Reply Brief of the Association, dated March 18, 2025, BOD, Tab 7; Reply Brief of the Administration, dated March 18, 2025, BOD, Tab 8.

¹⁵ Gedalof Award, *supra*, at para 7.

new hires and faculty members and librarians who have ceased employment for reasons other than retirement from the application of the ATB increase.

The Association's position is further confirmed by the fact that the costing provided by the Administration appears to have included all members employed as of June 30, 2023, without any discount for attrition.¹⁶ Clearly, if the parties were operating on any assumption other than that ATB includes all members, the Administration would have accounted for excluded members in their costing.

¹⁶ University Administration's Costing of UTFA's Proposals found at Tab 14 of the Administration's Book of Documents, dated March 7, 2025, BOD, Tab 9.

ATB increases presumptively apply retroactively to all members, including those who have left employment

The Administration's attempt to draw distinctions in the meaning of ATB is also contrary to the well-established principle that salary increases are presumed to apply to all employees during the period of the retroactive wage increase. The presumption is that retroactive salary increases "benefit the employees that performed the work", unless the collective agreement or award clearly states otherwise.¹⁷

The leading authority for this point is the 1977 decision of the BC Labour Relations Board, chaired by Paul Weiler, in *Penticton*. In that decision, the parties reached a collective agreement on December 23, 1975, which provided for the retroactive operation of the agreement to April 1, 1975. At issue was whether two employees who had voluntarily terminated their employment in July of 1975 were entitled to retroactive wage increases.

The Board held they were. It began by recognizing that the clear intent of a retroactivity clause is "to apply new monetary benefits to work performed between the date of expiry of the last contract and the date on which the new contract settlement is reached."¹⁸ The Board then explained why this benefit must apply to all employees, including those who had terminated their employment. First, the position that increases do not apply to those who have left their employment leaves ambiguity. In other words, it is entirely unclear what the cut-off date should be for determining eligibility. Second, and more fundamentally, the position is logically unsound when one considers that a union (or in the present matter, an Association) does not negotiate a contract binding only members at a specific moment in time. There is no "particular magic" in the date a collective agreement is signed or ordered.¹⁹

Moreover, it is well understood in collective bargaining that when working under an expired agreement, employees work with the belief that the work they are doing will be compensated at a higher rate, which will be determined in the near future. This understanding leads to good labour relations. Critically, this understanding is not limited to some employees—it applies to all employees. Withholding retroactive wage increases from former employees therefore defeats their reasonable expectations while performing the work.²⁰ It also confers "a pure windfall on their previous employer."²¹

Ultimately, the Board concluded that arbitrators "should interpret the general language of a duration clause as conferring retroactivity benefits on all individuals

¹⁷ *Wolfville Nursing Homes and Elms Residential Facility v International Union of Operation Engineers, Local 721*, [2012 CanLII 23667](#) (NS LA), at 18 ["Wolfville"].

¹⁸ *Re Penticton and District Retirement Service and Hospital Employees' Union, Local 180*, [1977 CanLII 2954](#) (BC LRB), at 103 ["Penticton"].

¹⁹ *Ibid*, at 106.

²⁰ *Ibid*, at 108.

²¹ *Ibid*, at 109.

doing work during the period of the contract, even if some of them may have left their employment before the contract was actually signed.”²²

The Board’s decision in *Penticton* is now the leading authority on the presumption of retroactive wage increases for all former employees. The Board’s decision has been described as “a strong consensus”.²³ As Arbitrator Gee stated in *OPEIU*: “According to the prevailing case law, which the parties are presumed to be aware of, the agreement is retroactive and entitles those employed on that date to the payment regardless of whether their employment subsequently severed.”²⁴

Here, the Gedalof Award is clear that the ATB salary increases are “retroactive”.²⁵ Without further exclusion, this undoubtedly applies to all members who worked during the period to which the ATB increase applies.

The Administration’s position will also negatively impact the parties’ bargaining relationship moving forward. The parties often bargain retroactively. If no retroactivity is paid to certain employees based on the date they ceased employment, the Employer can simply delay bargaining and limit its liability. By this logic, the longer the Employer delays, the less it has to pay, contrary to the purpose of broad retroactivity provisions which allow for effective and stable labour relations.²⁶

Moreover, the Administration’s position will allow it to receive an unjust and unintended windfall.²⁷ In the present case, the Administration provided costing for its proposal for the ATB salary increases that stated it included faculty and librarians employed as of June 30, 2023, without any discount for attrition.²⁸ At the same time, it devoted a considerable portion of its brief to the principle of total compensation, urging Arbitrator Gedalof to find that UTFA’s “strategy would contradict the total compensation principle”. Unless the Administration’s costing was submitted as an attempt to mislead Arbitrator Gedalof in his assessment of total compensation, it is undeniable that the parties did not intend to exclude these members.

²² *Ibid*, at 109.

²³ *Wolfville*, *supra*, at 16.

²⁴ *Office and Professional Employees International Union v Canadian Helicopters Limited*, [2013 CanLII 42289](#) (ON LA), at para [28](#).

²⁵ *Gedalof Award*, *supra*, at para [105](#).

²⁶ See e.g. *Penticton*, *supra*, at 99.

²⁷ *Ibid*, at 109.

²⁸ University Administration’s Costing of UTFA’s Proposals found at Tab 14 of the Administration’s Book of Documents, dated March 7, 2025, BOD, Tab 9.

The ATB increase ordered is a minimum for all members

The Administration's attempt to introduce distinctions into the meaning of ATB blatantly contradicts the MoA. The Gedalof Award applies to all Association members. It was issued pursuant to the MoA, which is a contract between the Administration and the Association intended to provide minimum terms and conditions of employment for Association members. The express purpose of the MoA is to "create or confirm the minimum rights, privileges and benefits which the University of Toronto shall grant to faculty members and librarians and to the Association."²⁹

The ATB increases ordered for the 2023-2026 term plainly form part of the agreement between the Administration and the Association. They are an essential element of the Administration's binding commitment to provide minimum entitlements to members. The University of Toronto shall grant these minimums to faculty members and librarians without exception.

The Administration appears to be taking the position that new members are not entitled to the ATB in their first year of employment because they have inserted the below language (or similar) in their letters of offer:

This is a firm salary offer and will not be affected by any salary increase effective July 1, 20[XX] that may occur as a result of negotiations between the University and the University of Toronto Faculty Association (UTFA), unless your salary falls below the applicable minimum amount in which case your salary will be increased to that minimum.

This language cannot be enforced to exclude new members from the ATB increase in the Gedalof Award. It plainly violates the overarching contract between UTFA and the Administration, which provides minimum entitlements to all members.

UTFA is not a certified bargaining agent and the MoA is not a collective agreement made pursuant to the *Labour Relations Act*. There is no legislation prohibiting individual bargaining. To the contrary, the MoA explicitly permits individual bargaining by mandating only minimum entitlements and permitting the negotiation of "more favourable" terms.

Further, unlike a certified bargaining agent, participation in UTFA's collective bargaining is not mandatory. Faculty can terminate membership with UTFA and redirect their dues to charity, pursuant to Article 13 of the MoA. Members who have joined UTFA, however, are entitled to all the guarantees of the MoA. Despite the differences from collective bargaining and representation in a workplace with a certified bargaining agent, the parties are clearly not operating in the ordinary common law of employment. While there is no legislation giving UTFA the status of an exclusive bargaining agent, the MoA is an agreement between the parties that covers all faculty members and librarians who have joined the Association or who have not opted out of paying its dues. Like in the context of a certified union, the

²⁹ MoA, Article 1.

Association has contracted with the employer as an independent contracting authority, binding the Administration to regulate its employment relationships to the agreed to terms.³⁰ Once the Administration and the Association entered into the MoA, they agreed to modify individual contracts of employment in accordance with the terms agreed to, subject to a member choosing to opt out of Association membership entirely.³¹ The MoA, as an overarching contract, therefore, limits the freedom of both the Administration and individual members to contract out of its terms, except to the extent that it allows individual bargaining.³²

Ultimately, members who have joined UTFA are entitled to all the guarantees of the MoA. This is the essence of the agreement reached between the Administration and the Association. The Administration cannot simply contract with new members to disentitle them from the benefits of the MoA.

It was open to the parties to negotiate exclusions from the ATB increases, including broader or narrower application of the ATB increases. Other faculty associations, including faculty with certified unions, have bargained such exclusions, creating a larger scope for faculty members to engage in individual negotiations at the time of hire.³³ The parties here did not do that. The MoA only allows for members to bargain “more favourable” terms. It does not permit individual bargaining lower than its minimums.

The Administration’s approach runs contrary to the basic principles of contractual interpretation, which provides that interpretations that render any of the words “meaningless” should be rejected.³⁴ Indeed, if the Administration can require new members to sign away basic provisions of the MoA, the entire scheme, in place for decades, may be rendered meaningless.

New members, especially those early in their careers, will often have the least amount of bargaining power. They often accept the conditions outlined in the letter of offer without negotiation. Under the Administration’s theory, if it has the authority to contract out of the MoA with individual members, it could require these new members to opt out of salary floors or grievance rights. It could require them to opt out of protections related to workload or working conditions. It could even require them to forfeit academic freedom. It could create a new class of members who, while remaining members of the Association and paying dues to the Association, are not entitled to the “minimum” benefits of membership negotiated by the Association and agreed to by the Administration.

³⁰ *McGavin Toastmaster Ltd v Ainscough*, [1976] 1 SCR 718, at 725 [“McGavin”], citing *Syndicat catholique des employés de magasins de Québec Inc v Cie Paquet Ltée*, [1959] SCR 206 [“Paquet”].

³¹ *Paquet*, *supra*, at 212.

³² *Ibid*; *University of Ottawa v Association of Professors of The University of Ottawa*, 2018 CanLII 37186 at p. 36

³³ See e.g. *York University Faculty Association and York University (2013)*, 2013 CanLII 13363

³⁴ *Ontario Nurses’ Association v Sinai Health System*, 2021 CanLII 125190 (ON LA), at para 31. See also e.g. *Manitoba Association of Health Care Professionals v Dynacare*, 2024 CanLII 59952 (MB LA), at para 63.

Rendering the “minimum” meaningless would undermine the clear intent of the MoA. The goal of collective agreement interpretation is to ascertain the intent of the parties based on the words of the agreement. As Arbitrator Gedalof explained in *Canadian Union of Public Employees, Air Canada Component v Air Canada*:

In broadest terms, the words of the collective agreement should be read as a coherent whole, giving the words of the agreement their plain and ordinary meaning, except where this would result in an absurdity, or where in the context of the provision or the agreement as a whole it is clear that the parties intended some other meaning (see, e.g., *Greater Essex* at para. 15 and *Telus Communications* at para. 62). The goal is always to ascertain the intention of the parties having regard to the terms to which they have agreed. As Arbitrator Knopf articulated in *Greater Essex*, a collective agreement should also generally be read to comply with common sense and labour relations sense (at para. 15).³⁵

The intention of the parties in agreeing to the MoA is unequivocal. As the first article of the MoA indicates, the purpose of the MoA is to establish minimum rights for members. Contracting out of those minimums with members directly contradicts the clear text and purpose of the MoA.

³⁵ *Canadian Union of Public Employees, Air Canada Component v Air Canada*, [2020 CanLII 25181](#) (CA LA), at para [26](#).