



# UTFA Bargaining Report

University of Toronto Faculty Association March 29, 2010

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## **Bargaining Report #6 for 2009–2010**

### **IN THIS ISSUE:**

#### **UTFA COUNCIL APPROVES MEDIATION DEAL ON WORKLOAD AND DISPUTE RESOLUTION**

#### **COMPENSATION ISSUES UNRESOLVED: ON TO ARBITRATION**

#### **THE MEMORANDUM OF AGREEMENT AND UTFA: WHAT NEXT?**

#### **UTFA Council Ratifies Partial Mediated Settlement Including Workload Breakthrough**

On March 16 UTFA's Council ratified a mediation agreement that makes workload negotiable for faculty and librarians at the University of Toronto and introduces important changes to dispute resolution mechanisms. This historic agreement was reached in negotiations between the UTFA bargaining team and the University Administration, assisted by Mr. Martin Teplitsky acting as Mediator.

The full agreement can be accessed on the UTFA web page at:

[http://utfa.org/index.php?option=com\\_content&task=view&id=88&Itemid=103](http://utfa.org/index.php?option=com_content&task=view&id=88&Itemid=103)

While matters remaining in dispute (including compensation) have been referred to Mr. Teplitsky, who will act as Arbitrator, the partial settlement approved on March 16 is highly significant. One of the main implications involves a change to our Memorandum of Agreement (MoA), the special plan or framework agreement that governs and prescribes the relationship between UTFA and the Administration. From now on, as a result of changes to the MoA, UTFA will be empowered to negotiate over workload with access to mediation and arbitration (if necessary). Effectively, the negotiated change rolls Article 8 (the workload article) of the MoA into Article 6 (the bargaining article). As a result, the arbitration before Mr. Teplitsky will include resolving remaining differences between the parties over an appropriate workload protection clause to take the place of the current language in Article 8.

This was a centrepiece of our negotiating strategy in the current round of bargaining. Specifically, we made expansion of the scope of issues negotiable with mediation and arbitration a focal point, and identified the workload issue as the foremost priority. We tabled and discussed detailed workload proposals during the face-to-face phase of bargaining and carried these forward into mediation even though workload was not previously named as a negotiable item. This "problem-based" approach to bargaining was developed in active dialogue with UTFA members. And it was based on an accumulation of evidence – much of it provided by you, our

members – acquired over several years pointing to escalating and inequitable workloads as a source of growing concern to our members and as a threat to the university’s reputation for excellence in teaching and research.

For too long the Administration maintained that workload was not a problem and was not negotiable. But thanks to the patience and support of UTFA’s members, our problem-based approach to bargaining was successful. As a consequence, the arbitration award to be issued after hearings in late April will include a new, more detailed workload article (the respective workload proposals tabled in mediation by UTFA and the Administration are available as Appendices B and C to the mediation settlement on our web site at the link above). The new workload framework will significantly enhance the ability of our members to participate in managing their own workloads and, as a consequence, improve work/life balance, enhance workload equity, and safeguard the quality of teaching and research.

The deal approved on March 16 also strengthens UTFA’s ability to act on behalf of members in disputes with the Administration. Specifically, the Grievance Review Panel (GRP) will now have an independent third party chair with formal legal training.

The GRP is the final recourse for faculty and librarians in pursuing grievances over matters ranging from appointments to salary disputes. Historically, the GRP has been composed entirely of U of T faculty and librarians. While this has worked reasonably well, UTFA has long argued that the GRP is in need of outside and independent third party expertise to ensure that our members receive the best substantive and procedural justice. To this end, in negotiations we pressed for access to independent third party arbitrators in all disputes and have agreed that such a person will now chair the GRP. Moreover, we have agreed with the Administration that the first person to occupy this role will be Mr. William Kaplan, a highly respected and accomplished arbitrator with extensive mediation experience. Mr. Kaplan also has first-hand experience in higher education, having been a member of the faculty at the University of Ottawa. In the future, if the parties are unable to agree on a GRP chair the agreement provides for the Chief Justice of Ontario to act as a selector.

The agreement reached in mediation also includes changes to tenure appeals. Specifically, proceedings of the University of Toronto Tenure Appeals Committee (UTAC) are now subject to the *Statutory Powers Procedure Act*. Here too, the changes will enable UTFA to better advocate for its members involved in tenure appeals by allowing access to the courts for rulings on issues of procedural justice. Moreover, while retaining the existing grounds of appeal, the agreement also broadens the jurisdiction of UTAC to deal with allegations of discrimination and other breaches of the MoA relevant to those grounds. The agreement also provides that the chair and vice-chair of UTAC must be mutually agreed on by UTFA and the Administration; in the event that mutual agreement cannot be achieved, the independent third party chair of the GRP will act as a selector in choosing candidates from the university community. Finally, the agreement provides for an independent legal advisor to UTAC to be appointed by mutual agreement of UTFA and the Administration.

It is important to note not only the substantive significance of this mediation settlement but also the manner by which it was secured. UTFA engaged the Administration in a lengthy phase of

face-to-face negotiations which resulted in both sides making proposals outside the formal scope of issues named in Article 6. For our part, we did this based on identifying matters of concern to our members whether or not they were considered negotiable. This is an important lesson for future negotiating teams. It suggests that our MoA must not be treated as iron clad. Rather, with appropriate resolve and engagement by the membership, meaningful change is possible. Our members deserve all the credit for articulating their priorities clearly, and for waiting patiently for reforms they so richly deserve.

## Arbitration

UTFA and the Administration have been unable to agree in negotiations or in mediation on salary, benefit and pension matters. As a result, we will be going to arbitration beginning April 27. As per the terms of the mediation settlement approved by Council on March 16, the arbitration award will be for two years, commencing retroactively on July 1, 2009 and ending June 30, 2011.

UTFA has several monetary priorities for arbitration. Our approach is based largely on the simple principle (most recently affirmed in the Winkler arbitration award of March 2006) that since UTFA's members are expected to perform at or above the level of any peers in Canada, they should be compensated appropriately. Quoting from page 8 of the Winkler panel award: *"In essence, the University [i.e. the Administration] has staked out a position at the top of the relevant market or 'industry segment'. It implicitly admits that maintaining that position depends to a large degree on maintaining the quality of its faculty and librarians. That in turn requires, leaving aside the intangibles, ensuring that the total compensation package available to those faculty members and librarians is sufficient to place them at the top of the market as well."*<sup>1</sup>

And yet we have seen erosion of our pre-eminence in a number of areas, including, for example: (i) in entry- and more junior level salaries; (ii) in the amount provided via the Professional Expense Reimbursement Allowance (PERA); and (iii) in the provision of important health benefits. UTFA's negotiating team is committed to restoring and maintaining our pre-eminence in compensation, a principle that the Administration has conceded should underpin this agreement.

That said, many in the university community worry about the deterioration of economic conditions. These concerns are likely to be amplified in light of the new Ontario budget, released last week. The budget provides a welcome increase in funding for higher education in the province. At the same time, the government introduced legislation imposing a wage freeze on non-unionized employees directly employed by the government, and in the broader public sector. However, employees whose compensation is negotiated collectively (as is ours) are explicitly exempted from the mandated freeze. And while the government is urging employees who

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<sup>1</sup> Arbitration panel report "In the matter of a salary and benefits dispute between the Governing Council of the University of Toronto and the University of Toronto Faculty Association", available as "The main Winkler award document" under "Bargaining Updates" at [http://utfa.org/index.php?option=com\\_content&task=view&id=88&Itemid=103](http://utfa.org/index.php?option=com_content&task=view&id=88&Itemid=103) .

negotiate collectively to agree to two year wage freezes in their next agreement, nothing in the budget compels this outcome, nor limits the ability of an arbitrator to award normative increases.

In this context, moreover, it is important to note that the University of Toronto's revenue stream has actually changed very little. Nor do we expect it to. It is true, the university has incurred losses in the pension and endowment funds. But, as UTFA has repeatedly documented, these losses are overwhelmingly the result of poor management – including misguided pension contribution holidays, overly optimistic projections and actuarial assumptions, inappropriately risky investments, and a failure to separate the investment and governance of endowment from pension moneys. Thanks to the 2009 pension governance arbitration award we have succeeded in moving pension governance in the right direction.

However, the Administration tabled a proposal in mediation seeking a significant increase in the pension contribution rate from our members. We are absolutely and firmly opposed to this. Our members were not responsible for squandering the pension funds. Indeed, we consider irresponsible and unconscionable any suggestion that our members should pay for the Administration's mistakes. We will be contesting this proposal vigorously with Mr. Teplitsky.

UTFA's past record in negotiating salary, benefit, and pension settlements shows a pattern of reasonable behaviour. In contrast, top administrators at U of T have consistently enjoyed exorbitant salary increases which have been only thinly and ineffectively veiled by the 2009–2010 administrative salary freeze. Members may wish to consult UTFA President George Luste's report to the 2009 UTFA Annual General Meeting in which he discussed increases in salaries for senior administrators at U of T. These increases include a 100 percent jump in the salary of the Office of the University President between 1997 and 2007, a 132 percent increase in the case of the Office of the Provost, and an 86 percent increase in the average of the top 50 salaries at U of T over the same period (the latter reaching over \$305,000 in 2007).

In the current round, we are committed once again to securing a fair and reasonable settlement that includes, among other things, an ATB award that is in line with recent settlements in higher education in Canada and that in particular protects our least well paid members. Such a settlement should also include full pension augmentation tied to cost of living increases so that our retired colleagues on fixed incomes do not experience deteriorating standards of living.

#### **Looking ahead: All terms and conditions?**

Obviously we cannot predict the outcome of the arbitration process. But this has already been an historic round of bargaining. We have secured important changes.

We have also established some important precedents. We have been able to expand the scope of bargaining to begin to better and more comprehensively reflect the priorities of our members. And we have done so in part through direct engagement with the Administration in face-to-face negotiations, albeit complemented by mediation and arbitration. This significant advance suggests that when we are clear in conveying the views of our members, and when we persist, we are able to achieve our goals even if the MoA appears to be an obstacle.

While we have come a long way, we have much work remaining to redress the inadequacies of our antiquated framework agreement. If we compare the scope of our bargaining article – even with workload added to it – with the collective agreements of certified faculty associations at other leading universities in Canada, the inadequacies are plain. These faculty associations, by certifying as unions, have secured the capacity – protected by statute – to negotiate “all terms and conditions of employment.” This rubric covers not only workload but also matters such as policies and procedures governing academic appointments; tenure; promotion; standards of excellence in teaching and research; health and safety; infrastructure; intellectual property; privacy; and academic freedom. These matters are vital to the university and to our members. Yet we are impaired in our ability to advocate on these fronts by a bifurcated and antiquated bargaining relationship that falls far short of full-scope negotiations.

Talk of certification sometimes polarizes conversations about the future of UTFA before they have really begun. Healthy, vigorous debate about the future of UTFA is consistent with the goals of the university, including the free exchange of often passionately held ideas. But we should never forget that certification is not an end unto itself. It is a means to an end. Our experience in the current round of negotiations demonstrates that there is more than one way to reach this end. And to its credit, the Administration ultimately was willing to embrace reform. That in mind, we must all understand that this process has not reached its conclusion. Indeed, it has barely begun.

You, our members, are central to enabling this institution to meet its research and teaching objectives and to ensuring the excellence for which the University of Toronto is known. You therefore deserve a form of representation commensurate with your professional obligations. UTFA must remain committed to securing no less.

Once again, on behalf of the entire bargaining team, I want to thank all members for your input and for your extraordinary support and patience. We always welcome feedback pertaining to our negotiations at [bargaining@utfa.org](mailto:bargaining@utfa.org).

Scott Prudham  
Associate Professor  
Department of Geography and Centre for Environment  
UTFA Vice-President  
Salary, Benefits and Pensions

*UTFA Bargaining Report* is published by:  
The University of Toronto Faculty Association  
720 Spadina Avenue, Suite 419 Toronto ON M5S 2T9  
Phone 416-978-4596 Fax 416-978-7061  
Email [faculty@utfa.org](mailto:faculty@utfa.org) Website [www.utfa.org](http://www.utfa.org)