

ADDENDUM OF UTFA NOMINEE

[1] I subscribe to the general principles set out by the Chair in his Award and, while not necessarily in agreement with the disposition of every item in dispute, concur in the Award as a whole which in my view represents a fair and balanced accommodation of the interests and concerns of both parties.

[2] As for pension augmentation, the only issue which the Administration's Nominee has specifically addressed in his Dissent, there is no reason, in my opinion, to abandon the parties' past practice of augmenting pensions to fully compensate for inflation (rather than, as is currently the case under the formula in the pension plan, only 75%).

[3] The fact that the pension plan has been in surplus when augmentation has occurred in the past does not, as the Administration submits, establish that the University should decline to do so when it is in deficit. As the Chair points out, the mere existence of a current actuarial deficit provides no compelling reason to depart from the bargaining model in which augmentation is part of the total compensation package that is bargained by the parties.

[4] Indeed, whether the pension plan is in surplus or deficit at any given time depends on many factors, such as fluctuations in the investment market as well as actuarial assumptions regarding rates of return, which may or may not accord with actual experience. Thus, there would in fact be no deficit at all but rather a surplus in the pension plan if the assumed market rate of return on investments had not been unilaterally changed from 7% to 6.5% when in fact the actual return was 15.4% and 10.9% in the past two years.

[5] The suggestion is made in support of the Administration's position that allocation of funds to pension augmentation is not an ideal expenditure of money because most active employees would receive no benefit from it during the term of the current agreement. This assumes that the Administration is proposing to assign the funds involved to some other employee benefit, but such is not the case. In any event, the same observation could be made regarding pension benefits generally, i.e. that they enure to the advantage of retirees. However, it can safely be assumed that all faculty and librarians are cognizant of the fact that they will at

some point retire, and thus all benefit from maintaining the real value of the pension plan. Also, the notion that the cost of augmentation would diminish the prospect of future surpluses, with attendant contribution holidays, seems unconvincing when it is understood that the decision to take contribution holidays is made unilaterally by the Administration, and the giant share of the saving since 1987 has been absorbed by the University rather than by the faculty and librarians.

[6] Moreover, it seems to me, the persuasiveness of the Administration's position in opposing pension augmentation for faculty and librarians, in the absence of a surplus in the pension plan, is seriously undermined by the following factors which are referred to in the materials filed by the parties: (1) the policy against providing pension augmentation only when the plan is in surplus is not a legal requirement but is one that has been adopted unilaterally by the University's business board; (2) the business board has decided to contribute twice as much as is stipulated in the *Pension Benefits Act* to the reduction of the deficit, and the amount of the excess is much larger than would be necessary to pay for pension augmentation; (3) the cost of augmentation could be funded from the surplus that currently exists in the Supplemental Retirement Allowance but the business board has simply chosen not to exercise this option.

[7] Finally, and in a collective bargaining sense most importantly, the plausibility of the Administration's position is undercut by the fact that it has agreed, during this very same period, to provide a pension benefit for its unionized administrative staff that is considerably more costly than the pension augmentation requested by the faculty and librarians, and it has done so in the face of a threatened strike by the administrative staff who have collective bargaining rights under Ontario's *Labour Relations Act*. If this Panel's task is to replicate free collective bargaining – an approach that no one disputes – there could be no better evidence of the settlement that these parties should have reached, and of the Award that this Panel should make.



Jeffrey Sack, Q.C.