



# UTFA Bargaining Report

University of Toronto Faculty Association May 30, 2011

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## Bargaining Report #1 – for 2011-12

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### Introduction: Another Round of Negotiations Begins

As the summer reluctantly arrives, so too does another round of negotiations between UTFA and the University of Toronto Administration. Our current agreement expires on June 30, 2011 and we will be working over the summer to negotiate a new agreement for the period spanning July 1, 2011 to June 30, 2012.

At its April meeting, UTFA Council approved a set of bargaining proposals to be used as the basis of negotiations by your UTFA bargaining team. The priorities embraced by Council in turn reflect what we learned from our February bargaining survey. This bargaining report outlines some of the highlights of our proposals, including a fair and reasonable across-the-board salary increase reflecting the pre-eminence of U of T as well as sector-wide norms and cost of living increases; much-needed improvements in specific benefits for members; and fundamental change to our antiquated framework agreement to enable fair, rigorous, and comprehensive negotiations across the full range of issues that shape the conditions under which faculty and librarians do their work.

As in the previous bargaining round, UTFA is fully committed to serious, substantive, and good-faith face-to-face negotiations with the Administration. These negotiations are consistent with the principles of shared governance and collegiality (phrases much in the wind this last year), and they are a requirement of Article 6 (the “bargaining article”) of our Memorandum of Agreement (MoA).<sup>1</sup> While we have access to third party professional mediation and arbitration to resolve outstanding matters if required, third party intervention must never be seen as a substitute for good faith, face-to-

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<sup>1</sup> The Memorandum of Agreement prescribes the relationship between UTFA and the University of Toronto Administration. It includes Article 6, which provides for good faith negotiations between the parties over salaries, benefits, pensions, and, as of the last round of negotiations, workload. It also provides for independent, third party mediation/arbitration if necessary. Though limited in scope, this mechanism is the only truly rigorous and fair mechanism we have for negotiating with the Administration because of the provision for independent third party dispute resolution.

face negotiations. The UTFA bargaining team is committed to making direct talks substantive, comprehensive, and productive. We should expect no less from the Administration.

## **Priorities and Expectations in Matters of Compensation**

Negotiations under the terms of Article 6 of the MoA always include matters of compensation, including salary, benefits and pensions.

In the previous round, our negotiations on compensation matters were influenced by the provincial wage restraint initiative. Our Administration and many other public sector employers were under pressure to secure zero across-the-board salary increases subsequent to March 2010. We fought this off in a landmark arbitration award issued in the fall of 2010. However, members must not forget that our Administration introduced a proposed wage freeze in June 2009, nine months prior to the provincial budget. We rejected this insult to our members out of hand. Heading into this round, it is clear that most faculty and librarian settlements in Ontario have resisted the pressure from the provincial government for net zero compensation, and that the financial position of our institution has improved considerably.

It is also clear that private and public sector settlements – including those in our sector – have been somewhat lower since the financial collapse of late 2008. UTFA’s settlements have always been reasonable and we are committed to remaining reasonable while at the same time ensuring that our compensation remains pre-eminent in the country within the university sector.

In our most recent bargaining survey,<sup>2</sup> members were asked what account UTFA negotiators should take of the province’s wage restraint initiative and the broader economic climate. Overwhelmingly the choice of our members in guiding our approach was the following statement: “UTFA should represent the interests of its members by continuing to bargain freely as it has over the years, and guided largely by norms in higher education.” That is what we will do. Given these considerations, we consider any proposal to freeze wages totally unacceptable.

It is important to note in this context that, contrary to the position the Administration has repeatedly taken, PTR is not a form of salary increase. Members should take careful note that Mr. Teplitsky (our Arbitrator in the previous round) specifically repudiated the administration on this point in awarding both normal PTR for the last two years and a non-zero ATB for both years.

However, ATB and PTR are not the only matters of compensation we will need to negotiate in this round. As reported in [Bargaining Report #8](#)<sup>3</sup> for the previous round, our analysis indicates that we are falling behind our sectoral comparators in several important areas of benefits. This is a disturbing trend given the long-established principle that the University of Toronto’s compensation for faculty

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<sup>2</sup> The bargaining survey for 2011 was completed by just under 800 members, 86 of whom were retired. This represents between one quarter and one third of UTFA’s membership and is comparable to the rate of return in the previous bargaining survey of 2008. Three quarters of respondents were members of the tenure stream, about 14 percent were members of the teaching stream, and about 9 percent were librarians. Thank you to all members who filled out the survey and particularly those who took the time to fill in the various comment boxes with your thoughtful additions.

<sup>3</sup> See [http://www.utfa.org/sites/default/files/webfiles/pdf\\_files/Bargaining%20Report%208%20post%20Nov-09-2010.pdf](http://www.utfa.org/sites/default/files/webfiles/pdf_files/Bargaining%20Report%208%20post%20Nov-09-2010.pdf) or go to <http://www.utfa.org/content/bargaining-updates>

and librarians should be “top of the market.” For example, we rank 6<sup>th</sup> of our 13 Canadian comparator institutions in sabbatical pay. And despite increases in the previous round, we still lag in Professional Expense Reimbursement Allowance (PERA). Members’ priorities for changes in benefits are reflected in our proposals. They include improvements in sabbatical pay and PERA, as well as enhancement of other benefits such as the Dependent Scholarship program. And building on the initiatives of the previous round, we seek to improve our oversight of the benefit plan and make sure that no benefits are changed without prior negotiation with UTFA.

In the area of pensions, we have no mandate from members to initiate any structural changes in the existing pension plan and are therefore seeking none. Members should keep in mind that there is an UTFA-Administration Joint Working Group examining possible updates and or changes to the Supplemental Retirement Arrangement (SRA). This working group arose out of the last SB&P round. UTFA members on the working group are Professors Ettore Damiano, Laurence Booth, and George Luste. The Administration, however, has made clear that securing increased pension contribution rates is very likely to be one of its priorities given the alarming increase in the plan’s deficit. Our survey findings make it crystal clear that members have no appetite for increased pension contribution rates if these increases are in any way intended to make up for accumulated deficits as the result of contribution holidays and irresponsible investment decisions by the Administration. Members should remember that our plan, since 1987, has been an employer sponsored plan. The employer alone assumes responsibility for ensuring the plan is adequately funded given changing market conditions and investment returns. The Administration was only too willing to divert previous pension surpluses out of the plan. By the same principle of risk and reward, responsibility for the current deficit belongs to the employer and the employer alone.

## **All Terms and Conditions**

In the previous round of negotiations, we pushed hard to reform our framework agreement in order to be able to negotiate workload using the Article 6 process (i.e., with access to third party mediation and arbitration if necessary). We did this because workload had become a serious concern as a threat to the quality of teaching and research, it was identified as a clear priority area for us to address in bargaining by faculty and librarians, and yet it was outside the scope of our narrow bargaining article. Our mediation settlement of March 2010 made workload subject to the Article 6 process and also secured important changes in grievances, including establishment of an independent third party chair of the Grievance Review Panel. These are important changes that help create the conditions for a more collegial university.

This experience showed that we do not have to accept the existing scope of the bargaining article if we find it holds us back from advocating in areas of priority to UTFA members. On the recent bargaining survey we identified other areas of concern where the terms and conditions of faculty and librarian employment – that is, the conditions under which we perform the critical functions of the university, including teaching, research, and professional activities – are not covered by our bargaining article. They include governance in academic planning and the policies on tenure and promotion. Because the Article 6 process is the only fair and rigorous mechanism we have for negotiating with the Administration, the formal exclusion of these issues from its scope is a serious problem.

In the area of governance in academic planning, controversies in both the Faculty of Arts and Science and the Faculty of Forestry provide glaring examples of breakdowns in norms of collegial and shared

governance. In each case, the Administration proposed fundamental changes to these units without adequate provision for input and dialogue, in the absence of proper self-study, without sufficient information sharing, and in general in ways that undermined essential and expected norms of academic planning in a university setting. We also saw similar and disturbing breakdowns in collegial and shared governance in the external review process for the Division of Humanities at UTSC and in the re-appointment of the Head Librarian at UTSC. These episodes undermine academic freedom, professional autonomy, and peer-based shared governance.

We grieved the Faculty of Arts and Science planning process as well as the process by which the UTSC Head Librarian was re-appointed, while we continue to work with colleagues in Forestry to contest the Provost's plan to close the Faculty. But it is clear that reliance on a combination of our antiquated framework agreement and a set of informal norms and expectations around collegial and shared governance will not be enough. We asked members in our bargaining survey, in the context of the current crisis of governance at the University of Toronto, "what priority do you assign to UTFA developing and seeking to negotiate proposals aimed at ensuring collegiality and shared governance in academic planning in the next round of bargaining?" A strong majority affirmed that this is indeed an important priority. We also asked if these matters should be subject to third party mediation and arbitration if necessary (i.e. added to the list of issues subject to Article 6). Again, we received support from a strong majority of respondents for this provision.

To be clear, 'academic planning' in this context refers to any proposed establishment, closure, merger, restructuring, or relocation of an academic unit or program (including libraries). And it bears emphasizing that no one is looking to place UTFA in the middle of academic planning processes at U of T. Nor are we looking to place substantive deliberations in academic planning in the hands of a third party. Rather, we are seeking to negotiate provisions that ensure faculty and librarians will be able to participate meaningfully, fairly, and directly in academic planning exercises and decisions that affect them. The Provost has proposed the usual unilateral remedies through the Provostial Advisory Group on Academic Planning.<sup>4</sup> But our members understand that nothing short of a truly fair bargaining process will secure the required remedies and, under our current arrangement, Article 6 of the framework agreement is all we have.

During the last round of bargaining, important appointment-related matters were raised by the Administration, including an extension in time to tenure. No real, substantive proposal was ever tabled by the Administration and for our part, we did not have a mandate from our members (absent more consultation) to negotiate changes in this area. We do know from long experience, however, that our tenure and promotion process is found wanting in important respects when candidates who are up for tenure and promotion run into difficulties. In our policies and procedures, the rights of these individuals fall short of accepted standards of procedural fairness and justice. It is still the case, for instance, that no promotion to continuing status can occur in appointments of less than 75 percent

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<sup>4</sup> To be clear, individual members of the Provostial Advisory Group on Academic Planning are performing a service to the university community and we hope that some of the ideas proposed will indeed help improve governance in academic planning. The scope of issues being discussed on the committee go far beyond the rights and responsibilities of faculty and librarians in the context of academic planning and restructuring. But as a way to confront the problems we have seen in both FAS and Forestry, and in terms of the need to institutionalize norms of shared governance, collegiality, and academic freedom, this committee falls far short of the mark. It was hand-picked by the Provost and has no formal terms of reference, nor has there been any explicit commitment from the Provost to implement the recommendations of the committee. We need to make sure that our members are central in any discussion regarding program opening, closure, restructuring, and the like. This principle goes to the core of who we are and what we do.

time. This is clearly unfair to those unable to work full-time. Another example is that tenure candidates are never able to actually see the text of external peer review letters (with identifying information removed, of course) and so cannot verify whether this evidence is being used appropriately or fairly in evaluating their candidacy for promotion. We continue to insist that some involvement of an independent third party in the tenure appeals process is needed to assure procedural fairness. This has become the norm in Canadian universities in tenure appeals and the Administration's refusal to allow it places the sanctity of peer review and the fairness of the promotion process in jeopardy. When asked about negotiating changes in these areas of policy in the current round, members again expressed strong support and similarly supported the notion that in order for us to negotiate effectively, we need recourse to mediation/arbitration on these matters.<sup>5</sup>

The survey results and our ongoing outreach efforts support further attempts to reform the framework agreement to accommodate a wider range of important issues and concerns – the priorities of our members – by negotiating them via the Article 6 process. We will seek to do so. Drawing on the same problem-based approach to bargaining we used in the previous round, we will table proposals based on member priorities and, if necessary, negotiate changes to the MoA to reflect these priorities.

However, in this round we will also table a proposal demanding that *all terms and conditions of faculty and librarian employment* be made subject to the Article 6 process. We asked members on our survey about this proposal and received very strong support. Indeed, perhaps somewhat surprisingly, respondents endorsed the general proposal to make all terms and conditions negotiable with mediation/arbitration as strongly as they supported making the specific issues of governance in academic planning and tenure and promotion policies subject to the Article 6 process. Members clearly understand the link between the general and the specific when it comes to the limitations of our framework agreement and the need to bring our bargaining process into the modern era.

There is an important context to the all terms and conditions proposal. Over eighty percent of the rest of the faculty and librarians in Canada enjoy full scope bargaining rights covering all terms and conditions of their employment. Our proposal, if accepted, would in most respects place us on a level footing in terms of our rights to negotiate relative to the vast majority of faculty and librarians in Canada. Why should we have a form of representation that fails to match a standard that has increasingly become the norm? Full scope bargaining with mediation/arbitration rights would lead to consolidation of all policies and provisions regarding terms and conditions of employment in a collective agreement that could only be changed via bilateral negotiation.

Moreover, demanding to negotiate all terms and conditions reflects the realization that reforming the framework agreement piece-by-piece runs the risk of a protracted process stretching over years if not decades. Justice delayed is justice denied. Moreover, we also run the risk that, proceeding issue-by-issue, we could fail to accurately identify important priority areas that, in the future, might affect our colleagues. It makes sense to insist that, in the spirit of shared governance, collegiality, academic freedom, and professional autonomy, our association should negotiate these matters comprehensively in a fair and rigorous manner with the Administration. This is real collegiality, not just a catch phrase.

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<sup>5</sup> The numbers on the survey for the two questions concerning tenure and promotion were about the same as the numbers for the questions concerning academic planning. That is, a strong majority of respondents indicated that this issue has priority, with even more expressing support for making negotiations over tenure and promotion policies arbitrable.

It does bear noting that most (though not all) faculty associations in Canada who enjoy full scope bargaining rights are legally certified as unions. Bargaining all terms and conditions of employment is, in the main, what certification delivers. Faculty and librarians at U of T have never to this point chosen to certify, though nothing in our past prevents us from doing so should we choose to. In this context, members will recall that we also asked explicitly about union certification on the survey. Specifically, we asked “If the Administration refuses a proposal from UTFA to expand the scope of bargaining to include all terms and conditions of faculty and librarian employment, would you support certification of the faculty association as a union?” Here, members were more ambivalent. It is clear from the survey and from our outreach in one-on-one meetings and focus groups that support for certification is strong and growing. It is also clear that many members oppose this and, importantly, that many others remain uncertain. Perhaps this is because most faculty and librarians, in the spirit of real collegiality, want to make a good faith effort to secure full scope bargaining rights through bilateral negotiations prior to any move toward certification. After all, it is in the spirit of collegiality that the Administration would agree voluntarily to a form of truly shared governance that is the norm in this country. We shall see.

But whether through negotiation or a certification drive, the goal is the same. It is time all terms and conditions of our employment were negotiable in a fair, rigorous, and comprehensive manner. Faculty and librarians perform teaching, research, and professional functions critical to and even definitive of the university itself. Without us, there is no university. It follows that we must be centrally involved in establishing the conditions under which these functions are performed. This is consistent with the ideals of academic freedom and professional autonomy, and it would institutionalize genuine collegiality and shared governance.

Enjoy your summer and look for updates and more reports as bargaining proceeds. We will post our proposals on governance in academic planning and on tenure and promotion on the UTFA website when they are ready to be tabled and notify you when they go up. Should you have questions, suggestions, or comments, feel free to write at any time to [bargaining@utfa.org](mailto:bargaining@utfa.org).

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