

5. Article 6 and the History of Bargaining: 1977 - 2005

1. As noted above at Tab A-1, since June of 1977, the relationship between the Association and the Administration has been governed by a formal voluntary contract, the Memorandum of Agreement, which recognizes the Association as the bargaining agent for academic staff and librarians. This framework collective agreement details a number of policies and procedures relating to grievances, sabbatical leaves, and freezes other specified policies and procedures (e.g., tenure policies), which may be changed only by mutual agreement. The Memorandum also sets out in Article 6 the procedure for negotiating, and if necessary, arbitrating, salaries, benefits and pensions. It is under this Article that the current proceedings are taking place. In this regard, it is instructive to review the history of bargaining between the parties, including the development of Article 6 itself.

2. A table, prepared by the Association and attached at the end of this section, entitled "University of Toronto Faculty Association Settlement Highlights" provides a summary of the history of bargaining between the parties for the academic years from 1971 to 2005. (A copy of this table can also be found in Book of Documents, Volume III, Tab 2-A.)

3. Bargaining for salaries and benefits at the University of Toronto has evolved through three quite distinct stages in terms of formal structures and procedures. W.H. Nelson, a former President of the Association, has described the first informal stage as follows:

In 1973, the first year I was President of the Faculty Association, our salary and benefit "negotiations" took, so far as I can recall, about ten minutes of my time; they might have taken no time at all except that, by

chance, I ran into Don Forster, the then Provost, and he told me what the administration had in mind as a salary increase. He wanted to know what I thought of the figure and regarded it as somewhat whimsical of me to refuse to discuss the matter until he had met with our salary and benefits chairman. He did, however, go through the motions of such a meeting, and told Wendy Potter, who was our salary chairman that year, what our settlement was to be. We dealt with some other benefits issues in a variety of casual and haphazard encounters. Even so, our procedures that year represented an improvement over the memorable occasion when we learned our forthcoming salary settlement by reading about it in the pages of the Toronto Star. And times were changing. Within a year, we had the form, if not the substance, of actual negotiations; within two years we even had an outside mediator, without, however, the power to propose a settlement.

4. The second, more formal, stage commenced in 1977-78 when, for the first time, salaries and benefits were negotiated under the new procedures spelled out in the Memorandum, which provided for mediation. The key aspect to this agreement, which ultimately led to its being utterly discredited, was the fact that the recommendation of the mediator was subject to rejection by a majority vote of the Governing Council of the University. It was the view of negotiators working under this system (ultimately confirmed by events) that the mediator would be unduly influenced by the fear of a Governing Council rejection.

5. In three of the four years during which this system was in effect, the parties failed to reach a negotiated settlement and called upon a mediator to help bring about agreement. In all three cases, mediation failed and the mediator recommended an award.

6. In two of these three instances, the terms of the recommended awards were hardly distinguishable from the final positions of the Administration, and well below the

rate of inflation. The mediators' awards facilitated and hastened the decline in faculty salaries relative to their previous levels, to inflation, and to virtually all other comparable groups. Indeed, in 1981, the last year when negotiations were conducted under the old Article 6, the salary award of 9.1% was one of the lowest at a Canadian university. (According to Statistics Canada, the Consumer Price Index in Toronto for 1981-1982 was 11.4%). The Association, after reflecting on these disappointing experiences, concluded that the problem lay not with the personal qualities of the mediators, but with the process itself. The critical flaw in the process was summed up by Innis Christie, the mediator in the Spring of 1981:

...The real point surely is that arbitrators in the public sector, where "ability-to-pay" has been held not to be an appropriate criterion, have been empowered or mandated by law to determine, in effect, how many public resources should go to pay the employee group whose pay is being arbitrated. That is not the case here. I have no statutory mandate. I am merely empowered by the Memorandum of Agreement to make a recommendation that becomes binding unless rejected by the Governing Council of the University of Toronto.

...If I were to make a recommendation which took no account of the University of Toronto's ability to pay, the result would surely be rejection of my recommendations by the Governing Council, presumably with great harm to the very process which brings me here.

7. It was this recognition by Innis Christie that the original Article 6 loaded the dice in favour of the Administration that led the Association to look for another system of impasse resolution. Two alternatives quickly emerged: binding arbitration within the framework of the Memorandum or certification under the *Labour Relations Act* of Ontario.

8. Prolonged and complex negotiations took place in the Fall of 1981 under the threat of certification by the Association and amidst a crisis atmosphere on campus.

Ultimately, an agreement was finally entered into between the Governing Council and the Association providing for binding arbitration within the Memorandum.

The Burkett Award

9. The first arbitration concerning faculty at the University of Toronto took place in the Spring of 1982 with Kevin Burkett as the sole arbitrator. It was held pursuant to the specific amendments to Article 6 of the Memorandum agreed to in December 1981.

10. The Burkett arbitration was prolonged and all the issues were thoroughly canvassed. The crucial issue was the demand by the Association for the restoration of salaries ("catch-up") because of the systematic erosion of faculty salaries in the period 1971-81. The Administration contested that faculty were entitled to "catch-up," and even that there had been any erosion of salary levels at all. Moreover, the Administration argued that, even if there had been erosion, restoration was not appropriate.

11. In coming to his decision, Mr. Burkett was required to make rulings on the nature of the salary model at the University of Toronto, and in particular, on the true nature of the Progress-Through-the-Ranks (PTR) salary scheme which had been in effect at the University since 1973. Mr. Burkett made definitive conclusions of fact and law on the crucial issues. He found, *inter alia*, that the claim by the Association that salaries had been eroded was irrefutable, and that in addition to maintaining the position of faculty relative to the annual increase in CPI, which he estimated at 11.5%, an initial amount of 6.5% should be paid in the academic year 1982-83 as "catch-up" on account of the erosion in the prior decade which required 25% overall to rectify. Moreover, he

concluded that full restoration should be achieved within some reasonable period. (To date, this goal has not, even in part, been achieved.)

See the Burkett Award, Book of Documents, Volume I, Tab 2.

12. Mr. Burkett's award was issued on June 3, 1982. In September, 1982, the government passed Bill 179, the *Inflation Restraint Act*, which imposed a 5% ceiling on wage and salary increases in the public sector and confined PTR merit increases to those earning less than \$35,000 per annum. As a result of this legislation, free collective bargaining was generally suspended in the public sector and no real bargaining took place at the University with respect to salaries for the period July 1, 1983, to June 30, 1984. Bill 179 was replaced by Bill 111 which imposed a guideline, followed with few exceptions in the Ontario public sector, of 5%. Bill 111 applied to the faculty of the University of Toronto with respect to the academic year commencing July 1, 1984 and ending June 30, 1985.

13. Since the 1981 agreement on binding arbitration was for a two-year period, there were difficult and protracted negotiations through late 1983 and most of 1984 between the Administration and the Association with regard to the re-negotiation of Article 6. As in 1981, the Association insisted on independent and binding arbitration and, as in 1981, it was only the likelihood of a move by the Association to seek certification under the *Labour Relations Act* that finally led to an agreement between the parties in late 1984. Thus, in 1984 the third Article 6 in eight years was finally approved by both the Association's Council and the Governing Council and this arbitration is taking place pursuant to its terms.

14. Negotiations for a compensation settlement for the year July 1, 1984 - June 30, 1985, began only in December, 1984, after the new Article 6 procedure was in place. This delay was contrary to the previous practice of the parties and the intent of Article 6 which contemplated that a settlement would be in place well before July 1 of each year. (July is the commencement date for every new agreement.) Thus, as of December, 1984, when negotiations commenced, faculty members' and librarians' salaries had not risen since July of 1983. Negotiations continued unsuccessfully for several months. By the Spring of 1985, faculty salary levels had been unchanged for almost a year and it was apparent that, if an arbitration was to be held, a final decision would not be handed down for many months. Finally, in May of 1985, with the assistance of mediator Martin Teplitsky, the parties entered into a "temporizing" agreement for the period July 1, 1984 - June 30, 1986. The first year of this settlement was governed by Bill 111, referred to above; the second year of the agreement was the first, since the Burkett Award, outside any government controls.

See Book of Documents, Volume I, Tab 3.

15. Negotiations and mediation with regard to salary and benefits issues for the academic year 1986-87 were unsuccessful and, for the first time, the parties presented their arguments before a Dispute Resolution Panel as outlined under the new Article 6. Chairing the arbitration panel was Donald R. Munroe, an arbitrator from British Columbia.

1987-1993 Settlements

16. Salary settlements for the academic years 1987-89, 1989-91, and 1991-93 were all reached during mediation between the parties, each mediated settlement covering a two-year period.

See Book of Documents, Volume I, Tabs 5, 6 and 7.

1993-94 Arbitration Award

17. For the 1993-94 year the parties were unable to come to an agreement and Mr. Munroe was again selected as the chair of the Dispute Resolution Panel. Even though there had been inflation in Toronto from 1992 to 1993 (the final figure, July 1992 to July 1993, was an increase in CPI of 1.4%), Mr. Munroe found that the economic climate in Ontario at that time was "savagely recessionary"; as a result he awarded no across-the-board increase, although he did award some benefits improvements and some pension augmentation.

See Book of Documents, Volume I, Tab 9.

The Social Contract Act (June 14, 1993 - March 31, 1996)

18. In the Spring of 1993 the Ontario government enacted the *Social Contract Act*, the purpose of which was to control wages of both public sector and broader public sector employees, including university employees. Under the *Act*, broader public sector employers were encouraged to enter into local agreements with their employees. If an agreement could not be reached, there was a "fail-safe" clause that would dictate the

terms of the contract for a nearly three-year period. The Association and the Administration were, however, able to come to a local agreement.

19. The agreement provided:

- no across-the-board increase through March 31, 1996;
- 2 unpaid days in each of the three years (a diminution in wages of 0.92% in each year);
- the usual merit increases in 1993 and 1994, but none in 1995.¹

See Book of Documents, Volume I, Tabs 10 and 11.

1996-1999 Arbitration Settlement Under Gold and the Rand Formula

20. The 1996 round of negotiations from start to finish took 19 months. The first four days of the interest arbitration hearing in front of a Dispute Resolution Panel, consisting of Mr. Justice Alan Gold, Roy Heenan, and Jeffrey Sack, were devoted to mediation.

21. The mediation having been unsuccessful, hearing dates for the interest arbitration were set for mid June 1997. The parties met just prior to the June hearing dates with the parties' nominees and made considerable progress in resolving many of the outstanding issues. On June 17, 1997, following a formal hearing, in light of further movement by the parties and of the proximity of their positions, Mr. Justice Gold was successful in mediating the final terms of a three-year settlement, together with a process for resolving the Rand formula issue.

¹ Note that, subsequent to the award, the Administration and the Association were able to persuade the Government of Ontario that normal merit increases should be exempt from the *Social Contract* restrictions.

22. The 1996-99 settlement brought into being the Supplemental Retirement Allowance (SRA), and it did improve pension benefits for the members of the Registered Pension Plan (RPP). A major augmentation of pension for those already retired was agreed to.

See Book of Documents, Volume I, Tab 12.

23. Subsequently, following a meeting of the Dispute Resolution Panel, Mr. Justice Gold found in favour of the Association and awarded the modified Rand formula that the Association had requested (i.e. Rand for new employees only), effective July 1st, 1998.

See Book of Documents, Volume I, Tab 13.

1999-2002 Mediation Settlement with Teplitsky

24. The parties agreed to another three-year settlement, the second in a row.

25. The professorial PTR breakpoints were increased by \$2,500 in each of 1999-2000 and 2000-2001. This adjustment resulted from the growing dysfunction of the parameters in the existing PTR model.

26. Pension plan changes included continuing augmentation for retirees, and an increase in the payout formula from 1.3% to 1.5% for the CPP portion of salary for future retirees. (Member contributions for this were increased from 3.9% to 4.5%.)

See Book of Documents, Volume I, Tab 14.

2002-2003 Arbitration Settlement with Teplitsky

27. During the three years from 1996 to 1999, the across-the-board salary increases had lost about 3.1% to inflation. This was not what the Administration spokesperson anticipated at the time. Vice-President Finlayson is quoted in the May 10, 1999 *Bulletin* as assuring the faculty that:

“In each of the three years, the across-the-board increase more than compensates faculty members and librarians for present and predicted inflation.”

Unfortunately, again because of the unforeseen rise in CPI, a similar loss occurred from 1999 to 2001 when salaries were eroded by an additional 3.4%. The annual losses to inflation were 1.7%, 1.1% and 0.6% respectively.

28. In subsequent negotiations, because of the loss to inflation, the Association would not accept similar 3-year settlements. Salary catch-up of past losses to inflation became a principal concern.

29. For the round of negotiations for 2002-2003, both sides agreed to Martin Teplitsky serving as both mediator and arbitrator (thereby modifying Article 6 of the Memorandum), on the understanding that Mr. Teplitsky could only impose a one-year settlement as arbitrator and that an arbitration decision would be binding on both parties. The parties failed to reach a mediated agreement. The dispute concluded in December of 2002 with an arbitration award by Mr. Teplitsky.

30. The monetary awards included an ATB of 3.0% for 2002-03, an increase in the PTR breakpoint of \$5,000, a senior salary threshold increase of \$10,000, a professional allowance increase of \$250, and the minimum lecturer salary set at \$50,000.

31. Pensions were a major issue. For pre-1996 retirees the formula for the CPP portion was increased from 1.0% to 1.3% (for actives the number stayed at 1.5%), an adjustment was made for those retired with annuities resulting from a “break-in-service”, OISE pensions were harmonized with those of the rest of the University’s faculty and all pensioners were given a pension augmentation for 2002-2003 to make up for the 25% of inflation not covered by the indexation rule in the formula.

32. In addition, Mr. Teplitsky awarded an increase of \$1,000 (to \$2,500) for the annual Major Restorative Dental Coverage. Due to a supposed ambiguity in the text of this award, the Administration chose to interpret the award as applying only to actives and so excluded the retirees. The Association challenged this unilateral interpretation and at a later date Mr. Teplitsky ruled that retirees were indeed covered by his award.

33. As it turned out, the 3% ATB settlement for 2002-03 resulted in catch-up of 0.4%.

See Book of Documents, Volume I, Tabs 15 and 16.

2003-2005 Mediation Settlement with Burkett

34. For the following round, the parties agreed to ask Kevin Burkett to act as Mediator. Mr. Burkett was successful in mediating a two-year agreement, for 2003-2004 and 2004-2005, ending on June 30, 2005.

35. The major monetary items included: ATB of 2.75% + 0.75% in the first year and 2.75% + 0.615% in the second year, a further increase of \$275 in the Professional Expense Reimbursement, an increase in the PTR breakpoint of \$5,000, and a further increase in the senior salary threshold.

36. Until this award, faculty and librarians who had retired prior to 1982 had not had any dental or extended health coverage from the University. (The current retiree coverage started in 1982 and was never made retroactive for earlier retirees). Under benefits, an expense account was initiated for pre-1981 retirees.

37. Part-time faculty and librarians were given health and dental coverage. Long Term Disability was made mandatory for all. Physiotherapy and chiropractic care were added to the \$500 yearly maximum coverage for massage. A major improvement was made in Maternity Leave and Parental Leave. Librarians were given Professional Development Days for the first time.

38. Pensioners were again given a pension augmentation for the two years to ensure that their pensions kept up with inflation.

39. The Association release time amounts were increased and a number of working groups were set up. The work of one of these groups eventually led to the ending of mandatory retirement in 2005.

2004-05 Special Retirement Agreement

40. By mutual consent Mr. Kevin Burkett was invited to mediate a new agreement for ending mandatory retirement at the University of Toronto. This agreement, unique in Ontario, was reached on March 14, 2005. Mr. Burkett went on to attempt to mediate salary, pension and benefits. Failing agreement, the dispute has been referred to this Panel.

See Book of Documents, Volume I, Tabs 17 and 18.

