

IN THE MATTER OF A FINAL OFFER SELECTION ARBITRATION

BETWEEN:

THE UNIVERSITY OF WATERLOO

("University")

AND:

THE FACULTY ASSOCIATION OF THE UNIVERSITY OF WATERLOO

("Association")

IN THE MATTER OF:

SALARY SETTLEMENT

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARANCES FOR UNIVERSITY:

Christine McWebb	- Associate Vice-President, Faculty Planning and Policy
Bruce Frayne	- Dean of the Faculty of Environment
Mark Giesbrecht	- Dean of the Faculty of Mathematics

APPEARANCES FOR ASSOCIATION:

Kate Rybczynski	- Department of Economics
Greg Berderich	- School of Accounting and Finance
Michael Wallace	- Statistics and Actuarial Science

A HEARING IN THIS MATTER WAS HELD ON MARCH 25, 2024

AWARD

I have been appointed as the final offer selector in this matter. Under the terms of the Memorandum of Agreement (MOA) governing a third party adjudication of an unresolved compensation renewal dispute, the dispute is to be adjudicated on the basis of final offer selection. Under a final offer selection process, the arbitrator must select one of the two competing final offers. It is not open to the arbitrator to fashion an award on the basis of the arbitrator's analysis of the evidence and the submissions. However, the terms of an award that would otherwise issue on the basis of the arbitrator's analysis of the evidence and the submissions must necessarily inform the selection of one of the two competing final offers. This is so because the final offer that is selected must necessarily be the one that most closely aligns with the most likely free collective bargaining result. There is no dispute with respect to my jurisdiction to act as the final offer selector in this matter.

A hearing in this matter was convened on March 25, 2024. The parties submitted briefs in advance of the hearing. The briefs set out the respective offers of settlement and the rationale, as well as supporting documentation.

Scale increases proposed by the Association were as follows:

- 2024 – 6%
- 2025 – 4%
- 2026 – 3.97%

with a vision care and mental health care improvement.

The scale increases proposed by the University were as follows:

- Effective May 1, 2024 – 3%
- Effective May 1, 2025 – 2.5%
- Effective May 1, 2026 – 2.5%

with provision for a \$300 per year health care spending account to a maximum of a \$600 accumulation over 2 years.

While the briefs confirmed that the parties had agreed upon a three-year term (May 1, 2024 to April 30, 2027), it became clear to the final offer selector that there were issues between the parties related to the appropriate comparator universe, calculations with respect to historical scale movement of the comparator universities, relative to this university, and with respect to the historical and recent movement of the Consumer Price Index (CPI). There also appeared to be a dispute as to how CPI movement factors into the negotiation of scale increases.

At the outset of the hearing, the final offer selector attempted to resolve these disputes/misunderstandings in order to put the parties on a common factual footing from which they could better negotiate. The following understandings in regard to the scale increases resulted from these discussions.

- The relevant direct comparator universe is comprised of McMaster University, Queen's University, University of Western Ontario, University of Ottawa and, to a lesser extent, York University.

- The University of Toronto is not a direct comparator in the sense that the salaries paid and the annual percentage scale movement at the University of Toronto are factored into the calculation of average comparator salaries or scale movement. However, the University of Toronto is the salary leader and the University of Waterloo salaries have at certain points in time been second to the University of Toronto amongst the comparator group. The Association aspires to be second to the University of Toronto from amongst the comparator group of universities.
- Article 10.2 of the MOA is the necessary starting point for salary scale negotiations. Article 10.2 stipulates that "each year the compensation negotiating teams shall use the annual rise in the Canada consumer price index as the starting point for the discussion of the scale adjustments."
- The methodology for application of the CPI is to bring forward the CPI increase for the preceding year as the starting point for discussion of the appropriate scale adjustment for the current year.
- The parties are agreed that the increase in the CPI for 2023 was 3.9% and the projected CPI increase for 2024 is 2.8% and for 2025 is 2.2%. These are the CPI increases that are the starting point for discussion of the 2024 (3.9%), 2025 (2.8%) and 2026 (2.2%) scale increases.

- The Association calculates that in addition to the scale increases justified by the rise in the CPI, i.e. 3.9%, 2.8% and 2.2%, a 5.07% catch-up increase based on the agreed upon CPI increases for the previous three-year term (the rise in the 2022 CPI was 6.8%) less the scale increases at the University of Waterloo for the corresponding scale year`s.
- The University, while not disputing the 5.07% calculation, disputes that any catch-up is warranted given the 2023 Bill 124 adjustments (plus 4% to scale over two years) as a full and final two-party settlement bringing the scale back into line for the period. The University, in arguing that catch-up is not warranted, relies to a lesser extent on the comparator relationship.
- In comparing the recent scale increases at the comparator universities with those at the University of Waterloo, the slippage vis-a-vis Queen's University and the University of Ottawa is significant. The scale increases at Queen's University for the years 2021, 2022 and 2023 totalled 8.4% (not compounded). The scale increases at the University of Ottawa for the same period totalled 8.5% (not compounded). The scale increases at the University of Waterloo for this period, including the Bill 124 adjustments, totalled 6% (not compounded). This differential warrants a catch-up increase of 2.4% or if implemented over the term .8% per year over the three-years.

- Given that this will be a pattern-setting agreement (in that, of the comparator universities, only the University of Western Ontario will have settled for 2025-26 and none of the comparators will have settled for 2026 or 2027) and given that it is too early to know the future effect of the 2023 University of Toronto Gedalof award, i.e. 8% 2022-23 scale increase, upon the sector, the parties were receptive to the final offer selector's suggestion that the third year, in addition to the 2.2% inflation-based increase, provide for an automatic scale reopener.

In regard to the benefits component, the Association seeks, in addition to the current \$85 every two years for eye exams, a vision care provision of up to \$300 per participant per three years for glasses/contacts, etc. to bring this benefit into line with the comparators and an increase in the mental health care maximum from \$1,000 to \$2,000 per participant per calendar year. The University has offered instead a health care spending account (HCSA) of \$300 per 12 months for each faculty member that can be accumulated over two years to a maximum of \$600 to be used for vision care or other eligible benefits. It was confirmed that the HCSA would be in addition to the existing benefits.

While the costs of the two benefits proposals are roughly equivalent as provided to faculty and dependants, the University argues in favour of the HCSA on the basis that because it would have to provide the vision care to its other employees, but not the HCSA, the HCSA, at \$414,000, would result in a significant cost saving, i.e. about one-

third the cost of extending the Association's vision care proposal across all employee groups as it would be required to do. While the direct cost to the bargaining unit is to be used in costing collective agreement benefit improvements, the rollout cost is a relevant consideration in evaluating the final offers. The University also points out that the HCSA could be used to provide faculty members with not only improved vision care if the choice was to purchase glasses/contacts but that faculty would have the option of applying the HCSA to offset other eligible benefit costs.

The University went to great lengths to impress upon the final offer selector the extent of the fiscal constraint under which it now finds itself. The Association presented counter arguments. While there is no doubt that the University is facing significant fiscal constraints, it has not made out a case nor did it argue an "inability to pay." Absent an "inability to pay," scale increases must be determined by the factors that have historically governed, i.e. CPI movement and comparator analysis. It cannot be that absent an "inability to pay," faculty members would nevertheless be required to subsidize the University by accepting or being awarded scale increases that are not in line with the governing factors.

Finally, it was confirmed at the outset of the hearing that an additional increase to salary structure (floors, thresholds and SIU) of 3% in 2024 had been agreed and, therefore, had not been expressly made part of the University's offer.

Having carefully considered the respective submissions, the final offer selector, in order to assist the parties in their deliberations, advised the parties that he would select the final offer that most closely aligned with the following position:

Scale Increases

2024-25 $3.9\% + .8\% = 4.7\%$

2025-26 $2.8\% + .8\% = 3.6\%$

2026-27 2.2% plus an automatic scale reopener with the current MOA
dispute resolution mechanism

Benefits

Health care spending account as offered by the University

Structure (floors thresholds, SIU)

As agreed – 3% in 2024

The settlement position set out by the final offer selector, consistent with the practice of the parties, applies the CPI increases from the previous year (confirmed for 2023 and projected for 2024 and 2025) to the current scale year and, in addition, captures the 2.4% scale slippage over the previous term relative to Queen's University and the University of Ottawa with an additional .8% scale increase in 2024 and 2025

and the scale reopener in 2026. The HCSA, as more versatile and cost effective than the Association's vision care proposal, is identified as the preferred benefit improvement.

The parties were directed to submit post hearing briefs.

The final offer of the Association, tabled in its post-hearing brief, mirrors the settlement proposed by the final offer selector at the conclusion of the March 25, 2024 hearing.

The University's final offer, as tabled in its post-hearing brief, is as follows.

1. Scale Increases

Effective May 1, 2024 $3.7\% + 0.8\% = 4.5\%$

Effective May 1, 2025 $2.7\% + 0.8\% = 3.5\%$

Effective May 1, 2026 2.2% plus a reopener for scale only if the average annual change in CPI-Canada for 2025 exceeds 3.2%.

2. Floors, Thresholds and SIUs

For the first year (2024), the salary floors, thresholds T1 and T2 for all ranks will be increased by 3% in addition to the annual scale change.

3. Health Care Spending Account

(The University's proposal at the March 25, 2024 hearing is reproduced.)

The final offer of the University, therefore, differs from the settlement proposed by the final offer selector, as adopted by the Association, by reducing the May 2024 scale increase by .2%, by reducing the May 2025 scale increase by .2% and by adding a trigger to the May 2026 reopener by requiring an increase in CPI-Canada for 2025 of more than 3.2%.

The University supports its final offer on the basis that it is offering scale increases well above the forecasted CPI for 2024 (2.8%), 2025 (2.2%) and for 2026 (2%). The University is correct in this regard. However, these parties identify CPI as the necessary starting point and apply the CPI increase from the preceding year to the year under consideration. Consistent with the practice of the parties, the CPI increases factored into the Association's final offer are the CPI increases for the previous year and, therefore, the Association's offer is to be preferred.

The University submits further that its offer "not only exceeds the forecasted CPI but is also substantially enriched with the inclusion of a 'catch-up' amount to address any concerns of wage erosion." The parties look to the previous bargaining cycle to determine if there has been wage erosion relative to both the CPI and the comparators. The "catch-up" proposed by the final offer selector was based on the 2.4% scale erosion over the previous cycle relative to Queen's University and the University of Ottawa spread over the three-year term at .8% per year. Because of the future uncertainty associated with a pattern-setting agreement, as this will be, the parties agreed to a third-

year scale reopener (albeit with a difference as to a trigger) such that the .8% third year "catch-up" was subsumed within the third-year scale reopener. That said, the "catch-up" component of the University's final offer is not an enrichment that weighs in favour of selecting the University final offer in preference to that of the Association.

The University's inclusion in its final offer of a more than 3.2% increase in the 2025 CPI as a trigger for the 2026 scale reopener is especially problematic. The 2026 scale reopener is intended to provide the parties with an opportunity to bargain about scale at a time when the comparators have completed bargaining for this cycle such that it can then be ascertained whether the .8% catch-up component for 2026 is more than adequate or less than adequate and by how much. Further, the 2026 reopener would be at a time when the CPI increases for 2024 and 2025 are no longer projected but actual. To accept the University's trigger would mean that the 2025 CPI would have to increase by more than 1% above the projected increase, thereby giving rise to the real possibility that there would be no 2026 scale reopener. This risk weighs in favour of the Association's final offer of an automatic 2026 scale reopener.

The University's benefit proposal of an HCSA has been accepted by the Association. The University's proposal was and continues to be conditioned upon a recommendation for acceptance to the Pension and Benefits Committee. Given that the HCSA was proposed by the University as both a less costly and more effective benefit than that proposed by the Association, the reasonable expectation of the final offer

selector and the Association is that the Pension and Benefits Committee will approve. The final offer selector remains seized pending this approval.

Finally, the agreed upon increase to the floors, thresholds and SIUs was not included in the University's offer tabled at the March 25, 2024 hearing because it was considered to be a matter of agreement. Although constituting an economic improvement with real cost implications for the University, it does not, in all the circumstances, tilt the balance in favour of selecting the University's final offer in preference to that of the Association.

Having regard to all of the foregoing, the final offer of the Association is selected for implementation.

The final offer selector remains seized until the parties finalize the implementation of the Association's final offer.

Dated this 12th day of April 2024 in the City of Toronto.

A handwritten signature in black ink, appearing to read "Kevin Burkett", written in a cursive style.

KEVIN BURKETT