



UTFA Bargaining Report

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Introduction

Faculty and librarians have finally received their compensation settlement covering the period from July 1, 2009, to June 30, 2011, as the result of negotiations and arbitration between UTFA and the University of Toronto Administration. On October 5 the Arbitrator, Mr. Martin Teplitsky, Q.C., issued the award to the two negotiating teams and, after a short and mutually agreed-upon blackout period, it was released to the U of T and wider communities.¹

In this bargaining report, we discuss at some length the dynamics and implications of the negotiations and arbitration process over compensation. We discuss in particular the Arbitrator’s rationale for the award before going over some of the specific aspects of the award. We then try to deconstruct the claim that faculty and librarians remain at the “top of the market” as the Arbitrator claims we do. We conclude with some thoughts on the need to secure the right to negotiate all terms and conditions of faculty and librarian employment. This change would realize a more robust, rigorous, and responsive bargaining relationship, but would also respond to the crisis of governance at the University of Toronto that is evident on many fronts, including in our compensation negotiations with the Administration.

The report is lengthy and we encourage members to read it in stages. The significance of this award and this moment warrant some careful consideration.

¹ The full award can be accessed on the UTFA website at http://www.utfa.org/images/file/SBP_Teplitsky_Award_for_2009-10-11.pdf.

Arbitrator Rebuffs Province and Administration

UTFA members waited a long time for this award. Our Council approved the initial bargaining platform back in March of 2009. Direct negotiation and mediation took us into 2010, with important changes to workload and dispute resolution agreed upon in the mediation phase. We then proceeded to arbitration over outstanding matters, including all compensation issues (salaries, benefits, and pensions) as well as the details of a new workload article. Arbitration hearings were held in the spring and we anticipated that an award would be issued in the summer. But we could not have foreseen that the Government of Ontario would call for a pause in ongoing negotiations and arbitration processes and initiate a consultation aimed at securing a salary freeze in the wider public sector for a two year period. As we explained in Bargaining Bulletin #7 in July, UTFA negotiators never agreed to a pause, not to mention a compensation freeze. Nevertheless, these developments led to some delay and additional exchanges between the bargaining teams and the Arbitrator.

In these exchanges, backed by strong support from our members, we insisted on the autonomy of our bargaining process and its continuation independent of the province's "consultations." We redoubled our resistance to a freeze on compensation increases, and we were successful. The Arbitrator's award clearly repudiates the Government of Ontario's efforts, but also, and arguably more importantly, rebuffs the Administration's attempts to secure a salary freeze.

Specifically, as Mr. Teplitsky states in his award, "The University [sic] submitted that... I should take [the province's] legislation and the accompanying policy statement into account in fashioning any award. UTFA was adamant that such a course would be de facto recognition of ability to pay as a relevant criterion in a public sector interest arbitration and would compromise the independence of arbitrators" (p. 4). Mr. Teplitsky agreed with UTFA, noting that to take the province's machinations into account would make him "...appear a minion of government." He also quoted the directive in Article 6 of our Memorandum of Agreement (MoA) that the Arbitrator "attempt to reflect the agreement the parties would have reached if they had been able to agree" (p.5). UTFA negotiators also stressed that the Administration's own submissions showed that the University was in a current budget *surplus*. In short, while he ruled that the ability to pay argument should not hold here, members should note that there was in fact *no such argument to be made*.

Mr. Teplitsky explains the "multi-factoral" approach he used in his determination. Those factors are: (i) the long established principle that compensation for faculty and librarians at the University of Toronto should be "top of the market" reflecting unparalleled professional expectations in Canada (for more on this theme, see below); (ii) cost of living increases; (iii) general economic conditions, including the dynamic interplay of private and public trends; and (iv) comparable settlements in the sector.

Members are strongly encouraged to read the full award and reflect on its reasoning. Mr. Teplitsky's rationale for this award – whether we agree entirely with it or not – provides a set of considerations that are likely to factor into the determination of future settlements.

Highlights of the Award

A summary of the award was sent by email to all members, but notable features include the following:

- Positive across-the-board (ATB) salary increases in both years roughly equivalent to year-end salary increases of 2.25 per cent, with minimum increases set to the median salary in each of the tenure, teaching, librarian, and CLTA streams. The ATB increase is to be delivered in two phases during each year, the first (1.25 per cent) effective July 1 and the second (1.00 per cent) effective January 1 of those respective years.
- A minimum flat sum ATB proviso establishes a floor within each stream for the award equivalent to a year-end salary increase of 2.25 percent of the median salary in that stream. The flat dollar increase favours those with salaries below the median salary and the straight percentage increase favours those with salaries above the median. Members seeking more detail on the median salaries by stream and the corresponding schedule of minimum salary increases should consult Table 1 below.
- Taken together, these two components of the award mean that the overall value of the salary increase is approximately 2.5% in each year. This reflects the 2.25 percent increase augmented by the value of the minimum increase. These minimum increases for lower paid faculty and librarians are a feature of the award for which UTFA advocated very strongly, particularly in a context in which the Administration was pushing for a salary freeze in both years of the award.
- Progress Through the Ranks (PTR) funds for 2010–11 will be allocated as usual (PTR was already distributed for 2009–10) and remains unchanged by the award.
- Because of the sequencing and complexity of the award, there will be some delays in its implementation. However, as per [PDAD&C Memo #21](#) : (i) the November 2010 pay should reflect both the July 1, 2009, and the January 1, 2010, increases and (ii) the January 2011 pay should reflect the July 1, 2010, and January 1, 2011, ATB award as well as the PTR award for 2010–11. In all applicable cases, implementation will be retroactive.
- The Professional Expense Reimbursement Allowance (PERA) has been increased for all members to \$1500 per year, with a further supplemental increase to \$1750 per year for pre-tenure and pre-promotion faculty and for pre-permanent status librarians, all retroactive to July 1, 2009. Extension of the \$1750 PERA to pre-permanent librarians is mutually understood to require renegotiation if it is to continue beyond this award.²
- There is no increase in pension contribution rates for active members, but there is also no pension augmentation for retired members.
- The individual course stipend for UTFA members (including retirees) is increased to \$15,000 per full course (i.e. two term) equivalent for 2009–10 and to \$15,340 for 2010–11, retroactively.

² Note that the extension of the \$1750 PERA to pre-permanent librarians is not reflected in the award itself as posted on our website.

	Stream	Percentage Increase	Minimum Increase	Median Salary
	CLTA	1.25	\$1,024	\$81,920
	Librarian	1.25	\$1,143	\$91,440
July 1 2009	Teaching	1.25	\$1,215	\$97,200
	Tenure	1.25	\$1,720	\$137,600
	CLTA	1	\$819	\$81,900
	Librarian	1	\$914	\$91,400
Jan. 1 2010	Teaching	1	\$972	\$97,200
	Tenure	1	\$1,376	\$137,600
	CLTA	1.25	\$1,066	\$85,280
	Librarian	1.25	\$1,190	\$95,200
July 1 2010	Teaching	1.25	\$1,265	\$101,200
	Tenure	1.25	\$1,791	\$143,280
	CLTA	1	\$853	\$85,300
	Librarian	1	\$952	\$95,200
Jan. 1 2011	Teaching	1	\$1,012	\$101,200
	Tenure	1	\$1,433	\$143,300

Table 1: ATB increases, Minimum Increases, and Median Salaries, UTFA Arbitration Settlement Covering July 1, 2009, through June 30, 2011.³

Benefits, SRA, & Dues

The award addresses several outstanding matters as detailed in the 2-page Schedule “A” attachment at the end of the award. These matters include: (i) ensuring that the full amount negotiated for the child care benefit is spent and, on a one time basis, carrying forward unspent residuals from 2008 and 2009 to ensure these too are spent on child care; (ii) establishing a working group to deal with the controversial Supplemental Retirement Allowance (SRA) issue; (iii) agreement in principle that adoption leave benefits should be harmonized with leaves for biological parents; (iv) clarification and adjustment of the mechanism allowing UTFA dues redirection; (v) introduction of application forms and regularization of procedures for early retirement notification; and (vi) establishing a Joint Benefits Committee to deal with a number of issues associated with the administration of negotiated benefits, and to take on a new role in dispute resolution in matters dealing with benefit administration.

³ As per PDADC#21, 2010–11, the two phases of the increase for the first year will be implemented in the November 2010 pay run and the two phases of the increase for the second year will be implemented in the January 2011 pay run.

Pension Matters

UTFA negotiators argued strenuously for pension augmentation to protect retirees on fixed incomes from the erosion of their pensions due to inflation. However, Mr. Teplitsky did not award augmentation, arguing that inflation is low and that the pension plan is in serious financial difficulty. While inflation has been low so far during the duration of the award, UTFA strongly disagrees with this aspect of the decision. We note, however, that Mr. Teplitsky emphasized that there is no reason pension augmentation cannot be achieved in future rounds of negotiations.

Mr. Teplitsky also rejected the Administration's attempt to secure increased pension contribution rates, noting an increase would amount to a reduction in compensation. The Administration has already registered dissatisfaction with this decision (see HR #9, 2010–11), noting that the pension plan remains in need of solvency relief. That UTFA and the Administration have very different positions on how and why the pension plan at U of T got into so much trouble is well known. No doubt, future negotiations will have to address these differences. UTFA's members will be required to give careful consideration to these issues, as we can expect the Administration to press hard for increased contributions in the future.

PTR

Members should take careful note of arguments in UTFA's and the Administration's respective briefs on PTR and its relationship to ATB. These arguments too will have a life beyond the current round of negotiations. Mr. Teplitsky awarded *both* a positive ATB *and* no change to PTR. In doing so, and together with many respected arbitrators before him, he has at least implicitly accepted UTFA's contention that the two are different and should not be conflated. The award flatly rejects the Administration's position, maintained throughout the negotiations, that PTR and ATB should be considered additive as salary increases and thus that UTFA's "choice" was one or the other. Specifically, the Administration argued on page 5 of its main arbitration brief that PTR should be allocated for 2010–11 "if, and only if" there was no ATB increase in the second year of the award, and argued further that PTR's having already been allocated for 2009–10 should give further impetus to the claim for zero ATB in the first year of the award. UTFA maintained, as we have in the past, that ATB and PTR are quite different. Specifically, PTR is not a salary increase akin to ATB. For one thing, though the amounts allocated to individuals are discretionary, the totals are not. They are prescribed and well known in advance. The Administration acknowledges as much on page 22, para. 37, of its arbitration brief. And as UTFA explained in our arbitration brief (p. 29), when first created "the University's career progress system was intended to allocate approximately 3% of the total salary budget each year to career development pay increases."

The exchange over PTR reflects a troubling difference of philosophy. First, the purpose of PTR is separate from ATB. If we are to take Mr. Teplitsky's reasoning into account, the ATB should be determined by a range of factors, including comparative settlements elsewhere in the sector, the wider economic landscape, and inflation. PTR is not intended to reflect any of these except perhaps comparator settlements, and in this regard, it would be comparator PTR amounts and settlements, not comparative ATB settlements. PTR, as the name suggests, is intended to recognize career progress. As we explained on page 12 of our reply brief, although it is allocated on the basis of merit at the University of Toronto "[t]he PTR system...represents career advancement and recognizes employees' development as they progress through their careers." This is relatively well established in the context of our past negotiations, including in previous arbitration awards. We quote, for

instance, from the 1982 Kevin Burkett arbitration award, a round in which the then Administration tried the same stunt. According to Mr. Burkett:

“The defect in the University’s position is illustrated by the example of the faculty member whose salary, including PTR, has kept pace with, but not exceeded, inflation during the period when he [sic] has been promoted from assistant to associate to full professor. The University does not dispute that the faculty member is entitled to monetary recognition for promotion. However, because his [sic] salary has remained constant in real terms throughout the period, it cannot be said that he has both maintained his [sic] salary level in real terms and received recognition for his [sic] promotions.”⁴

We also argue, contrary to the Administration’s claims, that PTR monies are largely recycled. While the end of mandatory retirement may make the situation less straightforward for a transitional period, to deny the recycling of PTR money altogether is to deny that average starting salaries are much lower than average salaries at retirement precisely because of the (intended) effect of PTR in recognizing career progress advancements. In this context, UTFA negotiators remain deeply concerned with the Administration’s wrongheaded position on PTR.

Access to Information and the Problem of Paternalism

UTFA’s capacity to contest the PTR issue is compromised by the paternalistic and outdated provisions and practices governing access to information at this University. Specifically, Article 6, paragraph 4 of our MoA requires that “The parties shall with reasonable dispatch provide each other with such data and documentation as may be reasonably requested to enable full and rational discussion of salary and benefit matters.” In order to evaluate the effects of PTR among individuals and across different groups, UTFA requires access to individual level salary data. Such data are provided as a matter of course in robust and mature collective bargaining settings — certainly where faculty associations are certified bargaining agents, as is the norm in Canada. Instead, we are given access to anonymous salary data which are not broken down by discipline. We cannot track these data over time in a manner that would allow proper account of the long term effect of PTR on salaries, nor can we evaluate and monitor the effects of other increases coming from market, anomaly, and retention funds. The Administration’s reason for not providing us with adequate information to facilitate effective bargaining is Article 11 of the MoA, which states: “It is understood that this Article shall not be construed to require the University (a) to compile information and statistics in particular form if such data are not already compiled in the form requested or (b) to provide any information relating to any individual.” The Administration has claimed that this provision is required to protect confidentiality.

The language in Article 11 is simply no longer acceptable. It is in tension with Article 6 and it represents an institutionalized form of paternalism, like much of the MoA more generally. UTFA consistently agitates for more access to information to facilitate good faith bargaining, one consequence of which is that Mr. Teplitsky has remained seized on matters of disclosure pertaining to the newly created Joint Benefits Committee. But this aspect of the relationship between UTFA (as the collective representative of faculty and librarians) and the Administration, like so many other aspects, has become patently dysfunctional to the detriment of our members and is in need of a serious upgrade.

⁴ Kevin Burkett Arbitration Award for 1982–83, quoted on page 13 of UTFA’s reply brief in the current round.

“Top of the Market”?

Do faculty and librarians at the University of Toronto remain at the top of the market, as Mr. Teplitsky asserts in his award in explaining why he did not grant UTFA members increases on par with sectoral norms? With respect, we take a different view. It is true that as measured by average salaries, we are at the top of the market. But averages are crude measures. Moreover, the “market” should be defined not only by salaries, but also by other forms of compensation (including benefit provisions) as well as non-monetary terms and conditions of employment.

Benefits

Consider first benefits. Heading into arbitration, we lagged far behind many of our comparators in numerous areas. The following list provides examples taken from our arbitration brief, with our ranking along with the number of comparators used:

- Employer share of extended health premium, 10 of 13
- One year sabbatical leave salary, 6 of 13
- Coverage for psychology and related services, 3 of 13
- Vision care, 6 of 13
- Coverage for Professional Services (e.g. massage therapy and physiotherapy), a distant 8th among the 8 non co-paying comparators.
- Professional Expense Reimbursement Allowance (PERA), 10 of 13.

We managed to secure significant increases in the PERA and this is important. But the other areas of concern vis-à-vis benefits were left almost entirely unchanged. These data raise the question as to how the U of T can claim to be the top employer we are frequently told about, at least where faculty and librarians are concerned. What is clear is that we have a long backlog of benefit improvements to secure (benefits that are available to all members equally) if we are indeed to be top of the market in benefits.

Salaries

In the negotiation and arbitration process we also contested the claim that we are top of the market in salaries. For instance, it may surprise many members to know that we rank 10th in relation to our major competitors in Canada in the average (i.e., per capita) PTR award. Moreover, the gap is quite wide in some instances; average PTR for faculty at U of T is \$2347, while at the University of Alberta it is now \$3779 and at the University of Ottawa it is \$3691. As noted above, when PTR was first established, its aggregate value amounted to approximately 3 per cent of the salary mass. That figure has since dropped below 2 per cent.

Many UTFA members have serious concerns about the manner in which PTR is allocated. But all members should understand that the Provost’s memo providing detailed instructions on how to allocate PTR was *never negotiated with UTFA*, despite the obligation to negotiate these provisions under Article 6 of the MoA. Clearly, significant changes in PTR will be necessary in the future. Increases in average PTR amounts should be coupled with new language providing for more reasonable and fair recognition of merit and career progress among the diverse scholarly and professional constituencies that make up our community.

It is also the case that overall averages can provide a distorted picture in certain respects. If we examine, for instance, average salaries among assistant professors, we are no longer at the top of the market in Canada; we have been passed. Similarly, average salaries for librarians at levels I, II, and III are lagging behind comparator institutions: in fact, we rank 6th of 7 at Librarian I rank and 6th of 10 at Librarian II rank.

Equity

This brings us to the question of equity. Faculty and librarian salaries at the U of T are not only larger on average but also much less equal. This is a fact that averages cannot convey. But measures of spread or dispersion can. When we compare the ratio of the 10th percentile faculty salary to the 50th percentile salary (i.e., the median), for instance, we find that we rank 9th of 10 by this measure of equality. That is, by this measure, we are the least equal with the exception of one other institution.⁵

Some might find this a curious metric vis-à-vis the top of the market issue. And yet scholarly research has shown that equality tends to reinforce social cohesion, while inequality has the opposite effect.⁶ Might some of these same dynamics apply within our community? No one is suggesting that all faculty and librarians at U of T be paid the same amount. There is no hint of this position in our arbitration brief. But UTFA negotiators were concerned that inequality at the University of Toronto as indicated by numerous measures is excessive. In fact, there is disturbing evidence that the problem is getting worse. For instance, between 2004–05 and 2009–10 the 10th percentile faculty salary at U of T increased at an average annual rate of 2.7 per cent. Over the same period, the 90th percentile faculty salary (i.e., that corresponding to a point in the salary distribution where 90 percent of salaries are lower) increased at an average annual rate of 3.7 per cent! Even many recipients of the larger salaries would have to agree, this hardly seems fair. And this is not an effect that could possibly stem from UTFA's negotiated salary awards since they feature straight percentage increases or increases with minima to *counteract* salary dispersion. Larger annual increases at the top also run counter to the intended purpose of PTR, which decreases on average above established break point salaries.

Market and Anomaly Monies

Where are the monies coming from to sustain these higher end increases? We are not entirely sure, in part because of the information issue noted above. But we know they do not come from forms of compensation now negotiated under Article 6 of our MoA. In the recently completed round of negotiations, and as articulated on page 32 of our arbitration brief, UTFA proposed new measures to regulate the amount and allocation of market and anomaly funds. These funds are significant and have in the recent past approached and even exceeded one per cent of the salary mass. To be clear, we never suggested the elimination of these funds. That would be a radical measure indeed and it would impair the correction of some of the very inequity problems UTFA is seeking to address (e.g., campus and gender inequities). But we did argue that UTFA should be more involved in establishing and monitoring the administration of these funds. And we considered it unconscionable that the

⁵ It bears noting that some of this effect is produced on the one hand by higher salaries in professional faculties such as the Rotman School of Management and the Faculty of Law, and on the other hand by lower salaries among teaching stream faculty members. Both are distinct though by no means entirely unique features of our faculty which do not directly compare with some of the institutions we use as Canadian comparators.

⁶ For research on these notions, see for instance Coburn, D. (2000). "Income inequality, social cohesion and the health status of populations: The role of neo-liberalism." *Social Science and Medicine* 51(1): 135–46; Wilkinson, R. G. and K. E. Pickett (2009). "Income inequality and social dysfunction." *Annual Review of Sociology* 35: 493–511.

Administration would blithely propose an across-the-board salary freeze with no apparent regard for the inequitable impact such a measure would have and with no hint of a commitment to negotiate and disclose information about these other significant and entirely unregulated compensation funds.

Mr. Teplitsky's award is silent on this matter and it remains an issue for us to address. It is one that pertains both to compensation matters and to the top of the market issue, but it also speaks to the wider issues of governance.

Bargaining All Terms and Conditions and U of T's Crisis of Governance

We are at an important moment at the University of Toronto. The summer of 2010 saw not only a seemingly interminable delay in securing our arbitration award in the midst of the Government's public sector wage restraint initiative. In addition, the summer was marked by controversy over the proposed Faculty of Arts and Science academic plan. Many faculty and librarians were outraged at the manner in which significant changes to departments and other units were proposed in the absence of adequate prior and collegial dialogue and consultation. This precipitated UTFA's FAS grievance.⁷

These events point to nothing less than a crisis of governance. And this crisis is hardly unique to the Faculty of Arts and Science. Indeed, the broader landscape of the crisis of governance includes the manner in which we negotiate compensation – and now workload – on behalf of faculty and librarians. The December 2009 UTFA bargaining bulletin (#5) included a short discussion of collegiality and what it means. We argued at the time that the MoA's structuring of relations between UTFA and the University of Toronto Administration represented a genuine obstacle to collegiality. We argued further that “[f]aculty and librarians deserve a form of collegiality that comes in the guise of robust, enduring, institutionalized norms of engagement and dispute resolution.” And to this we can add truly shared governance. Do we have these things? Are the institutionalized forms of paternalism evident once again in our most recent round of negotiations consistent with these principles? Hardly. Instead we have a system that too often rewards the few at the expense of the many, and an Administration that seems unable or unwilling to do anything but make it worse.

We have made important gains in the current round of negotiations, thanks to the support and resolve of our members. These gains include a major structural change in the MoA to allow workload to be negotiated with compensation. A new workload article will be issued soon.

But we must now reflect on what to do next. Many feel that only the expansion of our collective bargaining relationship as currently prescribed by Article 6 to cover the full range of matters of importance to our members can suffice as a way to institutionalize meaningful, rigorous, and genuine collegiality and shared governance. This includes all of the matters now subject to the archaic and ineffective frozen policies structure, e.g., tenure and promotion policies, etc. But it also means more generally that “all terms and conditions” of faculty and librarian employment should be negotiated in a comprehensive and mature fashion. This phrase “all terms and conditions” is what is provided for

⁷ Members should also consult the letter UTFA President George Luste wrote to University Vice-President and Provost Cheryl Misak in response to the FAS crisis outlining some of the broader changes required in academic governance at the U of T in order to redress these systemic issues. See http://www.utfa.org/images/file/Public_Letter_re_Academic_Planning_at_UofT.pdf.

by statute and is integral to guaranteeing the full rights of certified unions to negotiate on behalf of their members.

Union certification for faculty associations in Canada is the norm; about 80 percent of academic staff in Canada are now covered by collective agreements. In fact, union density in higher education is higher than in any other sector.⁸ The reason is simply that certification works as a means for academic staff to assert themselves in negotiating the conditions under which they provide services integral to and indeed synonymous with the university — teaching and research. But we are not certified. As a consequence, while we experience unparalleled professional expectations, the form of representation we are afforded via UTFA falls far short of what our colleagues at other Canadian universities enjoy. In other words, UTFA’s capacity to represent its members is constrained, narrow, and often dysfunctional.

To be clear, certification is not a panacea, nor an end unto itself. It is a means to the end of seeking to negotiate and jointly participate in the determination of all terms and conditions of our employment. But there is a growing sentiment among leadership and membership alike that nothing less than securing these sorts of comprehensive rights will suffice in giving us the form of representation we deserve. And nothing short of “all terms and conditions” negotiable will enable UTFA to serve as a comprehensive and effective resource for those many faculty and librarians now asking how to achieve truly shared governance and collegiality so that the sort of crisis we have seen unfold in the Faculty of Arts and Science can be prevented from recurring.

All members are encouraged to actively reflect on and discuss these issues, and to consider how we can best achieve the fundamental changes that are so clearly needed.

Your negotiating team in this lengthy round included the following UTFA members: George Luste, Cynthia Messenger, Jeff Newman, Scott Prudham, Helen Rosenthal, Peter Russell, Peter Sawchuck, Judith Teichman, and Terezia Zoric. Our very able counsel, Jeffrey Sack and Steven Barrett from Sack Goldblatt Mitchell LLP, did much of the negotiating and advocating for us with the Mediator/Arbitrator. Reni Chang, Heather Diggie, Steve Eadie, and Hugh Mackenzie also provided assistance. Thanks to David Mackenzie for assistance in drafting this bulletin and to Marta Horban for proofing it, formatting it, and managing the production side.

All input, feedback and comments are always welcome at bargaining@utfa.org

- emails sent to this address always go to both -

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⁸ Dobbie, D. and I. Robinson (2008). “Reorganizing Higher Education in the United States and Canada: The Erosion of Tenure and the Unionization of Contingent Faculty.” *Labor Studies Journal* 33(1), 117–31.