IN THE MATTTER OF AN INTEREST ARBITRATION

BETWEEN:

Ryerson University

and

The Ryerson University Faculty Association

Before:	William Kaplan Sole Arbitrator
Appearances	
For the University:	Simon Mortimer Hicks Morley Barristers & Solicitors Elizabeth Brown Brown Mills Klinck Prezioso Barristers & Solicitors Daniel Draper Executive Director, Faculty Affairs Ryerson University
For RUFA:	Steven Barrett Emma Phillips Simon Archer Erica Cartwright Goldblatt Partners Barristers & Solicitors

The matters in dispute proceeded to a hearing on April 10 & 13, 2021 and May 30, 2021.

Introduction

This interest arbitration was convened pursuant to Article 2.3 of the Collective Agreement and is between Ryerson University (University) and the Ryerson University Faculty Association (Association). At the request of the parties, an interim award – relating to the Phased Retirement Program and Voluntary Retirement – was issued on April 14, 2021. Both the University and the Association filed detailed written briefs and reply briefs in advance of hearings held in April and May 2021.

In deciding the outstanding issues, careful attention has been paid to the governing interest arbitration criteria, most notably replication – replication of free collective bargaining. In other words, this award attempts to replicate, inasmuch as possible, sectoral free collective bargaining outcomes. Demonstrated need and gradualism have also been taken into account. However, in this case, as a result of Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act*, increases in compensation are limited to 1% in each year of a three-year moderation period – the period covered by this award. As is customary in cases of this kind, I remain seized to reopen compensation should outstanding constitutional challenges prove successful or should Bill 124 be otherwise modified or repealed with retroactive effect, or for some other legally relevant reason.

Mention must be made of the University's submission that I remain seized of this issue only during the term of this collective agreement. This request is rejected. The fact of the matter is that a constitutional challenge has been mounted – it may or may not be successful – but if it is, it may be determined that Association members were deprived in *this round* of their entitlement to free collective bargaining. In these circumstances, remaining seized to deal with

any remedial issues that might arise from any finding is entirely appropriate. Putting over any remedy – should one be granted – to some other round would be completely unfair, leading, as it inevitably would, to both intermingling and conflating of historical and then current issues, to the obvious, inevitable and axiomatic detriment of the Association and its members, assuming for the sake of argument that constitutional rights are found to have been infringed.

Both parties agreed that additional and muscular measures needed to be introduced to promote equity, diversity and inclusion in hiring, tenure and promotion. The awarded language memorializes shared values and objectives. In addition, both the University and the Association sought significant changes in this collective bargaining-interest arbitration round. Some comment is required about some of their proposals.

The University has long sought to introduce a teaching stream; the Association has long resisted these efforts. On the one hand, the University points out that teaching streams are ubiquitous and are, therefore, required by replication; on the other, the Association observes that no teaching stream has ever been imposed at interest arbitration over the objections of a faculty association – they have always been introduced through negotiation and, in any event, there was no demonstrated need. The University modified its proposal to create a new category of instructors – Practitioner/Clinical Stream Faculty – and asked that it be awarded. The Association again objected and pointed out that this new proposal had not even been the subject of bilateral or mediated discussions. Clearly, the parties would benefit from further and meaningful discussion of this proposed initiative.

While one can easily understand the University's frustration at not being able to achieve one of its long-standing collective bargaining goals, the same observation equally applies to a number of Association proposals advanced in this and earlier rounds that have also been rejected: for example, substantial increases to full-time complement and related restrictions. The truth is that these issues – teaching stream and complement to name just two – are best resolved in the give and take of free collective bargaining; not bargaining that has been constrained by legislation.

On pension, there is no question that additional contributions are required by law. What is in dispute is who pays what. In this proceeding, the University sought changes to the collective agreement to "enshrine…the equal pension contribution principle." The Association rejected the existence of any such principle, and the University's proposal. The existence, or not, of this principle, and the employer's unilateral imposition of an employee contribution increase, is the subject of a grievance scheduled for hearing in the fall. Either by negotiation, or by adjudication, that issue will be resolved. But in the meantime, the Association is completely hamstrung, because of Bill 124, in its ability to bargain over pension, including possible offsets. While the plan is healthy, additional contributions are, one way or another, required. The matter is, nevertheless, best left to ongoing collaborative discussions at the Pension Committee, or bilaterally, the forthcoming arbitration or, perhaps, the next round of collective bargaining. (The parties are agreed, however, and it is directed, that collective agreement references to the Ontario Teachers' Pension Plan be deleted.)

For its part, as noted above, the Association tendered proposals to substantially increase the number of tenured faculty and did so to address what it described as the extraordinarily, and

increasing, high ratio of full-time students to full-time faculty. Other Association bargaining proposals sought to impose limitations on the use of LTFs and Temporary Instructors. The University took strong issue with all of these proposals. As noted above, changes to complement, and mode of delivery, are best addressed by the parties collegially or in collective bargaining.

The establishment of The Lincoln Alexander School of Law generated bargaining proposals from both the University and the Association largely reflecting differences in vision on the place and operation of this professional school within the University. The University's vision, however, is the normative one – both about the place of a law school in a University and the central role played by the Law Dean. Notably, the University and Association had very divergent views about the University's fiscal situation. Some outstanding issues, smaller in scale, have – deliberately – not been addressed. They are amenable to compromise, an option that remains open to the parties.

The collective agreement settled by this award shall include the items agreed-upon during mediation, agreed on language in proposals brought forward to arbitration, whether or not "contingent" on agreement to supplementary proposals, and items agreed to over the process of the hearing, for example, timing of CDI increases, and the terms of this award. Any University or Association proposal not specifically addressed is dismissed.

Award

Term

Three Years

ATB

July 1, 2020:	1%
July 1, 2021:	1%
July 1, 2022:	1%

MOU 17: Special Fund on Post Retirement Benefits

The Association proposal is awarded. This benefit – and that is what it is – is not being improved. Rather additional funding is required to maintain the existing quantum given growing numbers of retirees and utilization. Awarding this proposal falls with the section 11(3) exception of Bill 124.

Remainder

The parties agree on the remainder amount. Obviously, it is fully available for proper purposes. Allocation remitted to the parties.

However, inasmuch as guidance was requested, and it was by both parties, provided the Association's proposed allocations are normative – for example, and the range is wide, improvements to benefits and reimbursement of extraordinary COVID-19 expenditures – they should, in a Bill 124 context, be given substantial deference. However, the Association's

proposal to allocate remainder amounts to increase the accrual rate under the YMPE – given possible continuing obligations and other concerns raised by the University – is rejected. That too may be the subject matter of collective bargaining, if the parties wish, when the Association is not constrained by Bill 124.

PERF

Association Proposal awarded but increase to carry-forward to three years (including members on LTD or LOA).

Equity, Diversity and Inclusion in Hiring, Tenure and Promotion

University Proposal awarded.

Memorandum of Understanding (Joint Committee Re: Equity in Salary)

Association Proposal awarded. However: delete reference to Professional Counsellors; iv, add "reasonable cost"; delete vi.

Spousal Hiring

Where a candidate who self-identifies as a member of an equity-seeking group has been recommended for a tenure-track or tenured appointment, and the candidate has a spouse or partner who may be qualified for a full-time faculty appointment, a DHC in the spouse/partner candidate's proposed Department/School will be convened at the request of the Vice Provost Faculty Affairs where the following conditions are met:

> (a) The Provost has authorized a position for the purpose of this clause.
> (b) A spousal appointment is a non-renewable Limited Term Faculty (LTF) appointment for up to 4 years. The appointment shall not replace positions that have been previously approved - it will be supernumerary and funded above budget – and an LTF hired as a spousal appointment shall not be included in the complement calculation found in Article 4.6.C.

Prior to any spousal appointment under this provision, the DHC from the applicable Department/School must consider and approve the appointment. The DHC will be provided with an application file from the spouse/partner. In deciding whether to approve the appointment, the DHC shall consider all relevant factors including the academic qualifications and experience of the spouse/partner and the needs of the Department/School. The DHC shall provide a written report to the Dean, including its recommendation with respect to whether an appointment should be made, and at what rank.

The Dean shall forward the DHC report, along with their own recommendation, to the Vice-Provost, Faculty Affairs, whose responsibility it is to authorize appointments.

At any time during the limited term appointment under this article, the spouse/partner may apply for any advertised limited term, tenure track or tenured position. If the spouse/partner has met the posted academic qualifications and experience for the position, the relevant DHC shall add their name to the "preferred candidates' list".

Librarians

Amend collective agreement to apply Articles 20, 22, 23 & 24 to Librarians.

Faculty of Law Hiring and Tenure Promotion Processes

University Proposal awarded.

Memorandum of Understanding (Indigenous Faculty)

University Proposal awarded except re: Professional Counsellors: See below.

Memorandum of Understanding (Professional Counsellors)

The parties agree on the importance of increasing the number of Indigenous Professional Counsellors.

To that end the University and the RFA will establish a Joint Committee to develop a hiring and evaluation process specifically designed for Indigenous counsellors, and one that reflects any issues unique to Indigenous counsellors and students. This will include examination and recommendations for any specific measures to improve hiring and retention of Indigenous

counsellors and specific measures that may be needed to support Indigenous students. This will include review of best practices at other post-secondary institutions.

The Joint Committee will be composed of an equal number of committee members appointed by the RFA and by the Administration.

The Joint Committee will determine a process for consultation with relevant stakeholder groups. The Joint Committee will be supported by the Indigenous Lead, Human Resources.

The Joint Committee's recommendations will be reported to the RFA and to the Administration.

This process is to be completed by December 31, 2021, unless the parties mutually agree upon an extension.

Memorandum of Understanding (Teaching Stream)

Deleted.

Various Memoranda of Understanding

MOU #7 deleted, but housekeeping changes necessary.

All other MOUs renewed without amendment except as agreed in bargaining.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of my award including the allocation of the remainder in the unlikely event that the parties are not able to agree.

DATED this 7th day of June 2021.

"William Kaplan"

William Kaplan, Sole Arbitrator