

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

The University of Manitoba

and

The University of Manitoba Faculty Association

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: Adrian Frost
Miranda Grayson
Thompson Dorfman Sweatmen LLP
Barristers & Solicitors

For the Association: Garth Smorang QC
Joel Deeley
Myers LLP
Barristers & Solicitors

The matters in dispute proceeded to a hearing held by Zoom on March 10 & 11, 2022.

Introduction

The University of Manitoba (University) is the preeminent post-secondary institution in Manitoba, with more than 9000 employees including Faculty Members (977 Professors, Associate Professors, Assistant Professors & Lecturers), Instructors (226 Senior Instructors, Instructor IIs and Instructor Is) and Academic Librarians (58 Librarians, Associate Librarians, Assistant Librarians and General Librarians). With more than 30,000 students, the University is among the largest in the country. The University and the University of Manitoba Faculty Association (Association) have a mature bargaining relationship, one dating from 1951. The previous collective agreement expired on March 31, 2021. The parties met in collective bargaining throughout the summer and fall of 2021. The Association began a legal strike on November 2, 2021. The experienced and well-regarded mediator – who had been assisting the parties throughout – concluded that there was no prospect of a voluntary agreement and recommended that the outstanding issues be remitted to interest arbitration. This recommendation was eventually accepted and classes resumed on December 7, 2021. As will be discussed below, this was not the typical referral of unresolved disputes to interest arbitration: instead, the parties agreed on unique and specific terms of reference to guide the arbitrator in reaching a decision.

Process

By agreement of the parties – memorialized in the *Memorandum of Agreement re: Interest Arbitration on Outstanding Collective Bargaining Disputes (Memorandum)*– an interest arbitration board was consensually convened and three issues were referred to be decided within thirty days: (1) General Salary Increase, (2) Recruitment and Retention Adjustment and (3)

Return to Work Disputes. In advance of the hearing, both parties filed extensive briefs and reply briefs, together with supporting materials and relevant authorities. The case proceeded by Zoom on March 11 & 12, 2022.

Outstanding Issues in Dispute

As just noted, three issues were, by agreement of the parties, referred to interest arbitration:

1. The General Salary Increase.
2. Recruitment and Retention Adjustments.
3. Return to Work Disputes: Pay, Pension, Union Dues and Benefit issues related to the period of the strike.

Determination of these issues requires consideration of context.

The Context for this Hearing

Attention was paid, both in the briefs and at the hearing, to the recent and controversial history of the University-Association collective bargaining relationship and the role played by the Government of Manitoba in it. It is fair to say that government interference in free collective bargaining adversely affected wage outcomes (with general salary increases totalling just 1.75% between 2016-2021 not inclusive of increments). Suffice it to say that while both parties have their views about the past, they agree that the focus of these proceedings must be on the present and future. One of their shared goals is to restore their damaged relationship. Clearly it is time to turn the page.

Also extremely important, and legally and factually material – indeed governing – is the *Memorandum*; in particular, Paragraph 8:

In conducting the interest arbitration and determining the quantum of General Salary Increases and Recruitment and Retention Adjustments, the arbitrator shall be guided by the mutual aim of the Parties to achieve reasonable advancement in the U15 Group of Canadian Research University Salary Standings towards the 25th percentile, during the life of the Collective Agreement. The Arbitrator may consider arguments about the total effect of Article 24 in achieving reasonable advancement towards the 25th percentile during the life of the Collective Agreement.

The U15 Group (U15) is an association of 15 public research-focused post-secondary institutions in Canada (the University is the only one in Manitoba). According to the data, and it is faculty data only – accepted by both parties – the University is at or near the bottom of each Faculty Member rank (Professor, Associate Professor and Assistant Professor) within the U15. In Paragraph 8 of the *Memorandum*, the parties have made manifest and memorialized their mutual objective of reasonable advancement in the U15 rankings towards the 25th percentile, and to do so within the term of this collective agreement (2021-2024). The 25th percentile is the value below which 25% of U15 salaries fall. Depending on whether median or mean salaries are used – the University says use median and the Association says use mean – Professors, Associate Professors and Assistant Professors fall between 15th and 13th place. To advance to the 25th percentile would be equivalent to ranking between 11th and 12th place.

Quite clearly, and discussed further below, while all the usual interest criteria are relevant – and they were reviewed at length by both parties in their briefs and at the hearing – this shared goal; namely of reasonable advancement towards the 25th percentile, and as clearly set out in the *Memorandum*, is paramount. That is not to say that the other interest arbitration criteria, most particularly replication – the replication of free collective bargaining – have not been considered.

They have been. The parties referred to other relevant factors including their negotiating history, the general economic climate, including inflation, other Manitoba public sector settlements and the cost to the University of any awarded proposal. All these submissions have been carefully considered and have informed the results reached.

Association Submissions

General Salary Increase

In the Association's submission, for Professors, Instructors and Librarians (PIL) to make reasonable advancement towards the 25th percentile of the U15, the following General Wage increases were required:

April 1, 2021: 3.3%

April 1, 2022: 3.6%

April 1, 2023: 2.5%

In addition, the Association sought significant Recruitment and Retention adjustments – to be applied to base salaries in the first year of the collective agreement – ranging from \$17,150 for full professors to \$3,020 for Associate Librarians, Assistant Librarians and General Librarians. According to the Association, the across-the-board amounts, when combined with the Recruitment and Retention adjustments, together with certain structural compensation changes already agreed upon – elaborated below and referred to as Structural Changes – would result in PIL salaries reaching 90% of the 25th percentile of the U15 during the term of the collective agreement.

Insofar as the Return to Work Disputes were concerned, the Association asked (i) that employee and employer pension contributions be made for the period of the strike for the teaching work from that period – work that was performed after the strike – (and that this period be considered pensionable service), (ii) that arrangements be made for employees to buy back pension for the period of the strike, and be credited for service, (iii) that dues be deducted and remitted to the Association from PILs who chose to work during the strike, and (iv) that the Association be reimbursed for the cost of health and welfare benefits that it assumed for striking members.

Turning first to the General Wage Increases, the Association submitted that in moving PILs towards the 25th percentile of the U15 during the term of the collective agreement – the primary objective of this proceeding – the across-the-board increases it sought would only partially achieve that objective. To actually achieve that goal, the amounts awarded needed to incorporate projected increases in the U15 that reflected both anticipated inflation together with anticipated real salary growth. Even so – even with the across-the-board increases the Association sought – achievement of reasonable progress toward the 25th percentile was not possible with salary increases alone. A Recruitment and Retention Adjustment was, accordingly, required to complete the task mandated by Paragraph 8 of the *Memorandum*.

Recruitment and Retention Adjustment

Not only was a Recruitment and Retention Adjustment required to achieve reasonable progress towards attainment of the 25th percentile, but the evidence independently established, as detailed in the Association's submission, a serious and ongoing recruitment and retention problem at the University. Indeed, senior leadership at the University has, the Association submitted, frequently

and repeatedly pointed to this problem leading to the conclusion that the sought-after Recruitment and Retention adjustment amounts, to be applied to base in the first year for all PILs, should be awarded. When they were, and together with the requested across-the-board increases, and the amounts arising out of the earlier agreed-upon Structural Changes, they would collectively bring compensation to approximately 90% of the 25th percentile of the U15. To the extent there was any over-compensation, i.e., above the 25th percentile, that could be accounted for in the next bargaining round.

In further support of these submissions the Association noted that the provincial economic climate was good and steadily improving. Recovery was well underway. Provincial debt was high but manageable. The fiscal situation of the University was sound. It was, the Association argued, incontrovertible that inflation was a real and growing problem, with no sign of early abatement. Cost of living increases were, accordingly, both necessary and justified (and there was some evidence of cost-of-living adjustments in the provincial education sector that the Association referred to and relied upon). To be sure, there was a dearth of other provincial public sector settlements – settlements that would normally be given weight in a proceeding such as this – but that was not determinative given agreement that this arbitration be guided by the shared intention to move compensation toward the 25th percentile of the U15 during the term of the collective agreement.

Return to Work Disputes

Pay

The evidence was clear and categorical, the Association argued. Teaching that did not occur during the strike was required by the University to be performed after the strike. There was no reduction in assigned teaching and that had to be compensated. In addition, while some essential work took place during the strike, there was no doubt that when the strike was over, other deferred work – research and service – was performed.

In the case of teaching, striking members were required to perform all their annually assigned teaching duties for the 2021-2022 academic year. All teaching that could obviously not occur during the strike took place thereafter. There was no abridgement of instructional days and teaching hours – an option that was available to the University. One hundred percent of the teaching still had to be done, but in a compressed time frame. It would be completely inequitable, in the Association's submission, to expect its members to perform this deferred work but to do so without compensation. Likewise, deferred research and service activities were performed after the strike (along with essential work during the strike) and this work too appropriately attracted compensation.

Accordingly, the Association sought an order directing the University to pay for the teaching that was required after the strike. By way of example, if an individual had a 40% teaching load – which was normative – they should receive 40% of the compensation they lost during the strike (subject to union dues). With respect to Research and Service, the Association sought a declaration of entitlement to compensation for work performed during the strike or deferred and

performed after the strike. The Association asked that individual entitlements be remitted to the parties, but that I remain seized to resolve any disputes should the parties be unable to agree.

Pension

In the case of teaching that was not performed during the strike, but required afterwards, the Association, as previously noted, took the position that faculty members be paid for this work, as already described, and that the normal employer and employee pension deductions be taken from these pro rata amounts. The Association also sought an order permitting striking members to make retroactive contributions to the pension plan – and be credited for the service – for the period encompassed by the strike, both employer and employee amounts.

Deduction of Dues

The Association sought an order directing the University to deduct dues from members who worked during the strike, and to remit those deducted dues to it.

Health and Welfare Benefits

As is customary, the Association paid both employer and employee health and welfare premiums during the duration of the strike. The Association asked that this amount be reimbursed to it.

University Submissions

The General Salary Increase and Recruitment and Retention Adjustments

In the University's submission, the General Salary Increase should be as follows:

April 1, 2021: 1.25%

April 1, 2022: 1.5%

April 1, 2023: 1.75%

These across-the-board increases, together with the Structural Changes already agreed upon, achieved the shared objective of making “reasonable advancement” towards the 25th percentile. In fact, according to the University’s calculations, the offered across-the-board increases (relying on median data), when combined with the Structural Changes, and relying on certain assumptions that the University outlined, brought employee compensation “exceptionally close to the 25th percentile by 2024” (although, admittedly, comparing University outcomes with those in the U15 was problematic because data for many of these universities now and in the future is unknown).

The Structural Changes are as follows. On average, salary floors were increased as were the maximums. The threshold was removed from the salary scale together with upward adjustments to the value of the yearly performance increments. The University estimated that these Structural Changes had a cumulative value over the term of the collective agreement of around 4%. These Structural Changes – alone – would, based on the University’s analysis – actually result in achieving reasonable progress towards the 25th percentile even before any General Salary Increase. Completing the picture were the improvements to market stipends: utilization opportunities were broadened and amounts available had been substantially increased (although admittedly remained discretionary). Accordingly, and in the University’s view, its proposed General Salary Increase together with the Structural Changes did not just make “reasonable” progress of moving towards the 25th percentile, they made “significant” progress. In contrast,

according to the University's analysis, the Association's proposed compensation would "significantly exceed the 25th percentile and approach the 50th."

Given the economic outcome that would result from the University's proposals; namely, reasonable progress towards the 25th percentile, there was no need for any Recruitment and Retention Adjustment. Not only were such adjustments unnecessary to give effect to Paragraph 8, there was, on the evidence, no recruitment and retention problem that needed to be rectified (and to the extent individual issues arose, they could be addressed through the now broadened and increased market stipends). Simply put, in the University's view, there was no recruitment or retention problem. Turnover was low – there was an annualized resignation rate of approximately 1.7%, a rate that compared favourably in the sector – and the University was consistently and readily able to hire staff.

Moreover, in the University's submission, while Paragraph 8 was important, it was not the only factor to be considered in determining fair and reasonable compensation. Paragraph 8 did not say, as it might have, that the parties *will* reach the 25th percentile during the term of the collective settlement. Rather, it stated the objective of making reasonable progress toward that goal. Paragraph 8 – the mutual aims – were interrelated with replication and other criteria. And that meant objectively addressing sectoral outcomes, relevant comparators, market forces and economic realities, among many other factors. For example, the University's financial circumstances had to be considered. The situation was stable – the University was not claiming inability to pay – but at the same time the University was in no position to fund a profligate award. Its principal source of funding – the provincial government – was under pressure, as were

other traditional revenue streams. The provincial economic situation had to be considered: the provincial deficit and debt had dramatically increased. The impact of the pandemic on the economy was deep, and while there was evidence of recovery, uncertainty remained. Cost of living was increasing, but Winnipeg remained affordable especially compared with the cities and communities where the other U15 were located.

Also extremely relevant, in the University's submission, were direct comparators, such as, for example, the recently ratified University of Alberta agreement providing for across-the-board increases of 0% July 1, 2020, 0% July 1 2021, 0% July 1, 2022 and 1.25% on April 1, 2023 and 1.5% on December 1, 2023) with an additional .5% based on a "Gain Sharing Formula" in 2024 retroactive to 2023. There were few provincial public sector settlements to consider in this process, but the ones that were available confirmed that the numbers the University proposed were fair, reasonable and reflective of an outcome the parties would have reached had their negotiations concluded with a collective agreement especially when the Structural Change impacts – again worth approximately 4% over the term – were included in the overall compensation results.

Return to Work Disputes

The University also urged that all the Association requests for compensation under the Return-to-Work Disputes rubric be dismissed. There was simply no justification for retroactively paying employees who withdrew their labour. Employers could offer signing bonuses or other incentives to encourage employees to return to work from a strike, or for other reasons, but arbitrators should not order this. There was, likewise, no justification for adjusting pensions – no

matter who made the contributions – assuming it was even possible, which, the University suggested, was a dubious proposition at best given the terms and operation of the plan. As importantly, on a principled basis the fact was that work was not provided during the strike, and employees should not, in these circumstances, be entitled to be treated as if they had performed pensionable service. There was no justification for deducting dues from employees who did work and remitting them to the Association – those individuals were not represented by the Association during the strike and the University was under no legal obligation to deduct and remit those dues. And, finally, there was no justification for reimbursing the Association for the cost of continuing health and welfare benefits during the strike. The University was obligated to permit the Association to assume payment of these premiums, but there was no legal basis for the University to reimburse these payments after the strike and doing so would be completely inconsistent with sound labour relations as set out in the authorities. Not only were all of these Return-to-Work requests unjustified, they were also counter-intuitive and bad labour relations policy as they would do nothing but encourage future lengthy work interruptions.

Award

Paragraph 8 of the *Memorandum* is paramount and bears repeating:

In conducting the interest arbitration and determining the quantum of General Salary Increases and Recruitment and Retention Adjustments, the arbitrator shall be guided by the mutual aim of the Parties to achieve reasonable advancement in the U15 Group of Canadian Research University Salary Standings towards the 25th percentile, during the life of the Collective Agreement. The Arbitrator may consider arguments about the total effect of Article 24 in achieving reasonable advancement towards the 25th percentile during the life of the Collective Agreement.

First, the words “shall be guided” are a clear and compelling directive from the parties to make reasonable advancement toward the 25th percentile the priority. The arbitrator is not to *consider*; the arbitrator *shall be guided* (emphasis mine). When the parties wished the arbitrator to *consider*, as set out in the second and final sentence of Paragraph 8, they said so. As the

submissions make clear, this language was deliberately negotiated to bring an end to a lengthy labour dispute. It must be given meaning and it must be acted upon. Second, while “reasonable advancement” is not defined, there is not a lot of room between 15th, 14th and 13th to use the University’s placements, or 14th to use the Association’s placements, to somewhere between 11th and 12th place (which is the 25th percentile).

Second, in determining what “reasonable advancement” means, the parties, in the last sentence of Paragraph 8, have invited me to consider arguments about the effect of the Structural Changes in doing so. The University has costed that at approximately 4% – cumulative – over the course of the term. The Association disputes that costing. Either way, the economic impact is far from *de minimis* – acknowledged by the Association as a “gain” (albeit one with limitations for costing reasons discussed below).

Third, both parties made assumptions about outcomes over the course of the next few years – outcomes in compensation settlements that would affect U15 placement and “reasonable advancement.” There was granularity in these projections. In summary, however, the University urged me to project historical U15 settlement patterns on to the future and not account for inflation, while the Association urged me to adjust for anticipated inflation together with predicted normative wage outcomes. On balance, the Association’s assumptions about inflation adjustments and anticipated salary gains results in projected bargaining results that appear sectorally unrealistic. More importantly, they are not based on existing objective evidence which limited as it is, goes the other way, as discussed below. Notably, one year of the term of the collective agreement is over and the second year is about to begin.

There is also the matter of costing.

In my view, the preferred approach – as both the University’s and the Association’s involve assumptions – is to pay attention to the U15 data as it currently exists. Related to that conclusion, it is my view that the preferred costing method is to use means, not medians. Averages – the mean – is the most commonly used statistical measure and the one, for this reason and those that follow, best suited for present purposes.

I do not accept – a finding based on the data in the briefs – that there is actual evidence of a skewing effect here of extreme outliers, as suggested by the University, justifying the use of the median and have concluded, therefore, that averages, the mean, should be used when considering the General Salary Increase and movement towards the 25th percentile (a finding that also obviously impacts the University’s asserted value of the Structural Changes). The conclusion, again based on the data, is inescapable that median numbers are not particularly helpful in accurately plotting movement towards the 25th percentile, leaving me to conclude that the University’s proposed General Salary Increases, together with the Structural Changes, do not achieve the objective required by Paragraph 8 of the *Memorandum*. I also do not accept the Association’s submission that in giving effect to Paragraph 8 I should “err ... on the high side” and should salaries “rise above the 25th percentile ... that would provide good arguments the University could use at the next round of bargaining, to constrain further significant wage increases ...” The task at hand is to achieve “reasonable advancement in the U15 Group of Canadian Research University Salary Standings towards the 25th percentile, during the life of the Collective Agreement.” The task is not to provide a windfall; the task is to give effect to the

agreement memorialized in the *Memorandum*. I do not believe that it was ever in the contemplation of the parties that the base line for achieving the shared objective should rely on assumptions and projections both about salary increases and inflation over the term. The parties could have said that if they had wished, and it is legally and factually significant that they did not.

In fashioning this award, I am not oblivious to the corrosive effect of inflation on wages. Inflation may prove persistent, and if it is it will eventually be reflected in post-secondary free collective bargaining. Those outcomes/awards do not currently exist. If anything, the data indicates depressed sectoral salary results, in large part because of state action: the result of Ontario's Bill 124: *Protecting a Sustainable Public Sector for Future Generations Act*, 2019, but also, for example, more recently the results of free collective bargaining: for example, at the University of Saskatchewan (one year extension with 1.8% general salary increase in 2022/2023) and the University of Alberta (reviewed above).

In the meantime, making reasonable progress towards the 25th percentile should be made based on the data that is currently available – by and large the same data that was available when the parties entered into the *Memorandum*.

General Salary Increase to Achieve Reasonable Progress Towards the 25th Percentile.

April 1, 2021:	2.25%
April 1, 2022:	2.25%
April 1, 2023:	2.25%

Additional Special Adjustments as part of the General Salary Increases to Achieve Reasonable Progress Towards the 25th Percentile (Full Professors).

Full Professors not at max: to be treated in same manner as if it were an increment. Full Professors at max, or who reach max during the term, receive these amounts, pro-rated if necessary, as a lump sum.

April 1, 2021:	\$3000.00
April 1, 2022:	\$3000.00
April 1, 2023:	\$3000.00

Recruitment and Retention

I am not satisfied based on the evidence put before me that there is a retention issue; there is most definitely not a recruitment issue. The terms of Paragraph 8 of the *Memorandum* do not require me to order a Recruitment and Retention Adjustment no matter what. It would actually be perverse to order this kind of adjustment if I concluded, as I do, that there is no recruitment or retention problem to be addressed. For example, not a single Librarian has resigned in the last five years and it is far from challenging to fill vacancies. To be sure, the parties have historically agreed to modest recruitment and retention adjustments – but they last did so in 2013/2014. The University relied on future use of an expanded and enhanced market stipend to address any recruitment and retention issues that may arise. Normally, for whatever this observation is worth, recruitment and retention problems generally occur in particular faculties. Adjustments should, therefore, be targeted. Time will tell whether muscular targeted use is made of this discretionary funding.

Back to Work Disputes

Pay

There is no general entitlement for compensation lost because of a labour dispute. As Arbitrator Burkett observed in *Mount Allison University and Mount Allison Faculty Association* (2014 CarswellOnt 16645):

...it would be unusual, to say the least, for a third party to direct an employer to compensate its striking employees for loss of wages incurred as a result of withholding their labour in the form of a lawful strike. It is one thing for the parties themselves to agree, as one of the conditions upon which a strike is to be ended, to payments of this type (sometimes described as a signing bonus). It is quite another matter for a third party to award these types of payments where the parties have submitted their dispute to binding arbitration. The right to strike or lockout (except to the extent that it may be abridged in the interest of the greater common good, i.e. public health and safety, is a right that is fundamental to the functioning of a free and democratic society. However, it is a right that ought not be exercised without due regard to the merits of one's position and to the consequences. While I presume that the exercise of the right to strike in this case was exercised after careful deliberation, the fact remains that the primary purpose of a strike/lockout is to force the parties to agreement through the economic and other pressures that are brought to bear. In this case, the faculty must be presumed to have known that, subject to offsetting strike pay (which the Association correctly argues is delayed compensation already earned), they would suffer a loss of earnings and would most certainly have make-up work to do upon their return while, at the same time, the University officials would come under pressure from the community and from its students and, in the process, the University itself could suffer a loss of reputation. The secondary purpose of a strike/ lockout is, because of the economic and other disruption that it causes, to militate against future reliance upon the exercise of the right. To compensate striking employees for their strike-related losses or to force the University to make payments to charitable organizations after the fact would serve to lessen future resistance to the use of the right and, if the right is exercised in the future, make it more difficult to reach a compromissory result. It follows from the foregoing that, while parties themselves may choose to include such payments in the terms of a voluntary settlement of a strike/lockout, a third party should not award them (at para. 32)

In this case, however, when the strike was over the University had options. It could have truncated the academic year and the teaching that would take place within it. Instead, it chose to compress. In the result, faculty were required to perform all their assigned teaching, which self-evidently now included the teaching that had not occurred during the strike.

From the University's perspective, it did not require anyone to conduct the ordinary and assigned level of service and research upon the return to work as teaching duties were given precedence.

However, there is no evidence of any formalized changes to work assignments and what communications there were on point – for example, an email in early January 2022 from the

Vice Provost to Deans indicating that overall workload expectations were reduced – were not brought to the attention of Association members. Indeed, the University concedes, at a bare minimum, that some service linked to teaching was still required. The conclusion cannot be reached that the University altered workloads – teaching, service and research – in a factually and legally significant manner. The evidence indicates that the teaching that did not take place during the strike was required by the University after it and that some deferred service and research took place after the strike. (Some essential research work – for instance, laboratory duties – had to occur during the strike.)

There is, in the circumstances, no justification for not compensating employees for work performed. One hundred percent of the teaching assigned was performed and so 100% of the teaching must be paid for. Accordingly, faculty with teaching assignments are to be compensated for whatever proportion of their workload assignment was teaching, pro-rated for the period of the strike when they were obviously not paid. Any amounts paid are subject to union dues.

Research and Service is much more problematic. I do not accept that research and service can be easily turned on and off. The University asserts that teaching duties were prioritized by the University after the strike and that research and service were deemphasized – a proposition which I reject, for experience in these matters indicates first, that the cadence of academic life is otherwise, and second, that any such rearrangement was not communicated in any formal manner. There is no evidence that the memorandum from the Provost to the Deans was circulated to PIL. The University knows how to communicate workload, and workload changes, but this is not the manner to do so. Nevertheless, the Association's request to remit is simply an

invitation for future conflict and multiple proceedings with a most challenging and likely impossible quantifying task, and one that would not likely be informed by entirely reliable evidence. As well, the amount of time and attention that would be required to determine the value of essential work performed during the strike by strikers, and pushed forward research and service, would pale in comparison to the value of any likely award. More importantly, given the desire of the parties to turn the page and begin restoring their relationship, the labour relations benefits of leaving this matter subject to future almost certain intractable disputes where an attempt was made to determine individual activities not performed during the strike and then performed after it is far from apparent.

Accordingly, therefore, I direct a lump sum of \$1000 for Professors and \$500 for Instructors and Librarians (who almost exclusively only perform service). These payments are subject to deductions required by law but are not pensionable and are not subject to union dues.

Pension

The award on pension is two-fold.

First, the award has directed pro-rata salary compensation for any teaching performed after the strike that would have otherwise been performed during the strike. Consistent with that direction, pension contributions, both by the employee and the employer, must be made on this teaching compensation notionally calculated for the period of the strike. This award has directed a lump sum for service and research. This award does not direct that any amounts related to that lump sum be allocated for pension.

Second, this award also directs the University to request the Pension Committee to facilitate employees making both employer and employee contributions to the pension plan for the period of the strike – even if an amendment to the pension plan is required – and to do so forthwith as if employees were on an approved leave without pay or reduced pay or such other characterization to ensure no loss in pension contributions or service. All affected individuals must participate and make necessary contributions, again both employer and employee (subject to any adjustment for shared amounts paid by both the employer and employees on account of teaching).

This is not an amendment to the collective agreement; rather, it is a one-off resolution, directly authorized by the *Memorandum* and pursuant to the jurisdiction reposed in me. It is directed at ensuring that members not lose pension credits and service by requiring them to make both employer and employee contributions for the period of the strike (adjusted for any teaching where the contributions, as normal, are to be shared). As importantly, it also gives effect to the stated and shared objectives of the parties to take meaningful steps to restore their relationship.

I do not anticipate any difficulty in making these arrangements – the timing of this award will permit contributions prior to April 30, 2022 – but to the extent they arise and on the off chance that the pension contributions cannot be made, I remain seized to resolve any issues following a process developed in consultation with the parties.

Deduction of Dues

The Association sought the deduction of union dues from employees who worked during the strike. In my view, this request is wholly without justification. Persons who chose to work during

the strike were not represented by the Association – even if they arguably continued to benefit from its activities including the terms of this award – but it is hard to see on what basis dues should be deducted and remitted. Indeed, the Association acknowledges that the obligation to collect and remit ceased when the collective agreement terminated. The Association request is rejected.

Health and Welfare Benefits

There is no basis to direct the University to reimburse the Association for any portion of the premiums paid for Health and Welfare benefit costs it assumed during the strike. The Association request is rejected.

Conclusion

As agreed in the *Memorandum*, the collective agreement settled by this award shall consist of (i) the status quo provisions of the 2017-2021 collective agreement, (ii) the agreed-upon items and (iii) this decision. At the request of the parties, I remain seized with respect to the implementation of this award.

DATED at Toronto this 28th day of March 2022.

“William Kaplan”

William Kaplan, Sole Arbitrator