

IN THE MATTER OF A FINAL OFFER SELECTION ARBITRATION

BETWEEN:

SIMON FRASER UNIVERSITY

("University")

AND:

SIMON FRASER UNIVERSITY FACULTY ASSOCIATION

("Faculty Association")

RE:

Final Offer Selection: 2012-2014 Term

Vancouver, BC  
April 30, 2013

COLIN TAYLOR, Q.C.  
Arbitrator

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[1] Collective bargaining between the parties is governed by article 8 of their Framework Agreement. It provides a procedure for determining salaries and economic benefits. In the event collective bargaining fails to produce a settlement, the parties move to final offer selection arbitration.

[2] While the parties have reached agreement on most issues, they have reached impasse on the major monetary item and have submitted their final positions to me.

[3] Final offer selection - or last best offer - has been around for fifty years. It is intended to force the parties to their own negotiated settlement before the final offer selection is made. In its simplest form it empowers an arbitrator to select the final negotiating position of either party and impose it upon both as the final and binding resolution of the parties' impasse. The arbitrator is obligated to choose between the final offers as they stand. There is no authority to make any amendments or modifications. It is the risk to each party of submitting a final offer - winner take all - which increases the likelihood of settlement.

[4] The prospect of the other party's offer being more acceptable to the arbitrator generally induces each

party to submit a reasonable final offer and may even bring the parties to agreement without resort to an arbitrator's decision. Indeed, the present case illustrates the effectiveness of final offer selection. At the close of bargaining there were only two differences between the final positions of the parties. One was a minor difference in respect of the across-the-board increase in 2013 and the other a more significant difference regarding adjustments to the salary scales. The former difference was bridged by agreement to the psychological services benefit with a corresponding decrease of 0.05% in the across-the-board increase in the second year. It follows that there is final agreement on the general salary increase of 2% retroactive to July 1, 2012 with a further increase of 1.95% and the benefit improvement effective July 1, 2013. The parties agree that these general increases are comparable to other public sector settlements in British Columbia. There is, therefore, a single item unresolved: adjustments to the salary scales.

[5] The Faculty Association's position is that the scales for all ranks be remapped by raising the ceilings and floors by four full-steps costed at \$2,640 or \$10,560 (4 x \$2,640). The Faculty Association agreed that this did not take into account the impact of the across-the-board increases in 2012 and 2013. It follows that on the date proposed for the remap (August 13, 2013), the value of a step will have increased to

\$2,746. Thus, the cost of the proposed lift to floors and ceilings is \$10,984.

[6] The University's position with respect to adjustments to the salary scale is to add four steps to the top of the Senior Lecturer scale and four steps to the top of the Professor scale. These are the two terminal ranks. Further promotion beyond these ranks is not possible. With this proposal, the University is providing the potential for additional salary progression for those faculty at the ceiling of a terminal rank (Senior Lecturers and Professors) along with a general salary increase of 2% and 1.95%. The University anticipates that the cost of these additional steps will be offset in large part by reduced reliance on retention awards for members of these groups.

[7] The University does not propose additional steps for Lecturers, Assistant and Associate Professors because, it is asserted, they are eligible for further salary progression by promotion into a higher rank which the University seeks to encourage. The University wants all faculty members to progress successfully through the ranks to the highest possible level. For the remaining members of the bargaining unit, Librarians and Archivists, the University has reached agreement with the Faculty Association to review their salaries and, if the case is made, adjust them upwards to a maximum of \$5,000.

[8] The Faculty Association submits that its remapped salary scale adjustment proposal is essential because the faculty salary scale "is broken and regularization is required so that people with similar skills and qualifications are treated in a similar fashion rather than relying on ad hoc supplements."

[9] The Faculty Association submits that average salaries of its members are no longer competitive and the University has resorted to market differentials and retention awards. Currently a total of 426 of 1,105 Faculty Association members (39% of members across all ranks including librarians and limited term appointments) receive market supplements amounting to about 9% of the total salary bill. The mean (non-zero) salary supplement is just over \$25,000. The 2012 Faculty Renewal Report anticipates hiring 50 new faculty members for whom \$1.1 million is forecast to be spent on market supplements on a base salary of \$4.5 million. This works out to an average supplement over all hires (those with and without market differentials) of just over \$22,000. This, asserts the Faculty Association, "indicates just how bad our current salary scales are if such large market differentials are needed to hire new faculty."

[10] The Faculty Association asserts that the number and amounts of salary supplements is a clear sign that the salary scales are uncompetitive and that a

remapping will reduce the need for these ad-hoc adjustments.

[11] The University takes strong issue with the Faculty Association's assertion that the salary scale is "broken". It says that when the salary scale was originally put in place, the University was primarily a liberal arts and science university and a "one size fits all" salary scale met its needs. Since then, the University has grown and diversified, offering a range of professional, applied and highly specialized programs. Some faculty can now command high salaries outside the university sector. Some disciplines are in such high demand that faculty can command premium salaries. The University submits that market based supplements are now common at Canadian universities and its compensation system has evolved to recognize diversification and discipline-based competitiveness. The University also points to external bodies which provide salary supplements to exceptional faculty members.

[12] The University argues that retention awards have also become common in the university sector to provide incentives for faculty members not to take up positions elsewhere. An annual budget of up to 1% of the faculty salary base was established by the University some years ago for retention purposes.

[13] It follows, says the University, that for many faculty members, the salary scale provides only one component of their salary. That, it is contended, does not mean the salary scale is "broken": it means the salary system has evolved to meet the more complex characteristics of the University and the academic labour market while maintaining the commitment to merit driven salary progression and overall compensation. At the Assistant and Associate Professor levels, more than half of total compensation is "additional" to base salary (market/salary differentials, retention awards and the like). At the Professor level, 40% is additional; the Lecturer and Senior Lecturer levels much less.

[14] The University submits that "the most important characteristic" of the salary scales is that movement up a scale and the rate of advancement are merit-driven, as are tenure and promotion. It points out that not all faculty salary systems in Canada are based on merit to the same degree as at the University. At many universities, movement within a rank is an automatic one step each year with merit playing a role at tenure and promotion points. This type of salary progression at the University is in place only for Librarians and Archivists.

[15] The Faculty Association also submits that the remapping is necessary to reverse the University's decline in the ranking of faculty salaries at Canadian

universities. The University does not deny that it has slipped in that category ranking but does not agree this provides support for the Faculty Association's position. It says that such rankings are affected by a variety of factors including: disciplinary differences between the cohorts; the salary components included in the average salaries and overall age distribution and years in rank. Because of the effect such variables have on averages, the University says that reliance on aggregate salary data such as average salaries by rank is not sufficient to conclude that all salaries are uncompetitive. The University notes that the aggregate data indicate that the declining position described by the Faculty Association is, using 2006 as the benchmark, in the range of \$3-4,000 per annum for Assistant and Associate Professors and \$4-5,000 for Professors. The University also points out that the most recent Statistics Canada data indicate that average wages in British Columbia as of December 2012 fall below much of the country, ranking eighth overall.

[16] The University contends that a more important consideration when assessing the significance of aggregate salary rankings is whether the University has been facing recruitment and retention problems either generally or because the differential has been identified as a factor. The University says it has not experienced recruitment or retention problems and continues to attract and retain highly qualified and productive faculty. Over the past five years only



eleven faculty members a year on average (about 1%) have chosen to leave the University for reasons other than retirement. It says the most commonly cited reason for leaving is family preference, not salary. The University points to other factors which it says attract and retain faculty: location and climate; good benefit package including full tuition waiver for faculty and dependents; employer funded LTD; mortgage interest subsidy program; faculty member ownership of any intellectual property resulting from his or her work.

[17] The University calculates that the scale adjustments proposed by the Faculty Association will carry additional salary costs in 2013 of 1.43% or \$1.6 million; in 2014 of 1.51% or \$1.8 million and in 2015 of 1.56% or \$1.9 million. There is no material difference of opinion with these estimates. The Faculty Association does assert that increases in career progress costs ought not to be costed because they are "artifacts of the distribution of our members on our current salary scale." The difficulty with that position is that a lift to ceilings and floors of the salary scales as proposed by the Faculty Association will have a continuing cost to the University and result in higher salaries and higher lifetime earnings. The University points out that the cumulative impact of the Faculty Association proposal on the value of step 20, the highest step on the Professor scale, is a 12% increase. The current value of step 20 is \$133,045.

After the general increases and a four step remap, the value will be \$149,336.

[18] The University's status as a public university leads to its reliance on government financing as the primary source of its gross operating revenue. While tuition fees represent an important secondary source, they are capped at a maximum of 2% per year which will produce an additional \$3.5 million in 2013-14 which does not cover annual inflationary costs of some \$9 million.

[19] There has been no increase in the operating grant from the province in the past three years and the University has been told to expect a base grant reduction of \$5 million over the next three budget years (2013-14 to 2015-16). In 2006, the government funded the 4-year public sector wage settlements. The cost of salary settlements for 2012-14, however, must be found within the University's existing budget. The government imposed a bargaining mandate on the University limiting the cost of negotiated changes in salary and benefit levels to 2% in each year of a 2-year agreement which is about \$6 million each year.

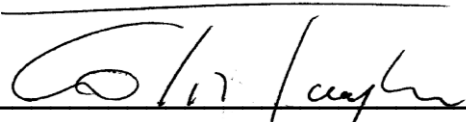
[20] The University asserts that severe cutbacks in funding for capital renewal have forced it to allocate internal funds to address deferred maintenance issues. As well, the University has found it necessary to increase its contribution rate to the defined benefit

pension plan for staff by 2.61%. Total compensation costs account for 70% of the University's operating budget and 93% of the Faculties' operating budgets.

[21] My task is to weigh all of the factors which the parties have skillfully advanced and determine where choice shall fall. Into that decision all of the relevant factors enter in varying proportions. Each factor, viewed objectively, finds its setting. In weighing conflicting interests in a final offer selection arbitration, the interest that is better founded in reason - that which is the most reasonable in the particular circumstances - will be chosen. It is a close call. One which has caused me to weigh and reweigh the relevant factors. In the end, I have determined that the closest to the mark - the most reasonable position - is that of the University.

[22] In the result, the final offer of the University is awarded and is binding on the parties.

DATED at Vancouver, British Columbia, this 30th day of April 2013.

  
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Colin Taylor, Q.C.