

In the Matter of a Final Offer Selection

between

The McMaster University Faculty Association

and

McMaster University

MU

FA



Brief submitted by
McMaster University Faculty Association
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Summary

We request that the final selector, under the mandate specified in Phase 3 — Final Offer Selection of the **Joint Committee Terms of Reference**,¹ consider the MUFA proposal as follows.

PROPOSAL: The McMaster University Faculty Association requests an Across-the-Board (ATB) award of 1.75% for one year for the period July 1, 2011 to June 30, 2012. All salary floors and all breakpoints in the Career Progress/Merit Scheme would also increase by this ATB percentage, as has been the case in all previous settlements and awards. There will be no change in member pension contributions or changes in benefits other than those agreed to as described in “Items Agreed to by the Parties” (p. 2).

Preamble

MUFA representatives met with Administration representatives from January 2011 to March 2011 to negotiate total compensation for McMaster faculty following the completion of the current agreement on June 30, 2011. While faculty representatives attempted to achieve a fair settlement, it became clear that the Administration would not agree to a settlement that is equivalent to those at comparator universities. The **Administration’s March 9, 2011 settlement offer** (that it chose to make public) included a two-year salary freeze (save for a base increase of \$1,000 in the second year) coupled with major reductions in compensation through increased pension contributions and increased cost of benefits. This would result in initial reductions in compensation for some faculty. Throughout negotiations, faculty representatives attempted to achieve a fair settlement that would help mitigate the serious pension issues currently facing the University. Unfortunately, no agreement could be reached on key issues resulting in a cessation of negotiations. MUFA strongly believes that changes in compensation, particularly long-term benefits, should be achieved in a collective bargaining environment to ensure the values embodied in our agreed-upon **Principles of Negotiations** are respected. We request an award that preserves the possibility of achieving these goals in future negotiations. The requested ATB award is modest in relation to the average of Ontario universities and is below the 2.0% average in public sector settlements (**Ontario Ministry of Finance Collective Bargaining Highlights**, January 2011).

¹References appearing in **Burgundy** are clickable links.

We request that the awarded term of settlement be one year, consistent with past practice at McMaster under Final Offer Selection. This will allow future negotiations to be conducted following any adoption of legislative changes affecting the long-term viability of Ontario university pension plans.

We note that several of the Administration's proposals, as posted, would lead to the creation of two sharply distinct groups of faculty: those with existing benefits and new faculty with substantially reduced pension and health benefits. As the Administration is well aware, MUFA has maintained a long-standing position, even prior to the last economic recession, that all full-time faculty possess broadly similar benefits. Creation of two classes of faculty, those with defined benefit pensions and those with a much less desirable group RRSP, could lead to an increasingly antagonistic campus environment in a few years. We note that the division of faculty into two groups is, to our knowledge, without parallel amongst our agreed-upon comparators, the G6 research-intensive universities of Ontario. Further, there has been no erosion of benefits at a comparator university in any recent agreement over the past few years comparable to proposed cuts in benefits that the Administration advanced in its initial brief — a stance maintained in its second posted February 15 brief and posted final settlement brief.

Status of Negotiated Items

ITEMS AGREED TO BY THE PARTIES

The following items were agreed to by both parties during negotiations:

1. Career Progress/Merit (CP/M)

The current Career Progress/Merit Scheme with 120 par units per 100 faculty will be maintained.

2. Child Care Support

The establishment of a committee with representation from the Administration and all employee groups to study the required expansion in day care spaces as well as the required licensing to accommodate children from birth to 18 months old.

3. Group Life Insurance

The optional employee-paid group life insurance coverage (above the employer-paid benefit coverage of \$175,000) will be increased from \$500,000 to \$1,000,000.

4. Professional Development Allowance (PDA)

There will be no increase to the professional development allowance during this contract.

ITEMS NOT AGREED TO BY THE PARTIES

1. Length of Contract

While the length of contract was disputed during negotiation, MUFA favours a short contract as this would allow impending financial information to be incorporated into long-term compensation valuations. The Administration position includes a provision for a long-term contract with inadequate overall compensation and no protection from an increase in inflation.

2. Across the Board (ATB) Increase

MUFA bases its ATB position on increases awarded to faculty at other excellent research intensive Ontario universities and categorically rejects the Administration position which is based on a misunderstanding of the force, scope and intent of the Ontario provincial government's wage restraint initiative and on internal comparisons that are inconsistent with our mutually agreed **Principles of Negotiation**. As described elsewhere in our brief, McMaster faculty salaries are, after age-correction, below that of faculty in peer universities and so the modest MUFA ATB proposal is made without prejudice of correction in future negotiations.

3. Pension Contributions

MUFA believes that pension contribution rates and plan design, including benefits, should be consistent with norms within the Ontario university sector for those universities that have defined benefit plans. Discussions regarding changes must implicitly recognize the benefit that the University has derived financially from previous plan surpluses and the University's responsibility for future funding that was determined through previous legal adjudication in **Maurer vs McMaster University**. Most importantly, while MUFA recognizes there are financial issues involving the McMaster Pension Plan, it could not accept an offer which coupled zero or low across the board increases in the first two years with such significant increases in pension contribution rates that the settlement ATB, net of pension contribution rates, was negative.

4. Extended Health Benefits

- Vision Care
- Paramedical Benefits
- Generic Drug Substitution

Extended Health Benefits are important to our members but as negotiations on this issue were linked to other elements of a potential agreement, this issue was not resolved. In the context of Final Offer Selection, we are not advancing any proposed improvement in benefits.

5. Post-Retirement Benefit Co-Pay for Faculty Hired after July 1, 2012

While MUFA has doubts about the financial priority that should be accorded to funding future retirement benefits, it recognizes that this is a concern of the Administration. If such benefits are to be funded, MUFA strongly prefers a mechanism that involves all faculty in such funding as opposed to singling out new faculty.

6. Replacement of Current Pension Plan with Group RRSP for Faculty Hired after July 1, 2012

MUFA rejects the proposed Group RRSP for newly-hired faculty for three reasons. First, the division of faculty into different benefit groups is without precedent among our comparator universities. Second, MUFA supports a long-standing position, of which the Administration is well aware, that all faculty should enjoy broadly similar pensions. Finally, the proposed RRSP would lead to a lower pension than current faculty can expect, and one subject to a much greater risk associated with market fluctuations. This is inconsistent with the **Principles of Negotiation** which specifically addresses this matter by stating that ***“Faculty should look forward to a good pension upon completion of their academic careers”***.

ITEMS PREVIOUSLY REMOVED FROM NEGOTIATION

1. Childcare

MUFA removed this item as we agree that further study of this issue, in consultation with other employee groups, will likely yield a satisfactory long-term solution.

2. Long-Term Disability

MUFA removed this item, without prejudice, as this issue may be addressed through the Joint Committee outside remuneration deliberations.

McMaster University

McMaster University developed from educational work initiated by Baptists in central Canada in the early 1830s. Incorporated under the terms of an Act of the Legislative Assembly of Ontario in 1887, the new University, housed in McMaster Hall in Toronto, offered courses in arts and theology. Changed conditions led to the transfer of the University from Toronto to Hamilton in the early 1930s. In 1957 the University became a non-denominational institution and the historic Baptist connection was continued through the separate incorporation and affiliation of a theological school, McMaster Divinity College. In 1976, the McMaster University Act established a Board of Governors with thirty-seven members. The Act provides that management and control of the University's property, revenues, and business affairs are vested in the Board and places the University's academic responsibilities primarily under the aegis of the Senate.

McMaster's approximately 1,000 faculty members carry out a wide variety of research, funded by contracts with the federal and provincial governments, with private industry, and with numerous other funding agencies and foundations. The total value of research funding at McMaster is approximately 400 million dollars per annum.

A wide range of sophisticated research equipment and infrastructure supports this research activity. Major library facilities exist to serve the needs of all Faculties. The Mills Memorial Library, with holdings in business, social sciences and humanities, is one of the best research libraries in Canada and one of the first Canadian university libraries to become a member of the prestigious Association of Research Libraries. The library houses many special collections including the collected papers of Bertrand Russell. The McMaster Art Gallery has an extensive collection that is acknowledged to be one of the finest university art collections in Canada. McMaster is eminent as an educational institution in many diverse fields, both at the graduate and the undergraduate levels. Our graduate program attracts large numbers of high-ranking students who successfully compete at the national level for fellowships and scholarships from the Natural Sciences and Engineering Research Council (NSERC), the Social Sciences and Humanities Research Council (SSHRC), the Canadian Institutes of Health Research (CIHR) and the Canadian Health Services Research Foundation (CHSRF). Over the past ten years, McMaster University, with little growth in faculty numbers, has experienced tremendous growth in both size and influence becoming one of Canada's premiere medical/doctoral universities.

In the area of undergraduate teaching, McMaster enjoys an enviable worldwide reputation for developing new problem-based teaching methodologies. It has developed unique models of education exemplified by the Arts & Science Program and the Bachelor of Health Sciences Program, both of which continue to attract excellent students.

In research, McMaster consistently scores highly in international rankings, comparable to much larger and older institutions. McMaster is currently ranked 88th in the world and 4th highest in the country in the highly regarded Shanghai Jiaotong University rankings. The *Times Higher Education* World University Rankings place McMaster University at 93rd in the world and 4th in the country.

The Joint Administration/Faculty Association Committee

Issues affecting faculty terms and conditions of employment are governed by the Joint Administration/Faculty Association Committee, a body approved by the Board of Governors. The mandate of the committee is to consider university financial matters and to discuss and negotiate matters related to terms and conditions of employment of faculty. The specific **Terms of Reference** of the Committee, including its role in remuneration negotiations, are defined in the charter of the Joint Committee.

History of Faculty Negotiations and Dispute Resolution at McMaster University

The Faculty Association and Administration at McMaster University have long enjoyed a collegial relationship to resolve financial issues and working conditions. Unlike many faculty associations in Ontario, MUFA is not a certified union and does not engage in collective bargaining or dispute resolution mechanisms that fall under the auspices of the Ontario Labour Relations Board. McMaster faculty cannot strike nor can they be locked out of their place of employment. Issues affecting faculty employment are reviewed on a monthly basis during the academic term by the Joint Committee which is composed of three senior administrators and three faculty members from the MUFA Executive.

Most issues referred to the Joint Committee are resolved by consensus. Disputes regarding non-financial matters may be further resolved by recourse to a mutually agreed upon third-party arbitrator or through the formation of an *ad hoc* joint committee.

In addition to its regular discussions, in those years when the compensation agreement for faculty and academic librarians is to be renewed the Joint Committee becomes the sole venue for negotiations. There is no direct participation by third parties. Unlike collective bargaining between an employer and a union, there is no massive collective agreement whose many articles may be re-examined. Rather the focus is simply on a small number of specific facets of compensation. There have been few occasions when mutual agreement could not be reached. Agreements resulting from successful negotiations have rarely been more than a few pages long (for past agreements see the MUFA website <http://www.mcmaster.ca/mufa/negfac.htm>). Occasionally complex issues requiring specialized expertise or requiring detailed study may, during the course of negotiation and by mutual agreement, be referred to an *ad hoc* committee (e.g. the drug formulary committee arising out of the 2006 negotiations).

It has been a long-standing practice that remuneration negotiations are confidential and without external communication, with the exception of the publication of initial briefs on December 15 and the February 1 Report (see **Joint Committee Terms of Reference**). This allows intermediate positions to be advanced without prejudice to the final positions of the respective parties. In the current round of negotiations, the Administration departed from past practice by posting intermediate **February 15** and **March 9 Final Settlement** positions. MUFA strongly favours continued confidential negotiations so that information and positions can be freely exchanged.

The last time Final Offer Selection arbitration was employed to resolve a dispute was in 1996 and Final Offer Selection has only been used four times in total as noted below. In each case, a small number of outstanding issues formed the basis for the Final Offer Selection decision.

YEAR	SELECTOR	ISSUE	AWARDED TO
1987	Kennedy	ATB increase to include a "catch-up" to address erosion vs Administration position no catch-up is required	MUFA
1989	Kennedy	Improvements in pension and additional catch-up vs Administration ATB offer	Administration
1990	Shime	ATB of 7.1% vs Administration's 6.0% ATB (established importance of comparators)	MUFA
1996	Kennedy <i>et al</i>	Recovery CP/M and ATB following Social Contract vs Administration's no CP/M and no ATB	Administration

While the reason for resorting to Final Offer Selection was, in each case, financial differences, selector rulings represent thoughtful reflections on the unique nature of university faculty compensation. In particular, the **Shime ruling** has become a landmark decision that has been cited extensively in many subsequent awards including the recent University of Toronto award (**Teplitsky, 2010**).

On one other occasion, the 1993 negotiations were unsuccessful and as a result Phase 3 Final Offer Selection was initiated. However, upon exchange of the briefs prepared for Final Offer Selection, the positions of the two parties were so close that, by mutual agreement, mediation was employed to resolve the differences. This resulted in the Administration and the Faculty Association signing a **Memorandum of Agreement** regarding the use of mediation during remuneration negotiations. However, this mediation has not been employed in any subsequent negotiation.

Principles of Negotiation

Both MUFA and the Administration, in their respective initial briefs, re-affirmed their support for the mutually-agreed upon **Principles of Negotiation** that have formed the basis of many successful past negotiations. These principles, as elaborated in the following, favour the equitable resolution of differences.

1. Faculty salary and benefits should compare favourable [sic] to those in comparable jurisdictions, including specifically other excellent universities.

This is the most important principle that bears on MUFA's final selector brief. The 1.75% ATB is well-justified in the context of settlements at comparator universities and with generally-

accepted methods of adjustment (e.g. age-correction and exclusion of faculty with primarily medical appointments). MUFA expresses concern that the Administration has departed from past practice in negotiations by introducing an unconventional argument that is not based on our *Principles of Negotiation* or not generally employed in university-faculty negotiations in Ontario. The Administration has employed cost-of-living adjustments to faculty salary averages that omit consideration of important confounding variables as set out in the section, *Compensation at Comparator Institutions*. More importantly, the Administration has, in its initial brief and throughout negotiation, maintained that changes in faculty compensation, including benefits, must be derived from and limited to, compensation agreements negotiated with other employee groups on campus (e.g. CAW and The Management Group [TMG]). This stance is not only an implicit rejection of a fundamental tenet of the *Principles of Negotiation* but is inconsistent with previous arbitrations including **Shime (1990)** who identified six criteria in ranked order that should be used in determining faculty compensation. In addition, MUFA believes that collective bargaining of individual employee groups with an employer should be conducted independently whenever possible to ensure that only group-relevant factors (such as a comparison of faculty salaries and other universities) are taken into account in determining compensation.

MUFA maintains that a 1.75% ATB award is modest in relation to settlements at other comparator universities. The University of Western Ontario and the University of Waterloo have recently settled multi-year negotiations. Both agreements provide additional compensation increases in the final years of their respective settlements making it difficult to compare to the proposed one-year ATB. The University of Western Ontario's agreement is calculated to be 8.92% over four years while Waterloo is 9.0% over 5 years, yielding average increases of 2.23% and 1.8%, respectively. Other recent settlements in the university sector include Carleton and Nippissing, which have yearly average increases of greater than 1.75%. The 2010 University of Toronto settlement, arbitrated by Teplitsky, resulted in 2.5% ATB per year in a two-year agreement. Importantly, recent awards in our agreed-upon comparator group (G6 universities), or the university sector in general, have not resulted in a net decrease of benefits to faculty. In fact, modest increases in paramedical benefits have been achieved at both Carleton University and the University of Toronto in recent agreements (see **OCUFA Comparisons of Salary Settlements for 2010/11, 2011/12 and 2012/13**).

MUFA notes that McMaster faculty, as an important determining factor in the growing international reputation of McMaster University, should receive compensation equal to that of

other Canadian universities that are also highly-ranked by independent international measures such as the *Times Higher Education* annual rankings and the Shanghai Jiaotong ranking.

2. Faculty salaries and benefits should be protected from inflation.

While MUFA strongly endorses this principle, our proposed ATB does not take into account the effect of inflation, without prejudice. The annual Canadian and Ontario-specific Consumer Price Index (CPI) for January 2011 is 2.1% (Statistics Canada) which is higher than our proposed 1.75% ATB. Significantly, Administration proposals offered in negotiation do not offer protection from CPI increases. Further, the long term nature of their proposals puts our faculty salaries at significant risk to erosion as CPI is expected to increase to higher stable levels in coming years (**Ontario Economic Outlook & Fiscal Review 2010**).

3. Differing degrees of contribution to the University depending upon experience and individual talents should be recognized through application of the CP/M Scheme, with sufficient par units to enable the rewarding of the many excellent faculty members without penalizing other competent faculty members.

MUFA favours the current CP/M scheme which rewards meritorious achievement. The continued implementation of the CP/M Scheme was one of the items agreed to by both parties.

4. Faculty should be protected from catastrophic expenses, such as those arising from ill health.

MUFA is concerned that reductions in previously-negotiated benefits (i.e. by adoption of a drug formulary or introduction of a co-pay system) would adversely affect our members. As a result of previous negotiations (2006), MUFA agreed to participate in a drug formulary study with the Administration to identify cost savings that could be applied to other benefits. The results of that study indicated that the savings that would accrue from adoption of a more restricted formulary were small and further discussion was terminated by the Administration. In reviewing recent utilization data, MUFA notes that health benefit use by faculty are comparable to other groups in absolute dollars and when expressed as a percentage of income are much smaller. To the extent that the Administration proposal reduces extended health benefits, their position is inconsistent with article 4 of the *Principles of Negotiation*.

5. Consideration should be given to the tax effects of the form of remuneration.

The tax implications of benefits is a serious consideration for many of our members because, as higher-paid professionals, taxable benefits are paid with income taxed at high (40%+) marginal

rates. As noted in the MUFA summary article on post-retirement benefits (see *MUFA Newsletter Article by J. Berlinsky and M. Veall*, December 2010/January 2011, Volume 37.3), previously-negotiated post-retirement benefits are highly tax-efficient and should be retained as a cost-effective form of deferred compensation.

6. Faculty should look forward to a good pension upon completion of their academic careers.

Proposed reductions in pension benefits for new faculty (placing them in a group RRSP) undermine this principle. Defined benefit pension plans are widely recognized as providing significantly better provision for retirement than either group RRSPs or defined contribution plans and are, by far, the most common type of plan provided to Ontario faculty (as either pure defined benefit or as the equivalent defined contribution plan with a minimum benefit [so-called “hybrid plan”]).

MUFA is well aware of pending challenges to public pensions. The periodic valuation of the McMaster Salaried Pension Plan, originally scheduled for July 2010 but delayed at the Administration's request until July 2011, is critical in developing long-term funding strategies to address pension plan liabilities. Financial information regarding valuation, combined with further clarification of the government's intentions through legislative changes, is critical information MUFA requires before agreeing to pension contribution increases. Other factors including predicted increases in interest rates (resulting in a reduction in liability through an increase in the discount rate) and change of discretionary plan assumptions, may significantly reduce liabilities.

In addition, MUFA notes that arbitrator **Teplitsky**, in the 2010 University of Toronto Award, reiterated the view that increases in member pension contribution rates represent a decrease in total compensation (see below). Consistent with this view, MUFA, in the 2006 Joint Committee Agreement, only agreed to increased pension contributions that were fully offset by corresponding salary increases. In this precedent agreement, the McMaster Administration implicitly recognized that pension contribution rates are an integral component in determining total compensation increases.

Compensation at Comparator Institutions

Both MUFA and the Administration, as stated in our *Principles of Negotiation*, agree that compensation at comparator institutions should form the basis for negotiated compensation. Prior to the 2007 negotiations, the comparator group used was the Bovey 6 Ontario universities as identified by the Bovey Commission. At the outset of the 2007 negotiations, the comparator group was changed, by mutual agreement, to the Ontario G6 component of the Canadian research-intensive universities. This group comprises McMaster, Queen's, Toronto, Western, Waterloo and Ottawa; in effect, Ottawa was substituted for the University of Guelph. Because McMaster's geographical location makes it an increasingly attractive option for Toronto area students, MUFA has also compared, in its initial brief, salaries at McMaster to Toronto-area universities and Ontario universities as a whole.

Salaries at McMaster, as noted in the initial **MUFA brief**, have, on a straight average basis, lagged slightly behind other universities. Rather than adjusting for conventional variables, the Administration has applied a normalization to salaries for cost of living. This unusual type of adjustment has not been made in any previous brief nor has it been made, to the best of our knowledge, in any other Ontario faculty-university negotiation (by either side). Even the University of Toronto Faculty Association (UTFA), whose position would be strongly supported by this type of normalization, does not employ cost-of-living adjustments. There are many problems associated with such an adjustment, including:

1. Cost-of-living analysis includes cost of housing which is an investment not just a cost. Faculty living in a high-cost Toronto area acquire a higher value asset than faculty at McMaster who live in a lower-cost area.
2. Funding to universities is not allocated based on cost-of-living adjustment and the University would likely strenuously object if the province took this factor into account by, for example, reducing funding to the University based on the lower purported cost-of- living in Hamilton.
3. Cost-of-living in Hamilton is assumed to be homogeneous, but in fact is very different based on area of the city. Few faculty live in the low-cost, highly populated east Hamilton area which is included in the cost of living comparison. In fact, a large proportion of our faculty live in Ancaster, Burlington, Oakville, Mississauga, Toronto, or other high-cost areas and this is not included in the analysis.

MUFA notes that reported average faculty salaries are affected by demographic changes in age profile and that age correction is required to validly compare salaries (this is the reason that age

classes are reported in the standard Statistics Canada University Faculty Salary database). This has been accepted by arbitrators in previous university salary comparisons (**Beck-Waterloo, 2000**). Among the G6 universities, increased faculty hiring by the University of Ottawa and lesser hiring by McMaster, among other factors, has made age correction of salaries an absolute necessity. Applying this correction reveals that salaries at McMaster University currently lag our comparator universities by almost \$4,000 (see **Comparison of Age-Corrected Salaries at Ontario G6 Research-Intensive Universities**).

A complication in the current negotiations, largely absent from previous negotiations, has been the Administration's insistence that compensation agreements achieved with other groups on campus, both unionized and non-unionized, should be determining factors in changes to faculty compensation. This is exemplified by the use of comparisons of past faculty salary increases to those of the CAW (support staff) and TMG (The Management Group) employees groups in their initial December 2010 brief and the rationale presented for their proposed changes to post-retirement benefits and pensions (both increased contribution rates and change to a group RRSP). We note that comparison with other campus employee groups is not one of the six ranked criteria identified by arbitrator **Shime (1990, McMaster)** in determining faculty compensation. Shime placed paramount importance on **comparison of total compensation with faculty at other universities** with particular reference to the "Principles concerning individual compensation as agreed between McMaster University and the Faculty Association".

The Career Progress/Merit (CP/M) Scheme is a common feature of most university faculty compensation agreements and is similar in value across the university system. It does not constitute any part of the reported ATB increase (percent or fixed dollar amounts) in comparator faculty collective agreements and thus should not be considered by the selector to be a factor in the decision.

Ontario Provincial Government Wage Restraint Initiative

In its initial brief, the Administration clearly stated its intent to achieve compensation agreements consistent with the Public Sector Compensation Restraint to Protect Public Services Act, 2010 (see **Administration Brief**) announced in May 2010. In initial remuneration meetings, MUFA reminded the Administration that the wage restraint initiative does not apply to faculty salaries (see **MUFA submission to Joint Committee**). The government itself considers

that it has sufficiently attained its goal because of reduction in public settlements (Minister Dwight Duncan commenting on the University of Western Ontario settlement, as reported in the **Western News**). Nonetheless, the Administration continued to make achieving 0% ATB compensation for two years a priority in negotiation which markedly reduced the possibility of bringing the process to a successful conclusion. The relevance of the provincial wage restraint initiative to public sector bargaining since the announcement of the initiative has been reviewed by **Teplitsky (Toronto 2010)** with specific reference to faculty at a comparator university:

The Government tabled its Budget Bill (Bill 16) on March 25, 2010. Schedule 25 to Bill 16 is the "*Public Sector Compensation Restraint to Protect Public Services Act 2010*" (the Act).

This Act precludes any increases in compensation for a 2-year period - March 24, 2010 to March 31, 2012. It applies to approximately 350,000 public sector employees who are not represented by a union or an association. This total includes approximately 1,300 U of T employees. UTFA members are not directly affected by this legislation because they are represented by an association. Presumably the reach of the Act was limited because of a concern that including unions and associations would infringe on freedom of association in the Charter of Rights.

Most public sector settlements, while lower than in the past, have not conformed with the government's initiative. Government directives that potentially impinge on the collective bargaining process have long been rejected by arbitrators as potentially endangering their independence in the adjudication process. For example, **Shime (McMaster 1990)** noted:

The Universities are funded by the Provincial Government. In recent years the funding has not been as generous as it might be which no doubt has eroded the salaries of University Professors. If arbitrator/selectors were to consider the funding level of Universities for the purpose of salary determination, they would in effect become handmaidens of the Government. Arbitrators/selectors have always maintained an independence from Government policies in public sector wage determinations and have never adopted positions which would in effect make them agents of the Government for the purpose of imposing Government policy. Their role is to determine the appropriate salary range for public sector employees regardless of Government policy, whether it be funding levels or wage controls.

This position has been reaffirmed in subsequent rulings and most recently by **Teplitsky (Toronto 2010)** who, with specific reference to the current provincial wage restraint initiative, stated:

It is plain that what drives the Government's legislation and policy is its legitimate concerns about the huge provincial deficit and its impact on the Government's ability to provide services. Obviously "0%" public sector increases make funding of services easier: The full title to the legislation makes this intent clear. This is a clear case of

either requiring or asking public sector employees to subsidize the public because public services benefit the public as a whole. A more equitable approach to protect these services would be to spread the "pain" widely by measures which increase revenues (more taxes or user fees) although I recognize that such measures would be less popular than the one adopted by the government. I agree with UTFA that recognizing the "Act" as relevant would be a recognition of ability to pay as a relevant criterion and recognizing the policy statement would compromise my independence. I would appear a minion of government. Thus, in fashioning this award, I have not taken into account either the legislation or the policy.

The final selector in this matter has recently expressed similar views on the role of the province in collective bargaining:

The notion of government controlling the outcome as the "ghost at the bargaining table" has long been rejected. It cannot be, therefore, that mere government pronouncements, absent legislative confirmation, can be relied upon to nullify good faith bargaining and distort the application of Section 9(1) of the Hospital Labour Disputes Arbitration Act. [*Canadian Union of Public Employees Local 4000 v. Ottawa Hospital*, October 20, 2010 (Burkett, Chair)]

While there is no doubt that this province has fallen upon difficult economic times, we must consider the full range of relevant economic indicators as they impact upon collectively bargained terms and conditions of employment. Government pronouncements of intent with respect to future funding are not, in and of themselves, sufficient to override what would otherwise be the content of an arbitrated award. A legislated directive would be required for this to happen. Indeed, if an interest arbitrator was to allow government expressions of intent with respect to funding, even in difficult economic times, to determine the content of an award, the effect would be to resurrect the ghost at the bargaining table long ago laid to rest and to thereby strip Section 9(1) of the HLDA of all meaning. [*Service Employees International Union v. Participating Hospitals*, November 5, 2010, Ontario Board of Arbitration (Burkett, Chair)]

Ontario Economic Outlook

After three years of declining GDP growth, the Ontario economy is predicted to continue to rebound with stable increases in GDP growth. CPI inflation is predicted to be about 2.0% for the foreseeable future due to broad increases in interest rates, food and energy. A summary table from the Ontario Ministry of Finance 2010 outlook² is provided below. The proposed ATB does not fully address the predicted increase in CPI and thus represents a modest proposed increase.

²This forecast is based on information available up to November 10, 2010. "The Ministry of Finance is assuming real GDP growth of 3.2 per cent in 2010, 2.2 per cent in 2011, 2.5 per cent in 2012 and 2.7 per cent in 2013. This is 0.2 of a percentage point below the private-sector average each year to be prudent." (From the **Ontario Economic Outlook and Fiscal Review**, p. 70)

	2007	2008	2009	2010p	2011p	2012p	2013p
Real GDP Growth	2.0	(0.9)	(3.6)	3.2	2.2	2.5	2.7
Nominal GDP Growth	4.2	0.1	(1.1)	5.6	4.1	4.5	4.6
Employment Growth	1.6	1.4	(2.4)	1.7	1.7	1.8	1.9
CPI Inflation	1.8	2.3	0.4	2.3	2.1	2.0	2.0

p = Ministry of Finance planning projection.

Sources: Statistics Canada and Ontario Ministry of Finance.

Proposed Ontario Pension Solvency Relief Initiative

Many public Ontario defined-benefit pension plans currently have solvency deficits. An analysis of the public pension system and possible solutions to the funding problems were contemplated in the 2008 Arthurs Commission report (**Report of the Expert Commission on Pensions, A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules**). Though many of the recommendations have yet to be implemented, the provincial government has begun consultations to ensure the future viability of public pension plans.

MUFA understands that proposed provincial pension **solvency relief legislation** will be a key factor in pending university faculty compensation talks. We note the proposed Ontario solvency plan, even if passed, will not mandate immediate increased member contributions or changes in plan design, allowing provision for such changes to be negotiated through normal collective bargaining processes. To be eligible for the proposed stage 2 phase of solvency relief, the Administration will likely submit a plan to address deficiencies in the current McMaster salaried pension plan. We look forward to expected talks that will be scheduled with MUFA and other plan stakeholders as this will likely be an important component of the Administration's plan for the filing for solvency relief. Such plans may include a proposal to increase member contributions to the plan. We note that there has been a precedent agreement in which MUFA member contributions were increased and we strongly believe that this can form a basis for future agreements on contributions that will result in long-term stabilization of the pension plan — a matter that is a key concern for our members. As has been past practice, MUFA will review the status of the plan following the July 1, 2011 scheduled actuarial valuation and will,

through its representative members on the Pension Trust Committee, recommend a course of action to the Finance Committee of the Board of Governors.

University Financial Condition

MUFA understands that there are pressing challenges that face the post-secondary sector, especially following the 2008 recession. Nonetheless, planned Ministry of Training, Colleges and Universities (MTCU) allocations will result in a substantial increase in funding to the university sector (**OCUFA, Budget 2010 Backgrounder: Ontario's Postsecondary Spending Plans**). McMaster has experienced a dramatic increase in first choice acceptance rates among high school applicants (**Ontario Universities Application Centre — March 03, 2011 report**). As a result, McMaster University could realize increased revenues from the substantial increase in predicted Ontario post-secondary enrolment during the next two years.

In light of rapidly increasing revenues and student enrolment over the past ten years, MUFA, through the MUFA Budget Advisory Committee (BAC), has closely monitored the University's budget and stated policies, providing critical analysis of University finances. These reports have also served as faculty-based analyses of University resource allocation to the twin missions of teaching and research.

The first BAC report in 2008 (**Do McMaster's Expenditures Reflect Its Mission?**) examined multi-year trends in funding and expenditures measuring these against the faculty salary component. These data reveal that the University investment in faculty (salaries and renewal) has, over a long period, substantially lagged behind the large increases in consolidated revenues.

The second BAC report in 2009 (**The Two Solitudes**) reviewed compensation to administrators following the release of McMaster senior administrator employment contracts that was requested by the *Hamilton Spectator* under the Freedom of Information Act. The extraordinary supplementary compensation arrangements for senior administrators severely challenge notions of internal equity that the Administration refers to in their public documents. In fairness, it should be noted the high, disproportionate administration compensation is a North America-wide problem that has been critically examined in the American Association of University Professors, **2007-08 Report on the Economic Status of the Profession**.

The third BAC report, issued last year, (**Understanding the Pension Muddle**), assessed the current McMaster pension situation in light of government reports including the Arthurs Commission report and **Final Report of the Working Group on Pensions** by the Council of Ontario Universities in February 2010. MUFA regards these analyses as essential steps prior to making changes to the contributory nature of the McMaster defined benefit plan.

These reports have provided important financial information to the faculty community to discussions of allocation of resources. They reveal that the University has the resources to fund our reasonable ATB proposal.

In its **Opening Statement and Proposal** (December 15, 2010) the Administration in effect invoked its *inability to pay* as partial justification of a zero ATB by referring to "current economic conditions, McMaster's financial position, ..." (their p. 3). The reasons why *ability to pay* has been rejected as a persuasive criterion by arbitrators has been summarized as follows³:

- (1) *Ability to Pay* is a factor entirely within the government's own control.
- (2) Government cannot escape its obligation to pay normative wage increases to public sector employees by limiting the funds made available to public institutions.
- (3) Entrenchment of *Ability to Pay* as a criterion deprives arbitrators of their independence, and in so doing so discredits the arbitration process.
- (4) Public sector employees should not be required to subsidize public services through substandard wages.
- (5) Public sector employees should not be penalized because they have been deprived of the right to strike.
- (6) Government ought not to be allowed to escape its responsibility for making political decisions by hiding behind a purported inability to pay.
- (7) Arbitrators are not in a position to measure a public sector employer's *Ability to Pay*.

Extended Health Benefits

Faculty benefits at McMaster must be measured in relation to comparator universities. Benefits achieved in past negotiations at each university have resulted in very different benefit profiles

³Sack, "Ability to Pay in the Public Sector: A Critical Appraisal" (1991, Labour Arbitration Review Yearbook)

which are largely due to differing faculty association objectives. This complexity makes comparison of total compensation difficult. Nonetheless, comprehensive independent professional assessments can provide cost estimates of benefit utilization and can provide valid comparative measures of relative benefits, despite differing benefit profiles. A recent **benefit survey commissioned by the University of Ottawa** reveals that McMaster University faculty benefits are about average amongst comparator universities. Regardless, any decrease in benefits will result in a net decrease in total compensation relative to our comparator universities.

Pension Contribution Rates

It is well-established through arbitration rulings, that pension contributions and benefits are an integral component of total compensation and that changes made must be in recognition of this principle. For example, **Kennedy (1989 McMaster)** in adjudicating a relatively minor proposed pension improvement noted:

Based on all the materials filed, I would conclude that the change implemented with respect to retirement date in 1985 had an unintended result of giving an effective increase in pension entitlement to anyone retiring on other than July 1st. In correcting that anomaly, it is appropriate to do so on the basis of the principle of the pension plan before the change was introduced, and that principle was that a retiree on July 1st was not intended to get the benefit of the negotiated ATB increase coming into force on that date, nor was he or she intended to get the benefit of any indexing until the following July 1st. The University proposal accomplishes that result, removes the anomaly relating to month of retirement, and maintains the level of pension benefit at what was originally intended under the principles of the plan. To take the next step, as is proposed by the Association, and reduce the period of computation to 42 months, constitutes a significant improvement to the pension plan and should be negotiated between the parties on that basis, and not in the guise of correcting an anomaly. It would appear that the anomaly itself can be resolved without significant cost consequences, and that is what is proposed by the University. **If, in addition, there is to be a significant increase in pension benefits, it should be negotiated and settled on that basis and as part of the total compensation package that is being sought.** [*Emphasis added*]

More recently Teplitsky re-affirmed this principle by directly comparing proposed increases in contributions to an equivalent decrease in ATB (**Teplitsky, Toronto 2010**).

The University sought a substantial increase in member contributions based on the pension plan's deficit and because at some comparable universities, pension plan contributions are higher.

Although this demand is framed within the pension context, it is, in reality, an attempt to reduce total compensation. I am not satisfied that a reduction in total compensation is warranted. Rather, I have found that an increase is appropriate. To take away with the left hand what was given with the right seems inconsistent.

The pension contributions rate advanced by the Administration in their posted briefs would make McMaster faculty contribution rates among the highest of our comparator group of universities that have defined benefit plans, equivalent to contribution rates at the University of Waterloo. Waterloo is the only comparator university with rates that are substantially higher than the current McMaster contribution rate. As noted in our age-corrected salary comparisons, average salaries at the University of Waterloo are higher than at McMaster University. In addition, the Waterloo plan includes full pension indexing and the derived Waterloo pension is based on the average of the best three years of earnings rather than four years, as is the case for faculty at McMaster. With Administration proposed increases in pension contributions and changes in existing plan design, McMaster's pension plan would become the least desirable defined-benefit pension plan relative to plans at comparator universities.

Concluding Remarks

MUFA believes its modest proposal represents an equitable settlement that is well-supported by past precedent, respects our *Principles of Negotiation* and is consistent with settlements at comparator universities. MUFA reserves and requests the opportunity of responding to the Administration Final Offer Selection proposal.

Links:

American Association of University Professors, 2007-08 Report on the Economic Status of the Profession

Stanley M. Beck, Final Offer Selection at the University of Waterloo (2000)

J. Berlinsky and M. Veall, "**Post Retirement Benefits: Are They Sustainable?**", *MUFA Newsletter*, December 2010/January 2011, Volume 37.3, pp. 2-3.

Budget Advisory Committee (BAC) Annual Report (2008)

Budget Advisory Committee (BAC) Annual Report (2009)

Budget Advisory Committee (BAC) Annual Report (2010)

Comparison of Age-Corrected Salaries at Ontario G6 Research-Intensive Universities

COU Final Report of the Working Group on Pensions (February 2010)

Final Offer Selection Brief: Kennedy (1987)

Final Offer Selection Brief: Kennedy (1989)

Final Offer Selection Brief: Shime (1990)

Final Offer Selection Brief: Kennedy, McKechnie, Swan (1996)

Joint Committee Memorandum of Agreement re Mediation (1993)

Joint Committee Negotiated Agreements on MUFA Website

Joint Committee Terms of Reference (1988)

Maurer vs McMaster University (1991)

McMaster University Administration Remuneration Brief (December 2010)

McMaster University Administration Remuneration Brief (February 15, 2011)

McMaster University Administration Remuneration Brief (Settlement Offer, March 9, 2011)

McMaster University Faculty Association Remuneration Brief (December 2010)

MUFA Submission to Joint Committee re Wage Restraint Initiative (January 2011)

OCUFA, Budget 2010 Backgrounder: Ontario's Postsecondary Spending Plans (March 2010)

OCUFA Comparisons of Salary Settlements for 2010/11, 2011/12 and 2012/13

Ontario Economic Outlook & Fiscal Review (2010)

Ontario Ministry of Finance Collective Bargaining Highlights (January 2011)

Ontario Universities Application Centre — March 03, 2011 report

Ottawa University Benefit Survey (December 2010)

Pension Benefits Act Regulation 909: Temporary Solvency Funding Relief for Certain Pension Plans in the Broader Public Sector

Principles of Negotiation (1990)

Report of the Expert Commission on Pensions, *A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules* (Ontario 2008)

Martin Teplitsky Award (Toronto 2009/10)

Western News, “**Salary bumps bode well for province’s bottom line**” (November 2010)