# ARBITRATION

Pursuant to a collective agreement

BETWEEN:

**THE GOVERNORS OF ATHABASCA UNIVERSITY**
(the "University")

- and -

**ATHABASCA UNIVERSITY FACULTY ASSOCIATION**
(the "Faculty Association")

In the matter of interest arbitration involving the selection of a final offer.

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# AWARD

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**ARBITRATOR**

D. P. Jones, Q.C.

**REPRESENTATIVES FOR THE UNIVERSITY**

Chantelle T. Kassongo
Laura Inglis
Donna Romyn

**REPRESENTATIVES FOR THE FACULTY ASSOCIATION**

John Carpenter, Q.C.
Nick Driedger

**HEARD** at Edmonton, Alberta on 3 May 2017.

**AWARD ISSUED** at Edmonton, Alberta on 14 June 2017.

## I. NATURE OF THIS INTEREST ARBITRATION

[1] This is a final offer selection interest arbitration to determine the salaries of the academic staff at Athabasca University.

[2] The University's final offer was:[1]

- increase salaries by 1% for 2016-17, 2% for 2017-18, and 2% for 2018-19.
- suspend the merit increments for 2017-18 and for 2018-19.
- decrease the professional development allowance for academics by $500 in 2017-18.
- decrease the professional development allowance for professionals by $500 in 2017-18 and by a further $500 in 2018-19.

[3] The Faculty Association's final offer was:

- a 2-year term;
- a 2% salary increase for the year running from 1 July 2016 to 30 June 2017;
- a 2% salary increase for the year running from 1 July 2017 to 30 June 2018.

[4] By its nature, a final offer selection arbitration requires the arbitrator to choose one or the other of the final offers. The arbitrator cannot award an intermediate or different position.

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1. The merit payments and professional development allowances have already been paid for 2016-17.

## II. BACKGROUND

[5] Founded in 1970, Athabasca University is a public, board-governed, open and distance education university operating as a Comprehensive Academic and Research Institution under the authority of the *Post-secondary Learning Act*.[2] The University serves students throughout Alberta, across Canada and around the world, offering a range of courses and programs leading to graduate and undergraduate degrees, diplomas and certificates in the Humanities, the Social Sciences, the Sciences, Technology, Business, and the health disciplines.

[6] In the 2016-17 academic year, the University had approximately 40,000 students, equating to approximately 8,561 full-load equivalent students (both graduate and undergraduate).

[7] In the 2016-17 academic year, the University had 401.83 employees who were designated as academic staff. Approximately 197.53 (or 45%) of the Association's members are academics teaching and researching, and 204.3 (or 55%) are professional staff employed in information technology, advertising, management and similar support functions.[3]

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2. S.A. 2003, c. P-19.5.

3. In 2013-14, the University laid off 19 members of the Faculty Association as a result of financial exigency.

Although the collective agreement covers both groups, it makes various distinctions between them.[4]

*The statutory and collective agreement framework*

[8] The relationship between the parties is governed by the *Post-secondary Learning Act*. Section 85 of the PSLA creates the Faculty Association and confers on it exclusive authority to represent the academic staff at the University and enter into a collective agreement with the Board of Governors of the University.

[9] Section 87 of the PSLA requires the parties to negotiate a collective agreement. Pursuant to section 87(3), a collective agreement must address:

- the establishment of salary rate and wage rate schedules for the purpose of setting the salaries or wages payable,
- procedures respecting the settlement of differences between the parties arising from the interpretation, application or operation of the collective agreement, and
- procedures respecting the negotiation of future agreements.

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4. For example, Articles 3 and 4 set out separate probation, determination and performance of duties and promotion for the two groups; Article 11 contains different provisions with respect to academic freedoms for the two groups; Article 15.6 sets out different application processes with respect to research and study leaves for each group; and Article 15.8 and Schedule F provide Professional Staff Members with a full salary option.

[10] Pursuant to section 88(1) of the PSLA, where the parties cannot resolve a dispute during the negotiation of a collective agreement, they "shall refer the dispute to compulsory binding arbitration".

[11] Article 6.3 of the parties' collective agreement provides that if the parties cannot agree on provisions regarding salaries and economic benefits, their final offers on these points are submitted to a Selection Officer. The Selection Officer then determines which of the parties' final offers will be incorporated into the collective agreement. (The parties have settled all of the other non-salary and non-economic benefit issues.)

[12] Section 90 of the PSLA makes the provisions in the *Labour Relations Code*[5] (including its provisions regarding interest arbitrations and what factors interest arbitrators must consider) inapplicable to the parties and to their collective agreement negotiations.

## III. THE CURRENT SALARY SCALES

[13] The collective agreement contains the following salary scales applicable to the period from July 1, 2013 to June 30, 2015 (Schedules A-1 and A-2).

5. R.S.A. 2000, c. L-1.

**Schedule A-1: Academic and Academic Professional Salary Rates and Scales July 1, 2013 - June 30, 2015**

| Academic Professional Level | Academic Rank | Annual | | |
|---|---|---|---|---|
| | | Minimum | Merit/LSI Ceiling | Maximum |
| AP-1 | Professor | 111,045 | 145,502 | N/A |
| AP-2 | Associate Professor | 89,031 | 117,284 | N/A |
| AP-3 | Assistant Professor | 67,547 | N/A | 94,655 |
| AP-4 | Lecturer | 52,684 | N/A | 76,516 |
| AP-5 | Academic Co-ordinator | 52,684 | 94,655 | 102,707 |

**Schedule A-2: Professional Staff Salary Rates and Scales—July 1, 2013 - June 30, 2015**

| Professional Level | Annual | | |
|---|---|---|---|
| | Minimum | LSI Ceiling | Maximum |
| A | 53,914 | 72,254 | 78,399 |
| B | 63,722 | 84,835 | 92,051 |
| C | 75,164 | 99,497 | 107,960 |
| D | 88,638 | 116,770 | 126,703 |
| E | 104,880 | 137,598 | 149,303 |

[14] As a result of a previous interest arbitration, there was no salary increase or cost-of-living adjustment from July 1, 2013 to June 30, 2015. During that interest arbitration, both parties proposed 0% increases for both of those intervening academic years. With respect to the Agreement's term, the Arbitrator accepted the Association's position that there should

be a wage-reopener for the third year. When the parties could not agree on a cost-of-living adjustment for that third year, they submitted that matter to arbitration. In an interest arbitration award dated December 10, 2015, Arbitrator Hodges accepted the Association's position and awarded a 1.75% cost-of-living adjustment for the 2015-2016 academic year. He found the Association's position preferable to the University's proposal of 0% for the third consecutive year (*The Athabasca University Board of Governors and The Athabasca University Faculty Association* (10 December 2015, Hodges). The parties have not yet incorporated these increases into the salary scales in the collective agreement set out above.

## IV. THE APPLICABLE PRINCIPLES IN THIS TYPE OF INTEREST ARBITRATION

[15] Unlike some other contexts, the statutory provisions and collective agreement do not prescribe the factors which are to be taken into account in this interest arbitration. However, in previous arbitrations involving these and other parties in the same legislative context, there is general agreement about the analytical principles applicable to interest arbitrations generally—namely, to the extent possible to replicate the agreement the parties would have freely negotiated at the time had the threat of work stoppage been available.[6]

[16] The criteria in final offer selection cases do not differ from those applied in other interest arbitration processes more generally. I summarized the general approach in *SAIT v. SAIT Academic Faculty Association* (26 June 2012) in the context of the post-secondary education sector as follows:

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6. Bill 7 amended the *Post-secondary Learning Act* to delete the prohibition against strikes or lockouts in post-secondary educational institutes. Accordingly, when the collective agreement next comes up to be renewed, it is possible that the parties might dispense with arbitration. (Bill 7 was given Royal Assent on 4 May 2017).

Neither the *Post-secondary Learning Act* nor the previous collective agreement provides any criteria for interest arbitrations. In such circumstances, other arbitrators have engaged in a wide-ranging inquiry and have taken into account all of the factors which the parties themselves considered in formulating their positions and defending them in their own negotiating sessions. These factors include:

- comparability of the remuneration and employment conditions of similar employees in similar communities;
- current economic conditions and trends in the cost of living that prevailed at the time parties would have reached a bargained agreement;
- what the parties would have agreed to had they bargained to fulfilment under the threat or experience of a work stoppage.

On the other hand, it has been universally accepted by interest arbitrators that an arbitrator's view on what may be "socially just or fair" is not a relevant factor, and must not be substituted for market and economic realities.

[Footnotes omitted.]

[17] For similar statements of the applicable principles, see:

- *Athabasca University and Athabasca University Faculty Association*, 2003 Carswell 2453 (Sims).
- *Lakeland College v. Lakeland College Faculty Association (collective agreement grievance)*, [2015] AGAA No. 9 at paragraphs 15-16 (Sims).
- *City of Medicine Hat v. Medicine Hat Fire Fighters Association, I.A.F.F. Local 263* (8 January 2014; Sims).

## V. THE UNIVERSITY'S SUBMISSION

[18] In both its written and oral submissions, the University made the following points.

## A. Applicable Principles

[19] While neither the legislation nor the collective agreement provides criteria to govern the award, the principles generally applicable to interest arbitrations should be applied in the present case.

## B. General Economic Conditions

[20] General economic conditions and circumstances is one of the factors to be taken into account in replicating a fair and reasonable award:

- *Lakeland College v. Lakeland College Faculty Association (collective agreement grievance)*, [2015] AGAA No. 9 at paragraph 145:

  > Both parties provided indicia of the state of Alberta's economy, and the province's fiscal position. These are not the same thing because provincial revenues are so heavily reliant on oil and gas revenues as opposed to drawing on a broader provincial tax base. Both a broader economy and the provincial fiscal position are significant to wages in this sector.

- *City of Medicine Hat v. Medicine Hat Fire Fighters Association, I.A.F.F. Local 263* (8 January 2014; Sims) citing Arbitrator Virtue in *Alberta Union of Provincial Employees and the Crown in Right of Alberta* (28 June 1985; Virtue); Arbitrator Dorsey in *Board of School Trustees, School District 1 (Fernie) and Fernie District Teachers' Association*, (1982) 8 L.A.C. (3rd) 157 at p. 159; and Ontario Chief Justice Winkler in the following quotation:[7]

  > In other words, to adjudicatively replicate a likely "bargained" result, the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain.

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7. *University of Toronto v. University of Toronto Faculty Association (Salary and Benefits Grievance)*, [2006] 148 L.A.C. (4th) 193 at paragraph 17.

[21] In discussing this quote, Arbitrator Sims commented as follows:[8]

> The last sentence is important. Replication too often is thought to be a process dominated by settlements and arbitration awards from arguably comparable work places for the same or similar occupations. However, this is a somewhat narrower focus than "market forces and economic realities." This is not to suggest one can take a subjective view of what such forces and realities may be from time to time. They too are to be established by objective criteria. This serves only to emphasize that the arbitrator's task is to take a broad look at the factors listed in the legislation and not to narrow that process by undue reliance on a jurisprudential approach based primarily on previous awards.

[22] Accordingly, Arbitrator Sims confirmed that general economic conditions are "an indicator worthy of serious consideration".[9]

[23] The University distinguished "general economic conditions" (which are relevant to an interest arbitration) from "ability to pay" as it relates to the public sector (which generally has not been considered to be relevant to interest arbitrations because the public sector is in principle always able to be funded by increased taxes, so public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions):[10]

- *University of Toronto v. University of Toronto Faculty Association (Salary and Benefits Grievance)*, [2006] 148 L.A.C. (4th) 193 at paragraphs 11-18. After

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8. At page 7.

9. At page 15.

10. *Mount Royal Staff Association and The Board of Governors of Mount Royal University* (26 January 2015; Beattie) at paragraph 12; *Olds College v. Olds College Faculty Association* (31 January 2011; Sims).

noting the inappropriateness of "ability to pay" arguments, Ontario Chief Justice Winkler went on to say the following:

> [16] However, the determination of the appropriate compensation does require the arbitrator to have regard to some market and economic factors.
>
> [17] There is a single coherent approach suggested by these authorities which may be stated as follows: the replication principle requires the Panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the Panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to adjudicatively replicate a likely "bargained" result, the Panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain.

[24] The University submitted that the previous jurisprudence establishes the following:

- Arbitrators have recognized that economic conditions are significant and the public sector should not be insulated "from the impact of a collapsing economy that threatens to engulf the private sector".

- "Ability to pay" arguments have received resistance on the basis that policy decisions regarding government funding levels should not be used as a basis for public sector employees to subsidize a community by accepting substandard wages and working conditions, and that arbitrators should not be viewed as "agents of the government for the purpose of imposing government policy". In the case of the University, government funding levels is only one factor that has contributed to its current financial situation.

### 1. Economic factors: Alberta's economy

[25] The University submitted that the considerable turmoil and uncertainty in Alberta's economy ought to be considered closely. Alberta is currently in the midst of a recession. Its gross domestic product contracted in 2015 and 2016, for the first time since 1990. Oil prices have fallen more than 70% since June 2014, which has directly impacted provincial Government revenues. The provincial Government forecast a $10.9 billion deficit for 2016-17, an increase of $527 million in the deficit since the 2016 budget. The province's Fiscal Update forecasts only a modest recovery for the Alberta economy in 2017. Alberta's unemployment rate in the first six months of 2016 was 7.6%, which increased to 8.6% in July 2016, and is expected to remain "elevated". A considerable number of jobs have been lost in Alberta.

### 2. Economic factors: the University's financial situation

[26] The University's financial situation is particularly difficult. In July 2015, its Presidential Task Force on Sustainability projected the likelihood of insolvency in 2016-17. That projection has been revised to 2017-18 as the result of the government's *Interim Supply Act* which came into force in mid-2015.

[27] Unlike Alberta's other Comprehensive Academic and Research Institutions which in 2015-16 received approximately 50% of their revenue in the form of government funding (with some such as the University of Lethbridge, the University of Alberta and the University of Calgary receiving more than 60% in government funding), the University relies much less heavily on government to fund its operations.

[28] From supporting approximately 80% of the University's operating budget 30 years ago, the government grant today supports about 30% of its operating expenses. To some extent, this is the result of a shift in enrolment demographics two decades ago that saw an increase in out-of-province student numbers which do not generate a commensurate increase in the government's grant.

[29] While the provincial Government cap on tuition only applies to Alberta students (who are a minority), that is nevertheless a significant constraint on the University's revenue. In addition, the University is subject to market discipline in the tuition it is able to charge all of its students. A recent price-point analysis of out-of-province tuition rates concluded that enrolment at the University from outside Alberta will continue to decline if the University increases its tuition; its sticker price is already greater than that of its competitors; and its market share is decreasing rapidly as other jurisdictions create online post-secondary organizations.

[30] Further, the University relies heavily on information technology to deliver its services, but these are not treated as capital in its funding arrangements, which therefore limits its ability to make required investments in information technology.

[31] In addition, there is growing competition in the open-university and distance-learning market. While the University is part of the eCampus Alberta consortium, there are financial and other constraints that prevent it from offering courses as part of that consortium.

[32] The University's 2015-16 deficit was $530,000, whereas its 2016-17 budgets projects its deficit to be $3.254 million (which does not include additional salary and benefits expenses in the amount of $1.1 to $1.3 million for 2016-17, $2.1 to $2.3 million for 2017-18, and $2.3 to $2.5 million in 2018-19). The University has requested $3.3 million in funding

from the government in order to "delay insolvency and allow time to explore a sustainability plan that will be informed by a planned independent third party review. The University has not yet had a response from the government to its request, and the third party review had not reported at the time of the arbitration hearing.

[33] Sixty-eight percent of the University's operating expenses relate to salaries and benefits.

[34] Further, the government has directed no job losses in Athabasca and has imposed a moratorium on new programs.

[35] This lack of growth in the University's key revenue source while facing rising expenses presents a real financial challenge to the University.

## C. The University's Final Offer

[36] The University's final offer consists of three components:

(a) COLA;
(b) Suspension of merit increments; and
(c) Reduction of professional development allowances.

### 1. COLA

[37] The University's final offer proposes COLA increases over a three-year term of 1% for Year One, 2% for Year Two, and 2% for Year Three, which equals a (non-compounded) increase of 5% over the course of the proposed term. The Academic and Professional Staff

Members received a 1.75% COLA increase in 2015-16 (the year before the period involved in this arbitration).

[38] By comparison, the excluded professional staff members at the University have not received a COLA increase since 1 July 2013, excluded management staff have not received a COLA increase since 1 September 2013, and excluded support staff received a 0% COLA increase as of 1 July 2016. The University staff members who are members of CUPE have not received a COLA increase since 2012. The University employees who are members of AUPE received a 1.75% COLA increase for 2016-17.

[39] The purpose of COLA is to compensate for loss of buying power attributable to inflation. This calculation is typically fixed by reference to the CPI. The forecast for CPI over the course of a three-year term proposed by the University will remain either constant with, or decrease from, the 2014 CPI. The CPI forecasts for 2017, 2018 and 2019 must be tempered by the inaccuracy of CPI forecasting for 2016. In light of this, the University submitted that its proposed COLA increases would adequately compensate for any changes in CPI over the term of the agreement.

[40] The following table sets out how the other five post-secondary institutions (which are the traditional comparators for the University) have managed COLA:

| Institution | 2013-2014 | 2014-15 | 2015-2016 | 2016-2017 | 2017-2018 | 2018-2019 |
|---|---|---|---|---|---|---|
| Athabasca University | 0% | 0% | 1.75% | | | |
| University of Alberta | 1.65% | 1.65% | 1.5% | 1.0% | 1.5% | |
| MacEwan University | 2% | 0% | 2.25% | 2.25% | | |
| University of Calgary | 0% | 0% | 2% | 1% | | |
| University of Lethbridge | -1% | 1.75% | 0.95% | | | |
| Mount Royal University | 2% | 1.8% | 2% | 1.8% | 1.8% | |

[41] A number of the post-secondary institutions in the above table are in the middle of the term of their collective agreements. However, the University submitted that there are some compelling patterns which emerge when analysing how other post-secondary institutions approach COLA. For example, the University of Calgary awarded a 3% increase over the span of the three years from 2014-15 to 2016-17 (0%, 2% and 1%). Grant MacEwan University awarded 4.5% over the same three-year term (0%, 2.25% and 2.25%). The University of Alberta has recently agreed to a 4% COLA increase over the three years from 2015-16 to 2017-18 (1.5%, 1% and 1.5%). The University of Lethbridge tied itself to the CPI for Alberta and Canada, with a nominal increase for 2016-17 and 2018-19 (with a 1.7% COLA increase over the three prior years from 2013-14 to 2015-16).

[42] Mount Royal recently agreed to a 3.6% increase over a two-year term (1.8% for 2016-17 and 1.8% for 2017-18). However, unlike Athabasca, Mount Royal does not provide merit increases, whereas the Academic and Professional Staff Members at Athabasca have already received these payments for 2016-17, and under the University's final offer would receive

a further 1% COLA increase—for an increase of approximately 3.08% for 2016-17—which should be factored into any comparison between Mount Royal and Athabasca.

[43] With respect to Grant MacEwan's 2.25% COLA increase for 2016-17, the University noted that this agreement was negotiated and agreed to prior to the current economic turn-down (the term of Grant MacEwan's collective agreement is from 1 July 2014 to 30 June 2017).

[44] The University of Alberta's recent settlement signals that the collective bargaining cycle will show decreased COLA increases. The University submitted that this trend is reinforced by NAIT's recent settlement which provides for 1.5% (2016-17) , 0% (2017-18), and 0% (2018-19) over a three-year term. Although NAIT is not a direct comparator to the University, its recent settlement reflects the downward trend in COLA increases in the post-secondary sphere.

[45] Accordingly, in light of the foregoing, the University's proposal for 1%, 2% and 2% over a three-year term is higher than recent post-secondary settlements. The University submits that this is a reasonable offer when compared to other post-secondary institutions, especially when accounting for other financial considerations at play.

### 2. Suspension of merit increments for Years Two and Three

[46] The collective agreement provides for merit increments to be awarded at 2.8% of regular salary, unless the staff member is at the "merit ceiling", in which case the merit increment is 2.0% of salary (Article 6.4.4 of the collective agreement). Although merit increments are to be provided on the basis of an evaluation process, in practice the number

of employees who do not receive merit increments[11] is a small fraction compared to those who do. The average merit award for 2016 was 2.03% for academic staff members and 2.21% for professional staff members.[12] Of the 247 academic staff members eligible for a merit increment, only 61 (about 25%) did not receive it. Similarly, of the 214 professional staff members eligible for a merit increment, only 34 (about 16%) did not receive it.

[47] Excluded support and professional staff members did not receive any merit increment increase for 2016. In line with the government's directive, the excluded support and professional staff will not receive a merit increase for the foreseeable future.

[48] Of the five comparator universities, Mount Royal does not offer merit increment increases.

[49] While it is difficult to draw comparisons between the University and the other four universities which do offer merit increment increases, the differences are striking. For example, with Grant MacEwan University, the award is equal to the value of the next increment on the annual salary schedule, which has a value of $1,438.[13] By comparison, a full professor at Athabasca, whose starting salary is $112,988, would receive $3,163.66 as a merit award at 2.8% of salary.[14]

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11. Which could be for a host of reasons including: unsatisfactory performance/assessments not completed, ineligibility due to start date, term end, or because the employee is at their maximum salary.

12. This calculation includes LSI increments which were awarded to 14 academic staff members and 43 professional staff members.

13. For instructors, professorial ranks, professional resource faculty and faculty development coordinators. There are 16 successive increments, each valued at $1,438 (except for the first increment which is valued at $1,471).

14. If 2% were awarded, the professor would receive $2,239.76.

| Merit Increments | | |
|---|---|---|
| **Institution** | **Award** | **Condition** |
| Athabasca University | 2.8% of base salary unless at ceiling, then 2.0 % provided | Satisfactory performance, completed assessment, eligibility due to start date and term end, and that the employee is not at their maximum salary. |
| University of Alberta | 0.00-3.00 increment | Discretionary and based on annual performance review. |
| Grant MacEwan University | Equal to the value of the next increment on the annual salary schedule. | Performance deemed meritorious. |
| Mount Royal University | None | None |
| University of Calgary | 1.0 increment | Not automatic awarded on meritorious performance. |
| University of Lethbridge | 0.0-2.0 merit increment. The value of the merit increment is calculated by dividing the value of the merit pool by the number of people in the pool. | Performance evaluation. |

[50] With the exception of Mount Royal (which does not offer merit increments) and Grant MacEwan (where the value of the merit award is equal to the value of the next increment on the annual salary schedule), the other universities have an established and limited merit pool which is distributed among the staff members. Typically, the value of a merit unit is calculated by dividing the value of the merit pool by the number of people in that pool.

[51] The fact that merit increments at Athabasca are expressed as a percentage of salary makes it difficult to quantify that amount, as compared with some of the other Alberta universities which have a defined increment pool whose value or cost is pre-determined. The

University needs to be able to predict the cost of merit increments, and to be able to control that cost.

[52] The University submits that merit increases should be suspended (at 0%) for 2017-18 and 2018-19 (emphasizing that the merit increments have already been paid for 2016-17). Because the University values its staff, and the contributions they make, the suspension of merit pay for these two years should not be construed as a devaluation of its employees or their essential role in the institution. However, there must be an attempt to balance each of these factors with respect to the total compensation package comparable to the other universities. As part and parcel of offering a healthy increase to COLA, the University is proposing to suspend merit increases for Years Two and Three of this collective agreement. The University submits that this is a reasonable approach in all of the circumstances and in the context of the staff members' total academic package.

### 3. Reduction of professional development allowances

[53] The University currently provides both academic and professional staff with $2,000 per year in professional development funds (which can be accumulated over a five-year period and is prorated for part-time staff members). The University is proposing that the annual professional development fees paid to academic staff members be decreased in 2017-18 and 2018-19 by $500 to $1,500. The University is also proposing that the annual professional development allowances for professional staff members be decreased by $500 in 2017-18 (to $1,500) and a further $500 for 2018-19 (to $1,000). The University submits that, even with these proposed decreases, the professional development funds would continue to be competitive with other post-secondary institutions in Alberta.

[54] The following table sets out the current professional development allowances at the other five comparator universities:

| Professional Development | | | |
|---|---|---|---|
| **Institution** | **Professional** | **Academic** | **Other** |
| Athabasca University | $2,000.00 | $2,000.00 | |
| University of Alberta | $0.00 | $1,400.00 | |
| University of Calgary | $0.00 | Up to $1,750.00 | |
| Grant MacEwan University | $0.00 | Up to 2.6% of total current faculty salaries as earned | |
| Mount Royal University | $0.00 | $1,400.00 | $1,250.00 to management and exempt staff. |
| University of Lethbridge | $0.00 | $1,900.00 | $1,520.00 to Instructors and Academic Assistants. |

[55] With respect to professional staff members, the University observed that Grant MacEwan, the University of Alberta, the University of Calgary and the University of Lethbridge do not provide professional development allowances to professional staff members at all. The only institution providing professional development allowances for non-academic staff is Mount Royal, which provides management and exempt staff with $1,250 (but these employees are not subject to collective bargaining so this item is not relevant to the present analysis). The University submits that it is not unreasonable to bring its professional staff members closer to (but still markedly higher than) their counterparts at comparable post-secondary institutions.

[56] With respect to academic staff members, the University notes that there is a varied approach to the manner in which other Alberta post-secondary institutions manage

professional development funds for academic staff. The University of Alberta provides $1,400 per annum. The University of Calgary provides $1,750 per annum for continuing, contingent term and limited term appointments, whereas sessional appointees are provided $175 per HCE up to a maximum of $1,750 per annum. The University of Lethbridge provides $1,900 to faculty members and $1,520 to instructors and academic assistants. Grant MacEwan provides funding for faculty professional development activities of up to 2.6% of the total current faculty salaries as earned. At the present time, the academic staff members' annual professional development funds at Athabasca are higher than any other post-secondary institution in Alberta. The University submits that decreasing the professional development funds for academic staff members to $1,500 per annum is designed to bring the University closer to the midline of the market.

**D. Summary of the University's position**

[57] The University submits that its final offer should be selected on the basis that it best reflects what the parties would have agreed to in a free collective bargaining context, taking into account the current economic conditions in Alberta and the University's dire financial situation and threat to its sustainability. Under its proposal, faculty and professional staff will be compensated in a fair and reasonable manner which is comparable to other institutions. The University's approach best ensures the University's long-term sustainability which is in the best interest of both its employees and the public which it serves. Accordingly, the University submits that its offer should be selected.

## VI. SUBMISSIONS BY THE FACULTY ASSOCIATION

[58] In both its written and oral submissions, the Faculty Association made the following points.

### A. Principles for interest arbitrations involving the University and the Faculty Association

[59] The Faculty Association submitted that the purpose of an interest arbitration is to replicate, to the extent possible, the agreement the parties would have freely negotiated had the threat of work stoppage been available:

- *The University of Alberta and Association of Academic Staff: University of Alberta* (unreported, 18 July 2000, Sims) at p. 3;
- *Intermediate Staff Assn. and A.T.A. (Conciliation Process)*, [2011] AGAA No. 26 (Sims) at paras. 7-8;
- *Mount Royal University and Mount Royal Faculty Association Assn. (Salary Increase Grievance)*, [2016] AGAA No. 14 (Sims) at para. 11.

[60] Public sector employees should not be required to subsidize a community by accepting substandard wages and working conditions:

- *Northern Alberta Institute of Technology and Alberta Union of Provincial Employees (Support Staff Grievance)*, [2009] AGAA No. 8 (Sims) at para. 12;
- *Alberta Hospital Ponoka v. AUPE Local 41, 42* (unreported, 1983, Hawco);
- *Board of Governors of N.A.I.T. v. AUPE Local 38* (unreported, 1984, Mason).

[61] In interest arbitrations involving the Faculty Association and Athabasca University, arbitrators have held that collective agreements governing comparable institutions are the primary consideration when replicating what the parties may have freely negotiated:

- *Athabasca University v. Athabasca Faculty Assn.*, 2003 CarswellAlta 2543 (Sims) at para. 91;
- *Athabasca University Governing Council v. Athabasca University Faculty Association* (unreported, 15 November 1993, Ponak) at pp. 12-13;
- *The Athabasca Governing Council v. The Athabasca University Faculty Association* (unreported, 17 June 1985, Hawco) at pp. 3-5;
- *AU v. AUFA 2015 (Cost of Living Adjustment for 2015-16)* (10 December 2015, Hodges).

### B. Comparables—Alberta universities

[62] Previous arbitrations involving these parties have consistently looked at salary increases at other post-secondary institutions, particularly the University of Calgary, Mount Royal University, MacEwan University and the University of Lethbridge. An example is the decision of Arbitrator Hodges in the 2015 salary re-opener arbitration. In 2003, Arbitrator Sims held that the "most significant and persuasive" comparables are "Alberta's other universities and, to a lesser extent, Alberta college and technical institutes and other Canadian universities", rejecting the argument that because the Faculty Association has a high percentage of professional staff, these comparables were less relevant. In the 1993 interest arbitration, Arbitrator Ponak looked to collective agreements governing the Universities of Alberta, Calgary and Lethbridge (as well as the support staff at Athabasca

University). In the 1985 interest arbitration, Arbitrator Hawco agreed that the Universities of Alberta, Calgary and Lethbridge are the most appropriate comparators.

[63] The Faculty Association observed that the non-academic staff at the University who are members of the AUPE bargaining unit received the following salary increases: 2% for 2014-15; 2% for 2015-16; and 1.75% for 2016-17.

[64] The Faculty Association submitted that the most relevant comparators, therefore, are the Universities of Alberta, Calgary, Lethbridge, MacEwan and Mount Royal, whose increases over the years are set out in the following chart:

| University | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 | 2015-2016 | 2016-2017 | 2017-2018 |
|---|---|---|---|---|---|---|---|---|
| **Athabasca University** | effectively -2% via furlough | 2% | 2.25% | 0% | 0% | 1.75% | | |
| **MacEwan University** | 1% lump sum | 1.75% | 1.75% | 2% | 0% | 2.25% | 2.25% | |
| **University of Alberta** | 4.75% | 1.75% | 2% | 1.65% | 1.65% | 1.5% | 1% | 1.5% |
| **University of Calgary** | 0% | 2% | 2% | 0% | 0% | 2% | 1% | |
| **University of Lethbridge** | | COLA = Greater of 0% or (Canadian CPI + Alberta CPI) /2 = 1.7% | COLA = Greater of 0% or (Canadian CPI + Alberta CPI) /2 = 2.25% | COLA = Greater of 0% or (Canadian CPI + Alberta CPI) /2 = 1.05% | COLA = Greater of 0% or (Canadian CPI + Alberta CPI) /2 = 1.75% | COLA = Greater of 0% or (Canadian CPI + Alberta CPI) /2 = 0.95% | 0.2%, plus COLA (greater of 0% or (Canadian CPI + Alberta CPI) /2) = 1.6% | 0.7%, plus COLA (greater of 0% or (Canadian CPI + Alberta CPI) /2) = tbd |
| **Mount Royal University** | 0% | 0% at the bottom step, 4.7% at the top step | July 1/12: 2%<br>Jan. 1/13: 1% | July 1, 2013, 1% plus additional grid step with bottom step removed = 2% total | 1.8% | 2% | 1.8% | 1.8%, but 2.3% for those paid off of the hourly grid (contract academic staff) |

[65] The Faculty Association also referred to the following settlements at several colleges and technical institutes:

| College | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 | 2015-2016 | 2016-2017 | 2017-2018 |
|---|---|---|---|---|---|---|---|---|
| **NAIT** | $1000 lump sum payment off grid | 2% | 3% | $1850 lump sum | 2.5% + $1500 lump sum | 2.5% | 1.5% | 0.% |
| **Northern Lakes** | $1000 lump sum | 2% | 3% | 2% | 2.25% | 2.25% | bargaining | bargaining |
| **ACAD** | $1000 lump sum | July 1/11–1%<br>Jan. 1/12–1% | July 1/12 –1.5%<br>Jan. 1/13 –1.25% | 0% | 2.5% | 2.5% | | |
| **Bow Valley** | $1000 lump sum | 2% | 2% | $1000 lump sum | 2.5% | 2.25% | 2% | |
| **Keyano College** | 0.6% off grid + 1 additional day off with pay | 2% | 2% | July 1, 2013, 1.5%<br>Jan. 1, 2014, 1.5% | 2% | 2.5% | 2% and 1 additional grid step of 3%, and stopped using bottom step | |

| College | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 | 2015-2016 | 2016-2017 | 2017-2018 |
|---|---|---|---|---|---|---|---|---|
| **Lethbridge College** | $500 to all faculty receiving increments, $1500 to those not | July 1, 2011, 1%<br>January 1, 2012, 1% | 2.5% | 2.5% | 2.5% | 2.5% | 1.9% and elimination of bottom grid step | 1.9% |
| **Medicine Hat College** | $1000 lump sum | 2% | 2% | | 2.25% | 2% | 1.8% | 1.8% |
| **Portage College** | $1000 lump sum | 2% | 1% and 1 additional grid step | 3% | 2% | 2.25% | bargaining | |
| **SAIT** | 0% | new grid step = 3% (and stopped using bottom step) | new grid step = 3% (and stopped using bottom step) | new grid step = 3.35% (and stopped using bottom step) | new grid step = 3.25% (and stopped using bottom step) | new grid step = 3.1% (and stopped using bottom step) | new grid step = about 3.15% (and stopped using bottom step) | |

[66] The Faculty Association submitted that the university collective agreements that have been concluded provided an average salary increase of 1.53% for 2016 and 1.65% for 2017. For the colleges and technical institutes which have concluded their collective agreements, the average salary increase was 1.84% for 2016 and 1.85% for 2017, not including the addition and deletion of grid steps which resulted in additional increases to wages for some of the academic staff at those colleges. Accordingly, the Faculty Association submitted that its proposal of a 2% salary increase for 2016 and a 2% increase for 2017 is reasonable.

[67] Further, the Faculty Association submitted that its proposal must be viewed in light of the fact that the academic staff only received a 1.75% salary increase over the previous three academic years (2013-14 through 2015-16), unlike academic staff working at other Alberta universities:

- 4.25% at MacEwan University
- 4.8% at the University of Alberta
- 2% at the University of Calgary
- 3.75% at the University of Lethbridge
- 4.8% at Mount Royal University.

This failure to keep up with cost-of-living increases at Athabasca University has resulted in a significant cut to real wages. Thus, the Faculty Association's proposal is not only reasonable relative to the comparables, but it is modest relative to the cut to the Faculty Association's members' real wages resulting from the minimal cost-of-living adjustment over the preceding three years.

## C. The community context

[68] The Faculty Association acknowledged that economic conditions and salary increases in the community as a whole provide context to the parties' collective bargaining with respect to salaries:

- *Spring Hill Police Assn., Local 203 of the Atlantic Police Association v. Spring Hill (Town) (Interest Arbitration Grievance)*, [2013] NSLAA No. 2 (Richardson);

- *Regional Municipality of Niagara Police Services Board and NRPA (Uniform and Civilian Members)*, 2013 CarswellOnt 6986 (Mariotte).

[69] The Faculty Association submitted that between July 2015 and June 2016, average hourly earnings in Alberta went up 3.2%. For unionized employees working in the public sector in Alberta, wages increased an average of 1.65% during the same period.

[70] From June 2015 to June 2016, the cost of living in Alberta rose 1.3% and in Edmonton 1.6%. The Royal Bank forecasts that in 2017 the cost of living in Alberta will rise a further 2.2%.

[71] Accordingly, the Faculty Association submits that its proposal is more consistent with salary increases at Alberta universities and colleges, salary increases in the community and changes to the cost of living in Alberta.

## D. Inability to pay arguments rejected

[72] Arbitrators have cautiously approached assertions by public sector institutions that they cannot afford increases, and given such assertions little weight. Arbitrator Sims rejected such an argument in the 2003 interest arbitration involving these parties when he concluded that "I am not influenced in my choice of positions by an inability to pay argument, or by the importance of conflicting priorities. The institution is in my view capable of adjusting its priorities to accommodate either of these two final positions." In the 2015 interest arbitration, Arbitrator Hodges acknowledged the University's financial difficulties, but nevertheless found the Faculty Association's proposed 1.75% increase reasonable. A public body cannot be excused from paying fair wages because it chooses to expend its financial resources in other ways (*Spring Hill Police Assn.*, *supra*). Allowing budgetary limitations and priorities set by government to dictate the outcome of an interest arbitration involving a public body would jeopardize arbitral independence (Arbitrator Sims in the 2000 interest arbitration involving the University of Alberta; with similar comments by Arbitrator Sims in *Southern Alberta Institute of Technology and AUPE, Local 039*, 2005 CarswellAlta 2746).

[73] Accordingly, the Faculty Association submitted the University's academic staff should not be asked to subsidize the University by accepting substandard wages.

## E. Conclusion

[74] For these reasons, the Faculty Association submitted that its proposed wage adjustment of 2% for 2016-17 and 2% for 2017-18 is reasonable. It is within the range of salary increases agreed to at other post-secondary institutions in Alberta, and is consistent with the increases unionized employees in Alberta have experienced and with the change to

the cost of living in Alberta. Moreover, the Faculty Association's proposal is modest relative to the cut to real wages between 2013-14 and 2015-16 caused by the Faculty Association's members' experiencing only a net salary increase of 1.75% in that three-year period. Accordingly, the Faculty Association submitted that its proposal should be selected.

## VII. REPLY BY THE UNIVERSITY

[75] The University provided the following costing of the two parties' final offers:

| **Cost of the University's Proposals** | | | |
|---|---|---|---|
| | **2016/2017** | **2017/2018** | **2018/2019** |
| COLA | 1% | 2% | 2% |
| Merit | * | Suspended | Suspended |
| Professional Development—Academics | * | (-$500.00) | Freeze |
| Professional Development—Professionals | * | (-$500.00) | (-$500.00) |
| Total Cost Increase $ | $1,578,296.00 | $821,324.00 | $739,771.00 |
| Total Cost Increase % | 3.12% | 1.61% | 1.42% |

* The merit payments and P D allotments have already been paid for 2016-2017. The total cost increase in both dollar and percentage amounts reflects this.

| Cost of the AUFA's Proposals | | |
|---|---|---|
| | **2016/2017** | **2017/2018** |
| COLA | 2% | 2% |
| Merit | 2.08% (average) | 2.08% (average) |
| Total Cost Increase $ | $2,084,397.00 | $2,147,958.00 |
| Total Cost Increase % | 4.12% | 4.16% |

[76] The University submitted that the Faculty Association's proposal is an outlier with respect to the five comparable institutions, and fails to take into account other relevant compensation package considerations for certain of those comparators (such as Mount Royal).

[77] In contrasting total compensation packages, it is apparent that the University's merit pay system is markedly different from that at the other comparable post-secondary institutions, which are either a fixed dollar amount for an increment or based on a defined pool (as opposed to a percentage of salary). The University's proposal to suspend merit increments for the second and third year of its proposed term is a temporary measure designed to inject some certainty into the University's labour cost forecasts.

[78] Similarly, the University submitted that its current professional development funding for both academic and professional staff members is higher than at the other five comparable universities. The cost of providing professional development funding to its 402 professional and academic staff members costs the University $804,000 per year. The University emphasizes that it is not proposing to abolish professional development funding, but rather

to reduce the amount to bring it in line with competitive compensation at the other five universities.

[79] With respect to the Faculty Association's submission about the 0% COLA adjustments for 2013-14 and 2014-15, the University noted that the 0% COLA adjustments were proposed by the Faculty Association as part of an arbitrated settlement. Further, the previous wage settlements between the parties in past years are not a justification for higher wage increases in this arbitration. The wage increases for the current period should be determined in light of the established criteria for resolving interest disputes, including current and imminent economic circumstances and the University's unique inability-to-pay challenges. The University submits that the Faculty Association has significantly under-emphasized the nature and extent of the economic challenges which exist in Alberta today.

[80] Further, the University submits that the wage settlements for post-secondary institutions which the Faculty Association uses as comparables were in fact reached or determined in different economic circumstances.

[81] The University reiterated that its inability to pay is a critical consideration in these proceedings, for the reasons set out in the University's main submission.

[82] With respect to term, the University submits that a three-year term is critical in the circumstances to provide the University with needed stability and certainty with respect to its labour costs, which are pivotal for its long-term sustainability. The Faculty Association's proposed (uncompounded) 4% COLA increases over a two-year term is greater than the University's proposal of 3% over the same two-year term.

[83] In summary, the University submits that its final offer proposal is a far cry from expecting Faculty Association members to "subsidize a community by accepting substandard wages and working conditions". Rather, its proposal results in a compensation package that falls within the range of wage increases for comparable post-secondary institutions in Alberta, while at the same time reflecting needed responsiveness to the current economic circumstances in Alberta and the serious sustainability issues facing the University.

## VIII. REPLY BY THE FACULTY ASSOCIATION

[84] The Faculty Association emphasized that arbitrators have overwhelmingly rejected a public body's inability to pay as a criteria for selecting one offer or the other in an interest arbitration, where the object is to replicate the agreement the parties would have reached if they had had recourse to a strike or lockout.

[85] The Faculty Association submitted that, even if inability to pay arguments were considered, the University's dire picture of its financial position is not accurate. The Faculty Association says the University has a history of estimating deficits, but actually achieving surpluses. For example, the University budgeted a deficit of $1,030,000 in 2012-13 but actually achieved a surplus of $752,000; it budgeted a deficit of $782,000 in 2013-14 but actually achieved a surplus of $3,628,000; and budgeted a surplus of $22,000 in 2014-15 but actually achieved a surplus of $2,496,000. Further, while the University's March 2016 financial statements show an operating deficit, they also show the University's accumulated surplus as $6,442,000.

[86] Accordingly, while inability-to-pay arguments are typically rejected by arbitrators, the University has failed to establish that it has an inability to pay. It made similar submissions

at the last interest arbitration between the parties, when Arbitrator Hodges found the Faculty Association's proposal of 1.75% COLA was more reasonable than the University's proposed 0%.

[87] With respect to suspending merit increments and reducing professional development funds, the Faculty Association submitted that none of the other comparable universities have taken such steps.[15]

[88] While the University's proposals of 1%, 2% and 2% for COLA are generally consistent with the settlements reached at comparable institutions (the average COLA increase being 1.53% for 2016 and 1.65% for 2017), they are entirely offset by the University's proposal with respect to merit pay. The average merit pay for academic staff for 2016-17 was 2.03%. Thus, while the University proposes a 2% COLA increase for each of 2017 and 2018, its proposed suspension of merit pay would actually result in a 0% salary increase for most faculty members in both 2017 and 2018.

[89] At both the University of Alberta and the University of Lethbridge, the value of merit increments was in fact increased.[16] At the college level, the professional expense reimbursement allowance at ACAD was increased by $50, and at Medicine Hat College the professional development allotment was increased by $300.

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15. In its written material, the Faculty Association initially took the position that a suspension of merit increments is outside the scope of this interest arbitration. A hearing day was set aside to address this preliminary issue by the Faculty Association, but it ultimately waived its objection to this part of the University's final offer. Accordingly, it was not necessary to address this issue.

16. At the University of Alberta, increment values were increased by 1.5%. At the University of Lethbridge, merit increases were increased by $25 for faculty members/professional librarians.

[90] At Athabasca, a 2.03% average merit award would equal $3,005 for full professors with a salary of $148,048 and $2,423 for associate professors with a salary of $119,336, and $1,395 for an assistant professor. The median is $2,200. The Faculty Association submits that the University's merit pay is at the low end of the range compared to the merit pay, salary increments or grid steps at other Alberta universities. Although the University says that the value of an increment at Grant MacEwan is $1,438, the Faculty Association calculates the value to be $1,470 for 2015 and $1,503 for 2016. While Grant MacEwan's is lower than the merit pay at the University, the value of the increments at the University of Lethbridge and the University of Calgary, and the annual grid movements at Mount Royal University, are higher.

[91] At the University of Lethbridge, faculty members are assigned a performance rating between 2.0 and 0, where 1.0 reflects "satisfactory performance and normal career progress" (Art. 21.04.4). Article 21.06.1 of the University of Lethbridge Collective Agreement provides that "Every Faculty Member/Professional Librarian with a performance score equal to or above 1.0 will receive a full career progress increment". Presumably, most faculty members at the University of Lethbridge have satisfactory performance and <u>receive a full career progress increment</u>, which equates to $2,600. The merit award is in addition to the career progress increment and is reserved for faculty members whose performance score equals or exceeds the mean performance score in his or her faculty. Thus, even without the merit award, presumably most faculty members at the University of Lethbridge are receiving a "satisfactory" performance rating and thus receiving a minimum of $2,600, which is more than the median of $2,200 merit pay at the University of Athabasca.

[92] Similarly, at the University of Calgary virtually all faculty receive a merit increment. A "merit pool" is established for each faculty based on an average of 1.2 increments per faculty member, and this merit pool is divided amongst the faculty members based on their

performance assessment. Only those few faculty with an unsatisfactory performance assessment, represented by a "0", do not receive a merit increment. All faculty who receive a satisfactory performance assessment, represented by a 0.4 increment unit, or a meritorious performance assessment, represented by a merit increment above 0.4, receive a salary increment. Because virtually all academics receive at least a satisfactory performance assessment, virtually all academics automatically receive an increment, and thus receive a yearly salary adjustment that is more akin to movement up a salary grid. The value of the salary increment is determined by taking the number awarded during the academic's performance assessment, and multiplying it by the increment value on the salary scales. For example, an assistant professor who receives a 1.4 on his or her performance assessment would receive a merit increment of $2,660 (1.4 x $1,900). Because the average merit increment per academic is 1.2, the average increment value for each assistant professor, associate professor, or professor can be determined by adding the five possible increment values on the Salary Scales and Increments Table, dividing that number by five, and multiplying that number by 1.2. This calculation shows that the average yearly increment value that virtually all full professors, assistant professors, and associate professors at the University of Calgary receive is $2,448. Again, this is more than the median of $2,200 merit pay at the University of Athabasca.

[93] While Mount Royal University does not have merit pay, it does have automatic annual grid movement. The amount awarded at each grid step for 2016-2017 varies but, for example, there is a $3,098 increase between Steps 9 and 10 for assistant professors, a $3,766 increase between Steps 10 and 11 for an associate professor, and a $4,430 increase between Steps 9 and 10 for a full professor. This annual grid movement is in addition to any negotiated COLA increase, and significantly more than the median merit award of $2,200 at the University.

[94] In sum, the Faculty Association submits that the merit pay at Athabasca University is already lower than the merit pay, salary increments, and annual grid steps at other Alberta universities. These annual increases at Alberta's other universities have been maintained for 2016-2017 and 2017-2018. In addition, the academic staff at those universities received an average COLA of 1.53% for 2016 and 1.65% for 2017. Yet, these universities are operating in the same economic climate as is Athabasca University. In this context, the University's proposal of a COLA that would be entirely off-set by a suspension of merit pay and a reduction in Professional Development funds is unreasonable.

[95] Further, the University's proposal does not contemplate changing the method of calculating the value of merit increments (for example, creating a defined value for the total merit pool), but rather only proposes to suppress the merit increments in Years Two and Three altogether.

[96] Accordingly, the Faculty Association submits that its proposal is the most reasonable. Awarding a 2% COLA for both 2016-17 and 2017-18 is more consistent with the salary adjustments at Alberta's other post-secondary institutions and with changes to the cost of living than is the University's proposal. The Faculty Association submits that the University's proposal is entirely out of step with the settlements at Alberta's other post-secondary institutions. While the University's proposal would result in a 1% COLA for 2016-17, it would in effect result in 0% for 2016-17and 0% for 2017-18 (without even taking account of the University's proposed reduction in professional development funds). On this basis, the Faculty Association submits that its proposal is to be preferred.

[97] Further, the University's proposal for a three year term is less reasonable than the Faculty Association's proposed two year term. By the time this collective agreement ends, Bill 7 will be law, and the parties will legally be able to engage in a work stoppage if

necessary during the negotiation of the next collective agreement. It makes sense to get to the new legislative regime sooner rather than later.

## IX. DECISION

[98] After carefully considering the information and submissions provided by the parties, I have selected the Faculty Association's final offer, for the following reasons.

[99] As set out above in each of the parties' submissions, the principles applicable to interest arbitrations in general are applicable to this final offer selection exercise, given the absence of any guiding criteria set out in either the legislation or the collective agreement.

[100] As required by the collective agreement, I am required to select either the University's final offer or the Faculty association's final offer. I am not to craft any other outcome, regardless of whether something intermediate between their offers would in my judgment otherwise result from the application of the general principles applicable to an interest arbitration—the outcome which would have resulted if the parties had been able to negotiate to and through a work stoppage. The question, therefore, is which of the two offers comes closest to the outcome which would replicate that state of affairs.

[101] I accept that the general economic situation is a relevant consideration, and is different from the ability to pay. The general economic situation in Alberta has been very challenging for the last two or three years. This consideration would militate in favour of lower salary increases, particularly if it were reflected in lower cost of living and lower wage settlements at comparable institutions and in the economy generally.

[102] By contrast to general economic conditions, a very considerable portion of the University's submission invokes its perceived inability to pay for a variety of reasons, including the provincial Government's freezing of tuition, the provincial Government's requirement that there be no loss of jobs in Athabasca (which in practice means anywhere), the lower proportion of the University's revenue from provincial Government funding compared to other Alberta universities because of the difference in its proportion of in-province students who attract provincial funding, and the provincial Government's unfavourable method of funding the infrastructure upon which the University heavily relies to deliver its programs. If the University were an entirely private institution, its financial difficulties would be a more compelling argument about ability to pay. Its history of projecting successive deficits is undercut by the reality of actual surpluses at the end of its financial years. The existential challenges it faces will have to be (and are being) addressed by it and the provincial Government. And for its part, the Faculty Association will have to recognize that the wage settlement resulting from this final offer selection process may have an impact on future employment at the institution. Accepting the University's final offer would effectively require focussing overwhelmingly on its ability to pay to the exclusion of the other factors required to be considered in an interest arbitration.

[103] The other five Alberta universities have been the established cohort of comparables for virtually the entire history of the bargaining relationship between these parties. While I am mindful of Arbitrator Sims's caveat that reference to settlements and arbitration awards from comparable work places does not exclude consideration of market forces and other economic realities,[17] the range of settlements at those other five universities provides considerable guidance in determining how the parties would have settled this dispute if they had been able to bargain to and through a work stoppage.

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17. *City of Medicine Hat v. Medicine Hat Fire Fighters Association, I.A.F.F. Local 263* (8 January 2014).

[104] With respect to whether the term should be two years or three years, I note that there is no settlement at any of the other five universities involving 2018-19. In addition, it is significant that Bill 7 will apply at the end of the present collective agreement, enabling either party to engage in a work stoppage if necessary during the bargaining of the next collective agreement. In my opinion, it would be desirable to bring this bargaining unit under that regime sooner rather than later, if for no other reasons so that the parties can be direct masters of their own fate rather than relying indirectly on arbitration to try to replicate the result that would arise from completely free bargaining. Further, to the extent that there is uncertainty about the future of the Alberta economy, it would be reasonable for the parties to be able to address this ofter two years rather than three.[18] Accordingly, the Faculty Association's proposed two-year term is a factor which is more reasonable in my view than the University's proposed three-year term.

[105] With respect to COLA, the parties are agreed that 2% is the appropriate figure for 2017-18.[19] For 2016-17, the Faculty Association proposes 2% whereas the University proposes 1%. Looking at the increases at the five comparable universities for 2016-17, it is clear that 2% is more within the range of comparables than 1% is. At MacEwan, the increase was 2.25%; at Lethbridge, it was 1.6%; at Mount Royal, it was 1.8%; whereas only Alberta and Calgary were 1%, and both of those received more than Athabasca over the previous three years. Further, the increases at virtually all of the Alberta colleges for 2016-17 were

18. In reality, one year from now rather than two, because the first year of the collective agreement has already elapsed.

19. I recognize that the University's proposal of a 2% increase for 2017-18 was contingent on there being a suspension of the merit increment and a reduction of the professional allowances (in other words, a package deal), but a 2% increase in salaries does bear a considerable relationship to the increases to COLA and to the increases at at least some of the other universities and colleges.

at or closer to 2% than 1%.[20] The increase in the cost of living in Alberta during 2016-17 is closer to 2% than 1%. Looking just at COLA, it is clear that the Faculty Association's proposal of 2% in each of Years One and Two is more reasonable than the University's proposal.

[106] In addition, I do not find the University's proposal to suspend merit increments to be reasonable in light of the comparables from the other universities. None of their settlements has included a suspension or reduction of their merit increments. Further, the merit increment system at Athabasca might more accurately be compared with the increment or progression-up-the-grid systems at some of the other universities. Athabasca does not have a grid with annual increments; that is effectively the function of the merit increment at Athabasca. Further, the University does not propose to convert the merit increase system currently in the collective agreement to the fixed-pool system applicable at some of the other universities; it merely proposes to temporarily suspend the awarding of any merit increases for Years Two and Three; while this would be a cost saving measure, it would not address the University's concerns about the nature and form of the merit increase provision in the collective agreement. The effect of the University's proposal would also effectively result in a 0% salary increase for virtually all of the members of the bargaining unit for 2016-17 and 2017-18,[21] which has not occurred at any of the other Alberta universities or colleges.[22] In my view, the University's proposal is not reasonable.

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20. Bow Valley was 2%; Keyano was 2%, added an additional step to the grid equal to 3% and stopped using the bottom step; Lethbridge was 1.9% and eliminated the bottom step on the grid; Medicine Hat was 1.8%; SAIT added a new grid step equal to about 3.15% and stopped using the bottom step. NAIT was 1.5%. ACAD and Portage are still in negotiations.

21. The average merit increase was 2.08% of salary, which would offset the University's proposed 2% salary increase. Persons entitled to the full 2.8% merit increase would effectively lose 0.8% of their salary in each of 2017-18 and 2018-19.

22. Except NAIT for 2017-18.

[107] For similar reasons, the University's proposal to reduce professional allowances for academic staff in 2017-18 and for professional staff in both 2017-18 and 2018-19 is not reasonable in light of the settlements at the other Alberta universities and colleges.

[108] Having examined the components of the University's final offer individually, the totality of its offer is also not in line with any of the comparables at the other Alberta universities and colleges. Those other institutions operate in the same general economic situation and the same public funding context as Athabasca. In my view, there is nothing in these factors which would differentiate Athabasca from the other Alberta universities and colleges.

[109] Accordingly, I select the Faculty Association's final offer.

[110] I want to thank counsel for their very helpful briefs and submissions.

**SIGNED, DATED AND ISSUED** at Edmonton, Alberta on 14 June 2017 by:

D. P. Jones, Q.C., Arbitrator