

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

THE UNIVERSITY OF MANITOBA,

employer,

- and -

UNIVERSITY OF MANITOBA FACULTY
ASSOCIATION,

union.

REPLY SUBMISSION OF THE UNIVERSITY OF MANITOBA

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(Matter No. 0189856 ABF)

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I. INTRODUCTION

1. The University¹ provides this Reply to UMFA's Submission dated February 18, 2021.

2. The University opposes UMFA's position on each of the three issues in this interest arbitration – namely, the General Salary Increases, the Recruitment and Retention Adjustments, and the Return to Work Issues.

3. The University maintains, as set out in its Submission, that when the General Salary Increases that the University has proposed are combined with the impact of the Structural Changes to the salary scale, the parties will achieve their mutual aim of reasonable advancement towards the 25th percentile of the U15 Group over the life of the 2021 Agreement. No further increase to the base salaries of UMFA's members, either through General Salary Increases or Recruitment and Retention Adjustments, is warranted.

4. Regarding UMFA's proposals on General Salary Increases and Recruitment and Retention Adjustments, the University respectfully objects to UMFA's methods for projecting both the University's salaries and the 25th percentile of the U15 Group by 2023/24.

¹ Except where otherwise noted, all defined terms in this Reply have the same meaning as in the University's Submission.

5. To put it simply, UMFA has exaggerated the value of the 25th percentile through the use of average salary data (instead of median data) and the inclusion of an inflation adjustment that has no basis in objective evidence. Simultaneously, UMFA has underestimated the salary growth of its own members by failing to properly account for the impact of the Structural Changes over the course of the 2021 Agreement. The resulting gap between the University's salaries and the 25th percentile of the U15 Group, which UMFA relies upon in support of its compensation proposals, is inaccurate and ought to be rejected.

6. Further, the Recruitment and Retention Adjustments proposed by UMFA have no tie to any objective evidence of an actual recruitment or retention issue at the University. And, in many cases, the proposed adjustments are in fact contradicted by the University's own objective evidence. The result, is that UMFA has proposed arbitrary additional salary increases for its members that are not required to achieve reasonable advancement towards the 25th percentile, nor are they justified on the basis of any actual recruitment or retention issue.

7. When UMFA's proposed General Salary Increases and Recruitment and Retention Adjustments are applied to the University's median salaries from 2020/21, it becomes clear that UMFA's towards the 25th percentile of the U15 Group, but will take the University well proposals will not advance the University beyond it. To give effect to the mutual aim of the parties, the University respectfully submits that these proposals must be rejected.

8. Finally, regarding the Return to Work Issues, the University maintains the position set out in its Submission – all four of UMFA’s proposals ought to be dismissed. Following the period of the strike, and given the need to complete Fall Term teaching duties, the University expressly directed Deans across the institution to proportionately decrease their expectations regarding Faculty Members’ research and service duties accordingly. The University maintains that through this adjustment, and members’ receipt of strike pay, UMFA’s members have been compensated to the full extent that is appropriate following their decision to withhold services. No further award ought to be made in this regard.

II. OVERVIEW OF REPLY

9. Due to the differences in structure between this Reply and UMFA’s Submission, the University has included this overview to describe how this Reply will proceed.

10. In the next section of this Reply, Part III, the University responds briefly to factual claims made by UMFA in Part B and C of its Submission regarding the parties and their bargaining history.²

² It should be noted, however, that Part B of UMFA’s Submission begins with a summary of its proposals in this arbitration. The factual allegations and conclusions contained in that portion of Part B are addressed in Part V of this Reply, alongside the University’s substantive response to UMFA’s proposals.

11. In Part IV, the University comments upon UMFA's characterization of the legal principles that are applicable to this interest arbitration.

12. In Part V, the University provides its substantive responses to UMFA's proposals on General Salary Increases, Recruitment and Retention Adjustments and the Return to Work Issues. Where appropriate in Part V, the University has also included its response to Part E of UMFA's Submission titled "Factors for Consideration in this Interest Arbitration".

III. FACTUAL BACKGROUND

13. Throughout this Reply, the University will reiterate its position: in order to properly project the University's position within the U15 Group by 2023/24, it is imperative that *both* the Structural Changes and the General Salary Increases are taken into account.

14. The parties have each relied upon Statistics Canada salary data (at least in part) to support their respective positions. To be clear, that data indicates the base salaries³ that staff at U15 Group institutions actually received in any given year. Yearly changes in the data, therefore, incorporate both General Salary

³ We refer to base salaries because it is the University's understanding that the Statistics Canada salary data does not include stipends or compensation for additional appointments, such as overload teaching.

Increases, as well as staffs' movement up their respective salary scales through the receipt of performance or merit increments.

15. In order to properly compare projections of the University's salaries and U15 Group salaries taken from Statistics Canada, therefore, it is imperative that both the Structural Changes and the General Salary Increases that are ultimately achieved through this arbitration are taken into account.

16. With the foregoing in mind, there are two initial points that must be made regarding the factual background provided by UMFA in its Submission.

17. First, while UMFA frequently reproduces or refers to section 8 of the MOA, it consistently fails to include the final sentence of that section, which contains the parties' agreement that the Arbitrator may consider the whole impact of Article 24 (i.e., the structure of the salary scale and the General Salary Increases applied to it) when determining whether a proposal will achieve reasonable advancement towards the 25th percentile of the U15 Group. Section 8, in its entirety, states:

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

25th percentile during the life of the Collective Agreement.

MOA, section 8, University Submission, Tab 1.

See, for example, UMFA Submission, at paras 7 and 289.

18. Second, and relatedly, UMFA has mischaracterized the value of past bargaining offers due to its failure to distinguish between General Salary Increases and the value of performance increments under the salary scale.

19. At paragraph 30 of UMFA's Submission, UMFA rightly notes that the University's bargaining proposal dated September 13, 2016 was calculated by the University to provide salary increases to UMFA's members of 17.5% over four years. This calculation, however, included both General Salary Increases and the performance increments that members would have received as they moved up the salary scale over the course of four years. To be clear, almost every eligible UMFA member receives yearly performance increments – it would be extremely rare for a member to be denied a yearly increment on the basis of unsatisfactory performance.

UMFA Submission, at para 30.

20. At paragraph 61, therefore, UMFA's characterization of the ultimate agreement reached by the parties is misleading. It is true that only 1.75% in General Salary Increases were agreed to over the course of the agreement. However, members still received the value of their performance increments during that time.

UMFA's members did not lose the benefit of a possible 17.5% increase in their salaries in favour of a 1.75% increase only.

UMFA Submission, at para 61.

21. Finally, and notwithstanding the foregoing, a broader comment is warranted regarding UMFA's presentation of the parties' bargaining history. With all due respect, the University submits that the detailed history provided by UMFA between paragraphs 22 and 62 is irrelevant to the task at hand.

UMFA Submission, at paras 22-62.

22. The parties have already agreed upon a mutual aim for the outcome of this arbitration – that is, reasonable advancement towards the 25th percentile over the life of the 2021 Agreement. The main question for the Arbitrator, therefore, is how the parties reach that outcome. That question, in the University's respectful submission, turns entirely upon the objective evidence, and not upon the bargaining history that led the parties to this point.

IV. INTEREST ARBITRATION PRINCIPLES

23. Turning to the applicable principles of interest arbitration, there appears to be little dispute between the University and UMFA regarding the factors that are relevant to the replication analysis.

24. The University maintains, however, that the proper legal framework for the replication analysis in the unique circumstances of this case is as set out in its Submission. To paraphrase:

1. The starting point for the replication analysis is the parties' mutual recognition that they wish to achieve "reasonable advancement" towards the 25th percentile within the U15 Group.
2. What will constitute "reasonable advancement" for these parties in these circumstances will still turn on the traditional criteria that are relevant to the replication analysis.

University Submission, at paras 67-72.

25. Respectfully, therefore, the University does not agree with UMFA that any particular replication principle is necessarily "less significant" or "less influential" in this interest arbitration. The parties have agreed on a mutual aim. The degree to which that mutual aim is achieved, as expressly recognized in *University of Toronto v UTFA*, 2006 CarswellOnt 11578 (Ont Arb) (Winkler), will still turn upon the traditional principles of interest arbitration and the objective criteria that are relevant to the replication analysis.

See, for example, UMFA Submission, at para 193.

***University of Toronto v UTFA*, 2006 CarswellOnt 11578 (Ont Arb) (Winkler), University Submission, Tab 12.**

V. REPLY TO UMFA'S PROPOSALS

26. Turning to UMFA's proposals, the University repeats and relies upon the whole text of section 8 of the MOA. The parties have agreed that their mutual aim is to achieve reasonable advancement towards the 25th percentile of the U15 Group. To achieve reasonable advancement, the parties have acknowledged that the whole effect of Article 24 may be taken into account:

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

MOA, section 8 (emphasis added), University Submission, Tab 1.

27. The University maintains, as set out in its Submission, that the Structural Changes are "fundamental to achieving the parties' mutual aim of reasonable advancement towards the 25th percentile of the U15 Group". And, when compounded with the University's proposed General Salary Increases, the University will achieve reasonable advancement towards the 25th percentile over the course of the 2021 Agreement.

University Submission, at para 45.

(a) General Salary Increases

28. Beginning with UMFA’s proposals on General Salary Increases, the parties’ respective positions are as follows:

	2021/22	2022/23	2023/24
University’s Position	1.25% GSI	1.5% GSI	1.75% GSI
UMFA’s Position	3.3% GSI (plus R&R adjustments)	3.6% GSI	2.5% GSI

29. As stated in Part I of this Reply, the University fundamentally disagrees with the manner in which UMFA has attempted to project the gap that it claims will exist between the University’s salaries and the 25th percentile by 2023/24. UMFA has artificially inflated the salaries of other U15 Group members, while simultaneously underestimating the extent to which UMFA’s salaries will increase by 2023/24.

30. In this section, therefore, the University proceeds first by identifying the differences in the datasets relied upon by UMFA and the University, and their impact on the analysis. Next, it explains why UMFA’s inflation adjustment ought to be rejected. Third, it addresses UMFA’s failure to account for the Structural Changes in its projection of the University’s salaries by 2023/24. Finally, it provides a clear comparison of the parties’ two proposals on General Salary Increases to illustrate

why UMFA's proposal does not advance the University to the 25th percentile, but takes it well beyond that point, and ought to be rejected.

(i) The Divergent Use of Statistics Canada Data

31. A review of the Submissions of the University and UMFA reveals that there are two differences between the Statistics Canada data relied upon by each of the parties: (1) the breadth of the data in the ranks of Professor and Associate Professor; and (2) the use of median salary data versus average salary data.

32. As the University will explain, the former difference will have little impact on the analysis and outcome. The latter difference, on the other hand, is crucial.

A. Breadth of the Data

33. Turning first to the issue of breadth, Statistics Canada allows for the inclusion or exclusion of "senior administrative duties" when viewing salary data for the ranks of Professor and Associate Professor within the U15 Group. The broadest categories of data (titled "Professor" and "Associate Professor") include salary data for those who have senior administrative duties, as well as those who do not. The narrower categories of data (titled "Professor – without senior administrative duties" and "Associate Professor – without senior administrative duties") exclude such individuals.

34. In presenting its proposals to UMFA in the course of bargaining, the University utilized the broadest categories of Professor and Associate Professor. For consistency, it then used those same broad categories in its Submission in this arbitration. UMFA, meanwhile, utilized the narrower categories, which exclude individuals with senior administrative duties.

35. While it is helpful to understand that the parties have relied on different datasets in preparing their Submissions, the difference between the two categories of data is negligible. It should not have any impact on the ultimate analysis.

36. For illustration, the two tables on the left are reproduced from paragraph 29 of the University's Submission, and include the broader data sets of "Professor" and "Associate Professor". The two tables on the right contain the same information, but use the narrower data sets of "Professor – without senior administrative duties" and "Associate Professor – without senior administrative duties". As is apparent, excluding senior administrative duties has a negligible impact on the gap between the University and the 25th percentile in 2020/21:

2020-21 - Stats Canada Median Salaries - **Includes Senior Administrative Duties**

Associate Professor	
University	Median
McMaster	\$167,575
Waterloo	\$161,550
Toronto	\$160,348
Queen's	\$159,950
Ottawa	\$159,350
Saskatchewan	\$155,125
UBC	\$155,050
Western	\$148,925
Alberta	\$132,550
Dalhousie	\$132,225
McGill	\$131,400
Calgary	\$127,425
Montreal	\$125,375
Manitoba	\$123,125
Laval	\$115,850

Professor	
University	Median
UBC	\$204,350
Waterloo	\$202,450
McMaster	\$201,325
Toronto	\$198,764
Ottawa	\$194,950
Saskatchewan	\$189,325
Queen's	\$179,875
Western	\$177,650
Alberta	\$177,300
McGill	\$172,800
Calgary	\$168,800
Dalhousie	\$164,975
Manitoba	\$153,900
Montreal	\$153,725
Laval	\$146,850

25th Percentile **\$129,413**
 UM difference \$ **\$6,288**
 UM difference % **5.1%**

25th Percentile **\$166,888**
 UM difference \$ **\$12,988**
 UM difference % **8.4%**

2020-21 - Stats Canada Median Salaries - **"Without senior administrative duties"**

Associate Professor	
University	Median
McMaster	\$166,200
Toronto	\$163,325
Waterloo	\$159,350
Ottawa	\$159,100
Queens	\$158,825
UBC	\$155,050
Saskatchewan	\$152,775
Western	\$146,250
Alberta	\$132,075
Dalhousie	\$130,375
McGill	\$129,250
Calgary	\$126,200
Montreal	\$123,900
Manitoba	\$121,925
Laval	\$114,125

Professor	
University	Median
Toronto	\$207,125
UBC	\$202,000
Waterloo	\$200,850
McMaster	\$198,825
Ottawa	\$194,475
Saskatchewan	\$188,300
Queen's	\$178,200
Alberta	\$176,250
Western	\$175,625
McGill	\$169,725
Calgary	\$167,000
Dalhousie	\$164,050
Montreal	\$153,725
Manitoba	\$152,575
Laval	\$146,850

25th Percentile **\$127,725**
 UM difference \$ **\$5,800**
 UM difference % **4.8%**

25th Percentile **\$165,525**
 UM difference \$ **\$12,950**
 UM difference % **8.5%**

37. In the rank of Professor, for example, the gap between the University and the 25th percentile increases by a mere 0.1%, when senior administrative duties are excluded. For the rank of Associate Professor, meanwhile, excluding those duties actually moves the University \$488 or 0.3% closer to the 25th percentile.

38. For further clarity, the same negligible differences exist across Statistics Canada's historical median salary data as well.

39. At paragraphs 106-107 of the University's Submission, the University relied on Statistics Canada's median salary data from 2011-2021 to project how median salaries within the U15 Group may increase by 2023/24. To do so, the University calculated the average percentage by which median salaries had changed in each rank over the last ten years, including the ranks of Professor and

Associate Professor. When that same calculation is performed for the ranks of Professor and Associate Professor, excluding senior administrative duties, the differences in the 10-year average median adjustments are, once again, minimal. Very few of the 10-year averages change at all, and those that do all fall within 0.2% of the University's original calculations:

Average % Change in Median Salaries (2011-2021)																
	Dalhousie	McGill	Montreal	Laval	McMaster	Ottawa	Queen's	Toronto	Waterloo	Western	Manitoba	Sask	Alberta	Calgary	UBC	
Professor	2.0	2.6	2.4	1.5	2.8	3.1	2.1	2.5	3.2	2.5	1.0	2.8	1.1	1.2	3.3	
Professor - without senior administrative duties	2	2.8	2.4	1.5	2.9	3	2.1	2.6	3.2	2.4	1	2.9	1.1	1.1	3.4	
Associate Professor	2.3	2.8	2.3	1.5	2.9	3.5	2.4	2.7	2.9	2.9	2.4	3.1	1.4	1.1	3.4	
Associate Professor - without senior administrative duties	2.2	2.7	2.1	1.5	2.9	3.6	2.4	2.7	2.8	2.7	2.3	2.9	1.4	1.1	3.4	

Table of Changes in Median Salary (excluding senior administrative duties), U15 Group, 2011-2021, Tab 1.

Table of Changes in Median Salary, U15 Group, 2011-2021, University Submission, Tab 23.

40. Therefore, to reiterate, it is helpful to understand that the University and UMFA relied upon datasets of different breadths in their respective Submissions. Whether senior administrative duties are included or not, however, will ultimately be immaterial.

41. For this reason, and to increase the ease of comparison between the positions of UMFA and the University in this arbitration, the University has used the narrower data sets of "Professor – without senior administrative duties" and "Associate Professor – without senior administrative duties" throughout this Reply. There is no change in the dataset for the rank of Assistant Professor, as there is no

option from Statistics Canada to exclude senior administrative duties for Assistant Professors.

B. Median versus Average Data

42. Next, and more importantly, turning to the key issue of median data versus average data, the University submits that UMFA's use of average salary data for the U15 Group should be rejected.

43. When viewing the salaries of U15 Group Faculty Members, Statistics Canada allows for the selection of average salary data or median salary data. Throughout negotiations, both in this round and past rounds, the University has always relied on median salary data. The University's Submission relies on median salary data. And, the University maintains that median salary data is the proper measure in this arbitration, when assessing the University's position within the U15 Group.

44. Averages and medians are both measures of central tendency, meaning that the purpose of both is to provide a descriptive summary of the dataset, using a single number.

45. The problem with an average, however, as explained at paragraph 29 and footnote 3 of the University's Submission, is that it can easily be skewed by

extreme outliers. Medians, on the other hand, are less susceptible to being artificially inflated or deflated by a few extremes within a dataset.

46. Using median data is standard accounting and statistics practice when dealing with compensation data such as Faculty Member salaries, because exceptional individuals or highly competitive departments can easily skew averages upwards, giving the appearance that the “average” or middle-of-the-pack employee is receiving higher compensation than they are in reality. Alternatively, a trimmed average may also be used, which removes the outliers on both ends of the data set. A trimmed average, however, is not currently available from Statistics Canada.

**WorldatWork, Quantitative Principles in Compensation Management, Module 6 excerpt:
Statistics: Measures of Central Tendency and/or Location, p 6.20, Tab 2.**

47. As a simple example, consider 10 hypothetical Professors at the University of Calgary, which most recently had a salary floor of \$104,771, but no maximum salary. Assuming 8 of those 10 Professors received similar salaries, 2 individuals with higher salaries can significantly skew the average to suggest that the remaining 8 individuals are receiving higher compensation than they are. The average, in these circumstances, clearly no longer represents the vast majority of the Assistant Professors within the group:

Professor	Salary
Professor 1	\$110,771
Professor 2	\$110,771
Professor 3	\$112,771

Professor 4	\$112,771
Professor 5	\$112,771
Professor 6	\$112,771
Professor 7	\$114,771
Professor 8	\$114,771
Professor 9	\$164,771
Professor 10	\$168,771
Average:	\$123,571
Median:	\$112,771

48. This concept was aptly described by the Faculty Association in *Athabasca University and Athabasca University Faculty Assn, Re, 2003 CarswellAlta 2453 (Alta Arb) (Sims)*, wherein the Association was attempting to establish that the average (or mean) was an accurate measure of central tendency within the salaries of its professors. As Arbitrator Sims summarized:

The Faculty Association tests the soundness of the mean salary by looking at the median salary and the variance from that figure. A mean salary figure can be distorted by high or low earners but this is less the case the closer the median is to the mean. The Association was limited somewhat in this analysis by the lack of comprehensive data from the University of Lethbridge.

...

The Association's data shows Athabasca's mean and median figures are as follows:

	Mean	Median
Full Professor	87,536	84,339
Associate Professor	71,965	71,432
Assistant Professor	60,058	61,555

These figures are close enough, the Association argues, to suggest a normal salary distribution...

Athabasca University and Athabasca University Faculty Assn, Re, 2003 CarswellAlta 2453 at paras 50, 53 and 55 (Alta Arb) (Sims), Tab 3.

49. Unlike in *Athabasca*, the figures in the U15 Group are not “close enough” to establish a normal salary distribution that can be relied upon. When the averages and medians for 2020/21 are compared across each rank and institution, it becomes clear that the averages at the vast majority of the institutions exceed the medians, often by a significant amount:

Assitant Professor				Associate Professor				Professor			
University	Median Salary	Average Salary	Average Exceeds Median By:	University	Median Salary	Average Salary	Average Exceeds Median By:	University	Median Salary	Average Salary	Average Exceeds Median By:
Queen's	\$135,450	\$139,350	\$3,900	McMaster	\$166,200	\$166,350	\$150	Toronto	\$207,125	\$218,050	\$10,925
Ottawa	\$126,600	\$129,325	\$2,725	Toronto	\$163,325	\$170,200	\$6,875	UBC	\$202,000	\$207,950	\$5,950
UBC	\$125,250	\$132,525	\$7,275	Waterloo	\$159,350	\$160,125	\$775	Waterloo	\$200,850	\$201,575	\$725
Toronto	\$124,675	\$133,750	\$9,075	Ottawa	\$159,100	\$156,275	-\$2,825	McMaster	\$198,825	\$203,675	\$4,850
Waterloo	\$123,300	\$122,325	-\$975	Queens	\$158,825	\$163,125	\$4,300	Ottawa	\$194,475	\$190,900	-\$3,575
Saskatchewan	\$121,200	\$122,425	\$1,225	UBC	\$155,050	\$158,450	\$3,400	Saskatchewan	\$188,300	\$195,350	\$7,050
McMaster	\$119,225	\$123,250	\$4,025	Saskatchewan	\$152,775	\$153,800	\$1,025	Queen's	\$178,200	\$181,500	\$3,300
Western	\$119,100	\$127,500	\$8,400	Western	\$146,250	\$154,325	\$8,075	Alberta	\$176,250	\$186,300	\$10,050
Dalhousie	\$107,275	\$108,800	\$1,525	Alberta	\$132,075	\$135,925	\$3,850	Western	\$175,625	\$187,450	\$11,825
Calgary	\$106,575	\$112,125	\$5,550	Dalhousie	\$130,375	\$133,025	\$2,650	McGill	\$169,725	\$173,775	\$4,050
McGill	\$105,000	\$113,850	\$8,850	McGill	\$129,250	\$133,950	\$4,700	Calgary	\$167,000	\$175,400	\$8,400
Alberta	\$104,800	\$111,775	\$6,975	Calgary	\$126,200	\$131,375	\$5,175	Dalhousie	\$164,050	\$167,175	\$3,125
Montreal	\$101,550	\$103,000	\$1,450	Montreal	\$123,900	\$123,700	-\$200	Montreal	\$153,725	\$153,575	-\$150
Laval	\$96,700	\$97,975	\$1,275	Manitoba	\$121,925	\$121,150	-\$775	Manitoba	\$152,575	\$152,000	-\$575
Manitoba	\$94,925	\$99,200	\$4,275	Laval	\$114,125	\$116,075	\$1,950	Laval	\$146,850	\$142,275	-\$4,575
25th Percentile		UM difference %		25th Percentile		UM difference %		25th Percentile		UM difference %	
Median Salary	Average Salary	UM difference \$	UM difference %	Median Salary	Average Salary	UM difference \$	UM difference %	Median Salary	Average Salary	UM difference \$	UM difference %
\$104,900	\$110,288	\$9,975	10.5%	\$127,725	\$132,200	\$5,800	4.8%	\$165,525	\$170,475	\$12,950	8.5%
		\$11,088	11.2%			\$11,050	9.1%			\$18,475	12.2%

50. As is apparent from the foregoing, there are over 15 ranks above that have medians and averages that vary by over \$4,500, and another 9 that vary by \$4,500 to \$3,000. Notably, many of the most extreme differentials between median and average salaries exist at institutions which, unlike the University, have no maximums in their salary scales and/or provide merit pay (as opposed to set

performance increments). Examples include British Columbia, Western, McGill, Queen's, Toronto⁴ and Calgary.⁵ The University, by contrast, has average salaries which closely reflect the medians in at least two of its ranks, likely due to the existence of salary maximums and set performance increments. Comparing the University's average salaries with these institutions' is, in no way, meaningful, because a few senior or exceptional individuals have the ability to earn salaries which far exceed what is typical amongst their rank, upwardly skewing the average salary data. Therefore, in order to ensure that a true comparison occurs between the middle-of-the-pack salaries paid within each rank at each institution, a median must be used.

See Comparison of Current Salary Scales, U15 Group, p 1, University Submission, Tab 18.

51. For all the foregoing reasons, the University submits that UMFA's use of an average in this arbitration must be rejected. Based on the difference between the medians and the averages listed above, a small number of outliers are likely skewing average data at many institutions. These outlier salaries should not artificially increase the gap between the Universities' salaries and those that are ordinarily paid at the 25th percentile of the U15 Group. Medians, not averages, ought to indicate how competitive the University is when paying its typical staff member.

⁴ In the ranks of Associate Professor and Professor.

⁵ In the rank of Professor.

52. Therefore, the University submits that the gaps identified by UMFA between the University's average salaries and the 25th percentile in 2020/21 should not be given any weight. The proper distance between the University's median salaries and the 25th percentile of the U15 Group, as of 2020/21, was as follows:

Rank	Difference (Average)	Difference (Median)
Professor	\$18,475	\$12,950
Associate Professor	\$11,050	\$5,800
Assistant Professor	\$11,088	\$9,975

UMFA Submission, at paragraph 302.

(ii) UMFA's Projected U15 Group 2023/24 Salaries

53. Having established why median salary data must be used over average salary data, the University now turns to UMFA's analysis of U15 Group salaries and, in particular, the method by which UMFA projects salary advances by 2023/24.

54. Respectfully, the University submits that UMFA's methodology for projecting salary increases across the U15 Group is fundamentally flawed and ought to be rejected for two reasons. First, UMFA has included an additional "inflation adjustment", which is not proper in the circumstances. Second, UMFA has failed to account for the impact of the Structural Changes on the University's salaries over the next three years.

A. The Inflation Adjustment

55. Beginning with the issue of inflation, UMFA has attempted to project salaries of U15 Group members by 2023/24 by undertaking an analysis that is similar to that of the University – specifically, it calculated the average growth in salaries paid and reported by Statistics Canada over the last ten years (2011-2021), and then applied those average growth rates to the salaries of each rank of the U15 Group for the years 2021/22, 2022/23 and 2023/24.

UMFA Submission, at paras 305-311.

See also, University Submission, at paras 105-114.

56. Unlike the University, however, UMFA then applied an additional inflation adjustment to the salaries of each rank, stating: “The salary growth rates for each rank at each university over the period 2011-2021 would have contemplated inflation in addition to real salary growth”. UMFA then reasons that because inflation was reportedly lower, on average, from 2011 to 2021 than it is projected to be in the next three years, U15 Group salaries should be expected to increase by an additional percentage over the course of the 2021 Agreement equal to the difference between projected future inflation and the average rate of inflation from the period of 2011 to 2021.

UMFA Submission, at paras 314-320.

57. The University disagrees with this conclusion and analysis.

58. The salaries reported by Statistics Canada do not “contemplate[] inflation” – they simply reflect the compensation that was actually received by Faculty Members in the years in question. The actual salaries paid reflect General Salary Increases, individuals moving along their own salary scales, and changes in the complement of the group, such as new hires, departures and promotions.

UMFA Submission, at para 312.

59. Presumably, what UMFA means is that the rate of inflation between 2011 and 2021 would have influenced the General Salary Increases negotiated between the parties, which could be reflected in the median salaries reported by Statistics Canada. It is clear from the objective evidence, however, that General Salary Increases in the U15 Group have not corresponded with inflation within the last 5 years, nor can they be expected to do so into 2023/24.

60. According to the inflation data relied upon by UMFA, between the periods of 2011-2015 and 2016-2021, total average inflation was consistent at 1.76%. While inflation remained relatively consistent, however, General Salary Increases did not.

UMFA Submission, at para 313 and footnote 16.

61. As noted in the University’s Submission, there has been a clear downward trend since 2015 in the General Salary Increases at U15 Group institutions. From 2011 to 2015, General Salary Increases did track relatively close

to inflation, averaging 1.69%. Between 2016 and 2021, that pattern ended, with General Salary Increases averaging only 1.42%. Clearly, therefore, UMFA's claim that salary increases across this period "contemplated inflation" is inaccurate.

University Submission, at paras 102-103 and 110 and Tabs 21-22.

62. UMFA's analysis also assumes that U15 Group institutions will agree, from 2021 to 2024, to General Salary Increases that track increasing inflation. In fact, UMFA goes so far as to claim this is almost a certainty: "This is particularly important when other U15 faculty associations will almost certainly earn increases that recognize the increases in inflation over the same years at issue".

UMFA Submission, at para 349.

63. This assumption is also contradicted by the evidence. Those institutions that have settled revised collective agreements for 2021 to 2024 plainly indicate that parties are not tracking inflation anywhere near the rates forecasted by UMFA for Canada: 3.4% in 2021/22, 3.7% in 2022/23, and 2.4% in 2023/24.

UMFA Submission, at paras 185-186.

University Submission, at para 109 and Tabs 21-22.

64. As explained in the University's Submission, the only two agreements that extend into 2024 at this time are Ottawa and Waterloo, both of which include 1% general salary adjustments in each of 2021/22, 2022/23 and 2023/24. These

adjustments of 1% fall well below the historic patterns for both institutions over the course of 2011-2020, as well as UMFA's projected inflation rates.

University Submission, at paras 102-103.

65. Similarly, the University of Saskatchewan recently reached a tentative agreement to extend its current agreement by one year. The General Salary Increase for 2022/23 was only 1.8%, falling well below the average at Saskatchewan from 2009-2022 of 2.4% and UMFA's projected rate of inflation for 2022/23.

University Submission, at para 102 and footnote 7.

66. Recently, the University of Toronto also reached a renewed agreement with the University of Toronto Faculty Association, which includes 1% salary increases in both 2020/21 and 2021/22.

University of Toronto Faculty Association, UTFA Reaches Three-Year Deal with Administration, February 2, 2022, Tab 4.

67. Finally, on February 9, 2022, the Association of Academic Staff University of Alberta posted its bargaining proposal online, which includes General Salary Increases of 0% in 2020/21, 0% in 2021/22, 2.25% in 2022/23 and 2.5% + 0.5% in 2023/24. The University of Alberta, on the other hand, had most recently proposed 0% General Salary Increases in each of the four years. Reportedly, the parties have reached a tentative agreement, based on a mediator's recommendation. The agreement is scheduled to be ratified on March 8, 2022.

Presumably, the parties have agreed to General Salary Increases of 0% in both 2020/21 and 2021/22, followed by adjustments of 2.25% and 3%, or less, in each of the last two years.

Association of Academic Staff University of Alberta, Association's Proposal, February 10, 2022, p 2, Tab 5.

University of Alberta, Employer's Proposal, January 27, 2021, p 2, Tab 6.

Association of Academic Staff University of Alberta, Bargaining Update from Gordon Swaters – Mediator's Recommendations and upcoming General Meeting, Tab 7.

68. Finally, the average General Salary Increase for 12 U15 Group institutions in 2021/22 is 1.54%, nowhere near the 3.4% forecasted by UMFA for Canada. Objectively, therefore, it is simply wrong to suggest that U15 Group members are currently agreeing to General Salary Increases that track inflation.

Updated Table of General Salary Increases, U15 Group, 2009-2024, Tab 8.

69. If anything, the actual data indicates that U15 Group institutions are experiencing depressed General Salary Increases in light of the economic pressures and uncertainty caused by the COVID-19 pandemic. This pattern follows a consistent decline in General Salary Increases since 2015.

70. Based on the foregoing, there is no justification for UMFA's application of an additional inflation adjustment within the U15 Group. Notably, were it accepted, it would nearly double the annual growth rate calculated by UMFA for numerous ranks in future years. Salaries of Dalhousie's Assistant Professors, for example, which have experienced average annual growth of 1.91% according to UMFA, would suddenly be expected to increase at a rate of 3.74% and 4.04% in 2021/22 and 2022/23:

2011-2022 growth rate= 1.91% per year

Revised future growth rates

2021-2022= 1.91% + (3.4%-1.575%)= 3.74%

2022-2023= 1.91% + (3.7%-1.575%)= 4.04%

2023-2024= 1.91% + (2.4%-1.575%)= 2.74%

UMFA Submission, at para 318.

71. It is plainly apparent from the foregoing how the inclusion of UMFA's inflation adjustment results in projected salaries that are simply unrealistic for the U15 Group, and are not based on existing objective evidence.

72. Therefore, in addition to UMFA's use of average salary data, rather than median, the inflation adjustment is a further reason why UMFA's projected salaries for the 25th percentile of the U15 Group, as set out below, ought to be disregarded entirely:

25th percentile of projected 2023-2024 average salaries in U15		
Rank	Unadjusted	Adjusted for predicted inflation
Full Professor	\$179,748	\$188,319
Associate Professor	\$139,356	\$146,016
Assistant Professor	\$115,116	\$120,614

Submission of UMFA, at para 321.

73. Moreover, as will be explained in the next section, not only has UMFA inflated the salaries of other U15 Group members through the use of an average and the inflation adjustment, it has also deflated its own members' salaries, making the gap between the University and the 25th percentile appear far greater than it is.

B. The Need to Account for the Structural Changes

74. Turning to the manner in which UMFA has projected the University's salaries for 2023/24, the University respectfully submits that UMFA has improperly failed to account for the value of the Structural Changes.

75. As will be recalled, the University spent a considerable portion of its Submission describing the Structural Changes and identifying the impacts that these changes will have on the salaries of UMFA's members, as compared to others within the U15 Group. This included an analysis of how the salaries of Librarians and Instructors can also be expected to increase over the next three years in

comparison to other U15 Group institutions (an analysis which, notably, is entirely absent from UMFA's Submission).

Submission of the University, at paras 34-45 and 75-88.

76. Given the importance, and the cost, of the Structural Changes, the University maintains that any proper analysis must take the Structural Changes into account. UMFA's projections are fundamentally flawed in this regard and ought to be rejected.

77. To start, according to UMFA, its proposed General Salary Increases of 3.3%, 3.6% and 2.5% will result in the following average salaries by 2023/24:

Rank	2023/24 Salary
Professor	\$173,971
Associate Professor	\$140,893
Assistant Professor	\$116,785

UMFA Submission, at para 324.

78. It is not apparent to the University how these increases were calculated.

79. What is clear, however, is that these projections do not properly account for the Structural Changes. To reiterate, while the University does not agree with the use of average salary, applying UMFA's proposed General Salary Increases to the average salaries reported by Statistics Canada in 2020/21 and

relied upon by UMFA results in average salaries well beyond those projected by UMFA when the Structural Changes are taken into account:

UMFA Proposal	Average 2020/21	New 2021/22 Increment	2021/22 (GSI 3.3%)	2022/23 (GSI 3.6%)	2023/24 (GSI 2.5%)	Revised Maximum 2023/24	
Professor	\$152,000.00	\$4,827.00	\$161,843.00	\$172,670.12	\$182,112.66	\$179,415	*hits maximum
Associate Professor	\$121,150.00	\$3,931.00	\$129,078.95	\$137,798.31	\$145,417.59	\$146,116	
Assistant Professor	\$99,200.00	\$3,349.00	\$105,822.60	\$113,101.78	\$119,485.63	\$124,483	

80. Therefore, UMFA has undervalued the increase in average salaries that will occur at the University under its proposed General Salary Increases. While UMFA, for example, calculates the revised average salary for Professors as \$173,971, the combined impact of UMFA's proposals and the Structural Changes would result in average salaries that reach the maximum of the pay scale, \$179,415, by 2023/24. For Associate Professors, meanwhile, UMFA estimates an average of \$140,893, while its proposal and the Structural Changes would result in an average salary of over \$4,500 more, at \$145,417.

81. To be clear, because the yearly Statistics Canada data indicates the actual salaries paid to U15 Group employees in any given year, the data reflects both General Salary Increases and movement of employees up their respective pay scales through the receipt of performance or merit increments. For illustration, consider the history of median salary changes for the University's Associate Professors as compared to General Salary Increases over the same period of time:

Institution	2011 / 2012	2012 / 2013	2013 / 2014	2014 / 2015	2015 / 2016	2016 / 2017	2017 / 2018	2018 / 2019	2019 / 2020	2020 / 2021	Average Change
University of Manitoba	\$ 99,575.00	\$ 102,925.00	\$ 108,700.00	\$ 110,950.00	\$ 115,225.00	\$ 116,575.00	\$ 116,575.00	\$ 117,925.00	\$ 120,450.00	\$ 121,925.00	
% Change:		3.4%	5.6%	2.1%	3.9%	1.2%	0.0%	1.2%	2.1%	1.2%	2.3%
% GSI:		2.9%	2.9%	2.0%	2.0%	0.0%	0.0%	0.75%	1.0%	0.0%	1.3%

82. While General Salary Increases averaged only 1.3% annually, median salary payments increased 2.3% annually on average. Put another way, over the course of 10 years, year over year median salary increases totalled 20.7%, while General Salary Increases totalled only 11.5%.

83. In order to adequately project the salaries of UMFA's members by 2023/24, therefore, it is indisputable that both the General Salary Increases and the Structural Changes must be taken into account.

84. When UMFA's failure to account for the Structural Changes is combined with (1) its use of average salary data; and (2) its attempts to further increase the 25th percentile by 2023/24 through the inflation adjustment, it becomes obvious why the gap perceived by UMFA between the University's salaries and the 25th percentile of Faculty Members within the U15 Group remains so large by 2023/24.

85. For all the foregoing reasons, the University submits that UMFA's projections ought to be given no weight in assessing how the parties ought to achieve reasonable advancement towards the 25th percentile over the course of the 2021 Agreement.

(iii) A Comparison of the Parties' General Salary Increase Proposals

86. In light of the foregoing, the University has prepared a new, true comparison of the impacts of the University's proposed General Salary Increases and those of UMFA. To be clear, the following comparison does not account for UMFA's proposed Recruitment and Retention Adjustment, but only compares the General Salary Increases proposed by each party.

87. Using 2020/21 median salaries, excluding senior administrative duties for Professors and Associate Professors, each party's proposal can be expected to advance the University's median salaries as follows by the end of 2023/24:⁶

⁶ This assumes that the complement of Faculty Members remains consistent until 2023/24. The revised maxima under the salary scale have also been included. Once a member reaches the maximum, he/she/they will no longer be entitled to receive yearly increments, but will receive a General Salary Increase. The median salary for Professors and Associate Librarians in the University's proposal will hit the revised maximum in 2023/24 (this was omitted in error in paragraph 90 of the University's Submission). The median salaries for Professors, Associate Professors and Associate Librarians in UMFA's proposal will hit the revised maxima in 2023/24.

University Proposal	Median 2020/21	New 2021/22 Increment	2021/22 (GSI 1.25%)	2022/23 (GSI 1.5%)	2023/24 (GSI 1.75%)	Revised Maxima 2023/24	
Professor	\$152,575.00	\$4,827.00	\$159,309.19	\$166,598.23	\$174,498.84	\$174,492	*hits maximum
Associate Professor	\$121,925.00	\$3,931.00	\$127,380.06	\$133,280.73	\$139,672.93	\$142,107	
Assistant Professor	\$94,925.00	\$3,349.00	\$99,460.56	\$104,351.71	\$109,636.58	\$121,068	
Lecturer	\$82,000.00	\$2,673.00	\$85,698.00	\$89,696.57	\$94,026.83	\$99,361	
Librarian	\$125,859.00	\$4,431.00	\$131,863.24	\$138,338.65	\$145,335.75	\$160,171	
Associate Librarian	\$112,540.00	\$3,541.00	\$117,487.75	\$122,844.18	\$128,650.97	\$127,985	*hits maximum
Assistant Librarian	\$79,984.00	\$3,072.00	\$84,055.80	\$88,434.72	\$93,154.97	\$111,040	
General Librarian	\$71,093.00	\$2,667.00	\$74,648.66	\$78,475.40	\$82,603.09	\$95,385	
Senior Instructor	\$111,450.00	\$3,931.00	\$116,774.13	\$122,515.70	\$128,719.52	\$142,107	
Instructor II	\$95,933.00	\$3,349.00	\$100,481.16	\$105,387.61	\$110,690.62	\$121,068	
Instructor I	\$75,456.00	\$3,000.00	\$79,399.20	\$83,635.19	\$88,197.09	\$108,440	

UMFA Proposal	Median 2020/21	New 2021/22 Increment	2021/22 (GSI 3.3%)	2022/23 (GSI 3.6%)	2023/24 (GSI 2.5%)	Revised Maxima 2023/24	
Professor	\$152,575.00	\$4,827.00	\$162,436.98	\$173,285.48	\$182,743.41	\$179,415	*hits maximum
Associate Professor	\$121,925.00	\$3,931.00	\$129,879.53	\$138,627.70	\$146,267.73	\$146,116	*hits maximum
Assistant Professor	\$94,925.00	\$3,349.00	\$101,406.53	\$108,526.72	\$114,796.20	\$124,483	
Lecturer	\$82,000.00	\$2,673.00	\$87,379.00	\$93,293.87	\$98,464.68	\$99,361	
Librarian	\$125,859.00	\$4,431.00	\$134,443.35	\$143,873.82	\$152,175.95	\$164,690	
Associate Librarian	\$112,540.00	\$3,541.00	\$119,794.82	\$127,775.91	\$134,730.50	\$131,596	*hits maximum
Assistant Librarian	\$79,984.00	\$3,072.00	\$85,695.47	\$91,963.10	\$97,524.34	\$114,172	
General Librarian	\$71,093.00	\$2,667.00	\$76,106.07	\$81,608.90	\$86,481.21	\$98,076	
Senior Instructor	\$111,450.00	\$3,931.00	\$119,058.85	\$127,417.48	\$134,777.25	\$146,116	
Instructor II	\$95,933.00	\$3,349.00	\$102,447.79	\$109,605.47	\$115,901.91	\$124,483	
Instructor I	\$75,456.00	\$3,000.00	\$80,946.05	\$86,968.11	\$92,328.01	\$111,500	

88. For ease of reference and as a visual aid, the University has also utilized its Salary Calculator to indicate how each of the foregoing median salaries will advance over the course of the 2021 Agreement, under both the University's proposal and UMFA's proposal. The calculations for the University's proposed General Salary Increases are attached hereto as Tab 9. The calculations for UMFA's proposed General Salary Increases are attached hereto as Tab 10.

University Salary Calculator Median Salary Calculations, Tab 9.

UMFA Salary Calculator Median Salary Calculations, Tab 10.

89. Once again, when the projections for Faculty Members are compared with the projections for all U15 Group institutions, based on average yearly increases to median salaries from 2011-2021, the varying impact of the two proposals becomes clear. While the University's proposal can be expected to bring the University very close to the 25th percentile by 2023/24, UMFA's proposal will significantly exceed the 25th percentile and approach the 50th:

UNIVERSITY PROPOSAL compared to Median Salary Projections 2023/24
Excludes senior administrative duties

Assistant Professor	
University	Median Salary
Queen's	\$144,164
Ottawa	\$139,957
UBC	\$136,068
Toronto	\$133,477
Waterloo	\$133,170
McMaster	\$130,280
Western	\$129,765
Saskatchewan	\$129,757
McGill	\$113,405
Dalhousie	\$113,173
Calgary	\$110,786
Manitoba	\$109,637
Alberta	\$108,297
Montreal	\$108,083
Laval	\$102,619

Associate Professor	
University	Median
McMaster	\$181,083
Toronto	\$176,915
Ottawa	\$176,909
Waterloo	\$173,114
UBC	\$171,409
Queens	\$170,537
Saskatchewan	\$166,456
Western	\$158,419
McGill	\$140,004
Manitoba	\$139,673
Dalhousie	\$139,170
Alberta	\$137,700
Montreal	\$131,871
Calgary	\$130,411
Laval	\$119,338

Professor	
University	Median
Toronto	\$223,704
UBC	\$223,312
Waterloo	\$220,755
McMaster	\$216,629
Ottawa	\$212,508
Saskatchewan	\$205,162
Queen's	\$189,664
Western	\$188,576
McGill	\$184,385
Alberta	\$182,130
Manitoba	\$174,492
Dalhousie	\$174,021
Calgary	\$172,572
Montreal	\$165,061
Laval	\$153,558

25th Percentile \$110,211
UM difference \$ \$575
UM difference % 0.5%

25th Percentile \$138,435
UM difference \$ -\$1,238
UM difference % -0.9%

25th Percentile \$174,292
UM difference \$ -\$200
UM difference % -0.1%

UMFA PROPOSAL compared to Median Salary Projections 2023/24
Excludes senior administrative duties

Assistant Professor	
University	Median Salary
Queen's	\$144,164
Ottawa	\$139,957
UBC	\$136,068
Toronto	\$133,477
Waterloo	\$133,170
McMaster	\$130,280
Western	\$129,765
Saskatchewan	\$129,757
Manitoba	\$114,796
McGill	\$113,405
Dalhousie	\$113,173
Calgary	\$110,786
Alberta	\$108,297
Montreal	\$108,083
Laval	\$102,619

Associate Professor	
University	Median
McMaster	\$181,083
Toronto	\$176,915
Ottawa	\$176,909
Waterloo	\$173,114
UBC	\$171,409
Queens	\$170,537
Saskatchewan	\$166,456
Western	\$158,419
Manitoba	\$146,116
McGill	\$140,004
Dalhousie	\$139,170
Alberta	\$137,700
Montreal	\$131,871
Calgary	\$130,411
Laval	\$119,338

Professor	
University	Median
Toronto	\$223,704
UBC	\$223,312
Waterloo	\$220,755
McMaster	\$216,629
Ottawa	\$212,508
Saskatchewan	\$205,162
Queen's	\$189,664
Western	\$188,576
McGill	\$184,385
Alberta	\$182,130
Manitoba	\$179,415
Dalhousie	\$174,091
Calgary	\$172,572
Montreal	\$165,061
Laval	\$153,558

25th Percentile **\$111,979**
UM difference \$ **-\$2,817**
UM difference % **-2.5%**

25th Percentile **\$138,435**
UM difference \$ **-\$7,681**
UM difference % **-5.3%**

25th Percentile **\$176,753**
UM difference \$ **-\$2,662**
UM difference % **-1.5%**

90. Based on the foregoing, the University maintains that UMFA's General Salary Increases do not achieve reasonable advancement towards the 25th percentile of the U15 Group, but something well beyond it. This is not the mutual aim that the parties agreed to in section 8 of the MOA, and it should not be awarded in this arbitration.

91. The University's proposal, when combined with the impact of the Structural Changes, will bring the University very close to the 25th percentile by the end of the 2021 Agreement. UMFA's proposal of General Salary Increases of 3.3%, 3.6% and 2.5% ought to be rejected.

(iv) Manitoba University Comparisons

92. In support of its proposal on General Salary Increases, UMFA also argues that the University has fallen behind Manitoban post-secondary comparators outside of the U15 Group, namely the University of Winnipeg (“Winnipeg”) and the University of Brandon (“Brandon”).

UMFA Submission, at paragraphs 329-331.

93. Respectfully, these comparisons do not support the General Salary Increases proposed by UMFA.

94. As is apparent from the data cited by UMFA, the Structural Changes that the parties have already agreed to will provide UMFA’s members with greater increments than their Manitoban comparators year after year. Specifically, for Professors, UMFA’s members are now currently slated to earn \$660 to \$1702 more in increments each year than Professors at Winnipeg or Brandon:

Full Professor Salary scales from Manitoba collective agreements					
Faculty Association	Floor	Increment	Threshold	Increment	Maximum
UM (2020-21)	\$105,269	\$3,900	\$140,361	\$2,924	\$157,904
UM (2021-22)	\$120,684	\$4,827	-	-	\$168,957
Brandon (2021-22)	\$122,665	\$3,668			\$166,685
Winnipeg (2020)	\$111,417	\$4,167	\$148,258	\$3,125	\$171,388

UMFA Submission, at para 329.

95. Therefore, and while the University maintains that the use of an average salary is not appropriate in this interest arbitration, any difference that may exist between average salaries paid to UMFA's members as opposed to Professors at Brandon can be expected to be reduced as Professors at the University earn \$4,827 each year in performance increments (prior to any General Salary Increase) while Brandon's earn only \$3,668.

UMFA Submission, at para 330.

96. Furthermore, even in 2022/23, Brandon's maximum (\$168,352) and increment (\$3,705) will still fall below those established by the University's Structural Changes for 2021/22. Once the University's General Salary Increases for 2022/23 are established and applied to its salary scale, this gap will only widen.

Brandon University Faculty Association Collective Agreement, 2019-2023, excerpt, pp 151-152 ("Brandon Agreement"), Tab 11.

97. Additionally, it is important to note that UMFA has only selected the rank of Professor to compare within Manitoban institutions. When a rank outside of Faculty Member is compared, such as the Instructor II rank, the beneficial impact of the Structural Changes for UMFA's members only becomes more apparent:

Instructor II salary scales from Manitoba collective agreements					
Faculty Association	Floor	Increment	Threshold	Increment	Maximum
UM (2020-21)	\$68,566	\$2,540	\$91,423	\$1,905	\$102,850
UM (2021-22)	\$83,734	\$3,349	-	-	\$117,227
Brandon (2021-22)	\$56,509	\$1,556			\$70,509

Brandon (2022-23)	\$57,074	\$1,572			\$71,214
Winnipeg (2020)	\$56,493	\$2,167	\$89,000	\$2,000	\$112,383

Brandon Agreement, pp 151-152, Tab 11.

**University of Winnipeg and University of Winnipeg Faculty Association, 2016-2020, excerpt,
p 101, Tab 12.**

98. In conclusion, once the Structural Changes are properly accounted for, there is nothing in the Manitoban data that could support the increases proposed by UMFA. This is especially so in light of the mutual aim of the parties – which is to advance within the U15 Group.

(v) The Parties' Negotiating History

99. Next, UMFA says that the parties' bargaining history also supports its proposed increases of 3.3%, 3.6% and 2.5%. Specifically, UMFA asserts that these General Salary Increases are within an "appropriate range of what has been negotiated between" these parties in previous rounds of bargaining.

UMFA Submission, at para :339.

100. Once again, with all due respect, UMFA has only considered half of the compensation equation. The University and UMFA have never agreed to revise the salary scale in a manner similar to what was accomplished by these parties in this round of bargaining.

101. Take, for example, footnotes 17-22, on pages 81-82 of UMFA's Submission, which make reference to structural changes of, at most, 2% to floors, maxima and increments. The current Structural Changes, by contrast, increased floors by 14.6% - 31.7%, maxima by 7% - 22.9%, and increments by 23.8% - 89.6%. The total anticipated cost of the Structural Changes is over 4% of payroll costs by the end of 2023/24. Moreover, those costs will only continue to increase into the future.

UMFA Submission, at para 337, footnotes 17-22.

University Submission, at paras 36 and 43.

102. Therefore, the University maintains that whether the parties agreed to General Salary Increases in the realm of 3% previously is of little assistance to UMFA in this arbitration. The new increased cost of UMFA's proposed General Salary Increases, when combined with the Structural Changes, is a compounded 12.9% over three years. This jumps to 15.9% if the Recruitment and Retention Adjustment is included. By comparison, the new increased costs of the University's proposed General Salary Increases and Structural Changes are a compounded 7.8% over the course of the 2021 Agreement.⁷

⁷ To be clear, at paragraph 182 of its Submission, the University indicates that its total payroll costs will increase by 12.9% over the course of the 2021 Agreement. The amount of 12.9% includes the costs of three years of performance increments under the previous salary scale, as well as the Structural Changes and the University's proposed General Salary Increases. When the costs of the previous increments under the 2017 Agreement are excluded from the calculation, the total cost of the University's proposals is 7.8%.

103. In sum, the parties' bargaining history must be considered in its proper context and on a total cost basis. UMFA's reliance on the parties' previous agreements regarding General Salary Increases does little to assist UMFA.

(vi) Economic and Fiscal Circumstances of the Province and University

104. Turning to the relevant economic and fiscal circumstances, the University disagrees with many of the assertions made by UMFA in its Submission. The University's Chief Financial Officer and Comptroller, Michael Emslie, reviewed UMFA's Submission and has prepared a response, which the University has attached hereto as Tab 13. The University maintains that the state of the economy, and the fiscal circumstances of the Province and the University, do not support the General Salary Increases proposed by UMFA (nor the Recruitment and Retention Adjustments).

Michael Emslie, Observations related to the submission of the University of Manitoba Faculty Association, March 1, 2022 ("Emslie Reply"), Tab 13.

Michael Emslie, Curriculum Vitae, Tab 14.

A. Provincial Economic and Fiscal Circumstances

105. To begin, with respect to the Report of Professor Barager, the University maintains that it is still too soon to say, with certainty, how strongly and quickly the economy will recover from the COVID-19 pandemic. In its Submission,

the University highlighted that the Province's most recent quarterly economic report did not yet account for the impact of the omicron wave. Economic summaries released by Canada's banks in February consistently indicate that the omicron variant did impact economic recovery in the first quarter of 2022. As the Emslie Reply indicates, "many major indices are down seven to ten percent since early January".

National Bank of Canada, "Monthly Economic Monitor: Economics and Strategy", February 2022, p 1 ("National Bank February Monitor"), Tab 15.

TD Economics, "Addressing Issues Impacting the Economic and Financial Outlook", February 23, 2022, pp 2-3 ("TD Issues Report"), Tab 16.

Emslie Reply, p 1, Tab 13.

106. Similar impacts can be reasonably expected from any subsequent wave. As highlighted by both TD Economics and the National Bank of Canada, the strength of Canada's economic recovery from this stage onwards will depend upon the emergence of future waves and variants. While the initial omicron wave has significantly receded across the country, reports of increasing cases from the omicron subvariant, BA.2, have already emerged. As the Ottawa Citizen reports:

The spread of BA.2, which is believed to be 1.4 times as contagious as the already highly transmissible original Omicron sub-variant, could complicate reopening plans now underway in most provinces.

As it becomes dominant in the coming weeks, BA.2 could extend the current wave of the pandemic, increase case counts, or slow the decrease in cases at a time

when provinces are dropping gathering restrictions and mask mandates.

Ottawa Citizen, “More contagious BA.2 sub-variant spreading in Canada, complicating opening plans”, February 19, 2022, Tab 17.

See also, Global News, “BA.2 in Canada: Tam says officials are watching new omicron subvariant ‘very closely’”, January 28, 2022, Tab 18.

107. In addition, and unfortunately, with the recent invasion of Ukraine, greater global economic uncertainty has arisen still. At the time of writing, even the most recent economic forecasts could not predict the full economic fallout of what was to follow. It is clear, however, that a prolonged war in Ukraine will impact markets across the world, including Canada.

National Bank February Monitor, p 1, Tab 15.

TD Issues Report, pp 3-4, Tab 16.

See also, Emslie Reply, p 1, Tab 13.

108. Regarding the Province’s fiscal circumstances, UMFA rightly acknowledges that the Province’s current debt to GDP ratio is comparatively high, when contrasted with its historic ratio. Moreover, it acknowledges that current debt levels will have a long term impact in Manitoba: “the current size of the deficit remains significant, and despite its reduction in 2021-22, the deficit will impart a more lasting financial legacy in terms of adding to the outstanding provincial debt”.

UMFA Submission, at paras 173-174.

Emslie Reply, p 1, Tab 13.

109. While UMFA and Dr. Barager allege that the Province's deficit is in line with that of other provinces, that comparison simply does not justify the increased salaries UMFA is seeking. To the contrary, as noted above, in other provinces, U15 Group institutions have already concluded revised agreements with General Salary Increases that fall well below their historic patterns for the years 2021 to 2024. If anything, the debt that all provinces are carrying as a result of the COVID-19 ought to temper salary increases, as the country aims to recover from the ongoing costs of the pandemic. Moreover, as the Emslie Reply notes, reducing the deficit has been a major focus for Manitoba's Conservative government since its election in 2016:

The Province of Manitoba was very vocal about its debt levels being too high before the pandemic, it was a common theme discussed by our former premier. There is little doubt paying down that debt will remain a priority in the medium term.

UMFA Submission, at paras 173-174.

Table of General Salary Increases, University Submission, Tab 22.

Emslie Reply, p 1, Tab 13.

B. University's Fiscal Circumstances

110. Further, even if it can be assumed that the Province will steadily recover from the pandemic, both economically and fiscally, there is no guarantee that this will translate into stable funding for the University. As just one example, Manitoba currently has an incredible backlog of over 150,000 medical procedures

that will need to be performed following the pandemic, requiring investment and resources from the Province.

CBC News, “Manitoba’s surgical backlog swells 1 month after province created task force to tackle problem”, January 13, 2022, Tab 19.

Emslie Reply, p 1, Tab 13.

111. In light of these, and other costs, it can be reasonably assumed that post-secondary funding may not be a top priority for the Province in the short term. Combined with the Province’s recent pattern of decreasing the block grant each year, it should be expected that the Province will not be inclined to maintain or increase the block grant in the coming years.

Emslie Reply, p 1, Tab 13.

112. Turning to the University’s fiscal circumstances, it is also important to respond to a number of points made by UMFA at paragraphs 179-180.

UMFA Submission, at paras 179-180.

113. First, the University respectfully submits that isolating and identifying the University’s “non-externally-restricted cash and investments” is not an accurate method of evaluating the University’s financial health or its ability to pay for increased salaries. Cash balances fluctuate dramatically throughout a year, and focussing on cash alone ignores the extent of the University’s liabilities. For example, the recent cash balances calculated by UMFA include restricted funds

provided by external granting agencies to fund specific research projects. These funds were applied for by UMFA members and must be spent in accordance with the terms of the grants. The University is not legally permitted to alter the use of those funds.

Emslie Reply, p 2, Tab 13.

114. Instead, the University maintains that the Composite Financial Index ratings, cited and relied upon by the University in its Submission, remain the proper method of evaluating a post-secondary institution's overall financial health. As explained in "Financial Health of Australian Universities as Measured by Composite Financial Index" from a 2013 edition of *Advances in Management & Applied Economics*:

The Composite Financial Index (CFI) is a single indicator of overall institutional financial health based on performance in four main areas of finance: sufficiency and flexibility of financial resources, management of debt, management and performance of assets, and results from operations (The Austen Group, 2012). The CFI framework is designed to address questions of whether an institution is financially healthy. Specifically, the following questions are answered in the assessment of financial health: Are resources sufficient and flexible enough to support the mission? Are resources, including debt, managed strategically to advance the mission? Does asset performance and management support the strategic direction? Do operating results indicate whether the institution is living within available resources? KPMG and Prager, McCarthy, and Sealy, LLC (2002) developed the four ratios (primary reserve ratio, viability ratio, return on net assets and net operating revenues) to calculate the Composite

Financial Index (CFI). A brief description of each ratio is important in understanding their significance in determining CFI.

UMFA Submission, at para 179.

University Submission, at paras 132-140.

Mohanlingam and Nguyen Thi Phuong Linh, "Financial Health of Australian Universities as Measured by Composite Financial Index", *Advances in Management & Applied Economics*, vol 3, no 6 (2013), pp 67-80, Tab 20.

115. Second, relying exclusively on cash on hand to fund increased compensation is not appropriate. Once salary increases are applied, the increases become permanent annual costs to the University, which are only compounded for years to come. Cash on hand, by comparison, can be spent only once. Once cash is depleted, the ongoing costs of the compounding, increased salaries remain.

UMFA Submission, at para 179.

Emslie Reply, p 2, Tab 13.

116. Third, the University acknowledges that its revenue per student is in line with McMaster University and Queen's University. However, both McMaster and Queen's have a higher student to Faculty ratio, which means they can pay their staff more with less revenue, as they have fewer staff doing the same amount of work.

UMFA Submission, at para 179.

Macleans, "Canada's best Medical Doctoral universities: Rankings 2022", October 7, 2021, Tab 21.

Emslie Reply, pp 2-3, Tab 13.

117. Further, while revenue per student may be a useful guide to the relative resources available to a post-secondary institution, there are many factors that influence the degree to which revenue per student can be used to pay for staff salaries. Number of staff, types of programs, student services, capital and maintenance requirements, just to name a few, are all relevant and impact the degree to which revenue per student can be applied to salaries.

UMFA Submission, at para 179.

118. Finally, regarding the surplus, the University continues to rely upon its explanation for the surplus as set out at paragraphs 141-151 of its Submission. It is important to note, however, that even with the recent yearly surpluses, the University's reserves are still only in the middle of the U15 Group. The University is, by no means, the most financially sound institution within this market.

Emslie Reply, p 3, Tab 13.

University of Manitoba Financial Results, Background Information Presentation with Speaking Notes, p 8, University Submission, Tab 29

119. The University maintains that with its proposal on General Salary Increases, the parties will be able to achieve reasonable advancement towards the 25th percentile, while ensuring that the University will be able to continue to afford salaries as well as other liabilities, such as its ongoing deferred maintenance costs.

See University Submission, at para 151.

120. It is also important to understand that, traditionally, all of the University's employees receive the same General Salary Increase, regardless of whether they are members of UMFA or not. Therefore, the decision on General Salary Increases will not only impact UMFA's salary costs, but will also increase the remaining \$289 million in payroll costs that the University carried in 2020/21 for unionized and non-unionized employees outside of UMFA. The University maintains that General Salary Increases in the quantum of 1.25%, 1.5% and 1.75% are fair, reasonable, and appropriate in the circumstances.

2020/21 Salary Costs Spreadsheet, University Submission, Tab 4.

(vii) Cost of Living

121. Further, UMFA claims that its General Salary Increases track the projected cost of inflation from 2021-2024, which will ensure that members' wages will be "at the true or forecasted cost of living rates". Once again, UMFA argues that providing General Salary Increases equal to the rate of inflation is "particularly important when other U15 faculty associations will almost certainly earn increases that recognize the increases in inflation over the same years at issue".

UMFA Submission, at para 349.

122. Respectfully, as noted above, this claim is directly contradicted by the General Salary Increases in recent U15 Group collective agreements. Both Ottawa and Waterloo have settled renewed collective agreements with 1% General Salary

Increases in 2021/22, 2022/23 and 2023/24. Toronto has agreed to a 1% General Salary Increase in 2021/22. Saskatchewan, similarly, recently reached a tentative agreement to extend its current agreement by one year, with a 1.8% General Salary Increase in 2022/23. Alberta, meanwhile, appears to agree with its Association that a 0% General Salary Increase is appropriate for 2021/22, although the parties disagree on the increases that ought to follow thereafter.

Submission of the University, at paras 102-103, footnote 7 and Tab 22.

123. None of the foregoing track inflation and, to the contrary, appear to establish a pattern of depressed General Salary Increases due to the ongoing economic uncertainty caused by the COVID-19 pandemic.

124. Additionally, the University reiterates that by insisting that General Salary Increases track inflation, UMFA has failed to account for the benefit of the Structural Changes – benefits which, under previous agreements, UMFA's members did not receive.

125. While UMFA has calculated the compounded rate of inflation as 9.7% over the course of the 2021 Agreement, its proposed General Salary Increases, when compounded with the Structural Changes, result in 12.9% of new salary costs to the University or 15.9% when the Recruitment and Retention Adjustment is included. Simply put, even accepting UMFA's rate of inflation, the salary adjustments proposed by UMFA are not consistent with inflation.

(viii) Other Public Sector Settlements in Manitoba

126. Finally, while UMFA alleges that the settlement of teachers' collective agreements in Manitoba supports General Salary Increases that track the cost of living in Manitoba, the University respectfully reiterates that UMFA cannot view General Salary Increases in isolation.

127. As explained in the University's Submission, caution should be exercised when relying upon the Cost of Living Adjustments achieved by teachers in Manitoba. Over four years, the General Salary Increases in the teachers' agreements amount to a compounded 7.0%. By contrast, the increased compensation costs to the University arising from its proposal on General Salary Increases and the Structural Changes are already 7.8% over three years (and 12.9% on a total cost basis). Simply put, the two situations are not comparable, and a Cost of Living Adjustment in 2021/22 in the teachers' agreements does not support UMFA's proposed General Salary Increases, especially in light of the fact that the parties have agreed that their aim is reasonable advancement within the U15 Group.

(ix) Conclusion

128. For all the foregoing reasons, the University submits that UMFA's proposals on General Salary Increases ought to be rejected.

(b) Recruitment and Retention Adjustment

129. Turning to UMFA's proposal regarding Recruitment and Retention Adjustments, UMFA has proposed that in addition to General Salary Increases, each member of every rank ought to receive an additional upwards adjustment in the first year of the 2021 Agreement as follows:

Rank	Amount
Professor	\$17,150
Associate Professor	\$5,810
Assistant Professor	\$3,020
Lecturer	\$3,020
Senior Instructor	\$5,810
Instructor I and II	\$3,020
Librarian	\$5,810
Associate Librarian, Assistant Librarian and General Librarian	\$3,020

130. Pursuant to sections 24.1.4 and 24.2 of the Agreed To Items, the parties have agreed that if a Recruitment and Retention Adjustment is to be provided in the first year, it will be added to a member's base salary (after the base salary has been adjusted by the GSI). Any performance increment will then be added to the total of the base salary and the Recruitment and Retention Adjustment. For illustration, therefore, the median salaries for Faculty Members would advance over the course of the 2021 Agreement as follows if UMFA's proposals were accepted:

UMFA Proposal	Median 2020/21	R&R Adjustment	GSI + R&R Adjustment	New 2021/22 increment	2021/22 (GSI 3.3%)	2022/23 (GSI 3.6%)	2023/24 (GSI 2.5%)	
Professor	\$ 152,575.00	\$17,150.00	\$174,759.98	\$4,827.00	\$174,759.98	\$181,051.33	\$185,577.62	*hits maximum in Year 1
				Revised Maximum	\$168,957.00	\$175,039.45	\$179,413.44	
Associate Professor	\$ 121,925.00	\$5,810.00	\$131,758.53	\$3,931.00	\$135,689.53	\$142,552.56	\$146,116.38	*hits maximum in Year 2
				Revised Maximum	\$137,599.00	\$142,552.56	\$146,116.38	
Assistant Professor	\$ 94,925.00	\$3,020.00	\$101,077.53	\$3,349.00	\$104,426.53	\$111,655.44	\$118,003.13	
				Revised Maximum	\$117,227.00	\$121,447.17	\$124,403.35	

Salary Calculator Examples with Recruitment and Retention Adjustment, Tab 22.

131. Notably, the median for both Professors and Associate Professors would exceed the maximum of the salary scale in one of the first two years of the 2021 Agreement if UMFA’s proposals were accepted. Once a member reaches the maximum of the salary scale, the member is no longer entitled to receive yearly performance increments. The member will, however, continue to receive General Salary Increases each year. For a Professor with a salary that it is at or above the median, therefore, that Professor would reach the ceiling within the first year of the 2021 Agreement, would lose his/her/their performance increment in the first year, and would not be entitled to receive performance increments thereafter.

132. UMFA’s proposal should be rejected for numerous reasons.

133. First, for the reasons set out above, these adjustments are not necessary to achieve reasonable advancement towards the 25th percentile of U15 Group salaries. UMFA has overestimated the gap between the 25th percentile and the University, by failing to account for the Structural Changes, failing to use a median salary and unnecessarily applying an inflation adjustment to the U15 Group.

134. Second, it is clear that the quanta of these Recruitment and Retention Adjustments are not tied to any actual evidence of a recruitment and retention issue at the University. And, in fact, in some cases, the justification offered for the quantum selected for individual ranks actually runs contrary to the University's objective evidence as described specifically in paragraphs 142-143 below.

135. To start, while UMFA has cited a number of statements made by the University regarding its desire to improve recruitment and retention, none of those indicate that there is a broad based recruitment or retention problem that requires University wide salary adjustments for every member of UMFA. In fact, as reported by HR Metrics, voluntary resignations amongst Faculty Members in 2019 and 2020 were below the average for other post-secondary Canadian institutions. As a whole, therefore, retention at the University is precisely where it ought to be.

University Submission, at para 196 and Tab 43.

136. In fact, by citing Dave Muir's comments at paragraph 368, UMFA rightfully acknowledges that the University's aim in bargaining was to improve the market stipend so it could address narrow issues of recruitment and retention. As discussed in the University's submission, the parties ultimately agreed to revisions to the manner in which the market stipend can be applied, and to increase the maximum cap on market stipend funds.

Submission of UMFA, at para 368.

University Submission, at paras 46-53.

September 29, 2021, Bargaining Notes of the University, Tab 23.

137. To be clear, as the University explained in its Submission, turnover amongst Faculty Members is higher in certain Faculties and Departments than others. Some professional programs have a turnover rate that exceeds the average at the University. To reiterate, however, turnover within particular Faculties or programs, does not justify Recruitment and Retention Adjustments to be applied to base salaries across all ranks, Departments and Faculties at the University.

Submission of the University, at paras 198-199.

138. The University maintains that the Market Stipend Changes are sufficient to allow the University to target the particular market sensitive disciplines that require increased compensation due to external forces, in order to recruit and retain top candidates.

139. Additionally, it is important to understand that unlike UMFA's proposed Recruitment and Retention Adjustment (which would see many of UMFA's members hit the maximum of their salary scale within the first or second year of the 2021 Agreement, thereby depriving them of the benefit of performance increments thereafter) market stipends are not included in members' base salaries for the purposes of moving up the salary scale within a rank. This means that were the University to provide a \$15,000 market stipend to a Department (as it already does

in the Faculty of Law), a Professor at the University's median salary in 2020/21 would continue to receive performance increments each year under the University's proposal, in combination with the Market Stipend, allowing the Professor to exceed the maximum under the salary scale:

University Proposal	Median 2020/21	New 2021/22 Increment	2021/22 (GSI 1.25%)	2022/23 (GSI 1.5%)	2023/24 (GSI 1.75%)	Revised Ceiling 2023/24
Professor	\$ 152,575.00	\$4,827.00	\$ 159,309.188	\$166,598.23	\$174,492.00	\$174,492
	Plus \$15,000 Market Stipend:		\$15,000	\$15,000	\$15,000	
	Total Annual Compensation:		\$ 174,309.19	\$181,598.23	\$189,492.00	

140. Further, regarding the Recruitment and Retention Adjustments proposed for Instructors, the University maintains that there is no evidence of any recruitment or retention issue amongst Instructors. As explained in the University's submission, a total of seven Instructors have resigned from the University in the last five years. Moreover, the Structural Changes create parity between the ranks of Senior Instructor and Associate Professor, as well as Instructor II and Assistant Professor. There is simply no justification, in these circumstances, to provide a further upwards adjustment to the salaries of Instructors at the University.

University Submission, at paras 205-210.

141. Additionally, UMFA submits that the Recruitment and Retention Adjustment for Librarians (as the most senior rank of Academic Librarian) ought to be higher than the ranks below: "to deal with retention issues at the top of their respective ranks, the adjustment should be higher". With all due respect, no Librarian has resigned within the last five years. Simply put, there is no retention

issue to address, let alone an issue that would justify a higher adjustment than the lower ranks.

University Submission, at para 212.

142. Finally, while UMFA relies upon a survey of its members (which, the University notes, it has not produced in full), there are a number of points that must be made about the survey.

143. First, it appears that only 55% of UMFA's membership completed the survey. As reported by UMFA, "question three" had only 699 respondents and "question four" had only 695. UMFA represents approximately 1270 individuals, spread across 11 ranks. There is no indication of which ranks or Faculties this subset of members is from. Simply put, the results cannot be taken to represent the entirety of UMFA's membership, nor are they robust enough to make inferences to the entire UMFA membership population.

144. Second, while the University acknowledges that a majority of the respondents reportedly indicated that they were individually dissatisfied with their salaries in January 2021, this is precisely what the parties set out to remedy through their mutual agreement to advance towards the 25th percentile over the course of the 2021 Agreement. The University maintains that the differential between the University's salaries and the 25th percentile will be adequately addressed through

its proposal on General Salary Increases, which when combined with the Structural Changes, will provide significant compensation increases to UMFA's members.

145. Therefore, any subjective dissatisfaction, even if it were representative of UMFA's entire membership, does not justify a further Recruitment and Retention Adjustment.

146. For all the foregoing reasons, the University submits that UMFA's proposed Recruitment and Retention Adjustments ought to be rejected.

(c) Interest

147. Additionally, UMFA has indicated it is seeking interest on any retroactive salary adjustments that are awarded. The University strongly opposes this proposal. These parties have never agreed to pay interest on retroactive salary adjustments. Further, the parties have no history of ever obtaining interest on overpayments or underpayments to employees, which happen from time to time. Simply put, there is no justification to award interest in these circumstances.

(d) Return to Work Issues

148. Finally, turning to the Return to Work Issues, the University maintains its positions set out at paragraphs 216 to 249 of its Submission. It does not intend

to repeat those position, but provides additional commentary here only where necessary.

University Submission, at paras 216-249.

(i) Full Pay and Benefits for the Period of the Strike

149. Regarding pay for the period of the strike, it is important to note that UMFA appears to have resiled from its request for “full pay and benefits” for the period of the strike as set out in the MOA. Now, UMFA is only seeking (1) full compensation for all teaching duties that were required to be completed after the strike ended; and (2) the right for each member to obtain quantification and compensation for research or service duties that were completed during the strike or deferred until after the strike, but still completed.

UMFA Submission, at paras 451-452.

150. The University maintains its position set out in its Submission – no salary or benefits ought to be awarded relating to the period of the strike. As an overview, the University’s response to UMFA’s modified proposal is:

(1) Members should not be awarded compensation for the completion of Fall Term teaching duties following the strike. Research and service expectations were proportionately reduced in the 2021/22 academic year to allow for the completion of all teaching duties. Moreover, members have already been adequately compensated in strike pay, and no further compensation is warranted in the circumstances.

(2) The University did not require UMFA's members to perform research or service duties during the period of the strike. These choices were left up to members themselves and those that chose to complete work, should not be compensated by the University. Moreover, the administrative burden associated with UMFA's proposal would be tremendous. This is not a rights based grievance, it is an interest arbitration, and the University is opposed to the process proposed by UMFA.

151. Beginning with the issue of deferred teaching duties, UMFA is seeking to be compensated for the work that its members would otherwise have performed during the strike (November 2, 2021 to December 7, 2021), but which instead was required to be completed upon members' return to work. This claim relates to UMFA's complaint that the University's Senate determined that the academic year would not be abridged as a result of the strike and members would still be required to complete their full teaching duties for 2021/22.

152. As a starting point, and contrary to UMFA's claims, it is important to understand that UMFA did not "waive" its "right to grieve the reconfiguration of [members] work schedule by the University Senate" in exchange for the opportunity to seek compensation for the completion of teaching duties through this arbitration process. Due to the bicameral nature of the University's governance structure, UMFA's members have no right to grieve Senate decisions. UMFA did not, therefore, give up any right in order to pursue its request for compensation in this forum.

UMFA Submission, at paras 412-413.

University of Manitoba Faculty Association v The University of Manitoba, 2019 MBQB 35, Tab 24.

153. For background, UMFA first requested to be compensated for (what it now characterizes as) “deferred work” in the course of negotiating the Return to Work Protocol on November 25, 2021. At that time, UMFA argued that because its members were going to be required to complete teaching for the Fall Term after the end of the strike, members were going to have to complete (what it then characterized as) “additional work”. It requested compensation from the University on this basis.

UMFA Proposal, Return to Work Protocol, November 25, 2021, para 24, Tab 25.

154. The University denied this request. While the University did require Faculty Members to perform all teaching duties, Faculty Members also carry research duties and service duties.⁸ Unlike teaching duties, research and service duties are typically not assigned to Faculty Members, but Faculty are expected to complete them on a yearly basis. To accommodate members’ return to work without creating “additional work”, the University advised UMFA that while members completed their Fall Term teaching duties in December 2021, they would not be

⁸ It should be noted that at paragraph 88 of UMFA’s Submission, UMFA appears to suggest that all Faculty Members’ duties are split 40/40/20 amongst teaching, research and service. This is not accurate. Distribution of duties varies from member to member. While the 40/40/20 split is common, it does not apply to all Faculty Members.

expected to complete research and service duties that would ordinarily have been completed during that time.

155. Effectively, therefore, members were not expected to complete any duties during the strike and once they returned, they were also not expected to perform the ordinary level of research and service as they completed their outstanding teaching duties. This understanding was communicated to all Deans to ensure that expectations of members were reduced accordingly for the 2021/22 academic year. On January 6, 2022, Vice-Provost (Academic Affairs) Tracey Peter, wrote to all Deans, stating:

As you know, UMFA requested a lump sum payment in respect of the “additional work” they claimed would be required to complete the Fall Term by faculty members who went on strike. **We denied this request on the basis that we do not expect returning faculty to teach in December while at the same time performing the other duties they would normally perform during that time.**

As a result of the five-week strike, striking UMFA members worked five weeks less in 2021. **Accordingly, expectations around performance of duties other than Fall term teaching duties should be reduced.** This would apply to research (for faculty members only) or to service (for instructors), or some combination of these duties (if applicable). Please ensure you note such a reduction on affected members’ 2021 annual evaluations. Similar reductions of research and/or service responsibilities in 2022 should also be considered on a case-by-case basis and should be well documented.

January 6, 2022 E-mail from Tracey Peter, Vice-Provost (Academic Affairs), Tab 26.

156. To be clear, the University acknowledges that there are *some* service duties that could not be eliminated entirely while requiring Faculty Members to complete all teaching duties. The University disagrees with UMFA, however, that these include “service linked to teaching” such as overseeing exams – these duties are teaching duties, not service duties, and were required to be completed for the Fall Term.

UMFA Submission, at para 439.

157. There were numerous service duties, such as Committee work, that was deferred and not completed. Meetings of the Arts Faculty Council and Senate Committee on University Research, as examples, were deferred. These meetings, and the related preparation and obligations related to them, were part of members’ service duties that would have occurred but for the strike. All tenure decisions, meanwhile, were adjudicated prior to the strike. And, to reiterate, research expectations were also proportionately reduced to account for the period of the strike and the need to complete teaching duties upon return.

UMFA Submission, at para 440.

158. The University denies, therefore, that the “only reason the University can offer, to justify paying one member who went on strike less than another member who did not, where both perform the same annual teaching assignments, is that the striking member elected to go on strike”. The reason striking members need not be compensated for teaching duties is because they had other duties

proportionately reduced for a period of time to eliminate the potential for creating any additional work for UMFA's members.

UMFA Submission, at para 417.

159. Further, regarding Librarians, it is important to note that Librarians did not teach any courses in the Fall Term of 2021 and, therefore, did not have any teaching duties to complete upon return. Librarians should also not have completed any other duties during the period of the strike. Any work that would ordinarily have been done by an UMFA Librarian was completed by a librarian outside of the UMFA bargaining unit during the strike (either members of CUPE or an excluded Associate University Librarian).

160. The University maintains, therefore, that no additional compensation is warranted. Moreover, even if it were, UMFA's members have already been generously compensated by UMFA through tax free strike pay, and should not be in receipt of additional compensation.

161. As an example, consider a Professor with a salary of \$120,000 and a normal 40/40/20 distribution of teaching, research and service. That Professor would be compensated \$48,000 per year for their teaching duties, or \$923 per week. UMFA's strike lasted five weeks, the equivalent of \$4,615 in pay for teaching duties. That Professor would have received strike pay from UMFA for five weeks in the

amount \$7,000, tax free. UMFA's members have been compensated sufficiently already, there is no need for any further pay.

University Submission, at para 230.

162. Turning to the issue of "essential work" that was authorized by the University during the period of the strike, this appears to relate, in large part, to research duties that were completed by UMFA members during the strike.

163. To be clear, the University allowed research and other essential work to proceed during the strike because it never intended to, and in fact did not, lock out UMFA's membership. The University understands that there is research undertaken at the University which is time sensitive, or otherwise requires Faculty Members' presence, and cannot be left unattended for any extended period of time. Each member, however, had the choice as to whether to complete such work or provide for other arrangements during the period of the strike. The University did not require any work to be undertaken while members withheld their services, and it should not be obligated to compensate members for their choices.

See University of Manitoba, Faculty and Staff FAQ, Strike Information, Tab 27.

164. Finally, the University reiterates that the survey results presented by UMFA do not represent the entirety of UMFA's membership. Many of the questions cited by UMFA that relate to duties in and around the strike attracted only 250-300 responses, out of UMFA's 1270 members.

UMFA Submission, at paras 441-445.

165. In conclusion, the University altered the expected workloads of UMFA's members to account for the need to complete all teaching duties in the 2021/22 academic year. The University did not *require* members to complete duties during the period of the strike, but allowed members access to the University to complete essential work, if they chose to do so.

166. As was recognized in *Mount Allison University and MAFA, Re, 2014 CarswellOnt 16645 (Ont Arb) (Burkett)*, one of the known consequences of a strike at a post-secondary institution is that work may become condensed and some duties may still need to be performed notwithstanding the strike:

In this case, the faculty must be presumed to have known that, subject to offsetting strike pay (which the Association correctly argues is delayed compensation already earned), they would suffer a loss of earnings and would most certainly have make-up work to do upon their return while, at the same time, the University officials would come under pressure from the community and from its students and, in the process, the University itself could suffer a loss of reputation.

Mount Allison University and MAFA, Re, 2014 CarswellOnt 16645 at para 32 (Ont Arb) (Burkett), University Submission, Tab 46.

167. As Arbitrator Burkett explained, these realities do not justify an award of compensation through a third party interest arbitrator. The University maintains that even if the strike resulted in increased duties to members, which is not admitted but denied on the basis of the foregoing, any increase is a potential and known

consequence of a strike at a post-secondary institution and it should not justify compensation above and beyond the strike pay received in this case.

(ii) Pension Contributions and Pensionable Service

168. UMFA has proposed that the University undertake an amendment of the pension plan to retroactively allow for pension contributions for the period of the strike. If it is determined that contributions cannot be made for the period of the strike, UMFA has requested damages in lieu of pension contributions.

UMFA Submission, at paras 459 and 473-474.

169. Regarding the request for a Plan amendment and pension contributions, the University maintains the position set out in its Submission. There is no justification for allowing pension contributions for a period of time that UMFA's members withheld their services. Further, to allow for pension contributions would require a Plan amendment, which the University maintains is not merely a "modest" undertaking, and should not be achieved through arbitration. Finally, even if a Plan amendment were ordered, contributions must be made by April 30, 2022 to be considered on a "current service" basis.

University Submission, at paras 232-243.

170. In the alternative, the University submits that UMFA's request for damages in lieu of pension contributions is beyond the scope of the parties'

agreement and the MOA. Specifically, in section 1(c)(ii), there is no reference to damages in lieu of pension contributions:

ii. The Association's request for contributions to the University's pension plan for the period of the strike and the period of the strike being considered pensionable service;

171. The University respectfully submits, therefore, that damages in lieu of pension contributions are beyond the scope of the Arbitrator's jurisdiction, and no such order can be made.

(iii) Union Dues

172. Regarding the deduction of union dues, the University maintains the position set out in its Submission: the University had no obligation to deduct union dues following the termination of the 2017 Agreement.

University Submission, at para 244-247.

173. Regarding UMFA's argument that it ought to have been put on notice that union dues would not be collected, the University notes that the same process was followed during the strike in 2016 and no union dues were remitted or collected from working members. In the absence of any indication to the contrary, UMFA ought to have been well aware that the University had no obligation or intention of deducting union dues once the strike began.

174. Regarding the 1995 Return to Work Protocol, the University acknowledges that it erred when it stated, at Tab 6 of its Submission, that no Return to Work Protocol was executed by the parties in 1995. Nevertheless, the University maintains that the agreement to deduct union dues in the Return to Work Protocol from 1995 does not support UMFA's position. Most recently, this practice was not applied following the 2016 strike. Therefore, the principle of replication does not support UMFA's position. The most recent past practice of the parties did not include any agreement to subsequently collect and remit union dues.

(iv) Member Benefits

175. For the same reasons set out in its Submission, and above in relation to compensation for the period of the strike, the University maintains that it is not appropriate to order the University to compensate UMFA for the costs of member benefits. No such order should be made.

University Submission, at paras 248-249.


VI. CONCLUSION

176. In conclusion, the University maintains that the only matter that ought to be awarded in this interest arbitration are General Salary Increases of 1.25% in 2021, 1.5% in 2022 and 1.75% in 2023.

177. UMFA's proposals regarding General Salary Increases, Recruitment and Retention Adjustments, and the Return to Work Issues ought to be rejected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of March, 2022.

THOMPSON DORFMAN SWEATMAN LLP

Per: 
Adrian B. Frost / Miranda D. Grayson

VII. LIST OF DOCUMENTS AND AUTHORITIES

1. Table of Changes in Median Salary (excluding senior administrative duties), U15 Group, 2011-2021;
2. WorldatWork, Quantitative Principles in Compensation Management, Module 6 excerpt: Statistics: Measures of Central Tendency and/or Location;
3. *Athabasca University and Athabasca University Faculty Assn, Re, 2003 CarswellAlta 2453 (Alta Arb) (Sims)*;
4. University of Toronto Faculty Association, UTFA Reaches Three-Year Deal with Administration, February 2, 2022;
5. Association of Academic Staff University of Alberta, Association's Proposal, February 10, 2022;
6. University of Alberta, Employer's Proposal, January 27, 2021;
7. Association of Academic Staff University of Alberta, Bargaining Update from Gordon Swaters – Mediator's Recommendations and upcoming General Meeting;
8. Updated Table of General Salary Increases, U15 Group, 2009-2024;
9. University Salary Calculator Median Salary Calculations;
10. UMFA Salary Calculator Median Salary Calculations;
11. Brandon University Faculty Association Collective Agreement, 2019-2023, excerpt;
12. University of Winnipeg and University of Winnipeg Faculty Association, 2016-2020, excerpt;
13. Michael Emslie, Observations related to the submission of the University of Manitoba Faculty Association, March 1, 2022;
14. Michael Emslie, Curriculum Vitae;

15. National Bank of Canada, "Monthly Economic Monitor: Economics and Strategy", February 2022;
16. TD Economics, "Addressing Issues Impacting the Economic and Financial Outlook", February 23, 2022
17. Ottawa Citizen, "More contagious BA.2 sub-variant spreading in Canada, complicating opening plans", February 19, 2022
18. Global News, "BA.2 in Canada: Tam says officials are watching new omicron subvariant 'very closely'", January 28, 2022;
19. CBC News, "Manitoba's surgical backlog swells 1 month after province created task force to tackle problem", January 13, 2022;
20. Mohanlingam and Nguyen Thi Phuong Linh, "Financial Health of Australian Universities as Measured by Composite Financial Index", *Advances in Management & Applied Economics*, vol 3, no 6 (2013), pp 67-80;
21. Macleans, "Canada's best Medical Doctoral universities: Rankings 2022", October 7, 2021;
22. Salary Calculator Examples with Recruitment and Retention Adjustment;
23. September 29, 2021, Bargaining Notes of the University;
24. *University of Manitoba Faculty Association v The University of Manitoba*, 2019 MBQB 35;
25. UMFA Proposal, Return to Work Protocol, November 25, 2021;
26. January 6, 2022, e-mail from Tracey Peter Vice-Provost (Academic Affairs);
27. University of Manitoba, Faculty and Staff FAQ, Strike Information.