

IN THE MATTER OF A FINAL OFFER SELECTION

BETWEEN McMASTER UNIVERSITY

AND McMASTER UNIVERSITY FACULTY ASSOCIATION

SELECTOR

O.B. SHIME, Q.C.

REPRESENTATIVES OF THE UNIVERSITY

DR. A. C. HEIDEBRECHT	PROVOST AND VICE-PRESIDENT (ACADEMIC)
DR. J. BIENENSTOCK	VICE-PRESIDENT (HEALTH SCIENCES)
MR. A. L. DARLING	VICE-PRESIDENT (ADMINISTRATION)

REPRESENTATIVES OF THE FACULTY ASSOCIATION

MS. D.M. MAURER	PRESIDENT, FACULTY ASSOCIATION
MR. A. R. KAY	CHAIRMAN, SALARY COMMITTEE
MR. G. K. SMITH	VICE-PRESIDENT, FACULTY ASSOCIATION

A hearing was held on April 6, 1990 at Hamilton, Ontario.

## AWARD

This is a final offer selection between the University and the Faculty wherein the Faculty claims an additional two per cent (2%) salary increase over the agreed upon 5.1% increase so that the total increase would be 7.1% as of July 1, 1990. The University proposes that there be an across-the-board increase of 6.0% so that the real difference between the two parties is 1.1%. Also since the parties have agreed upon a basic 5.1%<sup>1</sup> increase the difference between them is a difference concerning catch up.

The Faculty submits that over a number of years their salaries have eroded when compared to a number of indicators of economic growth. These indicators or factors include The Consumer Price Index for Canada, The Ontario Industrial Composite Index of Weekly Earnings and The Gross Provincial Product Per Labour Force Members for Ontario. The Faculty also maintains it has lost ground when compared to Ontario Secondary School Teachers, to other sectors of the labour force and to Faculties at other research-intensive Ontario Universities.

The University maintains that it has offered a salary increase which is significantly above The Canadian CPI for the past year. In addition to the 6% across the board increase the University

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<sup>1</sup> Footnote. There is in addition an increase of .35% for improved dental coverage and .016% for improvement in the major medical plan regarding private nursing which I have considered but do not refer to in the body of the reasons.

claims that there has been a dental plan improvement equal to .35%, that since the early 1960's the cumulative increase in the University's Faculty salary floor has matched the cumulative increase in inflation, that the average salary level for Faculty has remained among the top three for the Province's Universities in recent years, and that the proposed increase exceeds the across the board increases for 1990-91 reported by other major Universities. The University also maintains that its budget decisions are made in a political context where the Universities are accorded far lower priority by Government than in the past. And finally the University submits that its proposed increase represents a good balance between the principles related to remuneration and to working conditions.

In two previous decisions between these parties, while acknowledging that there was some erosion in Faculty salaries, Mr. R.L. Kennedy, the Selector expressed a healthy scepticism with respect to the statistical data and its utilization by the Faculty in determining the fundamental issue of entitlement to compensation. It is a scepticism with which I concur, but in doing so I wish to add a few comments of my own.

The concept of catch up, first gained notoriety in the early 1970's and continued for some years when inflation was escalating at a rapid pace. Initially the concept of catch up had a temporal

immediacy in that it was limited to keeping up with the level of inflation as it then existed; in that respect it had a contemporary flavour and it did not reach back historically. It now appears from the submissions that the concept of catch up has expanded beyond an immediate or contemporary view that wages should keep pace with inflation and now includes an historical view of wages.

The concept of historical catch up carries with it a number of difficult issues and problems. First where does one anchor the various indices that are used to measure the catch up? The Faculty uses 1971 as a starting point while the University uses 1961. Each starting point yields a different result. I am also satisfied that the same or similar rationales could be applied to select other starting points in time in which to anchor the various indices.

Secondly, if comparisons are to be made those comparisons should be based on total compensation. Compensation would value all benefits including pensions, medical and dental benefits, etc. For example, to simply compare the base wage or salary level of an Assistant Professor to the base wage in the Industrial Composite, is in my view, eliminating or omitting a number of significant items in the remuneration comparison.

Thirdly, the salaries and wages of particular groups will vary over time. There is not a necessary compensation relationship

between employees in various sectors. The wages of workers and employees in any particular industry may vary from time to time depending on the health of the industry. Thus wages for steel workers or auto workers will vary depending on the economic circumstances in the particular industry. There is no law of economics that says any particular group is to have a lock step relationship with a particular group or a given economic index such as the Consumer Price Index. Clearly there will be variations depending on the sector.

Fourthly, a historical comparison of wages and salaries does not reflect the historical realities of the work place. For example, many workers over the time comparisons urged on us by the Faculty, may have had to suffer and endure layoffs of varying lengths or they may have had to engage in strike activity for varying periods in order to secure the compensation levels that are now incorporated into the data. Yet the periods off work are not included in the data provided. Again to examine the bare data only without considering the other employment features that are part of the history is to omit very significant factors in the analysis.

I might add that the comparison suggested by the Faculty which compares the Industrial Composite wage to the base rate for Assistant Professor is not borne out by the actual experience at McMaster University where persons who have been appointed to the

rank of Assistant Professor generally start at a higher rate than the minimum.

And finally there is the element of acquiescence. Arbitrator/selectors recognizing the limitations of third party intervention have always looked to free collective bargaining for assistance in decisions concerning wage determination. The use of this criteria carries with it an implicit recognition that collective bargaining is an economic power struggle where wage determination is governed by market place conditions, and therefore arbitrator/selectors have recognized that no union, or employer is ever really satisfied with the ultimate wage settlement. But, inherent in these settlements is a recognition of market conditions and what the exercise of a economic power struggle will yield or not yield at any given time. Settlements do not reflect satisfaction and are, in effect, an acquiescence by the parties in the exigencies of the market place at a given time. Thus to some extent, I view previous settlements by Faculty, whether they be Faculty unions or associations, whether certified or uncertified, or whether they have occurred in the context of particular procedures developed by a specific University and its Faculty, as an acquiescence, albeit without satisfaction, in the wages that were determined. To go beyond those settlements to the degree that I am now requested is in some respects like being a revisionist historian or a mason shoring up chinks in past settlements with pieces of catch up. One should only be prepared to go beyond those

settlements with considerable hesitation.

What is troubling about the concept of acquiescence in this case however, is the extent to which the University has agreed with the Faculty over the years. Where both parties are in agreement that salaries have eroded and where both have made some efforts to adjust salaries with a catch up factor there is very little room for an arbitrator/selector to rely on the doctrine of acquiescence.

I cannot help but make this observation with respect to the bargaining that has occurred between these parties. Two of the past selections with Arbitrator Kennedy have considered catch up as a factor and this is the third situation in recent years where that has occurred. This issue of catch up, as the parties perceive it, has thus created a two level bargaining process. In the first instance the parties bargain about the present and in the second instance they bargain about the past, it is a most unusual process. It is as if they are driving forward while looking in the rear view mirror. The concept of catch up thus makes bargaining a more complex exercise than need be and seems to be an impediment to the parties constructing a positive relationship through self resolution in the bargaining process.

Notwithstanding my scepticism about reviewing the past, I am prepared to give great weight to salaries negotiated in other Universities. In very simple terms, I see no reason to pay people

performing the same functions at McMaster University less than those at other Universities. It seems to me that an Assistant Professor teaching Biology at McMaster should not receive less than an Assistant Professor teaching the same course at another Ontario University. There may be some room for slight differences depending on local conditions but those local situations, do not derogate from the basic premise that persons of the same rank doing the same work at different Universities should, by and large, receive the same or an equivalent salary and by salary I mean all benefits. In my view it is preferable to determine salaries and benefits by comparing salary schedules. Again, the most significant indicator of salaries is what free collective bargaining has produced for the same or similar positions at other Universities.

A comparison of the salary schedules, however, would not include consideration of the CP/M increment. In this, as with other merit schemes, I agree with the Faculty, that the CP/M scheme is to consider experience or promotional growth related to an individual's improved performance over the course of his or her career. Thus the CP/M increment represents an individual or merit assessment whereas the salary grid or schedule represents a position assessment unrelated to individual performance. In this I agree with the decision of Arbitrator Burkett in The University of Toronto and The University of Toronto Faculty Association, June 3, 1982, unreported.



I am also of the view given the similarities in funding as well as other similarities, that the education sector in general forms a basis for salary comparisons which may also be relied upon. Thus while salaries at other Universities, first in this province, and then outside, form a valid comparison, so too, salaries of teachers in Community Colleges and in the Public School system should be utilized as a measure against which Faculty salaries may be tested.

I am also in agreement with the Faculty that there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions. See eg. General Truck Drivers, etc. v The B.C. Railway Co., 1973, (O.B. Shime); Re The University of Manitoba, May 16, 1979 (B. Williams). Thus, for example, if I were faced with data showing that the salary scale for Assistant Professors at McMaster was less than that of other Universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standard for McMaster regardless of the University's fiscal position.

The Universities are funded by the Provincial Government. In recent years the funding has not been as generous as it might be,

which no doubt has eroded the salaries of University Professors. If arbitrator/selectors were to consider the funding level of Universities for the purpose of salary determination, they would in effect become handmaidens of the Government. Arbitrators/selectors have always maintained an independence from Government policies in public sector wage determinations and have never adopted positions which would in effect make them agents of the Government for the purpose of imposing Government policy. Their role is to determine the appropriate salary range for public sector employees regardless of Government policy, whether it be funding levels or wage controls.

University teachers are well trained and well educated professionals, who perform a valuable service to the community. There is little doubt that they are not paid well considering the service they perform. However, University teachers resemble other professional groups such as doctors, lawyers, dentists and engineers. There are indices that indicate the compensation paid to those groups and the increases they have received over time, and in my view, those indices may form a valid measure for comparison purposes with University teachers.

And finally, there are the indices referred to by the Faculty such as the Consumer Price Index, or the Industrial Composite which in my view should be considered, but only as a litmus test for

comparison purposes, and not as a test that is controlling or that should be given greater weight than what other settlements in the Universities or in the education sector have yielded. In my view settlements in other Universities and the salary schedules that flow from those settlements bear the greatest weight for arbitrator/selectors who are involved in wage determination. Again, for comparison's sake, total compensation should be weighed against total compensation.

In conclusion, it is my view, that University salary determination should be based on the following factors in the order in which they appear.

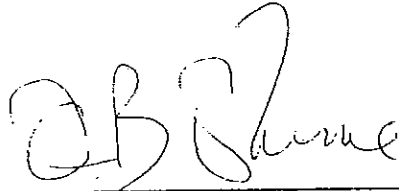
- (1) Salary schedules and benefit comparisons with other Universities in Ontario. See e.g. Principles concerning individual compensation as agreed between McMaster University and the Faculty Association.
- (2) Salary schedule and benefit comparisons with Universities outside of Ontario, See e.g. - University of Toronto and University of Toronto Faculty Association, June 3, 1982 (K. Burkett) at pp. 34-36.
- (3) Comparisons within the education sector such as High Schools and Community Colleges.
- (4) Comparisons with other professional salaries, e.g. - lawyers, doctors, engineers, social workers.
- (5) Comparisons with the Consumer Price Index and Individual Composite Index as well as other relevant indices.
- (6) All comparisons should be based on total compensation which would include pensions and other benefits.

Needless to say much of the data supplied in these proceedings

does not satisfy the criteria that I have outlined. I am particularly concerned that most of the data does not indicate comparisons based on total compensation. In some respects the most meaningful comparisons are shown in the Summary Data of University Teacher Salary Scale Minimums, by Province and by Institution 1989-90 (Table N-Faculty brief) when comparing salaries at McMaster with other Universities.

What appears to be significant and in my view tips the balance is that the across the board increase for McMaster University in 1898-90 was 4.5% and with benefits it was 4.51%. This fell short of other Universities by a significant amount. Based on these recent or more contemporary settlements, it is my view, that the Faculty have made a case for catch up. Thus while I might not have awarded the full amount claimed by the Faculty, its position falls closer to the mark than the University's position. To have selected the University's position would have left Faculty salaries in a deficit position for a second straight year when compared to other settlements in the recent past. On balance, therefore, while I consider both the University's position the Faculty's position to be within the range of reasonableness, I have chosen the Faculty's position as being the more reasonable of the positions, but only by a small margin, and I therefore select it.

Dated at Toronto, Ontario this 4th day of July, 1990.

A handwritten signature in cursive script, appearing to read "O.B. Shime". The signature is written in dark ink and is positioned above a horizontal line.

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O.B. SHIME, Q.C., SELECTOR

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BETWEEN                   McMASTER UNIVERSITY

AND                         McMASTER UNIVERSITY FACULTY ASSOCIATION

STATEMENT OF ACCOUNT

To services herein including  
correspondence, arrangements for  
meeting, to review of briefs and  
in anticipation of meeting; to  
attendance at meeting at Hamilton  
on April 6, 1990, and to final  
consideration of briefs and submissions  
and to preparation of final award (5 days)                   \$ 10,000.00

Disbursements

Travelling expenses	\$ 40.56	
Long distance calls	12.16	
Courier services	24.00	
Photocopies	6.00	
		<u>82.72</u>
		\$ 10,082.72

Share payable by each  
of the University  
and the Association                   \$ 5,041.36  
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Dispute Services  
Suite 200  
70 Bond Street  
Toronto, Ontario  
M5B 1X3

File # 635

July 4, 1990