

IN THE MATTER OF AN INTEREST ARBITRATION:

BETWEEN:

THE UNIVERSITY OF MANITOBA

Employer,

-and-

THE UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

Association.

**SUBMISSION OF THE
UNIVERSITY OF MANITOBA FACULTY ASSOCIATION**

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PART A: INTRODUCTION

1. The University of Manitoba Faculty Association (“UMFA” or “the Association”) has been bargaining on behalf of full time faculty at the University of Manitoba (“the University” or “UM”) since 1951, and currently represents approximately 1200 members.
2. In those 70 years, there have been only three strikes, prior to 2021.
3. In November 2021, following failed attempts over a period of three months to collectively bargain a new collective agreement with the University, UMFA and its members engaged in a 35-day strike, the longest strike in its history, during which further attempts at reaching a collective agreement with the assistance of a mediator were unsuccessful.
4. UMFA resolved to end the strike on December 6, 2021, and thereby salvage the academic year for the students at the University, in exchange for a Memorandum of Agreement (the “MOA”) contemplating an interest arbitration with unique and specific agreed-upon terms of reference. It did so in an attempt to alleviate a historic reality at the University of Manitoba, made worse by government interference in recent years. That reality is that compensation at the University is simply not competitive with other comparable Canadian universities. Remedying this, has been recognized by both the University and the Association as a major goal and priority.

Tab 1, Memorandum of Agreement between University of Manitoba-UMFA, dated January 31, 2022

5. Paragraph 1 of the MOA provides that the arbitrator shall conduct an interest arbitration with respect to the determination of:
 - a) General salary increases in Sections 24.2, 24.3, and 24.4 of Article 24 of the Collective Agreement;

- b) Recruitment and Retention Adjustments to be applied to base salary of UMFA salaries in Sections 24.2, 24.3 and 24.4 of Article 24 of the 2021-2024 Collective Agreement;
- c) The following issues related to the Return to Work protocol between the parties:
 - i. The Association's request for full salary and benefits (with normal deductions) to be paid to UMFA members for the period of the strike;
 - 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;
 - iii. The Association's request for deduction of dues from Members who elected to work during the period of the strike for remittance to the Association; and
 - iv. The Association's request for the University to reimburse the Association for the expenses incurred to pay for Member benefits during the period of the strike.

6. The parties have settled all other outstanding issues related to the renewal of the Collective Agreement, including that the renewed three-year Agreement will commence on April 1, 2021 and will expire on March 31, 2024. General Salary Increases and Recruitment and Retention Adjustments will be applied retroactively, in part, by agreement, for the years of 2021-2022, 2022-2023, and 2023-2024, respectively.

**Tab 1, Memorandum of Agreement between University of
Manitoba-UMFA, dated January 31, 2022, Appendix "A"**

7. The unique parameters within which this Arbitrator is to make determinations regarding general salary increases and Recruitment and Retention Adjustments are set out in paragraph 8 of the MOA:

8. 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...

**Tab 1, Memorandum of Agreement between University of
Manitoba-UMFA, dated January 31, 2022**

8. Advancement in the U15 Group of Canadian Research University rankings (“U15 rankings”) is the stated and mutual objective of the parties in this proceeding. The parties, through the MOA and by their conduct over the last three rounds of bargaining, have made it clear that this objective is to guide the arbitrator over and above all other factors in determining salary increases and Recruitment and Retention adjustments. As such, this interest arbitration is indeed unique in comparison to most interest arbitrations, where other factors might influence the outcome to a greater extent.

9. As per the MOA, the Arbitrator is also to make determinations on certain issues relating to the Return to Work Protocol between the parties. In particular, UMFA seeks to have the University pay compensation, benefits, pension contributions and dues for UMFA members for the time they spent on legal strike, given the University’s expectations of them for the balance of the academic year 2021/2022.

10. Further, the arbitrator is not to take into account, in considering or setting General Salary Increases and Recruitment and Retention Adjustments, any current provincial government mandate(s) that may have been issued by the government to the University (MOA – paragraph 10), nor is the arbitrator to take into account any decision from the Manitoba Court of Queen’s Bench in respect of UMFA’s constitutional challenge to the government’s interference in collective bargaining in 2016, should such a decision issue prior to the arbitrator making his award (MOA – paragraph 11).

11. This is the backdrop against which this Interest Arbitration is proceeding, and the

confines within which this Arbitrator is to make determinations on the outstanding issues.

PART B- UMFA's POSITION ON COMPENSATION AND COLLECTIVE BARGAINING BACKGROUND

Position on Compensation:

12. The following is a brief outline of the compensation increases that UMFA seeks by way of this arbitration. This position will be outlined in significantly more detail later in this Brief.

i. General salary increases in Sections 24.2, 24.3, and 24.4 of Article 24 of the 2021- 2024 Collective Agreement;

13. Compensation for faculty members at the University (Professors, Associate Professors, and Assistant Professors) currently ranks 14th out of 15th place in the U15 Group of Canadian Research Universities. Attaining the 25th percentile of the Group of U15 for these professorial ranks would raise their compensation to between 11th and 12th place in the U15 rankings.

14. With that as the agreed objective, the following retroactive and future general wage increases over the course of the Collective Agreement will be required, for each step and each rank:

Effective date	General Increase
April 1, 2021	3.3%
April 1, 2022	3.6%
April 1, 2023	2.5%

15. In total, UMFA seeks a 9.4% general wage increase for all ranks over a three (3) year collective agreement.

16. These increases do not advance the salaries to the 25th percentile of the U15 rankings, but instead towards it, during the life of the Collective Agreement. These necessary increases, coupled with the recruitment and retention increases set out below, therefore support the mutual aim of the parties.

ii. Recruitment and Retention Adjustments to be applied to base salary of UMFA salaries in Sections 24.2, 24.3, and 24.4 of Article 24 of the 2021-2024 Collective Agreement;

17. UMFA is seeking additional Recruitment and Retention Adjustments to be applied to the base salary of UMFA members to further advance their salaries towards the 25th percentile of the U15 rankings. The specific adjustments being proposed are as follows:

Classification	Amount
Professors	\$17,150
Associate Professors	\$5,810
Assistant Professors	\$3,020
Lecturers	\$3,020
Senior Instructors	\$5,810
Instructors I and II	\$3,020
Librarian	\$5,810
Associate Librarian, Assistant Librarian, General Librarian	\$3,020

18. UMFA proposes that these Recruitment and Retention Adjustments be applied in Year 1 of the Collective Agreement (i.e., 2021-2022).

19. UMFA's proposal of Recruitment and Retention Adjustments, when combined with its general salary increase proposals, results in UMFA salaries for faculty members reaching 90% of the 25th percentile of salaries in the U15 during the life of the Collective Agreement. This will be illustrated below and meets the stated objective of the parties in reasonably advancing compensation towards that goal. Further gains sought may be addressed in the next or subsequent rounds of bargaining.

iii. The Following Issues Relating to the Return to Work Protocol Between the Parties:

- i. The Association's request for full salary and benefits (with normal deductions) to be paid to UMFA members for the period of the strike;

- 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;
- iii. The Association's request for deduction of dues from Members who elected to work during the period of the strike for remittance to the Association; and
- iv. The Association's request for the University to reimburse the Association for the expenses incurred to pay for Member benefits during the period of the strike.

20. UMFA is seeking payment of full salary and benefits and pension contributions for the period of the strike, for those members who participated in the strike. UMFA is also seeking the deduction of dues from Members who continued to work during the strike, and reimbursement from the University for expenses incurred by the Association during the period of the strike for the continuation of all member benefits, which was paid by UMFA.

21. UMFA's specific rationale for these proposals is based on unilateral decisions made by the University's Senate and is elaborated upon in greater detail later in this Brief.

Relevant Bargaining History

22. The following outlines relevant historical information from the 2016 and 2017 rounds of bargaining between these parties, followed by pertinent information from the current round of bargaining.

23. It is vitally important for the arbitrator to understand this broader context in order to gain an appreciation as to why and how the parties found themselves engaged in a lengthy work stoppage in 2021, necessitating an agreement to resolve outstanding monetary issues matters via interest arbitration to end the strike.

24. The current impasse is directly caused by challenges experienced in previous rounds of bargaining, largely as a result of government interference in the collective

bargaining process between the parties, and the University bowing to prior government directives.

25. We begin with a review of the 2016 round of bargaining (which resulted in the 2016-2017 collective agreement), followed by a review of the 2017 round of bargaining (for the 2017-2021 collective agreement), and finally, a review of relevant information from the current round of bargaining.

i. 2016 Bargaining

26. The previous three-year collective agreement from April 1, 2013 to March 31, 2016 contained agreed to annual general wage increases as follows:

- April 1, 2013 –2.9%
- April 1, 2014 – 2%
- April 1, 2015 –2%

Tab 2, Excerpt from 2013-2016 Collective Agreement

27. In preparing its 2016 bargaining proposals, UMFA conducted a survey of its 1200 members in late 2015. 71.7% of the respondents indicated that salary increases were their number one priority.

28. The wages paid to faculty at the University of Manitoba were at the bottom of a group of 13 comparable Canadian universities.¹ This presented significant recruitment and retention issues at the University. Both UM and UMFA agreed that salary increases were a top priority in the 2016 round of bargaining.

Tab 3, Manitoba Labour Board decision, pages 10 – 11

¹ The 13 universities did not include data from the Universite of Montreal and Universite de Laval, which was unavailable at the time.

29. On August 3, 2016, University president David Barnard posted a message on the *UM Today* website, which is the website the University uses to make announcements publicly and to the University community. The message was entitled “*President Barnard’s message on financial position, budgeting.*” In it, he stated that:

- the University of Manitoba is in an overall healthy financial position;
- as a result, faculty and unit budgets had been adjusted to help the University pay for its top priorities and commitments, including salaries. (Emphasis added)

Tab 4, August 3, 2016 UM Today

30. The University made a comprehensive settlement proposal to UMFA on September 13, 2016. It offered a four-year collective agreement with general salary increases of 1%/2%/2%/2% plus additional market adjustments which, UM calculated and publicly announced, would result in the average UMFA members salary being increased by **17.5%** over four years.

Tab 5, UM offer from September 13, 2016

Tab 6 UM calculation of salary offer document

31. In its comprehensive settlement proposal, in terms of its wage and market adjustment offer in comparison with other Canadian universities, UM said:

- “Nationally, most settlements within the U15 larger universities have been in the range of 1.5%. The University’s proposal is slightly more generous than these comparators, and thus will help ensure that our institution continues to be competitive in the recruitment and retention of faculty members.” (p. 6)
- “It is important that the University be competitive when we recruit nationally and internationally for faculty members. The University’s proposal is based upon relevant comparators, with particular emphasis on the U15 large universities.” (p. 7)
- “The University believes it is important that we preserve and continue to slowly improve our competitive position. The biggest risk to our competitiveness is at the lower ranks, where data shows our compensation is less generous compared to peer institutions, and faculty are more mobile.” (p. 7)

Tab 5, UM offer from September 13, 2016

32. In its public statement regarding its comprehensive settlement proposal, the University stated:

- “With the offer, the University of Manitoba will improve salaries in relation to the U15 group of universities: The offer will position U of M faculty members 12th among the U15 for full and associate professor ranks, and 13th for assistant.”

Tab 6, UM document

33. This statement was reinforced by the University in a document contained within its September 29, 2016 bargaining proposal to UMFA entitled “Summary of “Gains” for UMFA members.”

Tab 7, UM bargaining proposal of September 29, 2016

34. Beginning on September 30, 2016, and for the balance of collective bargaining, unbeknownst to UMFA, the government of Manitoba substantially interfered in the bargaining process, secretly directing the University to entirely remove its financial offer from the bargaining table, and replace it with a one year collective agreement with a wage freeze. This substantial interference amounted to a s.2(d) Charter violation by the government, which has been confirmed by the Manitoba Court of Queen’s Bench and the Manitoba Court of Appeal.

35. Further, the University has been found guilty of an Unfair Labour Practice by the Manitoba Labour Board by failing to notify UMFA immediately when the government interference began, despite government insistence on secrecy.

Tab 3 Manitoba Labour Board Decision

36. In communicating with government representatives on October 4, 2016, the lead bargainer for UM, AVP Greg Juliano, characterized the University’s September 13, 2016 offer as “premised on our desire to maintain or improve our competitive position within the prestigious U15 group of research intensive universities.” Further, he justified the

market adjustments being offered by saying “we have some issues with competitiveness in particular areas and faculty ranks, and the University proposals target this money at specific issues.”

Tab 8, Letter from Juliano to government representatives dated October 4, 2016

37. At the bargaining table, Juliano stated that the relationship between the University and the provincial government is “hard” and added that “we can’t bite the hand that feeds us”.

Tab 3, Manitoba Labour Board Decision, p. 13

38. On October 26, 2016, on the eve of a mediation scheduled in an attempt to avoid a strike, University President Barnard wrote to Manitoba Premier Brian Pallister expressing grave concern about the effect of the government directive and asking the government to reconsider its decision to impose a salary freeze so as to avoid a strike and its consequences. The letter went unanswered.

Tab 9, Letter to Premier dated October 26, 2016

39. On October 28, 2016, after UM finally disclosed the government directive to UMFA, a joint public message issued from UM and UMFA. On behalf of UM, President Barnard described the effect of the government directive in the joint message as follows:

“We now find ourselves in the unusual circumstance of having a newly articulated provincial mandate regarding public sector compensation levels that will have a profound impact on the financial compensation levels that we are able to negotiate, despite having already made what we believe to be a fair and reasonable offer on September 13, 2016. The University of Manitoba is indeed challenged by these circumstances...”

Tab 10, UM Today from October 28, 2016

40. A 21-day strike commenced on November 1, 2016 and was ultimately settled with a one year collective agreement, April 1, 2016 to March 31, 2017, containing no wages or monetary increases whatsoever, as per the government directive.

41. In its decision, the Manitoba Labour Board stated:

“The University is established under provincial legislation. The Lieutenant Governor in Council appoints the majority of the members of the University’s Board of Governors. In addition, the evidence indicates that the University is profoundly dependent upon the government financially. It is not contested that the University was ordered by the provincial government, under warning of consequences, to comply with the new mandate requiring a pause (meaning 0%) in any wage increases for one year. The University complied with the government’s order having determined that the consequences of not doing so would be too severe in light of its financial dependency upon government and the substantial power and influence that the government could wield with respect to University governance.”

Tab 3, Manitoba Labour Board Decision, pages 71-72

42. As a result, the jointly stated goal of improving salary rates at UM so as to be more competitive with other Canadian universities within the U15 was not only not achieved, and UMFA salaries fell further behind due to a one-year wage freeze in 2016/17.

ii. 2017 Bargaining

43. In March 2017 the government of Manitoba introduced Bill 28 – the *Public Sector Sustainability Act* (the “PSSA”), which mandated that all collective agreements be subjected to a four-year “sustainability period”, with maximum wage and monetary increases at 0%/0%/.75%/1%. The Act also provided that where employees received no pay increase in 2016, the sustainability period may be shortened to three years beginning in 2017 of 0%/.75%/1%.

44. The Government passed the Bill into law in June 2017 but did not proclaim it into force. The Act did however contain a provision that would claw back any wage or monetary increases above the maximums that were negotiated or imposed by way of interest arbitration from the date it was introduced in March 2017 to the date of proclamation. As such, the un-proclaimed Act acted as a “sword of Damocles” on public

sector collective bargaining thereafter (as described by the Court of Queen's Bench Judge in her decision).²

45. Two other Manitoba universities had bargained new collective agreements in 2016, prior to the PSSA, and without government interference.

46. The University of Winnipeg Faculty Association bargained a 54-month collective agreement from March 2016 to September 2020 with wage increases as follows:

2016 – 1.5%
2017 – 1.5%
2018 – 1.5%
2019 – 2%
2020 – 1%

47. The Brandon University Faculty Association bargained a four-year collective agreement from April 2015 to March 2019 with wage increases as follows:

2015 – 2%
2016 – 2%
2017 – 2%
2018 – 2.5%

48. UMFA urged the University to ignore the PSSA during the 2017 round of bargaining on the basis that, although it had been passed into law in June 2017, it had not yet been proclaimed into force. The University refused to do so on the basis that, should it ever be proclaimed into force, it would have retroactive effect. Further, Mr. Juliano, on behalf of UM advised that, most importantly, the government continued to require that the University obtain a financial mandate from them, even in the absence of legislation, which mandate was unlikely to depart in any significant way from the provisions of the PSSA.

Tab 11, Letter from Juliano to UMFA dated July 5, 2017

² 28 public sector unions and the Manitoba Federation of Labour banded together and challenged the constitutionality of the PSSA in court, as a violation of the freedom of association guaranteed by s. 2(d) of the Charter. At the Queen's Bench level, the PSSA was found to be unconstitutional. At the Court of Appeal level, the trial judge's decision was reversed as to constitutionality of the Act. The plaintiffs have applied for Leave to Appeal to the Supreme Court of Canada.

49. UMFA proposed a two-year collective agreement with salary and market adjustments as follows:

2017 – 2.48% – 3.22% (depending on rank)
2018 – 2%

50. Mr. Juliano, on behalf of UM, wrote to the Association on July 27, 2017, proposing a four-year collective agreement with wage increases of 0%/.75%/1%, and an amount permitted under mandate in the fourth year. In his letter he indicated that “we have already been told informally that this mandate is unlikely to depart in any significant way from the provisions of Bill 28. The University cannot risk its relationship with its primary funder and depart from the government’s mandate.”

Tab 12, Letter from Juliano to UMFA dated July 27, 2017

51. Mr. Juliano, on behalf of UM, sought a government mandate on August 2, 2017, which would allow the University to offer 3% in the fourth year (the first year not restricted by the PSSA sustainability period) or alternatively allowing the University to offer a wage opener in the fourth year on condition that if no agreement was reached, the fourth year compensation would be settled by way of binding interest arbitration.

Tab 13, Letter from Juliano to government representative dated August 2, 2017

52. The government refused to agree to binding interest arbitration in the fourth year. It allowed UM to offer a wage reopener in the fourth year but, if the parties were unsuccessful in negotiating a wage settlement, resolution would follow the ordinary course set out in *The Labour Relations Act* (i.e., strike or lockout).

Tab 14, Public Sector Compensation Committee Minutes dated August 30, 2017

53. The University complied with the government's direction and a four-year collective agreement was ultimately agreed to with wage increases as follows:

2017 – 0%
2018 – .75%

2019 – 1%

2020 – wage reopener as per Letter of Understanding Appendix I

**Tab 15, Letter of Understanding dated February
20, 2018**

54. As a result, faculty salaries at UM were frozen for 2016 and 2017, and increased only .75% in 2018 and 1% in 2019. As will be illustrated elsewhere in this Brief, UM fell even further behind the U15 as a result.

2020 Wage Reopener Negotiations

55. The parties entered into limited bargaining in 2020 based on the re-opener clause in the Letter of Understanding negotiated during the 2017 bargaining round. Bargaining was limited to monetary clauses of the Collective Agreement and only for the final year of the 2017-2021 Collective Agreement (2020-2021).

56. When those negotiations commenced, the Government communicated to the University its expectation that no compensation increases would occur during the 2020-2021 year. Accordingly, UM advised UMFA that it was unable to provide any general wage increase, as a result of a direction from Government, and that its instructions were to negotiate another one-year wage freeze.

57. The parties ultimately sought mediation to assist with their bargaining, and Arne Peltz was appointed as mediator.

58. While in mediation in November 2020, UMFA and the University ultimately negotiated a one-time COVID-19 stipend of \$1,950 payable to all members. This equated to a 1.6% increase on average salary for 2020, but was not applied to base salary and which resulted in no increase to the salary scale. Given the direction from Government, a stipend was the only way UMFA members could receive any monetary compensation for 2020-2021, and only on a one time basis.

59. Following this agreement, University President Michael Benarroch made the following comments during a December 2, 2020, Senate Meeting:

President Benarroch commented on bargaining recently concluded with the University of Manitoba Faculty Association (UMFA), acknowledging it had been a difficult round and complicated by the pandemic. President Benarroch said he and his Executive Team remained committed to finding ways to improve salaries over time, and find solutions that would be more sustainable. The current situation, which had seen salaries negatively impacted by inflation over the last five years, had been created over a period of time and had been accelerated over the last number of years. President Benarroch said he requested flexibility from the Minister of Finance in response to the Province's mandate, but appeals to the Province were not successful.

President Benarroch committed to continue to communicate with government on the need for competitive compensation as the University enters the next round of negotiations with UMFA. He said a committee had been struck to review salary scales for some groups of faculty, which had been identified as an issue in recent negotiations.

Tab 16, December 2, 2020 Senate Meeting Minutes

60. President Benarroch also told UMFA members during faculty visits in early 2021 that members had lost between 6-8% of their real income to inflation since 2015.

61. As a result, between 2016 and 2021, UMFA members did not receive reasonable general wage increases over those five (5) years, largely as a result of government interference, and directives to the University, and its willingness to abide by those. The result is a total scale increase in UMFA salaries of just 1.75% over the past five (5) years. This, compared to the University's September 2016 offer to UMFA which the University calculated to be a 17.5% increase over four years.

62. This result has further reduced the competitiveness of UMFA salaries vis-à-vis their counterparts in universities across Canada. It is perhaps not surprising, then, that UM faculty salaries remain at or near the bottom of the U15 rankings.

Current round of bargaining- 2021

63. In preparing for this round of bargaining, UMFA surveyed its members, seeking to identify their bargaining priorities. Predictably, over 70% of members ranked salary increases as their number one priority.

64. Bargaining began on August 5, 2021 and negotiations between the parties continued over eighteen (18) sessions between August 5 and October 22, 2021³.

65. During the first bargaining session on August 5, 2021, both parties exchanged bargaining proposals, including salary proposals. UMFA presented certain additional non-monetary proposals on August 20, 2021.

66. Many issues were advanced in bargaining by the parties. While a number of issues were agreed to or withdrawn in those sessions, the parties remained far apart on other issues, most notably regarding appropriate salary increases, recruitment and retention adjustments, and certain non-monetary issues.

67. During a University Senate Meeting on October 6, 2021, University President Benarroch confirmed that the government had once again issued a mandate to the University regarding its bargaining with UMFA. The University refused to disclose the nature or details of the mandate to UMFA throughout bargaining. It has been agreed between the parties by virtue of the MOA (paragraph 10) that it will not disclose that information to the arbitrator in this process, nor will the arbitrator consider the current government mandate in determining the quantum of compensation increases.

Tab 17, October 6, 2021 Senate Meeting Minutes

68. The parties remained far apart in negotiations and bargaining effectively stalled. Due to the inability to reach agreement on many issues, UMFA conducted a strike vote of its members to pressure the University to improve the administration's position at the bargaining table.

69. Between October 16-18, 2021, UMFA members voted on the strike mandate. 86%

³ Given the ongoing COVID-19 pandemic, these bargaining sessions occurred virtually via Zoom Videoconferencing.

of all UMFA members (920 out of 1,265) participated in the vote, a record-setting turnout for a strike mandate vote. A total of 85%, or 782 out of 920 voters, voted in favour of authorizing strike action.

70. Notwithstanding the authorization to strike, the Union was not anxious to do so, and remained optimistic that a renewed collective agreement could be settled without job action.

71. On October 20, 2021, the parties agreed to participate in mediation. Arne Peltz was once again appointed as mediator to assist with negotiations. UMFA was prepared to deal with all outstanding issues during the mediation.

72. On October 22, 2021, UMFA informed the University that it would be setting a bargaining deadline of October 31, 2021, and a strike deadline of November 2, 2021 to reach a revised agreement; if a revised agreement could not be reached by the end of day on October 31, a legal strike would commence on November 2.

73. The parties continued to negotiate via mediation over an additional seven (7) consecutive days leading up to the bargaining deadline, i.e., between October 25 and October 31, with the assistance of the mediator. Over the course of those negotiations, further proposals were agreed to or withdrawn by both parties and do not form part of this interest arbitration. However, the parties were unable to agree to a number of important monetary issues, including appropriate salary increases, and non-monetary issues.

74. Following the bargaining deadline, the parties exchanged proposal packages over the course of November 1 and November 2, 2021, in a last ditch effort to avoid a strike. The parties did not reach agreement, and UMFA officially commenced a legal strike on November 2, 2021.

75. Mediation sessions continued during the strike. Six (6) sessions occurred up to November 25, 2021, however, the parties remained apart on many monetary issues, including salary increases, and non-monetary issues. The strike continued.

76. Arne Peltz ended his appointment as mediator on November 26, 2021, advising that he saw no further value in mediation at that time.

77. The strike continued. The parties continued to negotiate without a mediator for six (6) sessions on the following dates:

- November 27, 28
- December 1, 2, 3, 5

78. Notwithstanding their attempts to reach an agreement, the parties were unable to do so, and it was becoming clear that, if the strike did not end immediately, serious disruption to the balance of the academic year would occur, including disruption to the summer 2022 term.

79. As a final attempt to resolve the question of salary increases, UMFA agreed to one of the recommendations made by the mediator, which the University agreed to, being that the parties would refer the question of salary and compensation to binding arbitration, and the arbitrator would consider the parties mutual aim to achieve reasonable advancement in the U15 Group of Canadian Research University salary standings toward the 25th percentile during the life of the collective agreement.

80. On this basis, on December 6, 2021, the parties reached a tentative agreement to end the strike, agreeing to a number of non-monetary changes, and agreeing to proceed to interest arbitration to address specific outstanding monetary issues.

81. UMFA members voted in favour of the tentative agreement. As a result, the strike ended, with UMFA members returning to work as of December 7, 2021.

82. As part of the tentative agreement, the parties negotiated a Return to Work Protocol, and the MOA referred outstanding and unresolved issues to this Interest Arbitration.

Tab 18, Return to Work Protocol

83. The Arbitrator is now tasked with ruling on the outstanding terms and conditions of employment that are set out in the MOA and which were not resolved through extensive negotiations.

84. A complete list of Agreed to Items from 2021 bargaining is attached as Appendix "A" to the MOA at **Tab 1**.

PART C- ROLES AND DUTIES OF UMFA MEMBERS

85. UMFA is the certified bargaining agent for approximately 1,200 full-time academic staff (Professors, Lecturers, Instructors and Academic Librarians) employed by the University of Manitoba.⁴

86. What follows is a summary of the ranks of UMFA members and a broad description of their duties and responsibilities:

Faculty Members

87. There are four ranks defined as “Faculty Members” in the Collective Agreement:

- Professor
- Associate Professor
- Assistant Professor
- Lecturer

88. Faculty members are tasked with a combination of the following duties and responsibilities:

- Undergraduate and/or graduate teaching (40%): including developing and maintaining scholarly competence in their area(s) of expertise, conscientiously preparing and organizing the subject matter they teach, and revising the subject matter as appropriate for the courses they teach.

For graduate teaching, teaching also involves supervising student research, as well as thesis preparation, and the participation in the evaluation of same.

- Research, scholarly work and other creative activities (40%): Faculty Members are expected to conduct research in their areas of expertise, with the aim of having that research published. The primary objective of that research is the expansion of knowledge and understanding and the improvement of that Member’s scholarly competence.
- Service and Administrative Duties (20%): in addition to teaching and research functions, Faculty Members engage in additional activities such as advising

⁴ 1,265 members as of December 2021, with 9 members on Long Term disability.

students on academic matters, supervising examinations, participating in governance of the University through active membership on department and faculty councils and other University bodies, and community service.

89. Promotion within the Faculty Member ranks is based upon the contribution that the Faculty Member has made to their discipline and to their department, faculty/school and the University at their current rank over a period of time, taking into account the criteria and weightings established by the dean/director, their academic attributes and their performance of assigned and other duties. Faculty Members, other than Lecturer, are eligible for tenure.

90. A rank as Lecturer is typically given as part of a term appointment to a Member who is in the process of completing their PhD. A significant portion of a Lecturer's duties involves teaching. The appointment typically provides that, contingent upon the Member's satisfactory completion of the PhD in their discipline (but not later than two years from the date of the appointment), their appointment would be converted to a probationary appointment at the rank of Assistant Professor.

91. The current breakdown of UMFA members in the Faculty Member ranks are as follows:

Rank	Number of UMFA Members
Professor	396
Associate Professor	298
Assistant Professor	266
Lecturer	4

Instructors

92. There are three Instructor ranks in the collective agreement:

- Senior Instructors
- Instructor II

- Instructor I

93. Instructors are those UMFA members whose duties involve any one or more but not all of teaching, research, and service duties. Typically, assigned duties for Instructors include a teaching and service component, but not the research duties expected of Faculty Members. However, Instructors are required to maintain their scholarly competence and effectiveness as teachers, which requires various forms of research. Instructors are normally expected to spend 80% of their time on teaching (undergraduate or graduate teaching) and 20% of their time on service. Instructors may be granted contingent, term, probationary, or continuing appointments.

94. Initial Instructor appointments are normally based on the follow qualifications:

Instructor I: Qualifications are appropriate to the particular position but normally require a Master's degree or its equivalent.

Instructor II: normally restricted to those who hold a Master's degree or its equivalent and who have five (5) or more years' experience in a University or equivalent position.

Senior Instructor: normally restricted to those who hold a doctoral degree or its equivalent and who have ten (10) or more years' experience in a University or equivalent position.

95. As with Faculty Members, promotions from the rank of Instructor I to Instructor II and from Instructor II to Senior Instructor are based upon the contribution that the Instructor has made to their discipline and to their department, faculty/school and the University at their current rank over a period of time, taking into account the criteria and weightings established by the dean/director, their academic attributes and their performance of assigned and other duties.

96. The current breakdown of UMFA members in the Instructor ranks follows:

Rank	Number of UMFA Members
Senior Instructor	60
Instructor II	99
Instructor I	90

Academic Librarians

97. There are four ranks of Academic Librarians in the Collective Agreement:

- Librarian
- Associate Librarian
- Assistant Librarian
- General Librarian

98. Academic librarians are members of the academic community who share with faculty the responsibility for the collection, dissemination, and structure of knowledge in the University. Academic librarians' responsibilities to the University include the provision of a high level of professional service, the development of professional knowledge, contributions to librarianship and scholarship, and service to the University.

99. Qualifications and Eligibility for progression into these Academic Librarian positions are as follows:

General Librarian: minimum of a Master's degree in Library Science or an equivalent degree acceptable to the University Librarian, and must show potential for successful performance and promise of future professional activity.

Assistant Librarian: must have a record of successful performance as a General Librarian during which they have demonstrated a mastery of the skills and techniques of librarianship; evidence of effectiveness of professional performance; and evidence of the capacity to

develop and extend professional, subject and management expertise as appropriate.

The candidate should have a record of: A formal program of study and research in library and information science and/or a relevant subject field in addition to the minimum academic requirements for appointment, or relevant experience judged to be of equal value; some evidence of scholarly contributions in the form of publications and/or presentations.

Associate Librarians: must have a record of successful performance as an Assistant Librarian exercising independent judgment and creativity, i.e., must have demonstrated continuing significant achievement at the career level of librarianship.

The candidate should have a record of: Advanced study and research in library and information science and/or in an appropriate subject specialization, or relevant experience judged to be of equal value; evidence of continuing scholarly contributions in the form of publications and/or presentations.

Librarian: must have a record of outstanding professional accomplishment and performance as an Associate Librarian, including demonstrated initiative, leadership and creativity; a reputation among peers and associates as an authority in his/her field; and superior achievements reflecting leadership in the field of service or specialization, recognized beyond the University.

100. The current breakdown of UMFA members in the Librarian ranks are as follows:

Rank	Number of UMFA Members
Librarian	6
Associate Librarian	20
Assistant Librarian	18
General Librarian	8

101. Collectively, UMFA members provide and deliver a variety of significant and vital teaching, research, service, administrative and various other duties to the University and the broader University community, including local, national, and international organizations and stakeholders.

PART D – INTEREST ARBITRATION PRINCIPLES

102. This interest arbitration is unique in that the parties have established specific parameters and objectives of the arbitrator in making determinations about salary increases. This proceeding is therefore significantly different from a traditional interest arbitration, in that that parties have mutually identified their mutual objectives that will dictate the outcome regarding salary increases.

103. That said, UMFA accepts that general interest arbitration principles remain relevant, albeit to a somewhat modified extent. Below we review a number of general interest arbitration principles and then, following, we apply those principles to this matter. The principles that we review are:

- Replication;
- Fair and Reasonable Terms and Conditions;
- the Arbitrator must make a substantive decision;
- ability to pay is not a relevant consideration;
- public interest is not a relevant consideration.

i. Replication

104. In a 2002 interest arbitration award involving the *City of Winnipeg and the Winnipeg Police Association*, Arbitrator Freedman characterized the general principles applicable to interest arbitration as follows at page 4:

Interest arbitrators are charged with the responsibility of fixing contract provisions that, so far as reasonably possible, replicate those provisions which the parties themselves would have agreed upon, had the collective bargaining process reached a successful conclusion.

**Tab 19, *City of Winnipeg and Winnipeg Police Association Award*,
page 4**

105. What would have been attained in a negotiated settlement normally refers to a settlement that is reached under the shadow of the potential for a work stoppage or, as in this case, an actual work stoppage. The replication approach was described by Arbitrator Hope in *Re Beacon Hill Lodges of Canada and Hospital Employees Union*, [1985] B.C.C.A.A.A. No.279 in which it was stated at paragraph 63 that:

The replication approach, or as Professor J.M. Weiler describes it, the attempt to simulate the agreement the parties would have reached in bargaining under sanction of a lockout or strike, relies on a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions.

Tab 19, *Re Beacon Hill Lodges of Canada and Hospital Employees Union*, [1985] B.C.C.A.A.A. No.279, para 63

106. Arbitrator Hope confirmed that in attempting to replicate what the parties would have done, arbitrators are to look to objective data and evidence:

Interest arbitrators appear unanimous in their view that a board of arbitration should attempt to replicate the result which would have occurred if the collective bargaining process had not been interrupted by arbitration...

... a board of arbitration is not expected to embark upon a subjective or speculative process for divining what might have happened if collective bargaining had run its full course. Arbitrators are expected to achieve replication through an analysis of objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for work similar to the work in issue...

... a board of arbitration in an interest dispute is required to act adjudicatively and to respond to objective criteria. The subjective approach has been consistently disdained...

... Interest arbitration awards should reflect the standard received by employees performing similar work in the relevant labour market. When arbitrators speak of replicating the result of collective bargaining, that is the context in which they speak. ...

... [This is] a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions.

Tab 20, *Beacon Hill Lodges*, supra, paras 57-63

107. These principles were confirmed in a 2016 interest arbitration between the *Province of Manitoba and the Manitoba Association of Crown Attorneys* (“MACA”), where Arbitrator Werier commented:

As has been stated on many occasions, the role of an interest arbitrator is to apply the evidence objectively in an effort to replicate what the parties could have achieved in freely conducted negotiations.

Tab 21, *2016 MACA Award (Werier)*, page 12

108. They were also confirmed by Arbitrator Peltz in a 2021 interest arbitration award involving the Manitoba Association of Crown Attorneys and the Province of Manitoba.

Tab 22 , *2021 MACA Award (Peltz)*, para 97

109. In this interest arbitration, applying the replication principle requires the arbitrator to conduct an analysis of objective data regarding the U15 rankings and the common intention of advancing the salaries of UMFA members towards the twenty fifth (25th) percentile of those rankings, during the life of the Collective Agreement.

ii. Fair and Reasonable Terms and Conditions

110. In addition to the replication principle, arbitrators must endeavour to impose fair and reasonable terms and conditions of employment that should not simply mirror imbalances of power between the parties. To do this, arbitrators must examine objective criteria such as the nature, terms, and conditions of employment.

111. In *Yarrow Lodge Ltd et al. and Hospital Employees’ Union et al.*, the Board stated as follows at page 33:

In applying the replication principle, an arbitrator’s objective is to replicate or construct a collective agreement which reflects as nearly as possible the agreement that conventional bargaining between the parties would have produced had they themselves been successful in concluding a collective

agreement. This approach seeks to put both parties in the same position they would have been had there been no breakdown in negotiations.

However, arbitrators try to overcome one serious flaw in this approach; that is, they do not simply want to mirror any great imbalances of power between the parties in drafting the terms and conditions of employment. They will attempt to look at other objective criteria- for example, the terms and conditions of employment of other employees performing similar work. They therefore, in addition to employing the replication principle, impose what they consider to be fair and reasonable terms and conditions.

Tab 23, *Yarrow Lodge Ltd et al. and Hospital Employees' Union et al.*, 1993 B.C.L.R.B.D. No. 463, page 26

112. In the 2016 interest arbitration between *UFCW 832 and Diageo Canada Inc.*, Arbitrator Freedman confirmed that an interest arbitration award “should be based on objective standards of fairness and reasonableness and objective data and evidence.”

Tab 24, *2016 UFCW 832 Award (Freedman)*, page 8

113. In the 2016 MACA interest arbitration, Arbitrator Werier commented:

The parties were not able to settle their differences in negotiations. Therefore, interest arbitrators utilize certain criteria in an effort to achieve a fair and reasonable result, objectively speaking.

Tab 21, *2016 MACA Award (Werier)*, page 12

114. This same principle was also confirmed more recently by Arbitrator Freedman in a 2019 interest arbitration award between the Winnipeg Regional Health Authority and the Professional Association of Residents and Interns of Manitoba (“PARIM”).

Tab 25, *PARIM Award (Freedman)*, pages 6-7

iii. The Arbitrator Must Make a Substantive Decision

115. A further principle in interest arbitration is that an interest arbitrator must act adjudicatively. This means that the arbitrator’s role is to make a substantive decision,

rather than merely mediating a compromise between the positions of the parties. Arbitrator Freedman explained this in the 2001 MACA interest arbitration award:

In general interest arbitrators adhere to an approach whereby they attempt to reach a result which would, in their judgement, be the result which would have been achieved by the parties themselves, had their collective bargaining succeeded. In this model the arbitrator is not a mediator of the differences between the parties. Nor is the arbitrator necessarily to impose his or her notions of what is fair and just. The arbitrator is to consider all the material submitted, and construct a decision which in his or her judgment most fairly approximates what would have been obtained in a freely negotiated settlement.

But, of course, this theoretical construct is only that- a theory. If the parties were able to reach a result, indeed any result, in collective bargaining, this interest arbitration board would not exist. So the context in which we operate is artificial. Unlike the parties, we cannot engage in a give and take to achieve a result that, for whatever reason, each side finds acceptable. We recognize, as presumably all interest arbitrators do, that the theory which drives this process is difficult to convert to reality in a way that is satisfactory to both sides.

Tab 26, 2001 MACA Award (Freedman), pages 42-43

116. This principle must be applied in this interest arbitration. It would be insufficient to merely strike a compromise between the positions of each party. A “compromise” decision would not be in accordance with the replication principle, particularly under the parameters within which the parties have set for the Arbitrator. Rather, what must be imposed is the collective agreement that would have been freely negotiated, given the mutual aim of the parties to advance salaries towards the 25th percentile in the U15 rankings during the life of the collective agreement.

iv. Ability to Pay is Not a Relevant Consideration

117. While economic and fiscal conditions are one factor to consider in setting appropriate salaries, an “inability to pay” argument is not a relevant factor. The authorities confirming this principle are legion.

118. In a 1991 interest arbitration between MACA and the Province, Arbitrator Chapman considered the ability to pay argument, and cited *McMaster University and McMaster University Faculty Association* for the following comments of Arbitrator Shime:

I am 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 e.g. *General Truck Drivers, etc. v. B.C. Railway Co.* (1973) (Shime); *Re University of Manitoba*, May 16, 1979 (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 standards 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 arbitrators/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 determination 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..."

Tab 27, MACA 1991 Award (Chapman), pages 7-8

119. The 1979 decision of Arbitrator Williams between UMFA and the University cited in McMaster University includes the following comments:

I agree with Mr. Shime and others who have stated the principle that public sector employees should not be required to subsidize the community by accepting sub-standard wages and working conditions.

Tab 28, 1979 Award (Williams), page 7

120. Arbitrator Chapman also cited Arbitrator Shime's comments from *B.C. Railway Co.* that:

In sum, I determine that on balance, if the community needs and demands the public service, then the members of the community must bear the necessary cost to provide fair and equitable wages and not expect the employees to subsidize the service by accepting substandard wages.

Tab 27, MACA 1991 Award (Chapman), page 9

121. Arbitrator Chapman rejected the ability to pay as a relevant criterion, and this rejection has continued.

122. In *Newfoundland (Treasury Board) and N.A.P.E.*, [1995] N.L.A.A. No. 1, Arbitrator Buffett wrote:

It is unquestionable that the great bulk of arbitral jurisprudence in this area has rejected the notion of ability to pay as something that should be taken into account by arbitrators. This jurisprudence has set forth various reasons why this is so.

Included amongst these reasons is the assertion that it is illusory to say government does not have the ability to pay. Government can pay if it wishes to reallocate its resources to enable it to pay. It can pay if it has the political will to do so.

...

A third reason often put forward is that the ability to pay robs the arbitrator of independence and has the capacity to render the arbitration process nugatory.

Tab 29, Newfoundland (Treasury Board) and N.A.P.E., [1995] N.L.A.A. No. 1, paras 10-13

123. In *Pembroke Police Services Board v. Pembroke Police Association*, Arbitrator Marcotte wrote as follows:

The 'ability to pay' factor, when applied to public-sector collective bargaining, has been said to be 'elusive and subjective' Re: Willowhaven Private Hospital (December 28, 1983) unreported version (Hope) p. 7, (para. 111 of the Association submissions). Public-sector employers at the community level have the ability to meet their compensation obligations arising from a collective agreement by way of adjusting taxation levels. That is not to say there is no limit to the economic burden taxpayers are expected to bear. However, public-sector employees should not be required 'to subsidize the service provided to the public by accepting sub-standard wages and working conditions' Re British Columbia Railway Co. and Brotherhood of Maintenance of Way Employees, Caribou Lodge, 221 (June 1, 1976), unreported version (Shime) p. 8 (para. 92 of the Association submissions). Rather '... if the community needs and demands the public service, then the members of the community must bear the necessary cost to provide fair and equitable wages [to its employees]' Re B.C. Railway, supra, p. 8. (emphasis added)

Tab 30, *Pembroke Police Services Board v. Pembroke Police Association*, pages 4-5

124. Similarly, in the decision in *Springhill Police Association Local 203 and the Town of Springhill* (2013) N.S.L.A.A. No. 2 (Richardson), the Town argued that its ability to increase police wages was severely constrained by other economic forces and that its ability to pay should be a factor considered by the arbitrator. The arbitrator rejected this argument and stated as follows:

... if an interest arbitrator were to place great weight on the ability to pay he or she would be drawn into questions of social policy and analysis that are best left to politicians. For example, in the case before me part of Springhill's budgetary problem appears to stem from its decision to buy two new fire trucks, or to implement improvements in its water and sewage system, or to refrain from enforcing its tax collection obligations. As an employer Springhill has the unenviable task—and the duty—of balancing the needs of its citizens for certain services, the cost of providing those needs and the willingness of its citizens to pay for them. Springhill is clearly entitled to make such decisions, but they come at a cost. It is not for the interest arbitrator to say that Springhill is excused from dealing with the consequence of making such decisions- less money for the police service- by relieving it of the obligation to pay its police force the "market price" for the services those officers provide.

Tab 31, *Springhill Police Association Local 203 and the Town of Springhill* (2013) N.S.L.A.A. No. 2 (Richardson), para 23

125. Arbitrator Selter wrote in the 2012 *City of Winnipeg and Winnipeg Police Association* Interest Arbitration Award as follows:

The Chapman criteria include both the “state of the economy” and the “effect” of an award on taxpayers as relevant matters for arbitration boards to include in their deliberations. These factors must be distinguished from the issue of the City’s “ability to pay” which, as the Hamilton Award clearly stated, “is not a relevant consideration.” We agree that, in this arbitration, the City’s ability or inability to pay has no role either as a “sword” or a “shield”.

Tab 32, 2012 *Winnipeg Police Association and the City of Winnipeg* Award, page 32

126. In the 2019 Interest Arbitration between the Winnipeg Regional Health Authority and the Professional Association of Residents and Interns of Manitoba (the “PARIM/WRHA Award”), Arbitrator Freedman confirmed that inability to pay has no role in a public sector interest arbitration:

... In the Peltz 2012 proceedings WRHA declined to rely on inability to pay as a factor. It took the same approach before us. We need not, therefore, deal with or consider that as a factor, which is often relevant in private sector arbitrations, but usually is not regarded as a consideration in public sector arbitrations.

Tab 25, *PARIM Award (Freedman)*, page 13

127. In the 2021 interest arbitration between MACA and the Province, the Province did not assert an inability to pay, but argued that the arbitrator must consider the state of the economy and the public interest.

Tab 22, 2021 *MACA Award (Peltz)*, para 88

128. Arbitrator Peltz cited the following comments from his interest arbitration award between *The Louis Riel School Division and the Louis Riel Teachers’ Association*:

... the board holds that the *McMaster University* jurisprudence applies. Government does not lack the ability to pay but has decided it is unwilling to pay more than a prescribed amount for labour costs at this time, opting instead for taxpayer relief as a policy choice. The level of public services and the provision of resources to pay for them is a political responsibility. The Division will have to live within these constraints, which include the arbitration board's jurisdiction to make an award based on objective labour market data and the established relevant factors.

The present board adopts Arbitrator Ready's caveat in *City of Regina* where he endorsed the *McMaster* line of authority and stated as follows:

"The fiscal objectives and taxation policies are for the politicians to develop. A considered application of the replication doctrine cannot, however, be completely blind to the economic situation." An independent arbitration board must be responsible in fashioning an award but must not allow government's bargaining mandate to dictate the result.

Tab 22, 2021 MACA Award (Peltz), para 101

129. Arbitrator Peltz then commented, with respect to an interest arbitration process occurring during the COVID-19 pandemic:

203. Even now, under a pandemic with grave economic consequences, government does not lack the ability to pay. While the Province repeatedly emphasized the importance of fiscal responsibility and sustainability in its submissions, the level of public services and the provision of resources to pay for them is a political responsibility. There are differing views in our community about what constitutes fiscal responsibility at any particular time.

A policy of wage restraint as defined in the PSSA is one perspective. As noted by Arbitrator Ready in *City of Regina*, affirmed in *Louis Riel* and *Pembina Trails*, fiscal objectives and taxation policies are for the politicians to develop.

204. By contrast, an independent arbitration board is mandated to make an award based on objective labour market data....

Tab 22, 2021 MACA Award (Peltz), paras 203-204

v. Public Interest is Not a Relevant Consideration

130. In the 2021 interest arbitration between MACA and the Province, the Province submitted that the public interest is a relevant consideration. Arbitrator Peltz rejected this argument:

102. I decline, however, to accept the Province's argument that "the public interest" should be recognized as a factor in this arbitration. The concept of "public interest" is too amorphous to be workable in an arbitration proceeding, at least in the absence of a statutory definition. There are multiple conceptions of the public interest, each with its own band of adherents. Governments exercise a political mandate to pursue the public interest as they see it, and they are democratically accountable for their choices. An arbitrator purporting to decipher the public interest risks drifting into the kind of subjectivity that has long been precluded under the prevailing authorities.

Tab 22, 2021 MACA Award (Peltz), para 102

PART E- FACTORS FOR CONSIDERATION IN THIS INTEREST ARBITRATION

131. This is the fifth interest arbitration between the parties.

132. There were earlier arbitrations, in 1979 and 1985, between the University and UMFA which considered appropriate general wage increases and other monetary issues. However, these were Final Offer Selection arbitrations, rather than traditional interest arbitrations.

Tab 28, 1979 Interest Arbitration Award (Williams)

Tab 33, 1985 Interest Arbitration Award (arbitrator unknown)

133. The first true interest arbitration between the parties occurred in 1995 but related solely to non-monetary issues, those being language amendments for Outside Professional Activities (Article 12) and Discontinuance of Members' Appointments (Article 28).

Tab 34, 1995 Interest Arbitration Award (Scurfield)

134. The next interest arbitration between these parties occurred in 2001 for the renewal of the 1998-2001 collective agreement. Following a three-day strike between October 22-25, 2001 the parties agreed to appoint Arbitrator Freedman as arbitrator to resolve all outstanding issues. UMFA members returned to work in exchange for this process. Many issues were being considered, among them general salary increases, the structure of the salary schedule and the floor/threshold/maxima provisions in the collective agreement.

Tab 35, 2001 Interest Arbitration Award (Freedman), pages 1-2, 9

135. In his Award, Arbitrator Freedman recited many of the same interest arbitration principles cited previously in this submission. In terms of factors for consideration, he stated:

In any interest arbitration a number of factors are typically considered relevant. Without necessarily assigning any order of importance to these they would include, in a case like this, the compensation and benefits of academics in other comparable universities, recently negotiated settlements and the prevailing and forecasted economic climate. The employer's ability to pay may be relevant as could the compensation levels in the local community (both in the public and private sectors), and there may also be other factors appropriately considered by an arbitrator, depending on the circumstances. I was given data on most of these matters.

Tab 35, 2001 Interest Arbitration Award (Freedman), page 3

136. Arbitrator Freedman also considered cost of living in his determinations on general salary increases.

Tab 35, 2001 Interest Arbitration Award (Freedman), page 11

137. With the exception of the ability to pay, which arbitrators in Manitoba do not usually consider as a relevant factor, UMFA submits that these factors are applicable in this interest arbitration.

138. The third interest arbitration occurred in 2008 but related solely to the issue of intellectual property rights, and has little relevance this arbitration⁵.

Tab 36, 2008 Interest Arbitration Award (Peltz)

139. The fourth interest arbitration occurred in 2014 for the renewal of the 2013-2016 Collective Agreement before Arbitrator Werier. That arbitration focused primarily on operational and non-monetary issues. The only monetary issues left for determination were health spending account increases and parking fee adjustments.

Tab 37, 2014 Interest Arbitration Award (Werier)

140. In his 2014 Award, Arbitrator Werier noted that “there were no specific agreements as to what factors should be considered by the arbitrator, so the general principles set out in the jurisprudence should apply to the instant case.”

Tab 37, 2014 Interest Arbitration Award (Werier), page 6

141. Arbitrator Werier went on to consider a range of factors in addressing those monetary issues, including the wage increases in the Collective Agreement, historical increases for parking and the health spending account, and collective agreements in comparable workplaces.

Tab 37, 2014 Interest Arbitration Award (Werier)

142. One of the more applicable and recent interest arbitration Awards is the 2019 PARIM/WRHA Interest Arbitration where it was recognized that considering extra-

⁵ Briefs were not exchanged in that arbitration.

provincial comparators was the primary factor for consideration in determining appropriate salary increases (like the mutual agreement of the parties in this proceeding).

143. The Board's analysis and determinations included the following considerations:

- i. salaries of Residents in other provinces;
- ii. negotiating history of the parties;
- iii. general economic climate;
- iv. cost of living increases;
- v. other settlements in the public sector in Manitoba;
- vi. recruitment and retention issues; and
- vii. cost of any increases in salaries and benefits awarded.

Tab 25, 2019 *PARIM Award (Freedman)*, page 14

144. These same factors are applicable in this interest arbitration and are discussed in detail in the sections that follow. That said, while an interest arbitrator generally has a broad discretion as to the relative importance of each criterion, UMFA and the University have agreed on which factor ought to be given primary consideration in this proceeding, that being the advancement of salaries towards the 25th percentile in the U15 rankings. The remaining factors are thus secondary to that main objective.

(a) Salaries of UM faculty among the U15 rankings

145. UMFA provides a comprehensive review and consideration of the salaries of comparators in the U15 rankings below, in the section setting out its proposed wage increases.

(b) Negotiating History of the Parties

146. The bargaining history between these parties is also referenced below. While relevant, that history of is of lesser value in this arbitration than in traditional interest

arbitrations, given the established mutual objective of the parties. Nonetheless, UMFA's general wage proposals are within the range of past increases negotiated between the parties prior to interference from government in the more recent bargaining rounds.

147. That bargaining history includes past agreement that there should be money allocated for recruitment and retention adjustments in addition to general wage increases to remedy concerns within the ranks.

(c) The General Economic Climate in Manitoba

148. Traditional interest arbitration factors typically include an analysis of the general economic climate existing at the time, and forecasted projections over the years governed by the new Collective Agreement.

149. Despite the uniqueness of this proceeding, UMFA acknowledges that a review of the provincial economy and fiscal situation is nonetheless relevant, given that the University of Manitoba is funded partially by the government (approximately 50%).

150. To the extent that the general economic climate in Manitoba is relevant in determining appropriate compensation for members of this bargaining unit in this proceeding, UMFA submits that the state of the provincial economy supports its position on compensation.

151. Dr. Fletcher Baragar, Associate Professor and Associate Department Head in the Department of Economics at the University of Manitoba, has prepared a report on the economic conditions in Manitoba and the government's Budget. A copy of his Curriculum Vitae is attached as **Tab 38** in the Association's Documents. The report is attached as **Tab 39**. The "Background Report on the Manitoba Economy and the Fiscal Capacity of the Provincial Government 2022," (the "Baragar Report"), is discussed in detail below.

i. **Economic conditions**

152. In considering the prevailing economic conditions in Manitoba, the Baragar Report begins by acknowledging the impacts of the COVID-19 pandemic on the economy, but then notes that:

“Nevertheless, in the face of these conditions, the Manitoba economy as a whole has demonstrated considerable strength and resilience, and its prospects for the immediate future are unambiguously positive.”

Tab 39, Baragar Report, page 2

153. Baragar notes that economic recovery is not only underway but is expected, in most key indicators, to reach pre-pandemic levels in 2022 or shortly thereafter.

154. Baragar explains that while real GDP fell 4.6% in 2020, that contraction was very much a “one-off”, with forecasted real GDP growth of 3.9% in 2021, and a forecasted 3.8% average for 2022, “thereby completing the recovery and pushing real GDP levels beyond their pre-pandemic peak.”

Tab 39, Baragar Report, page 2

155. He remarks that while the medium term growth rate for Manitoba between 2010 and 2019 was 2.1% per annum, contemporary growth rates are within the 3.7%-4.0% range, “well above the longer term trend rate of growth.”

Tab 39, Baragar Report, page 2

156. In examining Manitoba’s positive macroeconomic performance since the start of the pandemic, the Baragar Report notes that the province’s resilience and recovery in the COVID-19 era can be attributed to a number of underlying factors.

157. One such factor is consumer spending. While real consumer spending fell by over 6.5% in 2020, increased savings in 2020 bolstered the desire to spend and enhanced the flow of consumer spending in 2021. While local figures are not available at this time, national data suggests that consumption levels surpassed pre-pandemic levels in the second half of 2021, and continued consumption growth through 2022 and into 2023 is anticipated. The Bank of Canada's Monetary Policy Report estimates that the national economy can expect a "consumption-led recovery" supported by job growth, "improving confidence and some spending of accumulated savings." Professor Baragar believes this larger picture applies to Manitoba, as illustrated by increases in retail sales figures of 4.9%, 9.1% and 14.8% in Manitoba in September, October and November 2021.

Tab 39, Baragar Report, page 4, footnote 4

158. Residential construction is another critical economic area in Manitoba. Despite the pandemic, house construction proceeded throughout 2021 at a pace exceeding pre-pandemic levels in 2019, indicating that this sector is relatively robust and "playing an important role in driving the recovery."

Tab 39, Baragar Report, page 4

159. Baragar notes that historically low interest rates have supported the economic recovery. While rates are expected to rise, they will rise closer to traditional pre-pandemic levels, around the 2% mark. Thus "rising interest rates can be anticipated in 2022, but are likely to be moderate and do not figure to threaten the incipient economic recovery."

Tab 39, Baragar Report, page 6

160. Baragar also considers exports, which comprise nearly 50% of the provincial GDP. He notes that exports fell significantly in 2020 and that disruptive factors continue to adversely influence export activity into 2022 (i.e., restrictions on cross border travel, vaccine mandates, backlogs. shipping rates, etc.). However, Manitoba's major export markets, those being Ontario, the western provinces, and the United States, are expected

to realize resurgent economic growth, which will augment demand for Manitoba products. Further, exchange rates do not appear to pose any additional challenges for Manitoba exporters.

Tab 39, Baragar Report, page 6-7

161. In terms of agriculture, which makes up 5-6% of provincial GDP, Baragar notes that this industry increased 7.4% in 2020, a notable exception to the larger trend. While the sector was then adversely affected by low precipitation levels in 2021, high crop prices offset low crop yields. Farm cash receipts were up 19.4% in 2021 compared to 2020. The forecasts are for the continuation of high prices, and the replenishment of soil moisture levels due to high winter precipitation between December 2021 and February 2022, “improving the prospects for more favourable growing conditions in the spring and summer of 2022.”

Tab 39 Baragar Report, age 7

162. Baragar notes that commodity prices for Manitoba products are on the rise. In this respect, he provides the following examples:

- hog prices for 2022 and 2023 will be close to 30% higher than their 2020 level;
- nickel, copper and zinc prices, the three main metals located in the province, were up 20-30% in 2021 from 2020, and are forecasted to remain above 2020 levels in 2022 and 2023;
- high precipitation in the winter of 2021-2022 should improve water level, thereby boosting hydroelectric power generation, which will result in increased electricity sales and higher sale prices per unit.

Tab 39, Baragar Report, page 8

163. In terms of the labour market, Baragar make the following remarks:

- Following labour pains in 2020, there has been a reduction in the unemployment rates to approximately 5.1%, which enables the province to again contend for the lowest rates in the country.
- Labour force participation is at 66.4% as of January 2022, which, in combination with low interest rates, favourably positions the province to maintain relative stability in matching domestic demand and maintaining stable and positive levels of consumer and business confidence.

Tab 39, Baragar Report, page 9

164. The Baragar Report concludes its discussion on the economic overview and outlook for Manitoba by noting that the pandemic exacted a toll on the economy. However, with respect to 2021 and the short term future:

Since those early months, however, the economy has progressed, albeit very much in a haltingly manner, along a path to recovery. Manitoba employment numbers have now exceeded their pre-pandemic level and the unemployment rate for January 2022 was lower than that of pre-pandemic January and February 2020. Real GDP will likely surpass its pre-pandemic mark by the end of the second quarter of 2022, and real GDP growth rates for 2022 and 2023 are forecast to exceed the province's 10-year average. The Manitoba economy is not a booming economy but it is poised to experience a period of moderately strong real economic growth, fueled by consumer spending, housing construction, high prices for major commodity exports, and strong economic growth in its most important export markets. Inflation rates will be higher in the 2022-24 period, compared to the 2019-21 years, but forecasts do not have future inflation rates moving very far beyond the Bank of Canada's 1%-3% target band width, or for very long.

Tab 39, Baragar Report, page 15

165. Baragar's opinion in the Manitoba economy is shared by economic forecasters.

From RBC Economics in December 2021:

MANITOBA – Soaring commodity prices lend a helping hand

As 2021 draws to a close, most signs point toward Manitoba's economy being essentially back to where it was before the pandemic. Strong commodity prices have provided substantial support throughout the recovery, as did booming construction investment. To date, the vast majority of jobs lost during the pandemic have been recovered, and employee compensation has grown at a rate above the national average.

Tab 40, RBC Economics Report

ii. Fiscal Status of the Government

166. Despite challenges posed by the COVID-19 pandemic, Manitoba's economy has fared well in recent years and has proven to be strong and resilient. Future projections indicate favourable economic conditions going forward and full recovery is expected from the pandemic. Throughout the period at issue in this arbitration, Manitobans have had and will continue to benefit from a recovering, healthy and stable economy.

167. The Baragar Report examines the financial position of the Province of Manitoba starting at page 11.

168. Baragar begins by explaining that the COVID-19 pandemic had a negative effect on public finances, causing a balanced budget in 2019-2021 to increase to a \$2.1B deficit in 2020-21.

169. However, Baragar explains that economic recovery in 2021 improved the province's short term fiscal position, and projections of strong economic growth in 2022 will further strengthen the public finances.

Tab 39, Baragar Report, page 11-13

170. Baragar refers to the Province's own *Economic and Fiscal Update* of December 2021, which reveals that, through increases above the projections for own-source revenues (up \$483 from the Spring Budget) and an additional \$275 million in transfer payments over budgeted, the deficit is expected to be cut by 1/3 in the current fiscal year.

Tab 39, Baragar Report, page 12-13

171. Baragar anticipates an improving economy in 2022 and 2023 will result in increased revenues for the Province, through pent-up consumer demand and a reversion of household saving rates back towards pre-pandemic levels, as well as the loosening of public health restrictions (which we are seeing now).

Tab 39, Baragar Report, page 13

172. Baragar explains:

The upshot of the above is that current conditions and short term forecasts for the remainder of this fiscal year and for 2022-23 give every indication that the province's current trajectory of rapidly diminishing budget deficits is likely to continue, at least for the short term, irrespective of any new fiscal policy initiatives that the government may choose to introduce in its 2022 or 2023 budgets.

Tab 39, Baragar Report, page 13

173. Baragar acknowledges that 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, which is forecasted to be \$29.1B for the end of the current fiscal year. However, "these elevated debt levels are, however, quite manageable and not out of line with that of other provinces."

Tab 39, Baragar Report, page 13

174. The current debt is considered by Baragar in the context of changes in Manitoba's net debt to GDP ratio in recent years. He remarks that Manitoba's debt/GDP ratios for 2020, 2021 and 2022 (projected for 2022) are 33.7%, 38.5% and 36.1% respectively.

While relatively high compared to previous decades, these figures are not out of line with the ratios prevailing in other provinces.

Tab 39, Baragar Report, page 13

175. Further, these increased deficits have come in an era of low interest rates, which lightens the burden of servicing the debt. While interest rates are anticipated to increase to approximately 2%, this remains a low interest rate, and “very favourable conditions for borrowers are expected to continue to prevail in the short to medium run.”

Tab 39, Baragar Report, page 14-15

176. The Baragar Report concludes its review of Manitoba’s fiscal status by noting that the pandemic certainly impacted the fiscal status of the Province. However:

Higher than average economic growth in the short term will be favourable to the fiscal position of the province, and that growth combined with a continuation of a period of relatively low interest rates will, in the absence of any overt change in fiscal policy, act to continue to reduce both the summary budget deficit of the government and the province’s debt/GDP ratio.

Tab 39, Baragar Report, page 15

177. To the extent that the province’s economic climate and fiscal status are relevant in determining the appropriate compensation for UMFA members, the state of the provincial economy supports the requests made herein.

iii. Fiscal Circumstances of the University

178. UMFA members Cameron Morill and Janet Morill, both Associate Professors of Accounting at the Asper School of Business, analyzed the published annual financial statements of the University of Manitoba over the period 2015 – 2021 with a view to assessing the ability of the University to increase salary and benefits for its academic

staff. They have drafted a Report entitled “University of Manitoba (UM): Report on Finances”, which is as attached as **Tab 41** to this Submission.

179. Their findings, in summary form, are as follows:

- The University’s stock of non-externally-restricted cash and investments has increased steadily and substantially between 2015-2021. While the University changed its reporting in 2019 when it adopted Canadian Public Sector Accounting Standards, the upward trend is very clear, indicating the University’s profitability and ability to pay increased salaries. On average, over the period between 2015-2021 the University’s non-externally restricted cash and investments have increased by 15% per year, or \$25 million per year. (page 1, 4)
- At March 31, 2021, non-externally restricted cash and investments stood at \$657 million, enough to cover the cost of UM’s proposed salary costs for the full three years of the 2021-2024 collective agreement. (page 1, 4)
- By way of comparison, UMFA’s salary proposal will increase salary costs by just under \$16 million in 2021-2022 relative to the 2020-2021 status quo (2020-2021 salary schedule with zero scale increase); then a further \$8.8 million in 2022-2023; and a further \$6.9 million in 2023-2024.(page 4)
- In every year since 2015, the UM’s operating surplus has exceeded \$80 million, whereas UMFA’s salary proposal will increase salary costs by \$16 million, \$9 million and \$7 million in each of the next three years. (page 5)
- An important metric reported by universities is their Net Operating Revenue Ratio, which indicates how much operating cash a university extracts from operations to divert to savings or other spending (essentially, this is a profitability ratio). In 2020, UM’s ratio was 13%, the highest of all U15 universities. While we do not have the 2021 figures for all other universities, UM’s ratio had increased to 16.2%. The “ideal” for this ratio is 4%, which is considered to be sufficiently prudent to create some margin of safety, while not under-spending on the core operations that are the reason for the university’s existence. (page 5-6)

- Information gathered by CAUBO (Canadian Association of University Business Officers), and presented by the administration during bargaining, presents Operating Revenues (grants, fees, plus other revenues) per Full Time Equivalent Students. The University's operating revenues per student are similar to that of Queen's, McGill and McMaster Universities. However, Queen's, McMaster and UM represent 9th, 10th, and 11th places in the U15 on this metric, all of whom pay substantially higher salaries to their faculty. UM's salaries lag substantially behind this group. (page 1,6)
- Even if UM achieved the stated goal of 25th percentile through these negotiations, the University would still likely have salaries below this group of universities despite similar operating revenues. Thus, UM is likely to continue to achieve levels of profitability far higher than that of other U15 institutions. (page 2)

Tab 41, University of Manitoba (UM): Report on Finances

180. The Report ends by concluding that:

It is evident that UM's salaries are significantly lower than other U15 institutions with similar operating resources, with UM's profitability being the highest of all U15 universities, including unprecedented stockpiling of resources.

Tab 41, University of Manitoba (UM): Report on Finances, page 8

181. Clearly, the UM's fiscal position remains very healthy, not unlike the public message delivered by President Barnard in August 2016 where he said "The bottom line is that today the University of Manitoba is indeed in an overall healthy financial position". Much like the fiscal status of the government, the fiscal status of the University is not a reason to deny the increases sought by UMFA; if anything, it is a reason to award those increases.

Tab 4, UM Today from August 3, 2016

(d) Cost of Living Increases

182. Cost of living is another factor traditionally considered in interest arbitrations. The cost of living in Manitoba can be considered by examining changes in the Consumer Price

Index (CPI), which is tracked by Statistics Canada. The CPI tracks changes in the cost of a fixed basket of consumer goods on a monthly basis. Accordingly, the percentage increase in the CPI is a way to measure the rate of inflation.

183. Percentage wage increases generally commensurate with CPI are needed to protect purchasing power. That correlation has not occurred for UMFA members for the since 2016. As explained by University President Benarroch following the 2020 Re-Opener bargaining, UMFA Members lost between 6-8% of their real income to inflation since 2015 because salary increases did not track increases in the cost of living, and have been considerably lower, thereby reducing members' purchasing power.

Tab 17, October 6, 2021 Senate Meeting Minutes

184. Wage increases that track or exceed CPI are significant to the 1,200 UMFA members involved in this proceeding, and have been taken into consideration in UMFA's salary proposals.

Current cost of living data

185. According to Baragar, and based on the projections of the largest information available at this time, cost of living increases in Manitoba are forecasted to be as follows for the years at issue in this proceeding:

Year	2021	2022 (forecasted)	2023 (forecasted)
MB CPI % change	3.3%	3.6%	2.5%

Tab 39, Baragar Report, page 11

186. The figures for Canada as a whole are very similar:

Year	2021	2022 (forecasted)	2023 (forecasted)
MB CPI % change	3.3%	3.6%	2.5%
Canada	3.4%	3.7%	2.4%

Tab 39, Baragar Report, page 11

187. Baragar explains that the Manitoba CPI figures tend to track the Canadian average fairly closely, and so the forecasts for Canada as a whole are typically a reliable indicator of the expected results for Manitoba.

188. This is borne out by the evidence: the 2021 CPI figures for Manitoba and Canada are true figures, not forecasted. While Manitoba's figure is higher than normal, a 3.3% CPI increase ranked in the middle of the ranking of CPI increases among the provinces in that year. Accordingly, these higher-than-usual increases are not unique to Manitoba.

Tab 39, Baragar Report, page 11

189. Baragar notes that the Bank of Canada is predicting even higher CPI rates in Canada: 4.2% in 2022 and 2.3% in 2023. If Manitoba's rates continues to shadow the national index, inflation rates of 4.2% and 2.3% for 2022 and 2023 could be expected in Manitoba as well.

Tab 39, Baragar Report, page 11

190. Another way of measuring the cost of living is to consider average weekly earnings. Baragar notes that reductions in employment in 2020 did not, in general, act to depress wage and salary levels, as many workers in sectors and occupations who were deemed essential experienced heavy demand for their services. The result was that the average weekly earnings of Manitoba workers actually increased by nearly 4.1% in 2020. He explains that due to rising demand for workers in 2021, and the scramble to find suitable

applicants for job vacancies, upward pressure on wage rates can be expected to persist in 2022.

Tab 39, Baragar Report, page 10

191. Further detail about UMFA's position on compensation and its reasonableness *vis-à-vis* cost of living increases in Manitoba and across Canada are set out in the section of the Brief on UMFA's proposed wage increases.

(e) Other settlements in the public sector in Manitoba

192. UMFA acknowledges that other public sector wage settlements in Manitoba are traditionally a relevant consideration in determining appropriate general wage increases. Those settlements are typically given considerable weight in establishing the outcome on wage increases.

193. However, those comparisons are less influential in this interest arbitration than in a traditional interest arbitration process, given the parties agreement for the arbitrator to be guided primarily by the U15 rankings (i.e., institutions outside of Manitoba) and the common intention to advance in those rankings. As such, the results of other settlements in Manitoba over the years at issue are less significant in the arbitrator's analysis.

194. Nonetheless, UMFA accepts that public sector wage settlements are worthy of consideration and has provided that information in the section on UMFA's general salary increases.

(f) Recruitment and Retention

195. The University is experiencing an ongoing recruitment and retention problem. This problem has been acknowledged on multiple occasions by the University in this round and in previous rounds of bargaining.

284. The low salaries paid to UMFA members are inadequate for members who can find better paying work elsewhere. Moreover, the low salaries are in many cases inadequate to attract qualified new applicants for positions.

285. UMFA's position, therefore, is that this Arbitrator must award special Recruitment and Retention adjustments, in addition to general salary increases, to be applied to the base salary of UMFA members to ensure that compensation is advanced reasonably towards the 25th percentile of the U15 rankings (i.e., to 90% of the 25th percentile by 2023-2024) and that they are paid at the appropriate market rates.

286. A summary of existing recruitment and retention problems at the University and UMFA's proposed adjustments are set out in detail in the section on the Union's proposed special wage adjustments.

PART F: UMFA's POSITION ON COMPENSATION

i. General salary increases in Sections 24.2, 24.3, and 24.4 of Article 24 of the Collective Agreement;

287. UMFA's general wage increase proposals are as follows:

- Year 1 (April 1, 2021): 3.3% general wage increase
- Year 2 (April 1, 2022): 3.6% general wage increase;
- Year 3 (April 1, 2023): 2.5% general wage increase

288. The general wage increases would be applied to all classifications and step levels under the Collective Agreement in each year. Increases would be paid retroactively and with interest.

Advancement within the U15 Rankings

289. To reiterate, advancing the salaries of UMFA members up the U15 rankings is the shared primary objective of these parties in this interest arbitration process. As per the MOA:

AND WHEREAS the Parties agree that the arbitrator shall determine the quantum of General Salary Increases and Recruitment and Retention Adjustments applying the mutual aim of the Parties to achieve reasonable advancement towards the twenty-fifth (25th) percentile of salaries in the U15 Group of Canadian Research Universities, during the life of the Collective Agreement;

...

8. 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.

Tab 1, Memorandum of Agreement dated January 31, 2022

290. There is no dispute as to the appropriate comparators in this proceeding- they are primarily salaries paid to UMFA's counterparts in the U15 rankings. These comparisons therefore ought to be considered the overarching consideration for this arbitrator, with any other factor being more secondary

291. UMFA's wage proposal is primarily focused on advancement in the U15 rankings.

i. U15 Group of Canadian Research Universities

292. The U15 Group of Canadian Research Universities is an association of fifteen (15) public research universities in Canada. It was formed in 1991.

293. From the U15 Group of Canadian Research Universities Website:

The U15 Group of Canadian Research Universities is a collective of some of Canada's most research-intensive universities. Although each institution advances its own research and education mandate, the U15 Directorate works for the collective interest of all our members. We foster the development and delivery of long-term, sustainable higher education and research policy, in Canada and around the world.

Canada's U15 universities are home to world-class researchers using state-of-the-art research infrastructure to make ground-breaking discoveries. Canada's U15 institutions undertake critically important fundamental research, train tomorrow's citizens, entrepreneurs and leaders, and work with partners from the public, private and government sectors to mobilize knowledge and capitalize on it. Top-quality university research is the foundation of our innovation ecosystem, which is one of Canada's core competitive advantages.

Tab 42, U15 website excerpt

294. The U15 institution members are:

- University of Alberta
- University of British Columbia
- University of Calgary
- Dalhousie University

- Université de Laval
- University of Manitoba
- McGill University
- McMaster University
- Université de Montréal
- University of Ottawa
- Queen's University
- University of Saskatchewan
- University of Toronto
- University of Waterloo
- Western University

ii. Current Rankings

293. Statistics Canada provides average annual salary data by professorial rank (Professor, Associate Professor, Assistant Professor) for each of the U15 Universities. That table is Table 37-10-0108-01, *Number and salaries of full-time teaching staff at Canadian universities*.⁶

294. That Table contains data for each of the U15 member universities (and others) for the period between 2010-2011 through to 2020-2021.⁷ Due to variations in the manner in which compensation is paid at each institution (number of steps per classification, promotions, merit increases, etc.), the Statistics Canada data provides the most objective, reliable and accurate data upon which this Arbitrator can rely.

⁶ <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3710010801>

⁷ Complete data is not available for University of Alberta (salary data unavailable for years prior to 2013-2014); and Université Laval and Université de Montréal (salary data unavailable for years prior to 2016-2017).

295. That data reveals that, as of 2020-2021 (the last year of the expired Collective Agreement) the average salaries in the U15 rankings are as follows⁸:

i. Professor

Rank	University	Average Salary
1	Toronto ⁹	\$218,050
2	UBC	\$207,950
3	McMaster	\$203,675
4	Waterloo	\$201,575
5	Saskatchewan	\$195,350
6	Ottawa	\$190,900
7	Western Ontario	\$187,450
8	Alberta	\$186,300
9	Queen's	\$181,500
10	Calgary	\$175,400
11	McGill	\$173,775
12	Dalhousie	\$167,175
13	Montréal	\$153,575
14	Manitoba	\$152,000
15	Laval	\$142,275

296. The average salary of an UMFA Professor, i.e., the highest classification within the professorial ranks, sits in 14th place in the U15 rankings. Only Laval has a lower average salary than the University of Manitoba.

⁸ For all universities, Medical and Dental professors, and professors with senior administrative responsibilities have been excluded, since these professors are, with certain exceptions, not UMFA members. Statistics Canada allowed for the removal of professors in these departments and they were removed in UMFA's calculations.

⁹ University of Toronto salary data is available to 2019/2020. The figure is the 2019/2020 average salary.

ii. Associate Professor

Rank	University	Average Salary
1	Toronto ¹⁰	\$170,200
2	McMaster	\$166,350
3	Queen's	\$163,125
4	Waterloo	\$160,125
5	UBC	\$158,450
6	Ottawa	\$156,275
7	Western Ontario	\$154,325
8	Saskatchewan	\$153,800
9	Alberta	\$135,925
10	McGill	\$133,950
11	Dalhousie	\$133,025
12	Calgary	\$131,375
13	Montréal	\$123,700
14	Manitoba	\$121,150
15	Laval	\$116,075

297. Like a Professor, the average salary of an UMFA Associate Professor sits in 14th place in the U15 rankings. Only Laval has lower average salary than the University of Manitoba.

¹⁰ University of Toronto salary data is available to 2019/2020. This is the 2019/2020 average salary.

iii. Assistant Professor:

Rank	University	Average Salary
1	Queen's	\$139,350
2	Toronto ¹¹	\$133,750
3	UBC	\$132,525
4	Ottawa	\$129,325
5	Western Ontario	\$127,500
6	McMaster	\$123,250
7	Saskatchewan	\$122,425
8	Waterloo	\$122,325
9	McGill	\$113,850
10	Calgary	\$112,125
11	Alberta	\$111,775
12	Dalhousie	\$108,800
13	Montréal	\$103,000
14	Manitoba	\$99,200
15	Laval	\$97,975

298. Like Professors and Associate Professors, the average salary of an Assistant Professor sits in 14th place in the U15 rankings. Only Laval has lower average salary than the University of Manitoba.

299. Earlier in this submission, UMFA provided a summary of the 2016 and 2017 rounds of bargaining and noted that advancement in the U15 rankings was an objective of these parties in those rounds, until government interference and directives made this objective unachievable. UMFA's current rank in the U15 professorial ranks as of 2020-2021 is a direct result of that interference..

¹¹ University of Toronto salary data is available to 2019/2020. This is the 2019/2020 average salary.

iii. The 25th percentile of the U15 rankings

300. The 25th percentile is the value below which 25% of U15 salaries fall. Advancing to the 25th percentile would therefore be equivalent to ranking in between 11th and 12th place in the U15 rankings.

Among the U15:

12th place: 20th percentile

11th place: 27th percentile

301. UMFA submits that 11.5th place, or halfway between 11th and 12th place in the rankings would be effectively equivalent to the 25th percentile.

302. On the basis of 2020-2021 data alone, the current salary difference between UMFA members in the professorial ranks and the 25th percentile (halfway between 11th and 12th place) is as follows:

Position	Difference
Professor	\$18,475
Associate Professor	\$11,050
Assistant Professor	\$11,088

303. To illustrate this differently:

Professor

11	Calgary	\$175,400
11.5	Manitoba (target)	\$170,475 = \$152,000 + \$18,475
12	Dalhousie	\$167,175
13	Montréal	\$153,575
14	Manitoba	\$152,000
15	Laval	\$142,275

Associate Professor

11	Dalhousie	\$133,025
11.5	Manitoba (target)	\$132,200 = \$121,150 + \$11,050
12	Calgary	\$131,375
13	Montréal	\$123,700
14	Manitoba	\$121,150
15	Laval	\$116,075

Assistant Professor

11	Alberta	\$111,775
11.5	Manitoba (target)	\$110,288 = \$99,200 + \$11,088
12	Dalhousie	\$108,800
13	Montréal	\$103,000
14	Manitoba	\$99,200
15	Laval	\$97,975

304. Significant progress is therefore necessary to reduce the difference in the 2020-2021 average salary rankings and to advance towards the 25th percentile.

Projecting average salaries in 2023-2024

305. The above data reflects the current difference in salaries based on the average salaries in 2020-2021. UMFA has therefore projected average salaries for each professorial rank for the U15 Universities to 2023-2024. It has done so by calculating the compound annual growth rate (CAGR)¹² for each professorial rank at each university over

¹² The compound annual growth rate for a given university/rank = $[(2020/2021 \text{ average salary} \div 2011/2012 \text{ average salary}) \text{ raised to the power } 1/9, \text{ minus } 1]$, for universities for which we have ten years of average salary data.

the period 2011-2021, using data available from Statistics Canada. It has also implemented true and forecasted inflation data into that model.

306. More specifically, this process for establishing projections into 2023-2024 was achieved taking into account the following.

307. First, past compound annual salary growth rates for each university and each professorial rank between 2011 and 2021 (i.e., the data available through Statistics Canada) were used to estimate current and future growth for each university and professorial rank for the years at issue in this Interest Arbitration (2021/2022 to 2023/2024).

308. The estimated salary growth rates for each professorial rank and each university between 2011-2021 are as follows:

U15 Compound Annual Average Salary Growth Rates: 2011-2021¹³

University	Rank	Growth Rate ¹⁴
Alberta	Assistant professor	0.97%
Alberta	Associate professor	1.46%
Alberta	Full professor	0.91%
Calgary	Assistant professor	1.59%
Calgary	Associate professor	1.35%
Calgary	Full professor	1.18%
Dalhousie	Assistant professor	1.91%
Dalhousie	Associate professor	2.28%
Dalhousie	Full professor	2.07%
Laval	Assistant professor	1.91%
Laval	Associate professor	1.32%

¹³ These estimates are based on average salaries reported by rank by Statistics Canada for the period 2011-2021 (ten fiscal years). This group of professors excludes Medical and Dental faculty, and professors with senior administrative responsibilities.

¹⁴ Compound annual average salary growth rates are rounded to two decimal places.

Laval	Full professor	1.58%
Manitoba	Assistant professor	2.20%
Manitoba	Associate professor	2.12%
Manitoba	Full professor	1.26%
McGill	Assistant professor	2.63%
McGill	Associate professor	2.70%
McGill	Full professor	2.48%
McMaster	Assistant professor	2.60%
McMaster	Associate professor	2.83%
McMaster	Full professor	2.91%
Montréal	Assistant professor	2.15%
Montréal	Associate professor	2.06%
Montréal	Full professor	1.79%
Ottawa	Assistant professor	3.55%
Ottawa	Associate professor	3.23%
Ottawa	Full professor	2.85%
Queen's	Assistant professor	1.74%
Queen's	Associate professor	2.65%
Queen's	Full professor	2.13%
Saskatchewan	Assistant professor	2.36%
Saskatchewan	Associate professor	3.00%
Saskatchewan	Full professor	2.93%
Toronto	Assistant professor	2.31%
Toronto	Associate professor	2.49%
Toronto	Full professor	2.61%
UBC	Assistant professor	2.93%
UBC	Associate professor	3.10%
UBC	Full professor	3.01%
Waterloo	Assistant professor	2.53%
Waterloo	Associate professor	2.91%

Waterloo	Full professor	3.21%
Western Ontario	Assistant professor	2.60%
Western Ontario	Associate professor	2.61%
Western Ontario	Full professor	2.35%

309. The growth rates estimated in the regression model above were then used to project the average professor salaries to 2023/2024 for all of the U15 universities, except for the University of Manitoba.

310. This was done by utilizing a formula that:

- i. took the average 2020-2021 salary for each university and professorial rank, and
- ii. multiplied that average by $1 + \text{the estimated growth rate (as set out in the above table)}$ for each university and each professorial rank, over the course of three years between 2021-2024.¹⁵

311. For example:

Example #1:

Assistant Professor at Dalhousie University:

- the average 2020-2021 Assistant Professor salary at Dalhousie University, as reported by Statistics Canada, was \$108,800, and
- the estimated growth rate in salary for an Assistant Professor at the University of Alberta between 2011-2021 was 1.915% (see above table)

Projection:

- The projected average salary of an Assistant Professor at the Dalhousie University for 2023-2024 is therefore:

¹⁵ The exception here is the University of Toronto where we only had data up to 2019/2020. In this case, we took the average 2019/2020 and multiplied it by $1 + \text{the estimated growth rate}$, over the course of four years between 2020-2024.

2021-2022 salary= \$108,800 x 1.01915= \$110,883

2022-2023 salary= \$110,883 x 1.01915= \$113,007

2023-2024 salary= \$113,007 x 1.01915= **\$115,171**

Example #2:

Associate Professor at McGill:

- The average 2020-2021 Associate Professor salary at McGill, as reported by Statistics Canada, was \$133,950
- The estimated growth rate in salary for an Associate Professor at McGill between 2011-2021 was 2.697%

Projection:

- The projected average salary of an Associate Professor at the McGill for 2023-2024 is therefore:
- 2021-2022 salary = \$133,950 × 1.02697 = \$137,562
- 2022-2023 salary = \$137,562 × 1.02697= \$141,271
- 2023-2024 salary = \$141,271 × 1.02697= **\$145,081**

Incorporating inflation

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. It is therefore appropriate to consider inflation as part of UMFA's projections of the U15 average salaries through 2023-2024.

313. According to the Bank of Canada, national inflation between 2011-2021 averaged 1.575% per year.¹⁶

¹⁶ From <https://www.bankofcanada.ca/?p=39863> . The annual inflation rate is the compound annual growth rate in total CPI over the period May 1, 2011 to May 1, 2021, to match the fiscal year of ten of the U15 universities (the other five have fiscal year ends that end on March 31).

314. Since annual inflation averaged 1.575% between 2011-2021, the growth rates for 2021-2022, 2022-2023 and 2023-2024 may be increased by finding the difference between forecasted inflation in those years and the 1.575% on which the 2011-2021 growth rates were based.

315. That calculation is as follows:

increase future salary growth rate by:

(predicted future inflation rates – 1.575%)

316. UMFA has completed that calculation to determine the forecasted growth rates as follows:

NOTE: UMFA has relied on the national CPI rates for 2021, 2022 and 2023 that were produced by the Province in the Manitoba Bureau of Statistics, “Survey of Economic Forecasts Reports, 2021f-2023f,” February 3, 2022 as referenced in Professor Baragar’s Report (Tab 39, page 11).

Contract year	2011-2021 inflation	National Predicted inflation	Required increase in growth rate to adjust for predicted inflation
2021-2022	1.575%	3.4%	1.825%
2022-2023	1.575%	3.7%	2.125%
2023-2024	1.575%	2.4%	0.825%

317. Returning to the University of Dalhousie Assistant Professor example, the growth rates would be increased as follows:

Contract year	Dalhousie Assistant Professor 2011-2021 salary growth rate	Adjustment for predicted inflation	Adjusted growth rate
2021-2022	1.91%	1.825%	3.74%
2022-2023	1.91%	2.125%	4.04%
2023-2024	1.91%%	0.825%	2.74%

318. The Dalhousie University Assistant Professors, as reported by Statistics Canada, had an average salary of \$108,800 in 2020-2021. The projected average salary in 2023-2024, using these adjusted growth rates that account for inflation, would be calculated as follows:

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%

2020-2021 average salary= \$108,800

Projections

2021-2022 salary = \$108,800 x 1.0374= \$112,869

2022-2023 salary= \$112,869 x 1.0404= \$117,429

2023-2024 salary= \$117,429 x 1.0274= **\$120,646**

Without the adjustment for future inflation, the projected average salary would be \$115,171.

319. As a further example, returning to the McGill Associate Professor example:

2011-2021 growth rate = 2.70% per year

Revised future growth rates

2021-2022 = 2.70% + (3.4% - 1.575%) = 4.52%

2022-2023 = 2.70% + (3.7% - 1.575%) = 4.82%

2023-2024 = 2.70% + (2.4% - 1.575%) = 3.52%

2020-2021 average salary = \$133,950

Projections

2021-2022 salary = $\$133,950 \times 1.0452 = \$140,006$

2022-2023 salary = $\$140,006 \times 1.0482 = \$146,757$

2023-2024 salary = $\$146,757 \times 1.0352 = \underline{\underline{\$151,925}}$

320. UMFA applied this same calculation for every professorial rank at each of the U15 universities through 2023-2024. The full U15 projected rankings for each professorial rank by 2023-2024 is as follows (the Manitoba projections are based on past salary growth and predicted inflation, like the other U15 universities; these numbers are not based on the recently negotiated salary schedule or any proposals that UMFA is making as part of this arbitration):

i) **Professor:**

Rank	University	Average Salary
1	Toronto	\$253,159
2	UBC	\$238,019
3	McMaster	\$232,396
4	Waterloo	\$232,011
5	Saskatchewan	\$223,075
6	Ottawa	\$217,470
7	Western Ontario	\$210,498
8	Queen's	\$202,526
9	Alberta	\$200,651
10	McGill	\$195,865
11	Calgary	\$190,404
12	Dalhousie	\$186,233
13	Montréal	\$169,684
14	Manitoba	\$165,371
15	Laval	\$156,242

ii) **Associate Professor:**

Rank	University	Average Salary
1	Toronto	\$196,691
2	McMaster	\$189,388
3	Queen's	\$184,773
4	Waterloo	\$182,750
5	UBC	\$181,811
6	Ottawa	\$179,988
7	Saskatchewan	\$175,991
8	Western Ontario	\$174,592
9	McGill	\$151,925
10	Dalhousie	\$149,074
11	Alberta	\$148,739
12	Calgary	\$143,292
13	Montréal	\$137,734
14	Manitoba	\$135,155
15	Laval	\$126,501

iii) **Assistant Professor:**

Rank	University	Average Salary
1	Queen's	\$153,724
2	Toronto	\$153,460
3	UBC	\$151,329
4	Ottawa	\$150,299
5	Western Ontario	\$144,209
6	McMaster	\$139,391
7	Waterloo	\$138,096
8	Saskatchewan	\$137,522
9	McGill	\$128,894

10	Calgary	\$123,149
11	Dalhousie	\$120,646
12	Alberta	\$120,583
13	Montréal	\$114,993
14	Manitoba	\$110,904
15	Laval	\$108,635

321. Using this formula, the projected 25th percentile of average salaries in the U15 for each professorial rank for 2023-2024 (between 11th and 12th place), with and without the adjustment for expected inflation, are as follows:

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

322. UMFA's projections of salary increases within the U15 serve as a reliable guide and reflect an accurate presumptive pay scale for this Arbitrator.

UMFA's wage proposal for the years at issue in this Interest Arbitration

323. UMFA has proposed general wage increases that track true and forecasted inflation for Manitoba in each year of the renewed Collective Agreement. The proposed wage increases are:

2021-2022: 3.3%

2022-2023: 3.6%

2023-2024: 2.5%

324. This would result in the following average salaries for UMFA members in the professorial ranks as of 2023-2024:

Rank	2023-2024
Professor	\$173,971
Associate Professor	\$140,893
Assistant Professor	\$116,785

325. These general salary increases ensure that salary increases maintain pace with true and forecasted inflation in Manitoba over the course of this Collective Agreement. It also assists in partially advancing the salary of UMFA members towards the 25th percentile:

UM versus 25th percentile over the course of the Collective Agreement:

Rank	Difference between UM average and U15 25th percentile in 20/21	Projected 23/24 average salary for UM (UMFA proposal)	Projected 23/24 U15 25th percentile	23/24 difference between UM average and U15 25th percentile	Reduction in gap (%)
Professor	\$18,475	\$173,971	\$188,319	\$14,348	22.3%
Associate Professor	\$11,050	\$140,893	\$146,016	\$5,123	53.6%
Assistant Professor	\$11,088	\$116,785	\$120,614	\$3,830	65.5%

326. As revealed by the above table, UMFA's proposal for general salary increases serves to advance the pay of Associate Professors and Assistant Professors partially towards the 25th percentile, by 53% and 66% respectively, by the end of the renewed Collective Agreement. That said, the pay for a Professor remains extremely distant from

the estimated 25th percentile in 2023-2024 - just a 22% reduction in the current gap with the 25th percentile. These results, by themselves, do not go far enough in achieving the mutual aim of the parties in this Interest Arbitration. Further adjustments are necessary to achieve that objective.

327. In fact, awarding UMFA's general wage increase alone would only serve to advance UMFA salaries from 14th place to 13th place by 2023-2024:

i) **Professor:**

Rank	University	Average Salary
1	Toronto	\$253,159
2	UBC	\$238,019
3	McMaster	\$232,396
4	Waterloo	\$232,011
5	Saskatchewan	\$223,075
6	Ottawa	\$217,470
7	Western Ontario	\$210,498
8	Queen's	\$202,526
9	Alberta	\$200,651
10	McGill	\$195,865
11	Calgary	\$190,404
12	Dalhousie	\$186,233
13	UMFA Proposal	\$173,971
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14	Manitoba	\$165,371
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ii) **Associate Professor:**

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10	Dalhousie	\$149,074
11	Alberta	\$148,739
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13	UMFA Proposal	\$140,893
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iii) **Assistant Professor:**

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1	Queen's	\$153,724
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12	Alberta	\$120,583
13	UMFA Proposal	\$116,785
14	Montréal	\$114,993
14	Manitoba	\$110,904
15	Laval	\$108,635

328. Accordingly, UMFA is proposing additional Recruitment and Retention adjustments to ensure that the salaries of UMFA members in each professorial rank reach 90% of the 25th percentile of the U15 rankings by the end of the Collective Agreement. This will be discussed further below in the section on Recruitment and Retention Adjustments.

Manitoba University Comparisons

329. The wage freezes and low salary increase provided to UMFA members have not only reduced the competitiveness of salaries at the University as compared to the U15 Group of Canadian Research Universities, but also as against other universities in Manitoba as well. For example, in the Full Professor rank, salary maxima and increments currently trail those at the University of Winnipeg and Brandon University, let alone those in the U15:

Average salary, 2020-2021	UM	Brandon	Winnipeg
Professor	\$152,000	\$153,125	\$145,950
Associate Professor	\$121,150	\$117,200	\$116,475
Assistant Professor	\$99,200	\$92,150	\$94,250

Full Professor Salary scales from Manitoba collective agreements					
Faculty Association	Floor	Increment	Threshold	Increment	Maximum
UM (2020-2021)	\$105,269	\$3,900	\$140,361	\$2,924	\$157,904
UM (2021-2022)	\$120,684	\$4,827			\$168,957

Brandon (2021-2022)	\$122,665	\$3,668			\$166,685
Winnipeg (2020)	\$111,417	\$4,167	\$148,258	\$3,125	\$171,388

330. Brandon University's full professor average salary exceeded that of UM in 2020-2021. Note as well that in spite of the improvements in the salary grid negotiated in 2021, UM's full professor maximum is still below that of the University of Winnipeg.

331. As the leading research and education institution in Manitoba, and the only university within the province that is a member of the prestigious U15, it is inappropriate for UMFA faculty to be paid at inferior rates to their colleagues at the University of Winnipeg and the University of Brandon. This must be remedied, and is, over the course of this collective agreement, through the increases proposed by UMFA (including the special wage adjustments sought).

Lecturer, Instructor and Librarian Ranks

332. Statistics Canada does not collect or produce data on average salaries for Lecturers, Instructors and Librarians like it does for the professorial ranks. Completing such a comparison accurately with other universities within the U15 rankings for these classifications poses a challenge for many of the same reasons that anything other than a comparison of average salaries within the professorial ranks is problematic- given the various manners in which compensation increases are provided, differences in classifications and steps, merit increases, market and anomaly adjustments, promotions, and other variations in compensation across the universities.

333. That said, UMFA and the University have always agreed to the same general wage increase for all UMFA members, regardless of classification. In the lengthy negotiating history of the parties, there has been no divergence in the percentage of general wage increases provided to UMFA members on the basis of classification.

334. Accordingly, awarding the same general wage increases to all UMFA members aligns with the unwavering negotiating history of these parties, and the outcome that would have been achieved in bargaining had the parties been successful, i.e., replication.

335. UMFA is proposing that all UMFA members be awarded the same general wage increases, those being:

- 3.3% in 2021-2022
- 3.6% in 2022-2023
- 2.5% in 2023-2024

Negotiating History of the Parties

336. The negotiating history of the parties is generally another factor in determining appropriate wage increases.

337. The following chart shows general wage increases that have been historically bargained by UMFA, since the 1998-2001 collective agreement, (i.e., the last eight (8) collective agreements):

Year	% Increase
1998-2001 CBA	
1998-1999	0% ¹⁷
1999-2000	1.0%
2000-2001	2.0%
2001-2004 CBA	
2001-2002	0% ¹⁸
2002-2003	2.5%
2003-2004	2.5%
2004-2007 CBA	
2004-2005	3.0%
2005-2006	3.0%
2006-2007	3.0%
2007-2010 CBA	
2007-2008	2.5%
2008-2009	2.5%
2009-2010	2.9%

¹⁷ There was a \$740 adjustment applied to the base salary rate in that year, and a 1% increase for all floors, thresholds and maxima.

¹⁸ There was a \$1,500 adjustment applied to the base salary of each member, plus a 2% increase to floors, increments and maxima.

2010-2013 CBA	
2010-2011	0% ¹⁹²⁰
2011-2012	0% ²¹
2012-2013	2.9%
2013-2016 CBA	
2013-2014	2.9%
2014-2015	2.0%
2015-2016	2.0%
2016-2017 CBA	
2016-2017	0%
2017-2021 CBA	
2017-2018	0%
2018-2019	0.75%
2019-2020	1%
2020-2021 Re-Opener	
2020-2021	0% ²²

338. The annual wage increases proposed by UMFA in this round are higher than in previous settlements. That is necessitated by the common objective of the parties to advance the salaries in the U15 rankings.

339. That said, UMFA's proposals remain within an appropriate range of what has negotiated between these same parties in past rounds of bargaining.

340. This includes increases of 3% or nearly 3% in six of ten years between 2004-2005 and 2013-2014.

¹⁹ The "wage pause" for 2010-2011 was agreed to in exchange for, *inter alia*, an increase in pension contributions. Further, the floors, thresholds and maxima in the schedule were all increased by \$500, which amounts to a 0.5% increase for a member earning \$100,000 per year)

²⁰ Promotion increments were established in this collective agreement. UMFA recalls that this was accepted early on in negotiations by the University.

²¹ While a wage pause was exhibited for the purpose of a general wage increase for 2011-2012, in actuality the parties agreed to a 1% recruitment and retention market adjustment to base salary. Floors, thresholds, increments, and maxima were also increased by 1%.

²² UMFA negotiated a one-time COVID stipend equating to 1.6% on average salary for 2020, but with zero on scale.

341. Notably, increases approximating 3% were also bargained in the last two collective agreements negotiated between the parties (2010-2013 and 2013-2016) before the government announced mandates and wage restraint legislation, and directed the University to freeze and limit wage increases in the 2016-2017 and 2017-2021 rounds of bargaining.

General Economic Climate

342. UMFA provided a comprehensive review of the economy for the years at issue in the section above on the economic climate. Despite impacts of the COVID-19 pandemic, the Manitoba economy as a whole has demonstrated considerable strength and resilience, and its prospects for the immediate future are positive.

343. The economy's current and predicted state are not a reason to deny increases proposed by UMFA in this Interest Arbitration.

344. Regarding the Province's fiscal status, as explained by Professor Baragar, higher than average economic growth is expected in 2022 and 2023 and will be favourable to the fiscal position of the Province. Both the deficit and the province's debt/GDP ratio will continue to reduce significantly, over the years at issue. The fiscal status of the Province is not a reason to deny UMFA's proposed general salary increases.

345. Nor is the fiscal status of the University is a reason to deny UMFA's proposed general salary increases, to the extent such an argument is available to the University in this Interest Arbitration.

Cost of Living Increases

346. UMFA's wage proposals are in line with cost of living projections for Manitoba for the years at issue in the renewed Collective Agreement.

347. In the 2020 interest arbitration between *MacDonald Youth Services and MGEU*, Arbitrator Freedman referred to the increases in the cost of living those employees in the

bargaining unit had to bear in the 24 months of the renewed agreement as being of “prime significance” in his determinations on salary. That same reality facing UMFA members should be given due consideration in this interest arbitration in establishing appropriate general wage increases.

**Tab 43, *Macdonald Youth Services Award (Freedman)*, , para
78**

348. President Benarroch confirmed that UMFA members already lost upwards of 8% of their real income to inflation between 2016 and 2020. This only makes it that much more critical to ensure that general wage increases maintain pace with inflation in this round.

349. If UMFA’s wage proposals are accepted by the arbitrator, its members’ wage increases would be at the true or forecasted cost of living rates for those years, after earning increases that were less than the rate of inflation during the period between 2016-2020. This reveals the moderate nature of UMFA’s general wage increase proposals. An increase equivalent to the rate of inflation must be awarded to protect against any further diminution in the value of wages over the term of this Collective Agreement. 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. Professor Baragar reports that the CPI in Manitoba tracks the national CPI very closely, making it clear that that similar requests can be expected across the country.

350. UMFA’s proposals, in addition to achieving the mutual aim of the parties respecting the U15 rankings, appropriately match the rate of inflation in Manitoba in each year.

Other public sector settlements in Manitoba

351. UMFA acknowledges that wage settlements in the public sector in Manitoba are traditionally a proper consideration in determining appropriate general wage increases. However, those comparisons are less influential in this interest arbitration, given the parties agreement for the arbitrator to be guided primarily by compensation of similar

employees in universities outside of Manitoba. As such, the results of other settlements in Manitoba over the years at issue are far less significant in the arbitrator's analysis.

352. Nonetheless, UMFA accepts that wage settlements in the broader public sector are worthy of limited consideration.

353. The majority of negotiated settlements and arbitration awards award wage increases of between 1.2% and 3.3% for 2021. Those outcomes must, however, be considered in their proper context.

354. Arbitrator Peltz, in the interest arbitration between the Province and MACA, awarded a 1.2% general wage increase for Crown Attorneys in 2021. He noted that the data was limited but forecasting called for "positive economic and employment growth", with inflation projected to rise to 1.6% in 2021 and 2.0% in 2022, while acknowledging that the data for this period was uncertain due to the pandemic unpredictability. MACA was seeking an increase that protected against cost of living increases, but Arbitrator Peltz determined that the economic realities of COVID may "preclude full achievement of such a goal at this time." He ultimately awarded an increase of 1.2% for 2021-2022.

Tab 22, MACA Award (Peltz), para 218-219

355. With the passage of time, it is now known that the forecasts for inflation in the MACA Award were off by a substantial margin. Since the MACA decision, the CPI for Manitoba has now been calculated as being 3.3% in 2021 and 3.6% in 2022, far higher than the earlier projections of 1.6% and 2% respectively.

356. On August 4, 2021, Manitoba Labour Board also awarded a 1.5% general wage increase for IBEW Local 2034 members for 2021. One can reasonably infer that the economic data provided to the Board in that case was more recent than the information that was before Arbitrator Peltz as of January 2021. In awarding 1.5% to IBEW members, the Board confirmed that a 1.2% general wage increase is not a ceiling for general wage increases in 2021.

357. Prior to those awards, Arbitrator Peltz, in the interest arbitration between *Pembina Trails School Division and the Pembina Trails Teachers' Association*, (released February 15, 2021), awarded COLA in 2021 (the third year of the collective agreement), primarily on the basis of economic uncertainty due to COVID-19 at the time, and to ensure that wage increases matched the rate of inflation, which was an objective of the Association.

Tab 44, *Pembina Trails Award (Peltz)*, para. 44

358. Significantly, 36 out of 38 school divisions in Manitoba subsequently voluntarily settled their collective agreements with their respective teachers' associations, each premised on the outcomes in the *Pembina Trails* interest arbitration award, including COLA for 2021²³. Virtually every teacher collective agreement in Manitoba now contains an agreement that the wage increase for 2021 will be on the basis of COLA in Manitoba (which has subsequently been determined to be 3.3%).

Tab 45, MB School Board Association Teacher agreement summary

359. The vast majority of support staff in these school divisions have also now negotiated increases that mirror the teacher settlements. For example, CUPE and other unions have renewed collective agreements for a number of support staff bargaining units within school divisions that contain general wage increases that mirror the increases provided to teachers within those Division, including COLA in 2021. Examples are included at **Tab 46**.

Tab 46, various settlement examples

360. As a result, the overwhelming majority of employees in school divisions in Manitoba reached agreement with their Divisions to receive a 3.3 % COLA general wage

²³ The Louis Riel School Division and the Louis Riel Teachers' Association proceeded to interest arbitration before the *Pembina Trails* Interest Arbitration and established an award that covered the period from 2018-2020 only due to economic uncertainty as a result of the COVID-19 pandemic.

increase in 2021. These school divisions, like the University, are partially funded by government.

361. This is the same increase proposed by UMFA for 2021. UMFA is not an outlier in seeking and obtaining a general wage increase that matches inflation.

362. No Manitoba interest arbitrator, to date, has made determinations on appropriate general wage increases for 2022-2023 or 2023-2024.

The University's Salary Proposal

363. UMFA will respond to the University's salary proposal once it has reviewed its written submission in that regard.

i. **Recruitment and Retention Adjustments to be applied to base salary of UMFA salaries in Sections 24.2, 24.3 and 24.4 of Article 24 of the 2021-2024 Collective Agreement;**

364. UMFA is proposing a recruitment and retention adjustment, to be applied to the base salary of all UMFA member salaries, as follows:

Classification	Amount
Professors	\$17,150
Associate Professors	\$5,810
Assistant Professors	\$3,020
Lecturers	\$3,020
Senior Instructors	\$5,810
Instructors I and II	\$3,020
Librarian	\$5,810
Associate Librarian, Assistant Librarian, General Librarian	\$3,020

365. UMFA proposes to have these adjustments be made, retroactively, in the first year of the collective agreement.

366. These adjustments are necessary to address and resolve ongoing recruitment and retention issues at the University, which are largely predicated on non-competitive salaries compared to the U15 member universities. These adjustments are necessary to further increase the relative standing of UMFA members' salaries in those rankings and to achieve the mutual aim of the parties to advance compensation reasonably towards the 25th percentile.

The University acknowledges that recruitment and retention issues exist

367. Recruitment and retention issues are not a new phenomenon at the University. The University's representatives acknowledged these issues exist during bargaining for

the 2016 and 2017 round of bargaining. Those comments have been referenced earlier in this submission in Part B.

368. The University acknowledged that these issues persist in the current round of bargaining. During a bargaining session on September 29, 2021, Dave Muir, UM Director of Compensation and Benefits, spoke regarding the University's proposal to increase the maximum on market stipend funds. In doing so, he mentioned that other U15 universities have a higher market stipend cap, and the UM wants to be competitive with what the other U15 universities offer, as "recruitment and retention are problems".

Tab 47, bargaining notes from September 29, 2021

369. The University also openly acknowledged the need to raise salaries to address recruitment and retention concerns with Faculty in the media.

370. On October 13, 2021, Myrrhanda Novak, the University's Executive Director of Public Affairs, stated that the university is committed to addressing faculty recruitment and retention. Novak said the University had made a proposal to continue market supplements and adjust salary scales to bring them in line with other institutions.

Tab 48 , Winnipeg Free Press, Oct. 13, 2021 - U of M department head details underfunding 'crisis' for faculty, students as strike vote looms

371. President Benarroch himself has recognized and expressed that recruitment and retention challenges exist due to inferior compensation as compared to other leading institutions in Canada. During a Senate Meeting on October 6, 2021, he stated that

"There was a shared desire to have an institution that attracts and retains the best and the brightest individuals to work and study at the University."

Tab 17, October 6, 2021 Senate Meeting Minutes

372. In a CBC News article dated November 1, 2021, President Benarroch is quoted, in reference to the University's wage proposal, as follows:

"We strongly believe it's a fair deal as it would allow us to recruit new faculty with more competitive offers, support faculty retention, and ensure faculty wages remain competitive with their U15 counterparts as they advance in their careers...."

Tab 49, CBC News, Nov. 1, 2021 - U of M faculty to strike after negotiations reach impasse day before deadline: union

373. In a CBC News article on November 2, 2021, President Benarroch explained that he felt that the University's latest offer "helped to address recruitment and retention issues".

Tab 50, CBC, Nov. 2, 2021 - Strike begins at U of M after faculty union, university fail to agree on new contract

374. In another interview with CTV News on November 2, 2021, President Benarroch spoke about the University's latest offer as follows:

"We feel we did put a fair offer on the table that provides benefit to not just current members, but also puts in a much stronger place to recruit faculty when positions open up," said Michael Benarroch, president and vice-chancellor of U of M.

Tab 51 , CTV News, Nov. 2, 2021 - U of M faculty hits the picket line Tuesday

375. On November 3, 2021, the University published an article in *UM Today* regarding its most recent salary proposal. That article contained the following quote from Provost and Vice-President, Academic, Diane Hiebert-Murphy, under the premise that the proposal would address these challenges:

"UM's offer makes significant improvements to current salary scales to meaningfully improve our ability to attract and retain faculty."

Tab 52, UM Today November 3, 2021

376. In sum, recruitment and retention is an important issue to the University which

requires addressing.

UMFA Bargaining Survey²⁴

377. In this round of bargaining, as in every round, UMFA surveys its members seeking to understand their bargaining priorities. UMFA sent such a survey to its members in January 2021.

378. Certain questions in that survey related to recruitment and retention as well as other salary-related questions. The questions and results were as follows:

Question Three: “I am satisfied with my salary when it is compared to the salaries of my colleagues at other universities.”

- Significantly, over 70% of respondents disagreed with this statement, noting that they are dissatisfied with their salary when compared to colleagues at other universities. Under 4% of respondents (699 respondents) agreed with this statement, and only 11% agreed or somewhat agreed.

Question Four: “I am actively seeking employment elsewhere because of the compensation levels at the U of M.”

- 14.96% of respondents (695 respondents) agreed with this statement, and over 35% agreed or somewhat agreed. That 35%, or 1/3 of members are contemplating or actively seeking employment elsewhere, clearly identifies a significant retention problem.

Question Five: “Salary levels at U of M make me open to considering better offers from other institutions.”

- The vast majority of participants surveyed (695 respondents) agreed with this statement. Nearly 50% agreed, and over 70% agreed or somewhat agreed.

²⁴ Survey is available upon request.

Question 12- Is there anything else the Collective Agreement Committee needs to know about your satisfaction with your base salary relative to other institutions?

- Members provided a myriad of comments regarding recruitment and retention challenges at the University. Some of those include:

“I know for a fact we aren’t competitive as an institution for recruiting or retaining talented academics. My department has lost 8-10 junior faculty to competing institutions over the last several years.”

“Salaries are a major recruitment and retention issue.”

“This is a retention issue and it has impacted our capacity to recruit and retain qualified academics.”

“I don’t posture and pretend that I would leave UManitoba under any but the most dire of circumstances (born and raised here, have roots with my partner, both our families are here) but I don’t want those responses to be taken to mean I think we’re not atrociously underpaid and I care about the message it says to how much the U of M values me and how this affects our ability to recruit new faculty.”

“UManitoba has lagged behind for way too long. It is insulting and is bad for recruitment, reputation, morale, and retaining faculty.”

“I belong to an equity seeking group which has historically been under-represented in PSE [Post-Secondary Education], and whose representation universities are actively trying to increase. I get yearly call from recruiting agencies about positions at other universities. UM will only have ever-increasing difficulty with recruitment and retention.”

“The truth is that I’ll personally be staying at UM for family reasons regardless of whether our salaries are increased. But there have been three female profs who have left our Department in the last 3 years who were unhappy with their UM salaries. I also know of three other male profs currently applying for academic positions elsewhere. This is in a Department of 20 people. That is not great for recruitment and retention.”

“Salary!” We’ve lost a significant amount of income over the last five years due to government interference, and it is making recruitment of new faculty more and more challenging.”

379. The reality is that the University has to compete for talent with not only other Canadian universities but around the world. When it offers nearly the lowest salaries in comparable universities in Canada, the University starts off those recruitment efforts at a significant disadvantage.

380. Moreover, the recruiting process is lengthy, expensive and labour intensive, and regularly requires that a candidate be convinced to relocate to Manitoba. In some cases, searches have failed altogether because there are no suitable candidates, due to uncompetitive salaries.

381. In other circumstances, there may be a number of candidates who complete an interview, but will turn down the position once offered because they have received more attractive offers elsewhere.

382. As indicated in the statements made by UMFA members and University representatives themselves, members have contemplated or are contemplating leaving the University for other institutions. Retention is an ongoing concern.

UMFA’s Proposal

383. UMFA’s proposals work towards repairing these issues by ensuring that salaries, when general wage and special wage adjustments are combined, attain 90% of the 25th percentile of the U15 rankings during the life of this Collective Agreement.

384. That results in the following one-time adjustments for all classifications:

Classification	Amount
Professors	\$17,150
Associate Professors	\$5,810
Assistant Professors	\$3,020
Lecturers	\$3,020
Senior Instructors	\$5,810
Instructors I and II	\$3,020
Librarian	\$5,810
Associate Librarian, Assistant Librarian, General Librarian	\$3,020

Rationale for the proposed rates

385. UMFA relied on the Statistics Canada information regarding average salaries of the U15 for the professional ranks for 2020-2021 (Table 37-10-0108-01, *Number and salaries of full-time teaching staff at Canadian universities*.) UMFA has explained its calculations for projecting those average salaries for each professorial rank through to 2023-2024 in its section on proposed general salary increases.

386. The result is that the professorial ranks, through a strict general salary increase, advance in the U15 rankings towards the 25th percentile as follows:

Rank	2020/2021 Reduction (actual)	2020/2021 current gap (% of UM average salary)	2023/2024 Gap (projected)	Reduction in gap (%)
Professor	\$18,475	12%	\$14,348	22%
Associate Professor	\$11,050	9%	\$5,123	54%
Assistant Professor	\$11,088	11%	\$3,830	66%

387. While this results in an advancement, it is not a considerable advancement by any stretch. UMFA is proposing a further adjustment that would see the professorial ranks reach 90% of the projected 25th percentile for 2023-2024. As a result of the following adjustments, the reduction between the average UMFA professorial rank salaries and the 25th percentile would be as follows:

Rank	2020/2021 Reduction (actual)	2023/2024 Reduction (projected)	Reduction (%)
Professor	\$18,475	\$1,846	90%
Associate Professor	\$11,050	\$1,106	90%
Assistant Professor	\$11,088	\$1,104	90%

388. These adjustments would serve to address recruitment and retention issues that emanate in the professorial ranks largely on the basis of uncompetitive salaries.

389. Adjustments (albeit differing amongst the various ranks) should not be limited to the professorial ranks and are necessary for all UMFA members to ensure that recruitment and retention issues and the prospect of further departures and vacancies over the course of the Collective Agreement are reduced at the University.

390. There are additional reasons why adjustments are necessary for all members. First, the tradition of these parties has been to provide recruitment and retention adjustments to all UMFA members when they have been issued. With one exception, this has been the practice of the parties since at least 1995. Issuing recruitment and retention adjustments to all ranks is in accordance with the replication principle.

391. Second, during the 2016 Bargaining Round, UMFA had initially proposed a recruitment and retention adjustment effective April 1, 2016 for members at all ranks. In response to that proposal, the University initially proposed a \$1,500 recruitment and retention adjustment to Members at all ranks whose salaries were below the threshold, except Professors, Senior Instructors and Librarians. The University made this proposal in a September 13, 2016 bargaining proposal package, in which it acknowledged that, even with market adjustments offered in the previous round (2013-2016):

“The University believes it is important that we preserve and continue to slowly improve our competitive position. The biggest risk to our competitiveness is at the lower ranks, where data shows our compensation is less generous compared to peer institutions, and faculty are more mobile.”

Tab 53, University proposal dated September 13, 2016

392. When the University presented this package to UMFA in a September 13, 2016 bargaining session, University AVP and lead bargainer Greg Juliano stated with regard to their market adjustments proposal:

“...we’ve moved up in absolute dollars, moving closer to middle. But still a bit low in lower ranks....”

Tab 54, UMFA bargaining notes

393. Due to government interference, UMFA Members received no recruitment and retention adjustment for 2016 (nor a general salary increase) and have received no further adjustment since. The result is that the salary in the lower ranks remain uncompetitive in relation to other U15 universities, as in the professorial ranks. Therefore, recruitment and retention adjustments are required for all ranks.

394. Third, salary data for instructors and librarians in the U15 has never been readily available, certainly not to the extent it is available for the professorial ranks. UMFA and the University have nevertheless held a shared belief that the same recruitment and

retention adjustments provided to the professorial ranks should be the same adjustments similarly provided to other UMFA members.

395. UMFA is proposing that those in the lower ranks for instructors and librarians (Instructor I and II, Associate Librarian, Assistant Librarian, and General Librarian), while entitled to an adjustment, be awarded the lowest of the proposed professorial adjustments (\$2,960).

396. For Senior Instructors and Librarians, to deal with retention issues at the top of their respective ranks, the adjustment should be higher. Senior Instructors, in particular, as a result of agreement from this round of bargaining, are now on the same salary grid as Associate Professors. Accordingly, they ought to receive the same recruitment and retention adjustment as Associate Professors (\$5,910).

397. UMFA is proposing that recruitment and retention adjustments be awarded in the first year of the Collective Agreement. Given the strike, combined with the low general wage increases received since 2016 which are far below inflation, UMFA members are entitled to real and immediate progress in their compensation effective at the start of the renewed collective agreement.

398. Moreover, these parties have a well established bargaining history that includes providing special recruitment and retention adjustments in addition to general wage increases:

Year	% Increase	Recruitment and Retention Adjustment
1998-2001 CBA		
1998-1999	0% ²⁵	
1999-2000	1.0%	
2000-2001	2.0%	
2001-2004 CBA		
2001-2002	0%	
2002-2003	2.5%	
2003-2004	2.5%	
2004-2007 CBA		
2004-2005	3.0%	
2005-2006	3.0%	
2006-2007	3.0%	
2007-2010 CBA		
2007-2008	2.5%	\$500 recruitment and retention market adjustment for all members
2008-2009	2.5%	\$500 recruitment and retention market adjustment for all members
2009-2010	2.9%	\$500 recruitment and retention market adjustment for all members
2010-2013 CBA		
2010-2011	0%	\$500 recruitment and retention market adjustment to base salary
2011-2012	0%	1% recruitment and retention market adjustment to base salary
2012-2013	2.9%	
2013-2016 CBA		
2013-2014	2.9%	Assistant Professor, Lecturer, Instructor II, Instructor I, Assistant librarian and General

²⁵ There was a \$740 increase to base salary in that year.

		<p>Librarian below the threshold received a recruitment and retention market adjustment of \$900 to their base salary;</p> <p>Associate Professor below the threshold received a recruitment and retention market adjustment of \$1,500 to base salary</p>
2014-2015	2.0%	
2015-2016	2.0%	
2016-2017 CBA		
2016-2017	0%	
2017-2021 CBA		
2017-2018	0%	
2018-2019	0.75%	
2019-2020	1%	
2020-2021 CBA		
2020-2021	0% ²⁶	

Tab 55, excerpts from historical agreements

399. For the reasons set out above, UMFA's Recruitment and Retention Adjustments for each UMFA member, in 2020-2021 are merited.

²⁶ UMFA negotiated a one-time COVID stipend equating to 1.6% average salary for 2020, but with zero on scale.

Total Costing:

400. UMFA has calculated the total cost of its general salary increase and recruitment and retention adjustments, over the course of the three year collective agreement, as being approximately \$34 million dollars:

**Total UMFA Baseline Salary Cost of Proposals
(\$ millions)**

Proposal	2020-21 (actual)	2021-22	2022-23	2023-24
2020-2021 actual	\$149.0			
New schedule + 3.3%-3.6%-2.5% GSI + Recruitment & Retention adjustment in 2021-2022 (adjusted for future inflation)		\$167.3 (Increase of \$18.3M)	\$176.1 (Increase of \$8.8M)	\$183.0 (Increase of \$6.9M)

Issue 3 – Issues Relating to the Return to Work Protocol

401. The strike by UMFA members began on November 2, 2021 and ended on December 6, 2021.

402. The Return to Work Protocol entered into between UM and UMFA provides:

- Members shall comply with Senate approved or mandated changes in the academic schedule, the provisions for modifications in the examination periods and changes in regulations or waivers of regulations and any other requirements resulting from the implementations passed by Senate on November 3, 2021, and by Senate Executive at its meeting of November 17, 2021;
- the period of the strike shall be considered continuous full-time service only for the purposes of the calculation of vacation on the administered of leaves, research/study leaves, maternity leaves, parental leaves, applications for promotion, and applications for tenure;
- The parties agree that the interest arbitrator appointed under the Memorandum of Agreement re: Interest Arbitration on Outstanding Collective Bargaining Disputes

will consider the issues that remain unresolved between the parties as identified in paragraph 1 of the Memorandum of Agreement.

Tab 18, Return to Work Protocol

Return to Work Protocol Issues

403. The Memorandum of Agreement sets out the following issues, relating to negotiations for the conclusion of the Return to Work Protocol, to be determined by the Interest Arbitrator:

- a. The Association's request for full salary and benefits (with normal deductions) to be paid to UMFA members for the period of the strike;
- b. 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;
- c. The Association's request for deduction of dues from Members who elected to work during the period of the strike for remittance to the Association; and
- d. The Association's request for the University to reimburse the Association for the expenses incurred to pay for Member benefits during the period of the strike.

A. The Association's request for full salary and benefits (with normal deductions) to be paid to UMFA members for the period of the strike;

404. As will be detailed below, there are two distinct, but related, claims for compensation for striking members.

405. First, the University authorized the performance of essential work during the strike that appropriately justifies an order of compensation. This form of work was principally in the area of research.

406. Second, work deferred by the strike, which must necessarily be completed as part of a striking member's annual assignments of duties, appropriately justifies an order of compensation.

407. The consequence of the 2021 strike is that work deferred by it is and will continue to compound workloads in early to mid-2022. Deferred teaching, research and service will be added on to ongoing work obligations. In the case of teaching, there is a requirement on striking members to perform 100% of their assigned annual duties for the 2021/2022 academic year. In respect of research and service, the assessment of deferred activities compounding workload requirements for the remainder of the annual assignment period, must necessarily be evaluated at the conclusion of the annual assignment period. The Association will demonstrate below that such deferral and compounding of workload requirements was anticipated by the University and is demonstrably occurring.

Article 19 and Faculty Remuneration

408. Article 19 of the Collective Agreement prescribes the duties for which the University is compensating Faculty and Instructors to perform, namely, teaching (19.A.1), research (19.A.2.4.2) and, service (19.A.2.4.3), or some combination thereof. Duties are assigned annually, taking into account the balance of a member's research, service and teaching in a given year, with a view to equity amongst a Faculty's UMFA cohort:

19.A.1.1 Authority to Assign Teaching Duties

19.A.1.1.1 Duties shall be assigned by the dean/director following consultation and discussion with the Member. The process of assignment of duties shall normally be completed by April 30 for the following Fall and Winter terms, and by December 20 for the following Summer term...

19.A.1.2 Fairness of Assignment of Teaching Duties

19.A.1.2.1 In assigning teaching duties pursuant to s. 19.A.2.4, the dean/director shall comply with the Guidelines for the faculty/school/college and the limitations on assignment 49 of teaching duties as set out in this Article. Teaching duties shall be assigned reasonably and fairly using a transparent method, equitably among Members of a unit, taking into consideration: (i) the full range of academic responsibilities of individual Members, including teaching, research, scholarly work and creative activity, and service;

...

19.A.2.4 The assignment of these duties may vary from individual to individual and from faculty/school to faculty/school as determined by the dean/director in consultation with the faculty member.

Tab 56, 2017-2021 Collective Agreement

Teaching Duties

409. The University has mandated that the annual teaching obligations of striking members will not be abridged in any way by the strike. As the University has explained on its website, in a Student FAQ, striking members will be required to perform the assigned instructional days/hours for their courses, rather than reducing teaching assignments and abridging course requirements:

Why do courses have minimum instructional hours? Why can't we just absorb that time that was missed and finish all courses on Dec 10 as planned?

To maintain the integrity of the university's courses and programs, and to ensure requirements for accreditation, the number of instructional days should remain at sixty-one where at all possible. Courses have minimum instructional hours determined by units and approved by the university Senate. Instructors carefully craft their courses to meet these requirements. It is important that instructors are provided with sufficient time to teach students and facilitate learning.

All students have sufficient time to successfully learn the content in courses and complete the required assessments of their learning. Students must be insured that the original learning goals or outcomes for the courses and programs are met. If this does not occur, students may not be prepared for follow-on courses that have prerequisite requirements or have the necessary

knowledge to progress effectively and safely to placements or other academic activities including laboratories.

Also, some programs have strict minimum contact hours that are stipulated within national accreditation standards. If these standards are not met, programs can lose accreditation and students may be ineligible to meet professional standards for practice in the profession. Lastly, there is generally agreed to understanding of what constitutes a 3 credit hour course across institutions in Canada and more broadly. If the number of teaching hours is altered, there is a potential that other institutions may not accept the course or program from UM. This could have significant consequences for student course credits or even degree(s), when applying to enter other programs or seeking some types of employment.

Tab 57, UM Student FAQ communication

410. At a meeting on November 17, 2021, the Senate Executive, passed a motion revising the academic schedule due to the strike by adopting what was called “Scenario 4”, which mandated that there would be no abridgment of instructional days for the 2021 – 2022 Academic Schedule. This was described by Dr. Torchia, Vice-Provost (Teaching and Learning), as reflected at p. 2 of the Meeting Minutes:

Dr. Torchia said, under Scenario 4, where classes would resume between December 1 and up to and including December 7, the Academic and Research Team was recommending the following changes to the 2021-2022 Academic Schedule, for the Fall Term, for interrupted classes only: the last instructional day would move from December 10, 2021 to January 19, 2022; an alternate examination period would be set for January 21 – 23, 2022; the Voluntary Withdrawal deadline would move from November 23 to December 21, 2021. Additionally, for both continuing and interrupted classes, the final grade appeal deadline would move from January 25 to February 11, 2022.

Changes to several 2022 Winter Term dates would also be necessary, including: the first instructional day would be moved from January 17 to January 24 and the last instructional day would be moved from April 18 to April 20; the Voluntary Withdrawal deadline would be changed from March 30 to April 1 for Winter Term courses and from January 28 to February 24 for spanned courses; the Winter Term Break would be reduced to one day, on

February 22, which together with the University closure on February 21 would provide students with a slightly longer weekend. Dr. Torchia referred committee members to the documents included with the agenda for changes to other Winter Term dates.

Tab 58, copy of the November 17, 2021 Minutes of Senate Executive

411. At the meeting, President Benarroch observed that these “Scenario” changes would put pressure on Association members to resolve the strike. The implication of this comment is that the University was compressing academic requirements for the Winter Term’s completion prior to the Summer Session. Potential disruption to the Summer Session was the pressure on the University. The pressure on Association members was that the longer the strike went on the more compressed Winter Term obligations might become. President Benarroch summarized these dynamics as follows at p. 5 of the Meeting Minutes:

President Benarroch noted that the union and the University were not at the bargaining table presently and information was being communicated through the mediator. He indicated he had raised Professor Watt’s concern with the University’s bargaining team and had instructed the team that revisions to the Academic Schedule should not be used in bargaining. He remarked that the various scenarios for revising the Academic Schedule should put pressure on both the University and UMFA to arrive at a resolution to the strike.

412. The Return to Work Protocol - in exchange for the instant adjudication on salary and benefits - required members to consent to, and effectively waive any right to grieve, the reconfiguration of their work schedule by the University Senate, wherein it reads that:

- iv) Members shall comply with all Senate approved or mandated changes in the academic schedule, the provisions for modifications in the examination periods and changes in regulations or waivers of regulations and any other requirements resulting from the implementations passed by Senate on November 3, 2021, and by Senate Executive at its meeting of November 17, 2021.

Tab 18, Return to Work Protocol

413. This consent and waiver is predicated on the University declining the option of term abridgment and to instead require the full amount of instructional days and teaching hours for all courses in a compressed second half of the academic year. The Association agreed to the inclusion of this consent clause, knowing that its request for full salary and benefit compensation for members during the period of the strike would be referred to arbitration.

414. The University had the option to abridge the teaching term or, conversely, pay all members full annual compensation for fulfilling their complete annual teaching mandates.

415. Abridging course requirements is not unprecedented. In a 2018 labour action involving CUPE 3903 (Unit 2) and York University, classes taught by sessional instructors in Unit 2 were reduced by a minimum of one week, with changes to the kind, weight and number of assignments. Attached hereto as **Tab 59** is a copy of York University's Senate directive on the "Completion of Courses and Finalization of Grades", dated July 13, 2018 (see chart at p. 4 for above references).

416. It is clear that the University of Manitoba wanted to do what it considered to be in the best interests of students *vis-a-vis* accreditation, graduation, etc. The form of course delivery and the number of contact hours could have been reduced for courses affected by the strike, as evidenced by the post-strike remediation plans devised by York University, described above. The fact that abridging courses may have been unpalatable to the University from a political or public relations perspective does not justify only partially remunerating striking members for completing the entirety of their annual teaching assignments.

417. The only reason that 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. This is

not substantially different than an employer requiring employees returning from a strike to work 10 hour shifts to recoup lost production, but insisting on paying them for 8 hours of work.

418. The University's Senate and President anticipated that this compressed window of work would be exceptional and onerous, per paragraph 411 above. Complete remuneration is required and only fair and reasonable, in exchange for performing full annual teaching assignments.

419. The Association has obtained responses from over five-hundred (500) members who participated in the strike, detailing their various assignments that were either completed during or deferred by the strike and will now require completion in this academic year.

420. An interesting feature of the Survey is that it demonstrates unequivocally that the University is requiring Association members to teach the same courses, with the same instructional requirements, but with different pay, according to whether a member went on strike or not.

421. Question 15 queried members as to whether they could identify instances whereby the same course with multiple sections was taught by striking and non-striking members. One hundred and sixteen (116) respondents were aware of such situations occurring.

422. Question 16 asked members to list these courses. Association members identified over eighty (80) courses where a striking and non-striking instructor completed the exact same course assignment. In every instance, the only reason that one instructor would complete one hundred (100) percent of the work but receive less than one hundred (100) percent pay, was their participation in the strike. We highlight this scenario because it demonstrates that the University's position constitutes unreasonable salary discrimination.

423. There is no reasonable justification for pro-rating or permitting differential pay between striking and non-striking members, who are performing their full teaching loads in the academic year. Furthermore, the evidence above provides clear support for UMFA's concerns on compensation for research and service duties during and after the strike within this academic year, as outlined below.

Research Duties

424. On October 27, 2021, the Associate Vice-President (Human Resources), Darlene Smith (hereinafter "AVP Smith"), wrote to the Association concerning UMFA's request to finance pension and health benefits contributions. In that letter, AVP Smith notified the Association that "We have arranged with our insurer, CURIE, to ensure liability insurance continues to cover striking faculty members that enter campus in order to perform limited duties, or deal with emergency situations".

**Tab 60, correspondence from AVP Smith to Dr. Flemming,
dated October 27, 2021**

425. On October 28, 2021, the Association wrote to AVP Smith for clarification on work activities during the strike to ask that, in the event of a strike, the University will not impede grant work, research equipment purchasing, salary payment activities, etc. This letter concluded with a request for the University to confirm that in general the University:

"Will not impede any other activity which, if left uncompleted, would result in harm to research and/or other projects currently undertaken by an UMFA member".

**Tab 61, correspondence from Dr. Flemming to AVP Smith,
dated October 28, 2021**

426. On December 3, 2021, the University formally responded to this letter confirming that the University will not impede grant work, research equipment purchasing, salary payment activities, etc., and furthermore, that "The University will not impede any other activity which, if left uncompleted, would result in harm to research and/or other projects

currently undertaken by an UMFA member.” This letter of December 3rd confirmed the practices being followed by the University during the strike.

**Tab 62, correspondence from AVP Smith to Dr. Flemming,
dated December 3, 2021**

427. The basis for the University permitting the general continuance of research work is that it is essential to the mission of the University. As reported by the University on December 10, 2021, this past academic year has seen the highest ever research funding totals in the UM’s history, at two-hundred and thirty-one (\$231) million dollars.

**Tab 63, UM Today article entitled “University of Manitoba
receives highest ever research funding”**

428. When the UM specifically authorizes members to apply for research grants, to manage human resources in laboratory environments, and to generally carry on with essential research work during the strike, it is because the University understands that this work is essential and timely to the ongoing mission of the University. It is to the University’s financial and reputational benefit for research to continue during the strike, given the substantial grant funds which UMFA Members bring into the University, and the innovative research which attracts local, national, and international attention.

429. Unlike other workplaces, Association members do not uniformly withhold their labour during a strike. Many must perform essential research functions during a strike and defer outstanding matters for completion shortly thereafter. Similarly, unlike other workplaces, which may face severe financial consequences from a strike, the University of Manitoba saved \$7,795,294.25 in salary for the period of the strike, while maintaining a record year for grant funding, and maintaining an otherwise extremely strong fiscal position, as already detailed in this brief.

430. As is evident from Question 1 of the Survey (“list all examples of essential research activities that you personally had to complete while on strike”), at least three-hundred and seventy-nine (379) respondents have indicated that they performed essential research

activities during the strike (i.e. 563 answered, 184 marked “not applicable”, and the remainder provided affirmative responses). Those marking not applicable are presumably from the Instructor ranks.

431. Those research activities included:

- Ordering/receiving supplies
- Routine or emergency maintenance of equipment or facilities
- Maintaining relationships with research partners and/or participants
- Completing time sensitive research grant applications
- Completing time-sensitive submissions to journals

432. Some more specific examples of the detailed responses to Question 1 include the following:

- “Maintain communications and a base level of supervision with the 15 HQP [Highly Qualified Personnel] in my lab who are responsible for conducting the research.”
- “Management of research assistants.”
- “Time sensitive responds [sic] to HREB Board [Health Research Ethics Board].”
- “Continuing work on team projects, when stopping would mean a) draining the budget (because AESUS [administrative] staff pay would continue whether there was work or not), risking project completion, or b) affecting the broader team to which I am accountable.”
- “Time sensitive support of graduate students progress (e.g., document review, ethical approvals, award applications).”
- “Prepared Research Ethics Board submission, liaised with Research Office to complete required contracts and obtain approvals.”

433. Question 2 of the Survey queried members as to the number of hours they performed for essential research activities. Of the 244 members who answered this question, more than 139 (57%) appear to have affirmed that they worked in excess of 13 hours during the strike on essential research activities. Many respondents indicated performing dozens of hours of research activity.

434. In addition to essential research conducted during the strike, striking members will not be relieved of deferred research activities and some or all of such activities will be completed in the applicable academic year.

435. At Question 3 of the Survey, members provided numerous examples of deferred activities required for prompt completion, including but not limited to, grant applications, ethics reviews, journal reviews and committee work, grant funding reviews and committee work, graduate student evaluation and oversight, conference planning, conference presentations, laboratory experiments, data collection, manuscript submissions, book contract fulfilments, student exhibition/performance requirements in Art and Music, etc. The strike did not have the consequence of relieving members of strict deadlines or other obligations that must be completed in a timely manner in this academic year. To highlight a few explanations of this dynamic, as provided in response to Question 3:

- “Preparation for RSL [Research/Study Leave]; research and develop grant applications; make arrangements with research subjects to conduct research activities.

All grant applications have firm deadlines; grant applications must be completed and submitted to the UM research services and faculty-level research coordinators well before the application deadlines. All those deadlines are imminent.”

- “Manuscript submission; supervision of undergraduate and graduate thesis research. Thesis research has a concrete deadline according to academic schedule. Prior to the completion, there are deadlines of ethics review and application, participant recruitment, etc.”

- "Data analysis, grad student thesis reviews, delayed greenhouse experiments, quarterly research reports. All projects have defined deadlines for deliverables as per the research/funding contracts."
- "Grant applications - 12 million in total; knowledge mobilization with govt & other partners (multiple countries). Data collection, reports, partner meetings"
- "Student committee meetings, thesis review, graduate student research.

[With respect to whether there are any deadlines necessitating completion in the current academic year]: of course it does, do you think students are free? they are all paid on grants which have ending dates and produce data needed for the next funding round iteration."

436. At Question 4 of the Survey, striking Association members were queried about the estimated time it would take to make-up for their deferred research activities. The vast majority (187 out of 242) of respondents exceeded the maximum survey query of 13-16 hours. As is evident in the detailed responses from column 31 onwards, many members are reporting working several extra hours per week on research.

437. Research activities conducted during or after the strike, whether under the general authorization from the University during the strike or as otherwise necessary to be completed within the academic year, must be appropriately compensated.

Service Duties

438. Pursuant to Article 19, governing Faculty and Instructors, the service obligations of members generally include the following:

19.A.2.4.3.1 Service includes those internal and external activities which arise from the research and teaching functions of the University. Consistent with their primary responsibilities in teaching and research, faculty members shall:

19.A.2.4.3.1.1 be responsible for advising students on academic matters, supervision of examinations and assistance at registration and other

administrative duties and committee work related to their teaching and research responsibilities...

19.A.2.4.3.1.2 participate in the governance of the University through active membership on department and faculty councils and, when called upon, participate to a reasonable extent in other University bodies.

19.A.2.4.3.1.3 have the right and responsibility to engage in community service when related to and appropriate to their discipline and field of expertise. Community service is that work within the community at large that enhances the reputation of the University because the individual faculty member makes an essentially non-remunerative contribution by virtue of special academic competence.

Tab 56, 2017-2021 Collective Agreement

439. With respect to service linked to teaching (i.e. advising students, overseeing exams, etc.), this service work must inarguably be performed in full, as the underlying teaching assignments have not been abridged and are being required to be conducted in the current academic year.

440. Furthermore, hiring, tenure, and promotion committees, whose activities were deferred by the strike, will still be required to perform their complete annual workloads. Tenure and promotion files must be adjudicated with sufficient time to effectuate decisions by July 1, 2022. Striking members will not be relieved of these service activities and some or all of such activities will be completed in the applicable academic year.

441. Question 5 of the Survey queried members “While you were on strike, did you perform service activities that you will include in your annual review (e.g. for National or International Committees or Associations) that were unable to be deferred until after the strike?”. Two-hundred and sixty-four (264) of five-hundred and seven (507) respondents, that is, 52%, responded “yes”. Question 6 of the Survey provides detailed answers, some of which are excerpted below:

- “As graduate chair of my department I am contacted for letters of support for international students who need to renew their visas, etc. This is work I could not defer to the end of the strike.”
- “Serving with professional organizations, Senate and U[niversity] committees. Corresponding with management to protect rights around covid.”
- “Administering departmental matters, sessional instructors.”
- “Internal thesis examiner; research grant reviews; external thesis examiner.”
- “Reviewing MA/PhD thesis drafts and providing feedback for students graduation.”
- “Pre-arranged talks at other universities, graduate supervision at another university.”
- “I attended Senate meetings during the strike, as an elected senator from my department.”
- “Grant and manuscript reviews that I had already agreed to. UofM Senate meetings. Preparing an application for a new Research Centre.”
- “REB [Research Ethics Board] related duties dedicated to reviewing course-dependent human research projects.”

442. Question 7 of the Survey queried members as to how many hours of service duties they performed during the strike. Nearly forty-three (43) of two-hundred and forty-nine (249) respondents, i.e. 17%, reported performing more than sixteen (16) hours of essential service work during the strike.

443. Question 8 of the Survey queried members “Do you sit on a University committee or committees (e.g. Tenure, Promotion, Hiring, etc.), for which work was deferred until after the strike?”. Three-hundred and two (302) respondents answered “yes”.

444. Question 9 of the Survey queried members “How many hours of committee work were deferred?”. Of the three hundred and five (305) respondents, the majority

experienced seven (7) hours or more of deferred committee work. Some of the detailed responses are quite illustrative:

- “I had both several hours of committee work and a two day conference planned during the strike.”
- “All the interviews for a search... so about 24 hours.”
- “Curriculum revision - now it is a tight window. due by march 30 and another by April 22. this is [*discipline*] specific to myself and someone else in [*department*].”
- “Open Educational Resource committee work still has the same deadline to be completed but in considerably less time.”
- “50+ hours (I am department head).”

445. Question 10 of the Survey queried members “Did you receive a reduction in other duties to be able to do this work?”. Of the two-hundred and ninety-seven (297) respondents, ninety-eight (98) percent indicated “no” and two (2) percent indicated “yes”.

446. As is evident from the above, many hours of essential service activities were performed during the strike and many more hours were deferred, but will nonetheless be completed within this academic year. Service activities, whether under explicit or implicit authorization from the University during the strike or as otherwise necessary to be deferred and completed within this academic year following the strike, must be appropriately compensated.

Article 17 and Librarian Remuneration

447. Article 17 prescribes a similar annual assignment process for Librarian members:

17.A.2.4.1 The duties professional performance responsibilities of academic librarians (as defined in s. 20.B.1.2.1) shall be assigned by the University Librarian or his/her designate annually following consultation and discussion with the academic librarian, fairly and reasonably in such a manner so as to

enable academic librarians to fulfill the rights and responsibilities described in s. 17.A.2.2 and s. 17.A.2.3 hereof...

448. Pursuant to Article 17.A.2.4, an individual librarian may be assigned to various administrative/service duties and the deferral of such activities by the strike does not extinguish the need for the performance of these activities. Ultimately, Librarians will perform some or all of their assigned teaching, research and service activities deferred owing to the labour disruption, within the applicable academic year and must be compensated accordingly.

449. Question 13 of the Survey queried Librarian members who participated in the strike, as follows: "As a Librarian, what forms of teaching or job performance duties not already described will be compressed into the remaining academic year?". Some of the answers received by the nineteen (19) respondents to this query are excerpted below:

- "Work relating to workshops or classes that I will teach this term. Possible work on a grant relating to a project."
- "Ordering items for faculty for teaching or research purposes, teaching for courses has been delayed and compressed, and one workshop of mine was cancelled."
- "Committee work; subject guides updating; acquisitions; professional development at UM; collaboration with and teaching faculty and graduate students."
- "Reference services: conduction research in order to respond to backlog of reference requests."

donor relations: negotiating/delaying important donations of materials that could not occur during the strike.

teaching: addressing increased requests for virtual teaching sessions, especially for the extended term."

- "Collection development, resource development (E.g. LibGuide creation), class/course preparation."
- "2 hands-on workshops originally scheduled for November and early December were rescheduled."

- “Preparing class materials changes for the collection, orders for new resources (less time to finish these tasks).”
- “My job duties are tied to the fiscal year, not the academic year; my duties have been compressed into a much tighter timetable because of the strike.”
- “Systems work being piloted with users is now bumped to the Winter semester.”

450. For the same reasons enumerated above for Instructors and Faculty members, striking Librarian members ought to be fully compensated for essential work required during or after the strike, which is necessary as part of their annual assignment of duties.

Requested Award

451. The Association requests that the Interest Arbitrator award full compensation (including salary and pension equivalent) in respect of deferred teaching duties for Instructors, Faculty and Librarians. Such an award of damages should be granted on a pro-rata basis relative to the allocation of teaching duties as a percentage of an individual member's total workload. For example, if an individual teaches 40% as a measure of their total balance of research, service and teaching duties, then they should immediately be awarded 40% of their total individual compensation that they lost as a result of the strike.

452. With respect to Research and Service duties compensation, the Association requests that the Arbitrator declare that striking members have an individual right to a quantification of and compensation for work (a) performed during the strike and/or (b) deferred by the strike that must be performed within the academic year. The Association requests that the Interest Arbitrator remit the determination of damages to the Parties. However, the Association requests that the Interest Arbitrator remain seized to deal with any disputes between the Parties as to the quantum of damages for individual members following completion of the academic year on July 1, 2022.

B. 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;

453. The Memorandum of Agreement for Interest Arbitration provides jurisdiction for the Arbitrator to determine whether the Association's requests for retroactive pension contributions and pensionable service, for the period of the strike, are appropriate.

454. The Association is claiming two distinct, but potentially overlapping, claims for pension compensation.

455. First, the Association is claiming for employee and employer pension contributions in respect of any award for compensation for duties performed during the strike and/or deferred by the strike, as claimed immediately above. Pursuant to the Collective Agreement and the *University of Manitoba Pension Plan (1993)*, all salary amounts are subject to a prescribed contribution formula.

456. Second, the Association is claiming for an award permitting striking members to make retroactive contributions to the Pension Plan, with respect to whatever deficits remain after the application of any remedy for compensation, in order to make whole their plan contributions and credited service for the period of the strike.

Pension Contributions for Duties Performed During or Deferred by Strike

457. Pursuant to Article 7 of the Collective Agreement, the University is obligated to abide by the terms of the *University of Manitoba Pension Plan (1993)*. The contribution formula is summarized by the University on its Staff Benefits website, as follows:

As a member of the Plan you make an annual contribution to your
Employee Contribution Account equal to:

- 9 per cent of your Basic Salary up to the Year's Basic Exemption (YBE) (\$3,500)

- plus 7.2 per cent of your Basic Salary between the YBE and the Year's Maximum Pensionable Earnings (YMPE) (\$61,400)
- plus 9 per cent of your Basic Salary above the YMPE.

The University of Manitoba matches the employee contribution. Each member will have an Employee Contribution Account and a University Contribution Account.

Tab 64, University's summary on pension plan contribution calculations

458. In light of the above, any award of compensation for duties performed during or deferred by the strike should involve an award of pension contributions, pursuant to the above formula. The University has advised the Association that the amount in pension contributions which would have been made to Association Member pensions but for the period of strike was \$701,576.48. Furthermore, there should also be an award of credited pension service commensurate with any individual compensation award.

459. Alternatively, should the Arbitrator determine that there are definite legal impediments to such a retroactive pension contribution and credited service award, the Association submits that the appropriate remedy is for an award of damages in lieu of pension contributions, in accordance with the formula for pension contributions under the Plan.

Permitting Members to Make Whole Their Pension Contributions and Credited Service

460. The University's agreement to advance the present pension dispute to interest arbitration bears relation to an antecedent undertaking from the Back to Work Protocol for the 2016 strike action, dated November 20, 2016.

Tab 65, 2016 Back to Work Protocol, dated November 20, 2016

461. At para. 28 of the 2016 Protocol, the Parties provided that "If possible, the University will allow the Association to pay both the Employer and the employee

contribution to the pension plan for the period of the strike”. The Association, after discussions with the University, concluded that the *Income Tax Act* did in fact preclude the Association making such contributions directly. However, the correspondence from that time remains instructive in evaluating the current issues, as the Association sought an alternative approach consistent with its current request in this matter for members to make themselves whole through their own retroactive contributions.

462. The Association submits that the resolution of this question rests on the determination of whether the Association’s request is legally permissible. This matter is not one of any substantial or material cost to the University, as members will bear the cost for making their retroactive pension contributions for any deficits remaining after the compensation award is determined. The University will bear responsibility to administratively effectuate the Plan amendments. The burdens associated with this are neither undue, nor unreasonable.

463. On January 20, 2016, Dr. Fleming wrote to AVP Juliano, requesting that the University recognize the period of strike activity as an authorized unpaid leave of absence, which could permit members - rather than the Association - to pay the entire share of retroactive pension contributions for the period of the strike and restore their credited service.

**Tab 66, correspondence from Dr. Fleming to AVP Juliano
dated January 20, 2016**

464. On April 17, 2017, AVP Juliano responded to Dr. Fleming’s request. At p. 1, AVP Juliano denied the request for retroactive pension contributions by members by first intimating that cooperation on such matters would create an incentive for strike action. Thereafter, AVP Juliano summarized legal concerns of the University relating to potential approval processes being required with tax or pension regulators. Ultimately, AVP Juliano concluded that, regardless of whether it is technically possible to permit pension plan amendments for retroactive contributions, it would be too “impractical” and “costly” to “go well beyond anything promised ... through the Back to Work protocol”, as follows:

The professional advisors with which we have consulted have indicated that, given the hybrid nature of the Plan and CRA administrative practice, there is some chance that the past service restriction may not be applicable or applied to the plan by the CRA. However, even if this were the case, they indicate the Plan would be unable to accept such retroactive contributions without amendments to the Plan text. In particular, the advisors have indicated that this may require amendments to the Plan text relating to:

- Timing of member contributions;
- Past Service Pension Adjustments (PSPA), and
- Pension Adjustments (PA).

In addition, legal counsel to the Pension Committee and that Plan's actuarial advisors have indicated that permission of the CRA may need to be sought to:

- Approve the retroactive contributions, crediting service and PA/PSPA reporting;
- Make the required amendments, and
- Obtain a waiver of contribution limits (in some cases the contributions may cause members to exceed ITA limits)

In our view, this would be impractical, costly and go well beyond anything promised at bargaining or through the Back to Work Protocol. The University did not commit to amending the Plan in order to try and make contributions for the period of the strike possible.

**Tab 67, correspondence from AVP Juliano to Dr. Fleming
dated April 17, 2017**

465. In the above correspondence from April 17, 2017, the then AVP Human Resources acknowledged that the University may simply have had to request the Pension Committee to make an amendment to the Plan and to have that amendment reviewed by the Canada Revenue Agency, provided this latter concern was even established as a *bona fide* requirement.

466. The following provisions of the UM Pension Plan (1993) are relevant to this question:

1.16 “**Credited Service**” shall mean:

- (a) In respect of the period prior to January 1, 1993, the credited service determined in accordance with Paragraph (13) of Section I of the Prior Plan, and
- (b) In respect of the period on and after January 1, 1993, the length of time a Member has been employed on a full time basis less any period(s) including partial days when participation was suspended plan the length of time a Member has been employed on a part-time basis multiplied by the Member’s Part time Ratio during this period.

Notwithstanding the foregoing, the following shall apply:

- (i) Credited Service shall include periods of leave of absence, if approved by the University, and contributions are continued during such period;

...

14.1 Leaves of Absence without Pay or with Reduced Pay

Where a Member is on a leave of absence without pay or with reduced pay, then, subject to Section 14.3, he or she may elect to make contributions so that the total contributions to the Plan on his or her behalf are the same as they would have been if the Member had been working in his or her regular position with regular pay, provided that, during this period of absence, the Member does not accrue benefits under the registered pension plan or deferred profit-sharing plan of another employer. If the Member elects to make such contributions, then, for the purpose of the determination of his or her pension, Basic Salary and credit Service shall be computed on the basis that the Member had been working in his or her regular position during this period.

Tab 68, copy of the University of Manitoba Pension Plan (1993)

467. Section 22.6.4 of the Collective Agreement also speaks to an Association Member’s ability to continue their pension contributions while on a leave of absence without pay:

In cases of leaves without pay, except for those covered under s. 22.5.5 above, the Member may make arrangements to pay both the University's and his/her contributions to the pension plan and staff benefits programs or in special circumstances the University may continue to make its contribution to the pension plan and staff benefits programs on the condition that the Member also continue to make his/her contributions.

468. It is apparent that only modest amendments to ss. 1.16(b)(i) and 14.1, or the adoption of provisions mirroring these, could be authorized by the Pension Committee to permit retroactive contributions and the restoration of credited service for the period of the strike.

469. On May 19, 2017, the Association obtained an actuarial opinion, requesting an evaluation of, amongst other matters, AVP Juliano's letter of April 17, 2017. The advice obtained from the actuary can be summarized as follows:

- A. A plan amendment would be required to credit service during the strike, in order to permit contributions to be made after the fact.
- B. CRA permission would not be required to accept contributions on the DC portion of the plan. However, it is the case that accepting contributions at this point in time would be a complex accounting task.
- C. A past service pension adjustment (PDPA) would be required to be calculated, but that it would likely be zero or close to zero, and that certification by CRA would likely not be required.
- D. At 2016 current contribution rates, there was only \$925.00 in annual contribution room left on salaries up to \$145,000.00. It was estimated that during the period of the strike, the cost of employer and employee contributions for members earning \$70,000.00 per year would be \$620.00. The cost of employer and employee contributions for members earning \$145,000 would be \$1,400.00. It was noted that the additional contributions in the higher range would have to be purchased by the employee over two years.

- E. He suggested that a simple solution would be to allow additional monthly contributions over time to purchase the additional amount of service.

Tab 69, copy of the actuarial report from Andre Sauve, dated May 19, 2017

470. The issues in paragraph 469 (C) and (D) above, is that past service adjustments, like the ones being proposed by the Association, require certification from the CRA where they have a greater than \$50.00 impact (i.e. zero or close to zero) on the prospective benefit entitlements of a specific individual or group of individuals who, as in this case, would be retroactively credited with past service. The Canada Revenue Agency provides the following summary, at p. 5 of their *Past Service Pension Adjustment Guide*:

These “past service events” occur when, for periods of past service after 1989:

- benefits are increased retroactively;
- an additional period of past service is credited to the member; or
- there is a retroactive change to the way a member’s benefits are determined.

When any of these events occur, the value of the pension accrued is increased and gives rise to a past service event and possibly a PSPA. A PSPA is basically the difference between the new DB pension credit(s) and the old DB pension credit(s) under the provision. Reporting the PSPA ensures that the overall limit on tax-assisted retirement savings is maintained. A PSPA is used to reduce the amount that a member can contribute to an RRSP...

The plan administrator of a defined benefit RPP is responsible for calculating and reporting PSPAs when necessary. In all cases, if the calculation yields zero or a negative number, the plan administrator does not have to report a PSPA.

Tab 70, Canada Revenue Agency’s “Past Service Pension Adjustment Guide” (T4104-18E)

471. The *Past Service Pension Adjustment Guide* provides the following summary on the limit of tax assisted retirement savings, at p. 5:

A PSPA is required to ensure that the overall limit on tax-assisted retirement savings of 18% of income is maintained. It achieves this goal by reducing an individual's RRSP contribution room by the amount of the PSPA.

472. With respect to paragraph 469(D) above, it was assessed that for 2016, only those making over \$145,000/yr would be at risk of exceeding the overall Money Purchase (MP) limit of \$25,370, after making their retroactive contributions to the Plan. For 2021, the MP limit is \$27,830. A striking member would need to earn over \$156,400 to similarly exceed the annual limit, as in the 2017 actuarial analysis, and thereby trigger a certification requirement from the CRA for a PSPA.

473. The Association submits that it is reasonable for the University to be ordered to implement a Plan amendment to permit the University and striking members to fully restore (a) their retroactive contributions for the period of the strike, and (b) credited service for the period of the strike. For clarity, such amendments should:

- a. permit retroactive contributions for the 2021 strike period up to applicable CRA and/or Plan limits for that calendar year;
- b. With respect to any outstanding retroactive contributions required to render an individual whole, those outstanding amounts should be permitted to be made via additional monthly member contributions for a period of either two (2) years from the date of the Plan amendment or until the outstanding deficit has been remediated, whichever occurs first.

474. In the course of complying with the above award requested by the Association, should the University (a) determine that CRA permission is required for some aspect of the necessary Plan amendments, and (b) CRA regulators deny the certification of the necessary amendment(s), then the residual aspects of the Association's claim(s) under this section – insofar as they are denied by the CRA - should revert to the alternative

remedy of pension damages in lieu of Plan contributions, as outlined above at paragraph 457.

C. The Association's request for deduction of dues from Members who elected to work during the period of the strike for remittance to the Association;

475. Article 33.3 of the Collective Agreement provides that the University is to deduct monthly membership dues established by the Association from the salary of UMFA members. Furthermore, Article 33.3.2 of the Collective Agreement states that the University shall remit to the UMFA Treasurer the name of members from whom salaries deductions have been made and the amount deducted from each, with a cheque for the total amount deducted, no later than thirty (30) working days after such deductions are made.

Tab 56, Articles 33.3, 33.3.2 of the Collective Agreement

476. Not only is this a requirement of the Collective Agreement, but also a statutory obligation in accordance with s. 76(1) of *The Labour Relations Act*. A failure to remit dues to a union amounts to an unfair labour practice as per s. 29 of *The Labour Relations Act*.

Tab 71, s. 76 of *The Labour Relations Act*

Tab 72, s. 29 of *The Labour Relations Act*

477. UMFA is requesting that the University provide it with dues that were, or should have been deducted from Members who worked during the period of the strike. There is no justification as to why membership dues were not deducted and provided to UMFA for members who elected to work during the period of the strike.

478. The University essentially acts as a collector of moneys due and owing from UMFA members to the Association. Those who worked during the period of the strike ought to have had those dues deducted, and the University, as agent for the collection and transmission of those dues, ought to have provided them to the Association. The University possesses no authority, as an agent, to do anything with that money other than to forward it to UMFA.

479. At no point either before or during the strike, did the University consult with UMFA regarding its intention to cease collecting dues from non-striking Members upon the termination of the collective agreement as a result of the strike. While the collective agreement between the University and UMFA had terminated, the Parties were still subject to an obligation in accordance with s. 63(1) of *The Labour Relations Act* to continue bargaining collectively in good faith and to make every reasonable effort to conclude a renewal of collective agreement.

Tab 73, s. 63(1) of *The Labour Relations Act*

480. In a 2020 B.C. arbitration award, *Interior Forest Labour Relations Association v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied and Industrial Service Workers International Union*, the Local Unions had grieved the employers having deducted the cost of employee Health Care Plan premiums from the union dues collected by the employers. Arbitrator Fleming stated that, despite the Employers' right to unilaterally change the terms and conditions of employment upon termination of the collective agreement, there remained a "legitimate expectation of prior consultation" if the Employers intended on making such changes, consistent with the good faith bargaining provisions of the *Labour Relations Code*, RSBC 1996, c 244.

481. At Paragraph 111, Arbitrator Fleming wrote:

"In light of the importance attached to union dues and the other remittances in this case, I accept that there would have been a legitimate expectation of prior consultation if the Employers contemplated making changes to them after the expiry of the Collective Agreement. That is also consistent with the LRB's law and policy under Sections 11 and 47 of the *Code* regarding the parameters for changes to terms and conditions of employment once a collective agreement has been terminated by a labour dispute."

**Tab 74, *Interior Forest Labour Relations Association*,
[2020] BCCAAA No. 119, Para 111, page 15**

482. The Employers had clearly communicated to the Local Unions via letter their intention to deduct Health Care plan premiums from the monthly dues in the event of a strike, and invited the Unions' views and input (including any alternatives). Arbitrator

Fleming held that the Unions would not have been unaware of the proposal, chose not to respond, and went ahead with strike action.

Tab 74, Supra, paras. 112-113

483. In response to queries made by UMFA the day prior, AVP Smith wrote to UMFA's Executive Director on October 27, 2021 regarding benefits coverage during a strike. In this letter, the University addressed its willingness to accept payment from UMFA to continue health benefits coverage for its Members, but that UMFA would be responsible for paying both the employee and employer portion of the cost. It also confirmed its unwillingness to accept any pension contributions on behalf of striking Members, and confirmed its intention to ensure liability insurance continued to cover striking faculty members that entered campus in order to perform limited duties, or to deal with emergency situations. What the University's letter did not confirm was its intention to cease collecting union dues from UMFA Members who chose not to go on strike and instead to continue working.

484. As a result, UMFA was not consulted as to the University's intention to cease collecting dues for non-striking Members, and was unaware of such intention prior to choosing job action and causing the termination of the collective agreement.

485. Alternatively, it is right and appropriate for the University, following the strike, to have deducted dues from the salaries received by UMFA members who worked and were paid during the period of the strike.

486. This was the agreement the parties reached following a previous UM strike in 1995. The 1995 Return to Work Protocol contained the following condition:

“Union dues shall be deducted from any salary received by Members of the UMFA bargaining unit during the period of the strike and shall be remitted to the Faculty Association, along with a list of those from whom such deductions were made and the amount of the deduction. (Article 33.3.1 and 33.3.2).”

Tab 75, 1995 Return to Work Protocol dated November 9, 1995

487. As interest arbitrator, following the replication principal, you can and should rely heavily on what the parties found to be reasonable subsequent to prior strikes at the University.

488. UMFA sought information on the total amount of dues UMFA would have received from the University for those members who continued to work during the strike. The University provided the figure of \$58,689.72.

D. The Association's request for the University to reimburse the Association for the expenses incurred to pay for Member benefits during the period of the strike.

489. Normally, the cost of the member benefits is shared equally between University and the UMFA member.

490. During the strike, the University did not cover their share of those costs. Instead, UMFA covered 100% of the costs of Member benefits in order to ensure that those benefits continued. Attached at **Tab 60** is a letter from AVP Smith to UMFA dated October 27, 2021 responding to the Association's request for UMFA to finance pension and health benefits contributions during the period of the strike. That letter states that "the University will accept payment from UMFA in order to continue access to all group benefits during the course of a strike. You will be responsible for paying both the employer and employee portion of the costs."

Tab 60, Letter dated October 27, 2021

491. UMFA did in fact cover both the University and employee portion of benefit costs during the life of the strike. UMFA notes that Section 18 of *The Labour Relations Act* expressly permits a union to continue to pay member benefits during the period of a legal strike:

Insurance scheme

18

Where

- (a) an employee in a unit of employees of an employer ceases to work because the employees in the unit are locked out by the employer or because the employees in the unit are on a legal strike; and
- (b) the union which was the bargaining agent for the employees in the unit at the time the lockout or strike commenced tenders, or attempts to tender, to the employer, for the duration of the lockout or strike, the premiums in respect of a medical, dental, disability, life or other insurance scheme normally maintained by the employer on behalf of the employees in the unit;

if the employer, or any person acting on behalf of the employer, without lawful excuse,

- (c) denies or threatens to deny to the employee any benefit under the insurance scheme; or
- (d) cancels or threatens to cancel the insurance scheme; or
- (e) refuses to accept any of the premiums tendered by the bargaining agent; or
- (f) fails to remit to the insurer any of the premiums tendered by the bargaining agent;

the employer, or the person acting on behalf of the employer, commits an unfair labour practice.

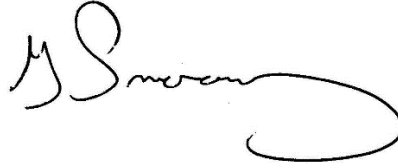
Tab 76, excerpt from *The Labour Relations Act*, s. 18

492. UMFA is requesting reimbursement from the University for its share of the normal costs of the continuation of those benefits over the period of the strike. Should the arbitrator award salary to the striking Members for the period of the strike (with normal deductions) then the Association requests that it also be reimbursed for paying the University's share of the normal costs of the contribution to those benefits over the period of the strike. The basis for this request is that if normal salary was being paid by the University for that period but for the strike, the University would have also paid its portion of the Member benefits.

493. The University has confirmed with UMFA that the total of those costs paid by UMFA for the period of the strike as \$328,621.32.

494. UMFA reserves the right to reply fully to issues raised in the University's Brief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th day of February 2022.

A handwritten signature in black ink, appearing to read 'G Smorang', with a large, sweeping flourish at the end.

**Garth Smorang/Joel Deeley
Counsel to UMFA**