

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
SECTION 55 OF *THE LABOUR RELATIONS CODE*, RSBC 1996, C. 244**

BETWEEN:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA

(“UNIVERSITY”)

AND:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA FACULTY ASSOCIATION

(“FA”)

SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA

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INTRODUCTION

1. These are the University’s submissions in connection with this arbitration pursuant to section 55 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (“Code”).
2. During collective bargaining, the University and the FA (collectively, “Parties”) reached agreement to convert, with amendments, much of their pre-certification agreement (“Faculty Agreement”) into a first collective agreement (“First Collective Agreement”). The terms and conditions of employment for the FA’s members (“Member” or “Members”, as the case requires) have long been established by the Faculty Agreement. Although the Faculty Agreement was not a collective agreement, it closely resembled a collective agreement in both form and formation. It contained common terms and conditions of employment for a contractually defined unit of employees and was negotiated at regular intervals between the University and the FA as the representative of the defined unit.

3. The issues that now remain in dispute between the Parties include compensation and the appropriate term for the First Collective Agreement.
4. The Parties remain far apart on compensation.
5. In recent years, and in particular since a February 4, 2014 interest arbitration award issued by Arbitrator Vince Ready pursuant to Article 46 of the Faculty Agreement (“Ready Award”), the University has faced an identifiable deterioration in its financial situation. This deterioration has resulted largely from marked declines in its two major sources of revenue – the operating grant provided to the University by the province (“Operating Grant”) and tuition – as well as from increased human resources costs.

**University’s Book of Authorities,
Tab 4**

6. For 2014/2015, the University faced an unanticipated revenue shortfall of \$1,361,987 and it now projects structural deficits for the forthcoming years.
7. In essence, section 29 of the *University Act*, R.S.B.C. 1996, c. 468 (“*University Act*”) requires the University to balance its budget each year. For the purposes of the University’s 2015/2016 budget, the University made a number of *one-time* adjustments in its expenditures – as described below – and as a result was able to balance its budget. However, the University has recently learned that student enrolment has once again declined for Fall, 2015. The University is now projecting a \$1,400,000 shortfall from its tuition revenue projection for 2015/2016.
8. The University does not expect the foregoing revenue streams to recover in the near future.
9. The outcome of this section 55 process will, of course, be an important factor in the University’s future human resources costs.
10. In the University’s compensation negotiations with the FA, and as is discussed below, the University, like all public sector employers in British Columbia, is restricted to bargaining within the mandate established by the Public Sector Employers’ Council (“PSEC”).

11. Despite the above, the University identified measures during bargaining which enabled it to offer Members significant financial gains within its mandate from PSEC (“Mandate”) in the First Collective Agreement. The University offered the following gains:
 - a. a general wage increase (“GWI”);
 - b. adjustments to the salary floors and ceilings for each academic rank in the second and third years of the proposed five-year term;
 - c. enriched Career Development Increments (“CDIs”); and
 - d. new Enhanced Career Development Increments (“ECDIs”) in the fourth and fifth years of the proposed five-year term.

In this regard, the University is committed to fostering the conditions for a collegial relationship at a research-focused university that serves students, faculty, staff, and community. However, it must do so within its financial constraints.

12. Both Parties recognize that compensation for Members as they progress through the ranks (often known as “PTR”) is not consistent with provincial and national norms. To remedy those issues, the Parties proposed different solutions:
 - a. As is noted above, the University proposed a GWI, adjustments to the floors and ceilings for each academic rank, and ECDIs. The ECDIs would reflect career development, accommodate different rates of career development, and improve the University’s PTR structure, making it competitive with comparator institutions. The University’s offer is substantial. The University has costed its final compensation proposal at \$4,529,000 over five years.
 - b. During bargaining, the FA did not propose a GWI but instead wanted the majority of resources dedicated to remapping the University’s salary scales to provide automatic progression through the ranks at identical rates for all Members regardless of career development. The University costed the FA’s compensation proposal alone at \$19,446,273 over five years. The FA also made additional monetary proposals, which the University costed at \$7,735,588. The FA’s monetary proposals would increase the University’s projected structural deficit by around \$4,000,000 per year over the next five

years. The University says that such a cost would not be financially sustainable.

13. The University says that many of the FA's proposals (both monetary and non-monetary) would represent breakthrough provisions. Given the conservative nature and stabilizing purpose of a section 55 arbitration, the University says that its final proposals in collective bargaining were and are appropriate for a First Collective Agreement.

FACTUAL BACKGROUND

The Parties

14. The University, which was established in 1990, is a research university continued pursuant to the *University Act*. In general terms, the University's mandate is to serve the needs of northern British Columbians. The University's main campus is in Prince George. It operates regional programs in other locations, including the Peace River-Liard (Fort St. John and Prince Rupert), Northwest (Terrace), South-Central (Quesnel), and Wilp Wilxo'oskwahl Nisga'a Institute. It also holds classes in other communities throughout British Columbia.
15. Between 1994 and 2014, the FA has represented a contractually defined unit of faculty members, librarians, senior lab instructors, and part-time instructors at the University.
16. Until 2014, the FA was a non-union employee association. As such, it enjoyed contractual recognition by the University as the representative of its members in, among other things, negotiations with the University to settle common terms and conditions of employment. These terms and conditions of employment were embodied in the Faculty Agreement.
17. On April 29, 2014, the Labour Relations Board ("LRB") certified the FA as the bargaining agent for a unit ("Unit") of: "tenured, tenure-track, and limited term professors, academic librarians, senior laboratory instructors, and sessional instructors, appointed either without home campus or at one of UNBC's campuses". There are currently approximately 355 Members in the Unit.

18. A chronology of both the Parties' bargaining towards the First Collective Agreement and the section 55 proceedings before the LRB forms Appendix A to these submissions.

Pre-Certification Faculty Agreement Negotiations

19. As Trevor Sones, the mediator appointed by the LRB in the section 55 proceedings, noted:

Although the University of Northern British Columbia Faculty Association was certified to represent a unit appropriate for collective bargaining under the requirements of the Code on April 29, 2014, this is not the first time these parties have made efforts to reach an agreement on a negotiated employment contract. The parties involved in this process have a long standing history of negotiation and determination of an employment contract. These past agreements have represented a compromise between the parties that would reflect many of the issues, challenges, limitations, and environment specific to these parties. In the context of bargaining a first collective agreement, the parties to this process have each represented and strongly advocated for a deal that will remedy and/or satisfy the unique challenges and opposing perspectives that have developed between them over time.

...Through direct collective bargaining and collective bargaining with the assistance of a mediator, the parties have resolved the overwhelming majority of the articles that were set out on their initial agendas. The parties have each made numerous compromises and through productive dialogue have developed a number of solutions to the challenges before them. However, despite these efforts the parties reached impasse on a number of articles, most of which relate to the total compensation package that faculty members receive. It is the unique history of the past agreement outcomes of these parties that have in many ways created the current impasse. In the context of this dispute, it is the history of the parties['] employment relationship and the surrounding labour market and geo-political variables which are causing these parties to remain at impasse despite extensive efforts to seek compromise and despite 14 days of job action....

20. Between the late 1970s and the early 1990s, the *University Act* prohibited faculty members at universities continued under the *University Act* from unionizing. In response to this prohibition, a “virtual collective bargaining” model developed at such universities. The typical features of this model were contractual recognition of a faculty association as the representative of a unit of faculty and librarians and some degree of negotiation at regular intervals to establish common terms and conditions of employment for that unit. The approach used at the University roughly tracked the model which had developed at the other research universities: the University of Victoria (“UVic”), Simon Fraser University (“SFU”), and the University of British Columbia (“UBC”).
21. Around the time of the University’s establishment on August 8, 1992, the University’s Interim Governing Council approved a *Faculty Handbook: Interim Part One*. It was administered by a joint committee consisting of two members of the administration and two faculty members.
22. Following the formation of the FA, the University and the FA successfully negotiated Faculty Agreements in successive rounds of bargaining as is set out below. When the University has a record of the percentage of FA’s members who voted in favour of ratifying the result, it is noted:
 - a. Around June 14, 1995 the FA’s members ratified the Faculty Agreement with a term from June 14, 1995 to June 30, 1998;
 - b. Around July 1998 the FA’s members ratified the Faculty Agreement with a term from July 1, 1998 to June 30, 2001 and 87% voted in favour of ratification;
 - c. Around July, 2001 the FA’s members ratified the Faculty Agreement with a term from July 1, 2001 to June 30, 2004;
 - d. Around June 28, 2006 the FA’s members ratified the Faculty Agreement with a term from July 1, 2004 to June 30, 2006 and 89% voted in favour of ratification;
 - e. Around October, 2007 (for monetary articles) and February, 2008 (for non-monetary articles) the FA’s members ratified the Faculty Agreement with a

term from July 1, 2006 to June 30, 2010; and

- f. Around December, 2010 the FA's members ratified the Faculty Agreement with a term from July 1, 2010 to June 30, 2012 and 85% voted in favour of ratification.
23. From the outset, the Faculty Agreement contained an article providing that either or both of the Parties could refer any outstanding negotiation issues to an arbitration board for resolution. Interest arbitration, conducted on a replicative model, was therefore always available to the Parties to resolve disputes about the terms and conditions of employment.

UBOD, Volume 1, Tab 2

24. In the final pre-certification round of bargaining the FA invoked the arbitration provision for the first time when the Parties were unable to negotiate a new Faculty Agreement for the July 1, 2012 to June 30, 2014 term. The result of that arbitration was the Ready Award.

Other Employee Groups at the University

25. In addition to the Members, the University employs the following employees in the following administrative groupings:
- a. support workers, tradespeople, supervisors, and English Language Studies (ELS) Associates (instructors) who are represented by a certified bargaining agent, CUPE, Local 3799;
 - b. an excluded group of middle managers and support employees working in a confidential capacity;
 - c. academic services employees who work in areas that are not funded by the University's general operating or ancillary funds. Such employees are usually employed on a limited term contract and perform or support academic research and other work financed by restricted funding;
 - d. students (usually graduate students in the case of Teaching Assistants) employed throughout the University to support various activities, usually teaching and research; and

- e. senior management, deans, and executive directors/directors who constitute the University's excluded management group. Members of this group who hold an academic appointment (e.g., the Provost, Deans, and some Directors) compensation is determined in part by the provisions of the Faculty Agreement and in part by administrative stipends negotiated by the University on an individual basis.
26. On May 7, 2015 the University and CUPE, Local 3799 ratified a collective agreement with a five-year term from July 1, 2014 to June 30, 2019 and GWIs at the mandate established for public sector employers by the provincial government. The current mandate, known as the Economic Stability Mandate, is described below.

The University Context in British Columbia

27. There are now eleven universities in British Columbia.
28. They are continued by statute. The University is continued by section 3(1) of the *University Act*.

**University's Book of Authorities,
Tab 9**

29. Under the *University Act* and associated regulations, there are two classes of university in British Columbia:
- a. research; and
 - b. special purpose teaching.
30. The University is one of four research universities designated as such under section 3(1) of the *University Act*. The other three are UVic, SFU, and UBC.
31. Section 47 of the *University Act* requires all four of these universities to provide instruction and conduct research in all branches of knowledge. Section 47 of the *University Act* states:

Functions and duties of university named in section 3

47 (1) *In this section, "university" means a university named in section 3 (1).*

(2) *A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:*

(a) establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;

(b) provide instruction in all branches of knowledge;

(c) establish facilities for the pursuit of original research in all branches of knowledge;

(d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency in the subjects taught in the university and original research in all branches of knowledge;

(e) provide a program of continuing education in all academic and cultural fields throughout British Columbia;

(f) generally, promote and carry on the work of a university in all its branches, through the cooperative effort of the board, senate and other constituent parts of the university.

32. The research universities continued under the *University Act* compete on both the national and global stages for recognition of their excellence and achievement.
33. National and international rankings of universities—based on such indicators as academic reputation and the impact of a university’s research output—are now generally accepted as part of the higher education landscape. Universities named in such rankings use their rankings in promotional materials to, among other things, attract high quality students and top-ranked faculty who, in turn, enhance a university’s reputation and overall success.
34. One of the leading global rankings is the Times Higher Education World University Rankings. For 2015-2016:
 - a. UBC ranked 34th in the world;
 - b. UVic ranked in the 201-250 range in the world; and
 - c. SFU ranked in the 251-300 range in the world.

The University does not appear in the *Times* rankings, which focus on the top 800 universities in the world.

UBOD, Volume 1, Tab 3

35. However, the University has done well in another commonly cited ranking, the Maclean's rankings, which focus on Canadian universities. In the most recent Maclean's rankings, which were released shortly before the University filed this submission, the University placed first in the Primarily Undergraduate category. UBC placed third in the Medical Doctoral category (behind McGill and the University of Toronto). SFU and UVic placed first and third, respectively, in the Comprehensive category. The Maclean's Rankings use performance indicators based on five subject areas: students (28%), faculty (24%), resources (20%), student support (13%), and reputation (15%).

UBOD, Volume 1, Tab 4

36. In addition to the research universities continued under the *University Act*, two other British Columbia universities have research as part of their mandate. Both are established by their own statutes:
- a. Royal Roads University ("Royal Roads") is continued pursuant to the *Royal Roads University Act*, R.S.B.C. 1996, c. 409. It is a unique institution in British Columbia. It offers programs primarily to professionals working in the global economy. Most of its programs are at the master's level. It is authorized, under section 2 of its enabling statute, to "maintain research activities that support the university's programs"; and
 - b. Thompson Rivers University ("TRU") (formerly University College of the Cariboo) was designated as a university in 2005 by the *Thompson Rivers University Act*, S.B.C. 2005, c.17. TRU was established to provide students in the region with expanded access to post-secondary options. TRU offers a wide range of programs, including master's and bachelor's degrees, diplomas, certificates, trades, apprenticeships and developmental programs. Like the special purpose teaching universities described below, TRU is required, by legislation, to serve the educational and training needs of the region and is authorized, under section 3 of its enabling statute, to "undertake research and scholarly activities" for the purpose of offering the above-noted programs.

37. All of the above- named universities are members of the Research Universities Council of British Columbia (“RUCBC”).
38. In addition, there are five special purpose teaching universities in British Columbia, designated pursuant to s. 3(1.1) of the *University Act*. Like TRU, each of these institutions is required to serve its local area (as shown opposite the institution’s name in BC Reg. 220/2008) and is required to offer the particular program or programs specified in the regulation. These universities are teaching-focused and primarily serve undergraduates but have some scholarly research activities.

The General Economic Framework for Collective Bargaining at the University

39. Under section 29 of the *University Act*, the University must operate with a balanced budget:

(1.1) The board [i.e., University’s Board of Governors] must not incur any liability or make any expenditure in a fiscal year beyond the amount unexpended of the grant made to the university and the estimated revenue of the university from other sources up to the end of and including that fiscal year, unless an estimate of the increased liability or over-expenditure has been first approved by the [Minister of Advanced Education] and Minister of Finance.

40. Section 58 of the *University Act* imposes preconditions on any borrowing activity by the University:

(1) With the approval of the [Minister of Advanced Education] and Minister of Finance, a university may borrow money for the purpose of

(a) purchasing or otherwise acquiring land for the use of the university, or

(b) erecting, repairing, adding to, furnishing or equipping any building or other structure for the use of the university.

(2) The board may

(a) enter into any agreement that it may consider necessary or advisable for carrying out the purposes mentioned in this section, and

(b) execute in the name of the university all agreements, deeds and other instruments considered necessary or advisable to carry into effect the provisions of the agreement.

41. The *Public Sector Employers Act*, R.S.B.C. 1996, c. 384 (“*PSEA*”) establishes PSEC.

**University’s Book of Authorities,
Tab 8**

42. The purposes of the *PSEA* are set out in section 2. Those purposes are: to ensure the coordination of human resource and labour relations policies and practices among public sector employers and to improve communication and coordination between public sector employers and representatives of public sector employees.
43. Government establishes a mandate for all public sector employers in collective bargaining with all public sector employees, which PSEC enforces. The mandate sets, among other strategic objectives, the maximum allowable changes in employee compensation.
44. In the University’s case, like that of every other public sector employer in British Columbia, PSEC must approve its bargaining plan before the University makes any offers to its employee groups. In addition, once a tentative agreement has been reached, PSEC must approve it.
45. The Economic Stability Mandate applies to the current round of collective bargaining between the University and the FA and between the University and other employee groups at the University. The Economic Stability Mandate is as follows:
- a. a 5-year term;
 - b. GWIs over the five-year term totalling 5.5% as follows: 0%, 1%, 1.5%, 1.5%, and 1.5%, with the increases in the last three years to be implemented on a staggered basis; and

- c. a potential for additional increases if growth in British Columbia exceeds the annual forecasts set by the Economic Forecast Council during the last four years of the agreement. This is known as the Economic Stability Dividend.

In addition, with prior PSEC approval the Economic Stability Mandate also permits public sector employers like the University to provide additional monetary increases when the employer has identified internal savings to fund the increases. The Economic Stability Mandate (“Mandate”) referred to in these submissions includes such PSEC-approved additional monetary increases.

UBOD, Volume 1, Tab 5

46. The PSEC mandate does not have legislative force. In the Ready Award, Arbitrator Ready found, for this reason, that the then current PSEC mandate did not bind him. However, Arbitrator Ready also recognized that the PSEC mandate was “a relevant aspect of the [University’s] economic environment” (at 8-9, 12, and 14).
47. Further, PSEC has informed the University that government will not fund any settlement or arbitral award in excess of the GWIs provided for in the Mandate (see paragraph 45). As a result, the University has and will be required to repurpose funds internally – to the extent the University has funds to repurpose – to cover any compensation in excess of the GWIs contemplated in the Mandate.

UBOD, Volume 2, Tab 28 at 2

48. Further, PSEC has further informed the University that if the First Collective Agreement has a term of less than five years, whether by agreement or order, the Mandate will continue to apply to the then remaining balance of the five years covered by the Mandate.

The Characteristics of Research Universities

49. An understanding of research universities and their focus on excellence and achievement is necessary to understand the general context against which these Parties are negotiating their First Collective Agreement.
50. Worldwide, one of the core missions of research universities is research production including its close association with training both undergraduate and graduate students to engage in research. Research universities teach in a scholarly environment that is

informed, stimulated, and enriched by research-inspired insights. They take pride in providing an environment for discovery and innovation. They foster an intellectual climate that encourages scholarship. They provide research infrastructure, as an interface between researchers and funding agencies, in order to support faculty members in obtaining research funding through competitive peer-reviewed processes.

51. Excellence is the goal of every research university under the *University Act*. This is confirmed and illustrated in each institution's strategic plan:
 - a. UVic's Strategic Plan, *A Vision for the Future – Building on Excellence* (2012) (<http://www.uvic.ca/strategicplan/>) states the institution's commitment to the highest standards of excellence;
 - b. SFU's Strategic Vision, *The Engaged University* (<http://www.sfu.ca/content/dam/sfu/engage/StrategicVision.pdf>), speaks of promoting research excellence and excellence in teaching; and
 - c. UBC says that it strives for excellence in research and teaching (<http://strategicplan.ubc.ca/>).
52. The UNBC University Plan 2010 (<http://www.unbc.ca/sites/default/files/reports/unbc-university-plan.pdf>) speaks of being a student-centered, research-intensive university, uniquely Northern in character, and of national and international acclaim. It speaks of attaining the highest standards of undergraduate and graduate teaching, learning, and research.
53. Indicia of excellence in research universities include highly qualified faculty conducting leading-edge or ground-breaking research that is published in top-tier academic journals, as well as quality teaching, strong student-faculty engagement, high levels of government and non-government funding to support research and scholarship, and the ability of the institution to recruit and retain top-ranked and intellectually gifted graduate students and postdoctoral fellows.
54. Faculty at British Columbia research universities can generally be classified into two groups: tenure-track faculty and teaching-only faculty.

55. The emphasis placed by research universities on achievement and excellence is recognized in, among other places, the faculty tenure and promotion system which is found at all such universities in Canada.

Initial Appointment, Renewal, Tenure, and PTR

56. Under a standard university tenure and promotion system, there are usually three ranks of tenure-track faculty: assistant professor, associate professor, and professor (or full professor). Tenure-track faculty are usually hired at the lowest rank and progress over their careers to the highest rank. As is noted above, this progression is often referred to as PTR. Increases in compensation are closely associated with PTR.
57. The primary duties and responsibilities of full-time, tenure-track faculty are described in similar terms at virtually all Canadian universities. These responsibilities fall under three general headings: teaching; research, scholarly, or creative activity; and service to the university and the community.

General

58. The initial appointment as a tenure-track assistant professor at a research university is usually for a period of three years. It is a probationary appointment in the sense that a research university normally expects a tenure-track appointee to meet the criteria for renewal and, subsequently, to meet the criteria for achieving tenure after six or seven years in rank. Reappointment, tenure, and promotion reviews are among the most important decisions made by an academic community. The granting of tenure reflects a high degree of trust in and a long-term commitment to the employment of a faculty member without close supervision.
59. As Arbitrator Luborsky wrote recently in *Ryerson University v. Ryerson Faculty Association*, [2015] O.L.A.A. No. 11:

The decision by a university to grant tenure is a milestone of accomplishment for the individual professor, usually following years of study and dedication to his or her chosen field. To the university it is at the heart of its identity and future, since once tenure is awarded it is difficult to remove and the professor has broad academic freedom to set his or her own direction that impacts the institution's reputation, funding and ability to attract quality students. Recognizing the university may only be as good as its tenured faculty, the collective agreements in this sector typically set

out detailed requirements for conferring tenure that seek to strike an appropriate balance of the important personal and institutional interests involved.

**University's Book of Authorities,
Tab 3**

60. The process for evaluating a candidate for tenure and promotion is normally rigorous. In general terms, the candidate is assessed by a departmental committee composed of his/her peers which considers how well the candidate has performed his/her teaching, research, and service duties. External referees are engaged to assess a candidate's performance in research and scholarship, as evidenced by his/her publication record and his/her reputation among other scholars in his/her field of major interest. External referees are asked to provide an independent and unbiased evaluation of the candidates' research and scholarly performance. The candidate's teaching ability and general contributions to the university are usually assessed internally. Usually, the departmental committee makes a recommendation to grant or deny tenure (or promotion) to a faculty committee (or to a dean, or to the provost) and the president. Pursuant to the *University Act*, appointments, reappointments, tenure decisions and promotions are made by a university's board of governors, on the recommendation of the president.

Criteria

61. Tenure-track faculty usually have a Ph.D. in their respective disciplines and are hired without tenure at the rank of assistant professor (or, temporarily, at the rank of lecturer) for a term of three or four years. Renewal of tenure-track faculty for a second and final term is based on satisfactory performance in teaching, research, and service.
62. Appointment to the rank of assistant professor presumes a strong academic record, coupled with the aptitude to become a successful teacher and the potential to grow in stature as a scholar.
63. Promotion through the academic ranks requires ever increasing levels of academic and teaching prowess. Promotion from assistant professor to associate professor generally requires the member to have engaged in sustained and productive scholarly activity that has made a substantial contribution to his or her academic discipline and recognition as an established scholar. Promotion from associate to full professor is

reserved for those who have excelled in teaching and research and generally requires scholarship that has attained wide recognition at a national or international level and which reflects an appropriate standard of excellence.

64. Further to the *University Act*, the University is a research university. It has been recognized at the national level for its achievements and aspires to a level of achievement comparable to the other BC research universities. In bargaining for the First Collective Agreement, the University's proposals were designed to foster excellence and recognize and reward achievement at the University.

OUTSTANDING MATTERS IN DISPUTE

65. As is reflected in the correspondence between the Parties and this arbitration board, there is, in large part, agreement about the matters which remain in dispute. They are:

- Proposals that are predominately monetary (although a number of them also propose language revisions that do not have monetary implications):
 - Article 48/I-1 (Compensation);
 - Article 21/E-2D (Awarding of ECDIs);
 - Article 50/I-2 (Pensions and Benefits);
 - Article 54/F-1 (Sabbatical Leave);
 - Article 55/F-2 (Academic or Professional Leave for Librarians and Senior Lab Instructors);
 - Article 56/F-3 (Assisted Study Leave); and
 - Article 61/F-7 (Sick Leave).
- Proposals that are predominantly non-monetary:
 - Article 75/J-4 (Duration of the Agreement);
 - Article 22/E-4 and E-8 (Renewal, Tenure and Promotion of Faculty); and
 - Article 23/E-7 (Letters of Reference).

66. The Parties appear to agree that Article 24 may remain in dispute within the parameters described by the FA at bargaining on January 25, 2015. If changes are made to Article 22, Article 24 remains open to allow for the specific changes that *might* then be required as a result of the changes to Article 22.

67. In addition, the University says the FA is impermissibly attempting to revive two matters that were resolved when the Parties signed-off certain agreed Articles:
- Article XX;
 - 19MOU/19A.
68. More particularly, the University says that XX and 19MOU/19A contain language that was tabled by the FA as part of a proposal that resulted in a signed off article and from which the language in question was dropped by the FA. The University is concerned that the FA now appears to be reviving language which it dropped at bargaining by re-characterizing the language as a new proposal.
69. In particular, around December 3, 2014 the Parties entered into an “Agreement on Bargaining Process”. It contained the following provision:
6. Once an article under the categories listed above is negotiated and [the] parties reach agreement that article is no longer open for future negotiation....

UBOD, Volume 1, Tab 6

70. According to the FA’s response to the University’s section 55 application, it tabled 19MOU on March 25, 2015 and XX on March 12, 2015, in both cases long after the Parties had signed the Agreement on Bargaining Process.
71. The University’s submissions below address the duration of the First Collective Agreement as a threshold issue, then turn to the Parties’ outstanding monetary and non-monetary proposals.

ARGUMENT

Appropriate Duration for the First Collective Agreement

72. In *Re Yarrow Lodge Ltd.*, BCLRB No. B444/93 (“*Yarrow*”), the LRB made the following statement about the appropriate term for a first collective agreement:

A further factor related to the specific terms and conditions of employment is the duration of the agreement. Most academic commentators, including Weiler, have concluded that one year collective agreements do not provide

sufficient time to accomplish the goal of establishing enduring collective bargaining relationships. The reason is that a year is found to be insufficient to heal the wounds of a fresh dispute and also, inadequate to assist in building a future relationship. It will therefore be the policy of this Board to require a minimum term of two years, commencing from the date of the award, unless the parties agree otherwise.

[Emphasis added.]

73. In collective bargaining, the FA proposed a two-year agreement and the University proposed a five-year agreement.
74. Under the approach set out in *Yarrow*, the minimum duration of the First Collective Agreement would be two years from the date of this arbitration board's award.
75. The University says that in the present circumstances and given the above statement in *Yarrow*, this arbitration board ought to order a five-year term in an effort to stabilize the Parties' relationship following several years of significant disruption.
76. In effect, the Parties have been bargaining terms and conditions of employment since Spring, 2012.
77. In Spring, 2012 the Parties began negotiating to renew the Faculty Agreement for a term starting on July 1, 2012. During that process, the Parties negotiated extensively and participated in mediation. Ultimately, they ended up in an interest arbitration before Arbitrator Ready which concluded in November, 2013.
78. In February, 2014 Arbitrator Ready issued the Ready Award.
79. Soon afterwards, the FA began the organizing drive which led to a certification in April, 2014.
80. In May, 2014 the Parties started to negotiate the First Collective Agreement. They met many times for this purpose.
81. From March 5 to 19, 2015 the FA engaged in a full strike.
82. Since that time, the Parties have been engaged in the section 55 process under the *Code*.