

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA

AND:

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION

(INTEREST ARBITRATION 2015)

**REBUTTAL SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH
COLUMBIA FACULTY ASSOCIATION**



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(“the Employer”)

AND:

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION

(“the Union”)

REBUTTAL SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION

1.0 Criteria for Section 55 Arbitrations

1.0.1 After having itself invoked Section 55 of the BC Labour Code, the Employer attempts to recreate the current arbitration as a standard interest arbitration, substituting criteria of its own devising for the established Section 55 criteria of *Yarrow*. The Employer also misrepresents the meaning of several *Yarrow* criteria.

1.1 The Employer introduces criteria not mentioned in *Yarrow*

1.1.1 In response to ¶89 the Union asserts that Employer obviously realizes that the guidelines set forth in *Yarrow* favour the moderate, sector-norm proposals of the Union. In place of addressing the *Yarrow* criteria the Employer attempts to introduce new ones. Here the Employer attempts to argue that because the parties have a mature bargaining relationship, the criteria in *Yarrow* do not apply. This is a bizarre twist of logic. However, it is good that the parties find common ground on the question of the longstanding bargaining relationship. Still, nowhere in the Section 55 case law can one find an assertion that a mature bargaining relationship turns a Section 55 arbitration into an ordinary interest arbitration. Indeed, the Section 55 arbitration award discussed in our initial brief at 5.2.2.v (*Diversified Transportation Ltd. v. Teamsters Local No. 31*) is germane here.

1.1.2 In ¶91 the Employer quotes, from the *Western Coal* case, an internal quote from the *Board of Police Commissioners of the Corporation of the City of Regina and the Regina Police Association*. However, the Employer cherry-picks from the list of criteria. The only criterion that the Employer does not emphasize is the one that is similar to one of *Yarrow*'s criteria, that is, "a comparison of other police force settlements." Apparently, for the Employer's purposes, the *Yarrow* criteria are not only "not exhaustive" (¶89) but irrelevant.

1.1.3 The Employer's "objective criteria" listed in ¶92 are not based on any Section 55 criteria but on adjudicative criteria imported from other agreements (and never present in the UNBC Faculty Agreement). Though not mentioned in *Yarrow*, one of these criteria, cost of living, is sometimes addressed by arbitrators in the absence of explicit agreement direction; we therefore address it below.

1.1.4 However, we reject the notion that settlements reached with the other bargaining agents at the university are relevant. We note that as the Employer itself acknowledges, Arbitrator Ready responded to the Employer's same argument by rejecting it because the work done by those employees is so different from the work done by the Members of the UNBC-FA.

1.1.5 At ¶204 The Employer disingenuously asserts that Arbitrator Kelleher considered settlements with other employee groups at UVic as relevant without noting that the provisions of the UVic Framework Agreement directed him to consider this criterion. That might be well if the factor were of itself logical or worthy; but it is clear that the relevant comparators are employees performing the same kind of work, as Arbitrator Ready noted in 2014 and as other arbitrators have noted in similar cases.

1.1.6 In attempting to argue for the relevance of this criterion, at ¶205 the Employer proposes consideration of "internal equity." It is difficult to know what the Employer means by internal equity between such disparate Employee groups; the labour markets, duties and responsibilities, and terms and conditions of employment of the two bargaining units are utterly distinct. When assessing many issues, including compensation, each group's "equity" must be weighed externally, against relevant comparators, and internally, within the bargaining unit.

1.1.7 In fact, the Employer has previously recognized what it considers the appropriate comparator for CUPE 3799—other CUPE locals at BC's research universities. After reaching an agreement in 2012, the Employer announced that

We've worked closely with the Ministry of Finance, the Ministry of Advanced Education, and the Public Sector Employers' Council (PSEC) to ensure that our members were compensated on par with other CUPE unions in the university sector across the province. (http://www.unbc.ca/releases/2012/10_24tentativedeal.html. (accessed 13 November 2015).

1.1.8 In ¶206 the Employer proposes an odd and novel factor. If the Employer fears that remedying a more than 20-percent difference between faculty at UNBC and faculty at comparators amounts to "injustice," the Employer's logic is opaque to the Union. Indeed, if the

Employer fears that treating one group of employees fairly—as measured by the standard rules of comparison obtaining within labour relations—would alienate another group or amount to injustice, then the UNBC-FA enjoins the Employer to treat all of its employees fairly rather than suggesting that any bargaining unit should accept substandard terms and conditions of employment.

1.1.9 The UNBC-FA was deeply grateful for the solidarity of the CUPE membership during our two-week strike. The fact that, in the same round of negotiations, CUPE 3799 reached an agreement without a strike and within the terms of the purported mandate suggests that the group's bargaining goals were met reasonably well. Such was not the case with the UNBC-FA.

1.1.10 At ¶207 the Employer implies that there should be symmetry between the settlements given to CUPE and the UNBC-FA, and that there *is* symmetry between the negotiations of CUPE in 2012 and the UNBC-FA in 2014. The Employer notes that CUPE Local 3799, after strike, ratified a collective agreement within the PSEC mandate in the same round of negotiations in which the UNBC-FA “benefitted” from the 2.5% GWIs awarded by Mr Ready. In relation to the first implication (that there should be symmetry between the settlements of the two bargaining units), the UNBC-FA unequivocally states that like the Members of the Union, the membership of CUPE 3799 deserve terms and conditions of employment comparable to those enjoyed by other employees performing the same kind of work in similar environments—as was recognized by the Employer in the news release cited above.

1.1.11 However, this does not necessarily imply that in any given settlement, particularly one awarded by an arbitrator, rates of pay increase or other alterations in terms and conditions will be the same for the two bargaining units. This is precisely because the two bargaining units are to be compared not to one another, but to other employees performing the same kind of work. If there are bona fide reasons why the settlements should vary, then there is nothing unjust about such variations.

1.1.12 At ¶187, the Employer shifts gears to examine workers performing the same kind of work as UNBC-FA Members: faculty at RUC-BC member institutions and extra-provincial comparators. The Employer again focuses on *salary settlements rather than on a comparison of salary scales*: understandably so, since the evidence submitted by the UNBC-FA makes it abundantly clear that UNBC salaries are terribly out of step. However, *Yarrow* does not contemplate consideration of recent salary settlements as a criterion for adjudication. Instead, *Yarrow* requires consideration of “objective criteria, such as the **comparable terms and conditions paid** to similar employees performing similar work” (emphasis added).

1.1.13 In ¶208-209 the Employer once again fixates on GWIs rather than on “comparable terms and conditions paid to similar employees performing similar work.” Recent GWIs in the broad “health, education, and social services” sector are not relevant for the purposes of this arbitration.

1.1.14 In sum, the new criteria introduced by the Employer are of extremely limited utility for this arbitration—or worse, work mischief with the tried-and-true criteria established for the purposes of Section 55 arbitration.

1.2 The Employer asserts that cost of living is a meaningful criterion for this Section 55 arbitration

1.2.1 The Employer attempts to argue that cost of living should form part of this Section 55 arbitration and that UNBC's faculty, by virtue of living in northern British Columbia, are entitled to lower compensation than their southern colleagues.

1.2.2 At ¶197 the Employer, as it did in the 2013 arbitration before Arbitrator Ready, once again distorts the manner in which cost of living is used in arbitrations. *Increases in* cost of living are sometimes used as one of several criteria by which to establish an appropriate GWI, to be sure; but here the Employer here turns cost of living into an argument for the systematic underpayment of UNBC faculty.

1.2.3 The Employer rests heavily upon one indicator of cost of living alone: real estate prices. At ¶201, the Employer attempts to argue that because houses are more expensive in the Lower Mainland and Victoria than in Prince George, UNBC faculty should be compensated at a lower rate than the faculty at the other research universities. We assume that the Employer uses this argument because it alone might appear to support the distance between UNBC salaries and those in effect at UBC, SFU, and UVic. Indeed, by the Employer's logic virtually all faculty in Canada (outside of Vancouver and Victoria) would have to take a pay cut, so overheated are the real estate markets in the regions where the other research universities of BC are located.

1.2.4 This argument—that those who work in the north deserve lower compensation—is not found in other employment sectors. It is noteworthy that salary scales of teachers in school districts 57, 82, 39, 41, and 61 (in which UNBC's Prince George, Quesnel and Terrace campuses; UBC; SFU; and UVic are located) are almost identical. Teachers in district 60 (where UNBC's Fort St. John campus is located) get paid slightly more than teachers in all of those other districts. Similarly, all Members of BCGEU get paid according to the same grid, regardless of where they live. Members of the British Columbia Nurses Union are paid according to one scale, regardless of where they live. Firefighters in Prince George are also paid comparably to firefighters in the Lower Mainland. Certainly physicians are not paid less if they practise in Prince George, Terrace, Quesnel or Fort St. John than if they practise in Vancouver! The Employer's logic is therefore skewed. Indeed, the UNBC-FA asserts that the administration of UNBC implicitly insults every resident of northern British Columbia—the region it ostensibly serves—when it implies that the people of northern British Columbia should be paid less than people in Vancouver, Burnaby, and Victoria.

1.2.5 As the foregoing suggests, wages and salaries are generally *not* lower in the North than in the Lower Mainland; indeed, the *opposite* is true. According to 2012 Statistics Canada data, the median income for a couple in Prince George was \$76,545, well above the provincial average of \$72,200 and the Canadian average of 71,700 (<http://www.statcan.gc.ca/daily-quotidien/141210/dq141210a-eng.htm>). In comparison, the average income in the Greater Vancouver was significantly *below* average

(http://www.vancouver.sun.com/Opinion+Vancouver+among+lowest+incomes+highest+costs/10098684/story.html?__lsa=7708-c003). Wages, in fact, might be said to bear an inverse relationship to house prices, in that wages tend to be higher in places where people are reluctant to live; house prices are highest in places where most people want to live. That is why Vancouver may have the most expensive houses in the country, but Fort McMurray has the highest income.

1.2.6 Taking this Prince George/Lower Mainland comparison further, we note that UBC has programs that assist its employees in buying real estate. Such programs have assisted faculty there to amass very significant equity in their homes. In contrast, UNBC faculty who buy homes in Prince George have *not* amassed significant equity in their homes, to the extent that relocating elsewhere at retirement may mean taking on a new mortgage—or may simply be impossible.

1.2.7 Comparing Prince George real estate with that in large centres should also consider more than just the initial cost of a home. Real estate investments in Prince George are:

- riskier than in the Lower Mainland;
- less likely to result in substantially increased equity because of rising house prices; and
- an unstable base from which to “trade across” to real estate in a retirement location. Faculty who hope to sell their home and move to the Lower Mainland or Vancouver Island will find it difficult to do so without taking on a new mortgage.

1.2.8 Moreover, housing is not the only cost of living, as recourse to Statistics Canada data would show. Comparing spending of faculty in the north to that of faculty in the Lower Mainland would be a complicated matter, and would require taking into consideration *additional and higher costs* of living in Prince George, such as (only a partial list):

- increased fuel costs and requirement to drive given distance, the lack of a comprehensive transit system, and often-inclement weather (faculty in the Lower Mainland can rely entirely on transit if they wish, and often use bicycles or walking to get around);
- costs of home heating, which can amount to hundreds of dollars per month; and
- increased travel costs relating to oneself and one’s dependents for social and family contact, medical treatment, and sports participation.

1.2.9 Notably, despite its real estate market, Prince George is not experiencing a population boom as Lower Mainland buyers flood into the area to take advantage of low house prices. In fact, there are at least two reasons that salaries tend to be *higher* at remote than at less remote universities. First, more remote communities bear their own additional costs, as detailed above. Houses may be cheaper, but one may spend much more on travel (medical, personal, professional), energy (particularly in northern locations such as Prince George or Thunder Bay), and other expenses. Second, more remote locations are simply not as desirable to most academics—or other workers, which is why wages tend to be *higher* in Prince George than they are in the Lower Mainland, despite the house prices.

1.2.10 The idea that house prices are an attraction that offsets low compensation is thus a non-starter. We might also address another issue: perceptions of whether cities are good places to live. *Moneysense* annually ranks Canadian cities as “Best Places to Live” based on a number of factors including low unemployment; high incomes; affordable housing; healthy population growth; access to health care; low taxes; low crime; ease of walking, biking, or taking transit; and strength of arts and sporting communities. According to the 2015 list, Prince George ranks 163rd out of 209 Canadian cities. By contrast, Vancouver ranked 46th, Victoria 50th, and Burnaby 68th. (<http://www.moneysense.ca/canadas-best-places-to-live-2015-full-ranking/>). However unfair such rankings may be, no BC community that houses *any* kind of university placed as low in this ranking as does Prince George. Moreover, of all of the ranked communities across Canada in which our comparators are housed, none ranked as low as Prince George. (Sackville and Antigonish are too small to be ranked, but the other comparators ranked between 26 [Brandon] and 112 [Thunder Bay].) There are no “sunshine wages” in Prince George because the widespread perception, justly or unjustly, is that Prince George is less attractive than many, many other communities across Canada. The UNBC-FA does not believe that these data support the Employer’s unsupportable argument that UNBC’s faculty deserve lower compensation because they live in Prince George.

1.2.11 Since the University has seen fit to advance that comparative argument, however, we assert vigorously that the University’s claim is not upheld by arbitral jurisprudence. The relevant criterion is comparability, not real estate listings. Assessing the relevance of comparability in 1996, Arbitrator Kelleher (his paragraph 42) quoted Arbitrator D.R. Munroe’s 1994 award (paragraph 32) that said

In my view, no compelling reason exists why the faculty at this university [University of Victoria] should be asked to accept an unfavourable salary gap as between themselves and their counterparts at UBC and SFU as a systematic feature of their conditions of employment.

University of Victoria and University of Victoria Faculty Association Award No. A-92/96 (1996) (Kelleher) (BoA, Tab 23 at paragraph 42)

1.2.12 The Union has not crafted its proposals on the basis of parity with the other research universities of British Columbia, nor does it accept the utility of comparison with those universities for the purposes of replication. But based on the Employer’s arguments, we assert that Kelleher’s statement could hold for UNBC: no compelling reason exists why the faculty at UNBC should be asked to accept an unfavourable salary gap as between themselves and their counterparts at UBC, SFU, and UVic as a systematic feature of their conditions of employment.

1.2.13 The UNBC-FA asserts, however, that *more relevant comparison* can be made with the cities in which our comparator institutions are located. The Employer made no attempt to compare housing prices with housing prices for faculty at our comparator institutions. Because the UNBC-FA does not consider this factor to be relevant, we have not carried out thorough research on house prices in those cities, but here are some statistics regarding average home prices in cities in which our comparators are located. The first table presents CMHC data on the

prices of new homes in comparator cities, while the second presents sale-price data (from indicated sources) on all homes sold in comparator cities.

University	City	Average price of single-detached home, September 2015
Regina	Regina	\$525,655
UNBC	Prince George (data not available for Fort St. John, Terrace, or Quesnel)	\$427,252
Brandon	Brandon	\$412,128
Lethbridge	Lethbridge	\$402,900
Trent	Peterborough	\$381,510
Lakehead	Thunder Bay	\$376,597
Mount Allison	Sackville/Moncton	\$314,031 (September 2014)
UPEI	Charlottetown	\$273,056
Acadia	Wolfville	No data*
Saint FX	Antigonish	

Figure 1. Average price of a new single-detached home, September 2015 (except where data not available).

Source: CMHC (<https://www03.cmhc-schl.gc.ca/hmiportal/en/#Profile/1/1/Canada>) *CMHC reports only an average of \$450,446 in Nova Scotia (including Halifax).

University	City	Average 2015 price	Average 2014 price	Data source
Regina	Regina	313,035	316,105	http://creastats.crea.ca/regi/
Trent	Peterborough	300,375	277,200	http://creastats.crea.ca/pete/
Brandon	Brandon	278,106	269,637	http://www.breb.mb.ca/index.php/stats
UNBC	Prince George	277,000	271,581	http://www.princegeorgecitizen.com
Lethbridge	Lethbridge	264,168	259,149	http://creastats.crea.ca/leth/
Mount Allison	Sackville	249,323		http://www.century21.ca/CA/NS/Sackville
Lakehead	Thunder Bay	217,000	208,909	http://www.occ.ca/advocacy/ontario-economic-outlook-2015/northwest/
StFX	Antigonish		250,000	http://www.canadianrealestatemagazine.ca
UPEI	Charlottetown		162,298	http://www.moneysense.ca/property/best-deals-in-real-estate-2015-canadas-best-cities-to-buy-in/
Acadia	Wolfville		156,573	http://creastats.crea.ca/anna/

Figure 2. Average selling price of all homes sold, year-to-date 2015 and year 2014 (except where data not available).

1.2.14 It is apparent from this list that housing costs in many of the cities in which our comparators are located are *lower* than they are in Prince George.

1.2.15 The UNBC-FA contests the relevance of cost of living to this Section 55 arbitration. However, if the Arbitrator were to consider cost of living, relevant considerations are (a) higher costs of living for transportation and energy in the north; (b) the generally elevated wages in the north relative to southern communities, and the fact that average wages are *higher* in Prince George than in Vancouver; and (c) comparisons to housing prices in communities across Canada

in which our relevant comparators are located. All of these reinforce the UNBC-FA assertion that salaries at UNBC are unreasonably low.

1.3 The Employer misrepresents the meaning of *Yarrow* criteria

1.3.1 In ¶13 (and again in ¶211) the Employer asserts that the Union’s proposals are breakthrough items (and thus in contradiction to *Yarrow* criteria) without presenting any evidence to that effect. The Union has demonstrated that its proposals are modest, sector-norm proposals. Thus, none of the Union’s proposals is a breakthrough.

1.3.2 In ¶13 the Employer also refers to the “conservative nature” of Section 55 process rather than to criteria established in *Yarrow*. With regard to the “conservatism” of interest arbitration it is worth referring to one of the cases cited by the Employer. In 2007, Arbitrator Lanyon wrote that

The two basic principles that an interest arbitrator must adhere to are first the replication principle (to replicate what conventional bargaining would have produced) and second, to determine what is fair and reasonable. *Yarrow Lodge Ltd* (1993) 21 C.L.R.B.R 2nd 1

Both as a legal and practical matter this task involves the consideration of comparable terms and conditions of other employees performing similar work. Further, interest arbitration is essentially a conservative undertaking. As a general rule, neither party should look for a breakthrough from a third party neutral. As a matter of policy, entirely new provisions, benefiting only one party, must be a result of either agreement *or involve the full scope of collective bargaining negotiations, strikes, and/or lockouts. Compass Group Canada and Hospital Employees Union (Lanyon) (2007), BoA, Tab 16* at pp. 2 & 3 [emphasis added]

1.3.3 In response, the Union submits again that its proposals are not breakthroughs. The salary proposals of the UNBC-FA are modeled on provisions in effect at the *vast majority* of comparators.

1.3.4 Moreover, the proposals are modest; that is, the proposals *do not achieve parity* (“average” salaries) *but rather lay the groundwork for parity*. However, the Union reiterates what we stated in 5.2 of our original submission: *Yarrow* does not require a modest award in this case. As noted already, the present case does not reflect the typical first collective agreement scenario. In such a case, there is nothing that binds an arbitrator to a modest award, nor is there anything preventing the comparison of the UNBC-FA’s current demands to collective agreements that result from mature bargaining relationships.

1.3.5 In addition, the Union asserts that **the current case is precisely the kind of case, involving “the full scope of collective bargaining negotiations, strikes, and/or lockouts,” that according to *Compass* might produce an entirely new provision benefiting the Union.** It is instructive, in fact, to ponder the situation in *Compass*. The Section 55 arbitration involved a first collective agreement in a situation where previously, voluntarily recognized bargaining agents had

negotiated agreements. Thereafter, in December 2005, the HEU was certified to represent a combined bargaining unit. Mediation under Section 74 of the BCLRC was conducted and a successful strike vote taken (but no job action commenced) before the parties entered Section 55 mediation in October 2006. Remaining issues were referred to binding arbitration in December 2006. The arbitration award produced parity with other comparable workers by the end of the three-year collective agreement, representing a total increase of 24 percent over the term of the contract.¹

1.3.6 It is unclear whether the Employer means “breakthroughs” as generally understood—that is, provisions not in place at any or many comparable workplaces—or simply as new provisions at UNBC. With regard to the former, the UNBC has demonstrated that there is nothing novel about its proposals; our compensation proposals reflect what is in effect at our comparators. With regard to the latter, we defer to the *Compass* case cited above to ask: under what circumstances is *any* advance in working conditions achievable, if not after a highly successful certification campaign, followed by vigorous negotiations and an extraordinarily solid strike?

1.3.7 In ¶12 the Employer notes that some of the Union’s proposals were previously made in the 2012—2014 round and that Mr Ready did not “award any of the Association’s proposals.” (The Employer leaves out seniority-linked compensation as one of these proposals.) Mr Ready did not award either the Association’s or the Employer’s proposals because he asserted that the “mature bargaining relationship” of the parties should enable them to negotiate changes to these provisions. The Union asserts that since these provisions remain outstanding, there is demonstrated need for an award in this round, particularly if an agreement longer than two years is anticipated. Furthermore, in the situation of concluding a first collective agreement, unlike the agreement-renewal process that Mr Ready presided over, the Arbitrator’s award must include provisions for sick leave, sabbatical and other academic leaves, and remuneration for Part-Time Instructors, because such provisions are integral and essential to any collective agreement governing university faculty.

1.4 The Employer’s suggestions regarding other settlements for purposes of replication are not valid

1.4.1 The Employer’s assertion in ¶93 that the settlement reached at UVic is “the best indicator” of what the parties might have agreed to is preposterous, particularly given that the Employer admits at ¶95 that its offer to the UNBC-FA is “significantly richer” than the UVic settlement. Thus, the Employer seeks to assert that an offer was made that was richer than the UVic settlement; that the UNBC-FA rejected that offer and went on strike for two weeks, removing its picket lines only when forced to by the Employer’s Section 55 application; but that somehow in

¹ By the end of the three-year term, HEU workers at Compass enjoyed parity with HEU workers at Aramark and Sodexo. According to the HEU, this represented “a total increase of 24 per cent over the term of the agreement including a retroactive wage increase of 14 per cent on hours worked since September 18, 2006.” <http://www.heu.org/bargaining/bargaining-bulletins/arbitrator-awards-first-contract-members-compassviha>

the end the likely replicative settlement is *poorer* than the one the Members of the Union roundly rejected before going on strike. In point of fact, the UVic situation is completely different. *No* unanimous rejection of the Employer’s proposals by the UVic membership occurred; *no* strike vote was taken at UVic; and most importantly, the Members of the UVic Faculty Association did *not* launch a successful strike ended only by the *deus ex machina* of Section 55 as invoked by the Employer. For the Employer to assert that the UVic settlement is an appropriate index for the purposes of replication is ludicrous.

1.4.2 At ¶220—221, the Employer once again recognizes the flaws in the current salary system, but again implies that replication should favour a system based upon that recently agreed to at the University of Victoria—despite the clear and unequivocal rejection by the UNBC-FA Membership of that very salary system. UNBC-FA Members rejected this proposal in spite of the fact that as the Employer states in its submission, the UNBC offer was *richer* than the Victoria offer.

1.4.3 The reason for the Membership’s rejection is simple: *the approach taken by the Employer would not only widen existing inequities but would produce new ones.*

1.4.4 While never stated in negotiations, the Employer’s statement that it based its compensation proposal on the “philosophy” of the SFU compensation system is particularly relevant to the issue of exacerbating inequities. The SFU compensation philosophy was a major contributor to the certification of the SFU faculty in 2014, particularly after the arbitration of 2013. The SFU Faculty Association referred in its 2013 submissions to Mr Taylor to the brokenness of SFU’s salary system, which enabled vastly inequitable salaries distributed at the discretion of the Employer: “Neither our absolute salary nor our salary scales are competitive with similar institutions, which forces the University to make ad hoc adjustments through market differentials and retention awards.” (<http://sfufa.caut.ca/wp-content/uploads/2013/03/SFUFAs-arbitration-submission.pdf> at p. 7) Such a “philosophy” is clearly at odds with the principles of *Yarrow* and with the status of the Union as sole bargaining agent. For purposes of replication, neither UVic’s salary system nor SFU’s passes the test, nor do those salary systems and their philosophies accord with the criteria of *Yarrow* or the clear and firm priorities of the UNBC-FA’s Membership.

1.4.5 Turning from faculty negotiations at other universities to other bargaining agents at UNBC, at ¶207 the Employer implies that comparison for purposes of replication can be made between the negotiations of CUPE 3799 in 2012 and the UNBC-FA in 2014. We note simply that there is a great *dissimilarity* between the two sets of negotiations, not least in one signal fact: the UNBC-FA struck for two weeks before being forced by the Employer’s Section 55 application to take down the Union’s picket lines. *There was no settlement, even after two weeks of job action.* Thus any implication that the 2012 negotiations of CUPE 3799 offer any relevant information for the purposes of replication must be categorically rejected.

2.0 Comparators

2.0.1 In this round of negotiations and the previous one, the UNBC-FA attempted to discuss comparators at the bargaining table as had been done in previous rounds of negotiation. At ¶182 of its submission, the Employer misleadingly states that it used comparators at the bargaining table. The Employer did not ever agree to discuss comparators with the UNBC-FA during bargaining. Moreover, when it presented proposals at the table, it never once stated at the table that a proposal was based on provisions at UBC, UVic, SFU, TRU, or Royal Roads. On the other hand, when the Union presented proposals as based on the provisions of small primarily undergraduate universities (as it frequently did), the Employer never asserted that the agreements at UBC, UVic, SFU, TRU, or Royal Roads were more appropriate models. In sum, the conduct of the Employer's bargaining team could best be characterized as a tacit acknowledgement that the Union's comparators were apt.

2.0.2 The UNBC-FA learned of the Employer's supposed list of comparators only on 8 October 2015, when the Employer responded to the UNBC-FA's 24 September 2015 request for a "list of universities used by the UNBC Board of Governors since 2013 for the purposes of comparing any aspect of the performance of the University with other post-secondary institutions" (BoE, Tab A-13).

2.0.3 Although the Employer's list of comparators of 8 October 2015 includes several small primarily undergraduate universities in Canada, the Employer's brief virtually ignores these appropriate comparators in favour of others that are inappropriate.

2.1 The Employer's analysis uses inappropriate comparators

2.1.1 In its brief, the Employer disregards the small primarily undergraduate universities on its list of comparators, and attempts to narrow its analysis to comparisons to the members of RUC-BC, a membership that does not correspond to a meaningful category of British Columbia university (such as "research university" as defined by the *University Act*). In so doing, the Employer also ignores the entire past history of negotiations between the parties and its own practices of institutional and performance analysis.

2.1.2 The UNBC-FA reiterates that it has relied upon criteria for determining comparability presented by Arbitrator Andrew Sims in 2011. He asserted that comparable universities

- Will offer a similar scope of programs over a wide range of undergraduate and graduate faculties including Professional Faculties,
- Will be institutions of relatively similar size,
- Will have a similar research profile,
- Will be ones for which reliable objective data is available, and
- As a group will be geographically representative of such Universities in Canada.

Sims, 2011, *supra* (BoA, Tab 5 at p. 15)

2.1.3 In addition, the UNBC-FA relied upon the comparators used by the parties in past rounds of negotiation, and by the Employer for purposes of institutional analysis. That is, in addition to using valid and defensible criteria to establish comparators, the Union relied upon the longstanding practice of the parties and of the Employer itself. As was detailed in the Union's initial submission. The first Faculty Handbook was cobbled together from the agreements in effect at UBC, SFU, and UVic, as was appropriate for a newly founded research university. When the time came to negotiate agreements, though, the parties selected appropriate comparators from the institutions to which UNBC sought to compare itself then, and has compared itself since then: Canadian primarily undergraduate universities and several small Canadian comprehensive universities in other provinces. Thus, the Union relied not only upon the Sims criteria, but upon the longstanding practice at UNBC.

2.1.4 It is clear the none of the RUC-BC universities is a good comparator for UNBC by the criteria of Sims. The RUC-BC list is a subset of *provincial* universities. It is true that some university arbitrations in Ontario have traditionally emphasized comparators within that province; but that practice is enabled by the size and diversity of the university sector in Ontario. Ontario has many more universities in each category than does British Columbia, which possesses only one medical/doctoral, two comprehensive, and one primarily undergraduate university. Only in the category of special-purpose teaching universities are there multiple BC institutions that might reasonably afford comparators within the same category—but *not* for UNBC. Relying on provincial comparators, therefore, is inappropriate for this arbitration and for any arbitration at UNBC.

2.1.5 It is also evident that TRU and RRU are particularly weak comparators given their fundamentally distinct histories, enabling legislation and mandates, and funding structures.

2.1.6 Thompson Rivers University is a “Special Purpose University” which offers a very different scope of programs than does UNBC. Unlike UNBC, defined under the *University Act* in the same manner as UBC, UVic, and SFU, TRU (formerly Cariboo College/University College of the Cariboo) is a teaching university whose purposes are defined by the *Thompson Rivers University Act* as “(a) to offer baccalaureate and masters degree programs, (b) to offer post-secondary and adult basic education and training, (c) to undertake and maintain research and scholarly activities for the purposes of paragraphs (a) and (b), and (d) to provide an open learning educational credit bank for students.” Thus the scope of TRU is quite distinct from the scope of UNBC or any of the other research universities. TRU offers many certificate and diploma programs including Gas Fitting, Heavy Duty Equipment Technology, Metal Fabricating, Retail Meat Processing, Saw Filing, Welding, Carpentry, and Cabinet Making. Those who teach in those programs are not required to have PhDs, and do not have research obligations. The funding model of TRU is different than it is for the research universities, and the Faculty Association's collective agreement is completely different. The fundamental differences between TRU and UNBC explain why UNBC is categorized in the *Maclean's* list of small primarily undergraduate universities, but TRU is not.

2.1.7 Royal Roads University (formerly Royal Roads Military College) is, as the Employer notes, a unique university. It is a very small institution that focuses on applied and professional

programs. Again, this unique institution is governed by its own legislation, the *Royal Roads University Act*, which delineates the purposes of RRU: “(a) to offer certificate, diploma and degree programs at the undergraduate and graduate levels in solely the applied and professional fields, (b) to provide continuing education in response to the needs of the local community, and (c) to maintain teaching excellence and research activities that support the university's programs in response to the labour market needs of British Columbia.” The distinctness of this mandate and the character of the institution explain why RRU does not appear in the *Maclean's* list of small primarily undergraduate universities. In sum, then, the universities in the RUC-BC membership list are either wholly inappropriate comparators (as in the case of RRU and TRU) or comparators of limited utility because they are of such different scope, size, and research profile (as in the case of UBC, UVic, and SFU).

2.1.8 Indeed, the problematic nature of comparisons with institutions of different scope is seen in ¶193 of the Employer's submission, where the Employer attempts to use its list of inappropriate comparators to disparage its faculty. The Employer's comparison of UNBC research funding with that of other research universities in British Columbia carries no assertion but a relatively clear insinuation. But as is pointed out in the UNBC-FA's brief, universities with large engineering and medical faculties earn a disproportionate share of Canada's available research dollars; for this reason, the largest medical/doctoral universities in the country far outrank the others in research earnings. That is why the distance in research funding between UBC and SFU/UVic is much greater than the distance between SFU/UVic and UNBC. Again, it is unclear what point the Employer is trying to make with this comparison, since none is stated. In fact, the Employer's presentation in ¶193 merely shows that UBC, SFU, and UVic are inappropriate comparators for UNBC for, as Sims indicated, appropriate comparators will have “a similar research profile.”

2.1.9 In what can only be a further (if bland) attempt to disparage its own faculty, at ¶34 the Employer notes that UNBC does not appear in the *Times Higher Education World University Rankings* for 2015-16. The Employer fails to add that *no small primarily undergraduate university in Canada* appears on that list. Neither do such top-ranked smaller institutions in the United States such as Amherst, Middlebury, or Williams. The employer's ¶34, rather than supporting the Employer's insinuation about UNBC's faculty, serves in fact to demonstrate that the Employer has chosen the wrong comparators for UNBC.

2.1.10 The UNBC-FA is pleased to see that in ¶193 the Employer recognizes UNBC's first-place position among its relevant national comparators. In fact, it is this group to which UNBC generally, repeatedly, publicly, and *appropriately* compares and has compared itself.

2.1.11 In sum, the UNBC-FA reiterates that the list of comparators identified in its brief, compiled and defended with copious evidence, is the appropriate list of comparators for UNBC, and that the Employer's list, presented without relevant evidence, is not an appropriate list. Indeed, the Employer's own brief adds additional evidence that the large comprehensive and medical/doctoral universities (and the unique special-purpose universities) in British Columbia are inappropriate comparators for a small, top-ranked, primarily undergraduate university such as UNBC.

2.2 Notwithstanding, salaries at other British Columbia research universities support the UNBC-FA's proposals

2.2.1 Above, the UNBC-FA has demonstrated that the salaries at other BC research universities are not relevant to this arbitration. In ¶210 the Employer asserts that its proposals correspond to the “sectoral norm at British Columbia’s research universities: to tie one component of compensation at each rank to meritorious performance in the rank.” This “sectoral norm” was not previously asserted in bargaining between the parties, including when the parties agreed to eliminate merit; nor was it asserted at any time in this round of bargaining. Neither does the Employer present evidence to support its argument. In fact, to refer to a “sectoral norm” for compensation among the research universities of British Columbia is difficult, given that overall compensation and salary structure vary widely (with the value of UNBC faculty compensation a clear outlier), and given that three of the four university faculty associations have just become certified. Only the University of Victoria Faculty Association has settled a first collective agreement. Once again, the UNBC-FA is puzzled by the Employer’s insistence on a “sectoral norm” among BC’s research universities when the Employer is well aware of how radically the compensation of the Union’s Members departs from the compensation in effect at any of the other three research universities in British Columbia.

2.2.2 While still asserting that other British Columbia research universities are inappropriate comparators for UNBC, the UNBC-FA also asserts that comparison between salaries at UNBC and those at UBC, SFU and UVic shows that, compared with other British Columbia research universities, the salaries at UNBC are woefully inadequate. This comparison appears below.

2.2.3 Average salaries at UNBC, UBC, SFU, and UVic

2.2.3.1 Figure 3 shows that average salaries at UNBC are much lower than salaries at UBC, SFU, and UVic.

2.2.3.2 The table shows that the average UNBC Assistant Professor makes 75.7 percent of the average salary at the other research universities. The average UNBC Associate Professor makes 74 percent of the average, and the average UNBC Full Professor 70.6 percent of average.

AVERAGE SALARIES	UNBC	UBC	SFU	UVIC	Average of UBC, SFU, and UVIC
Lecturer	\$ 63,979.78	\$ 94,398.00	\$ 91,593.00	\$ 92,953.00	\$ 92,981.33
Assistant Professor	\$ 75,624.48	\$ 109,794.00	\$ 98,774.00	\$ 91,120.00	\$ 99,896.00
Associate Professor	\$ 87,202.99	\$ 130,241.00	\$ 115,453.00	\$ 107,194.00	\$ 117,629.33
Professor	\$ 106,675.64	\$ 170,526.00	\$ 143,013.00	\$ 140,047.00	\$ 151,195.33

Figure 3. Average salaries at BC's research universities. Source: Data provided by each FA & data provided by Employer

2.2.3.4 We note that in ¶232, the Employer presents data at variance with the UNBC numbers in the above table. The UNBC-FA disputes these numbers. We suspect that the Employer has included the salaries of academic administrators in its calculations, as it has frequently done in the past. The Union has used the statistics provided by the university, but has excluded the salaries of administrators.

2.2.3.5 However, even if the Employer's numbers are used, the comparisons are virtually the same. If the Employer's figures are used, the average UNBC Assistant Professor makes 76.2 percent of the average at other universities. The average Associate Professor makes 74.9 percent of the average, and the average Full Professor 71.7 percent of average. Thus, however inappropriate the Employer's comparison to the other research universities may be (because of their very different size and scope), the result of such comparison strengthens rather than weakens the UNBC-FA's argument.

2.2.4 Benchmark salaries

2.2.4.1 In the UNBC-FA's initial brief (5.3.7), the FA followed Outhouse who wrote that "In my opinion, the best way to compare salaries is on the basis of benchmark positions. This method is fairly standard and widely used." *Faculty Association of the University of St. Thomas and St. Thomas University (2008) (Outhouse) (BoA, Tab 11 at p. 43)*

2.2.4.2 The UNBC-FA noted that benchmarks are useful because they enable an arbitrator to compare what would happen to salaries of two hypothetically identical faculty members at different universities.

2.2.4.3 Benchmark salaries are very difficult to calculate for other research universities in British Columbia. However, any attempt to estimate such benchmarks reveals that salaries at UNBC are far below salaries at the other research universities in British Columbia. UBC salaries are not included in Figure 4 because it is virtually impossible to arrive at benchmark salaries there, since there are no salary floors at UBC. However, the UNBC-FA notes that the average combined CDI and merit increment at UBC is \$4,978 per year. Simon Fraser University is also not included, because of the very complex salary system that exists there (which helps account for the decision on the part of faculty there to certify). However, the average CDI at SFU is \$2600 (before any merit payment, which exists only in policy in the pre-certification agreement). The evidence of CDIs and average salaries at UBC and SFU does show that actual UNBC salaries are very considerably out of step with actual salaries at UBC and SFU. The Employer has cherry-picked salary floors in an attempt to obscure this reality.

2.2.4.4 In Figure 4, we present the salary of mid-range (4 years in rank) of Assistant; mid-range (8 years in rank) of Associate; and mid-range (8 years in rank) of Full Professor at UNBC and UVic. Because there is no ceiling on Full Professor salaries at UNBC, we have selected a similar

benchmark: senior Full Professor (13 years in rank). Because of the complexities of UVic's salary system, the UNBC-FA presents conservative estimates of benchmark salaries at UVic.

	mid-range of Assistant (4th grid step, or 4 years in rank)	mid-range of Associate (8th grid step, or 8 years in rank)	mid-range of Full (8th grid step, or 8 years in rank)	senior Full Professor (13th grid step, or 13 years in rank)
UVic	82,620	101,835	119,835	131,800
UNBC	69,624	87,915	104,644	110,199

Figure 4. Faculty Member benchmark salaries at UNBC and UVic, 30 June 2013

2.2.4.5 Figure 4 shows that (according to the UNBC-FA's conservative estimates) mid-range Assistant Professors at UNBC are paid only 84 percent of their colleagues' salaries for doing exactly the same job at UVic. Mid-range Associate Professors make 86 percent of what their colleagues make at UVic. Mid-range Full Professors earn about 87 percent of their colleagues' earnings and senior Full Professors earn about 84 percent of what their colleagues earn. Given that these estimates are difficult to reconcile with the statistics regarding average salaries, the UNBC-FA asserts that the benchmark salaries at UVic are probably actually considerably higher.

2.2.5 In sum, although the salary systems at UBC, SFU, and UVic are very complex and difficult to interpret, and although the UNBC-FA asserts that those universities are not the proper comparators, if those universities were to be used as comparators, the conclusions reached regarding the inadequacies of UNBC salaries would be the same as conclusions based on UNBC's more appropriate comparators. *The actual salaries of UNBC-FA members at the same years in rank, doing the same work as their colleagues at other research universities in British Columbia, are far lower than the actual salaries of their colleagues.*

3. Compensation Proposals

In its submission to the Arbitrator, the Employer misrepresents both the Union's proposals and its own.

3.1 The Employer supplies a misleading costing of the Union's proposals

3.1.1 At ¶98/99 the Employer presents its purported costing of its own and the Union's proposals only on a *cumulative* basis. This requires a lengthy reply.

3.1.2 In its negotiations with the FA, the Employer provided two sets of costings for proposals: incremental cost and cumulative cost. In its arbitration brief, the University has chosen to include only its cumulative cost estimates.

3.1.3 Incremental cost estimates are the widely used method for determining the cost of a contract; cumulative cost estimates are much less common, although the Employer purports that they are required by PSEC. The reason that cumulative cost estimates are less common is because they are critically dependent on contract length and thus their interpretation is problematic.

3.1.4 Consider the following example. Firms A and B are identical. Employees at Firm A negotiate wage increases totaling \$1m in a one-year contract. In their next contract they sign a nine-year agreement with no wage increase. In Firm B, employees sign a ten-year contract with wage increases totaling \$1m in year one of the contract and no increases in years two to ten.

3.1.5 Employees of both firms receive identical wage increases over the ten years and both firms' wage costs increase by the same amount. The *incremental* costs for both firms are \$1m in year one and zero in each year thereafter. However, the *cumulative* costs for Firm A are \$1m in year one (the first contract) and zero for years two to ten (the second contract). For Firm B, the cumulative costs are \$10m (over one contract). The tenfold difference in cumulative costs arises solely because of the differences in the lengths of contracts negotiated, *not in the actual expenditures*.

3.1.6 This example shows the difficulty in interpreting cumulative cost estimates. The example also demonstrates how any given wage increase can be made to appear more expensive, i.e., have a higher cumulative cost, by extending the length of the contract. *The Employer's cumulative costing of the FA's proposal is therefore misleading.*

3.1.7 At no point has the UNBC-FA submitted a proposal for a five-year agreement, and yet the Employer, in its arbitration brief, has submitted figures based upon this contract length. This tactic was also used at the negotiating table and rejected by the Union, which demanded that the Employer provide, in writing, incremental and cumulative cost estimates based on the Union's *actual* two-year proposal. The Employer refused to do so until during the strike. Indeed, even in this arbitration it has submitted a costing of the UNBC-FA proposal based on five years, rather than the two years that the Union has proposed. It is unclear to the UNBC-FA why the Employer did not present a costing of the Union's monetary proposals based on the *actual* proposals.

3.1.8 For the record, the Employer's estimates, provided on 12 March 2015 for the FA's *initial* submission for the two-year contract period, are: \$3,749,928 (\$2,470,521 in 2014-15, and \$1,279,407 in 2015-16). This estimate was later revised at the Union's request to take into consideration known retirements. The resultant costing (provided on 29 October 2015) for the FA's initial submission for the two-year contract period is \$3,057,569 (\$2,072,388 in 2014-15 and \$985,181 for 2015-16). While still costing increases on vacant and administrator positions, this costing represents an increase on the full-time salary mass of just under 10 percent in the first year and 4.3 percent in the second year.

3.1.9 The Union's initial submission was subsequently revised and tabled on 14 March 2015 to include a six-month delay (in each year of the agreement) for the implementation of salary increases. The Union specifically designed this proposal to reduce the incremental cost of the

agreement in the first year and the cumulative cost of the two-year agreement. Upon tabling this proposal, the Union requested an updated costing. Instead, the Employer chose, within hours, to communicate to our members by issuing a bargaining update that said that:

The University and Faculty Association bargaining teams met today. The FA bargaining team provided its response to the compensation proposal presented by the University on Thursday. The University's perspective is that it does not represent a substantial shift from the FA bargaining team's original compensation position tabled on June 11 2014. However, the University has committed to reviewing the proposal and will be in contact with the Faculty Association to establish the next meeting. (<http://www.unbc.ca/faculty-relations/bargaining-updates>)

3.1.10 Contrary to this message, the Employer did not contact the UNBC-FA until after it had triggered Section 55. In light of those developments, and the news that the Employer considered our shift insubstantial, the Union reverted to its original proposal of 11 June 2014.

3.1.11 However, in preparation for arbitration, the Employer initially costed the Union proposal of 14 March instead of the proposal submitted for Section 55 arbitration. The Employer's estimate of the incremental and cumulative costs of the UNBC-FA proposals of 14 March, provided on 28 September 2015, is \$2,869,733 (\$1,413,178 in 2014-15, and \$1,456,554 in 2015-16). That is, the effects of the FA's proposed delay in implementation of 14 March were substantial indeed, reducing the first year's implementation cost to about 6.8 percent.

3.1.12 In reproducing these data, the Union is not asserting or conceding agreement with the Employer's costings as presented. In fact, a second major concern of the Union is with the University's overall costing methodology. The most significant of our methodological concerns are:

- (i) The inclusion of unfilled positions in the costings despite the fact that it is clear that no expenditure would occur in the contract period;
- (ii) The failure to take account of the differences between retirees' salaries and new hires' salaries. During the contract period some members are known to be retiring. Their salaries should not be included for the costing of the proposal when it is known that should they be replaced, they will not be replaced by faculty earning the same amount; and
- (iii) Inclusion of academic administrators.

3.1.13 In fact, the Union asked for a revised costing taking into account planned and projected retirements; as can be seen above in 3.1.11, the effects are substantial. Moreover, the Union's own calculations demonstrate that retirements already announced have already had a significant effect on the costs of the Union's proposal.

3.1.14 In addition, at ¶100 the Employer acknowledges that once again, as in the 2013 arbitration before Mr Ready, it has included academic administrators in its costing of the Union's proposal because they may one day be Members of the bargaining unit. But academic administrators are not Members of the UNBC-FA. If the Board of Governors decides to tie administrators' salaries

to faculty salaries, the costs of those salaries do not thereby become part of the cost of the UNBC-FA Agreement. The UNBC-FA represents Members of the Faculty Association, not potential future Members of the Union.

3.1.15 We therefore assert that the Employer's costing of our proposal is in error in several significant respects: it adds three years to our proposed agreement; the costing considers only the unusual category of cumulative costing and therefore overstates the cost of our proposal (particularly given the erroneous five-year costing); and finally, the cost estimate includes non-Members (vacant positions and academic administrators) while excluding from consideration predicted and projected retirements, which will have a significant effect on costs.

3.1.16 The foundation of the UNBC-FA's proposals is the restoration of the relationship among rank, years in rank, and compensation: that relationship is the hallmark of the normal university salary system. Yet because of the Employer's methodologies of costing, any increase in CDI is treated as if it were a GWI, thus inflating the cost of the Union's proposal and making progress more difficult.

3.2 The Employer portrays the Union's proposals as antithetical to the concept of rank and career progress, when precisely the opposite is true

3.2.1 At ¶235-237, the Employer fundamentally misrepresents the Union's proposals. First, the Employer asserts that compensation would be based "solely on years of service" and "seniority," forcing compensation to march "in lockstep." In fact, the Employer is aware that under the concluded articles of the new collective agreement, there is provision for the withholding of steps regardless of years of service. Progress through each rank and the awarding of CDI remain tied to satisfactory performance for career progress, as in the UNBC 2012—2014 Faculty Agreement, as at our comparators, and, for that matter, as at the other research universities of British Columbia. The Employer asserts at ¶188 of its submission that "UBC's compensation is based entirely on merit," but this is not the case. At UBC, there are two components to salary progression, CDI and merit. Currently, the amount available for CDI (called CPI at UBC) is up to \$3708 per annum, and "[t]he over-riding criterion for the award of CPI is satisfactory career progress" (<http://www.hr.ubc.ca/faculty-relations/compensation/faculty-salary-increases/career-progress-information/>). Members who do *not* receive CPI at UBC are therefore entitled to an explanation of why this is so. On the basis of the foregoing, the UNBC-FA reiterates: the award of a salary grid would do *nothing* to alter the effects of seniority/performance on the PTR of our members going forward. The Employer's assertion to the contrary is utterly false.

3.2.2 Second, the Employer claims that those who have "not met the requirements to be promoted to a higher rank" (i.e., long-serving Associate Professors) would be rewarded more than those at higher ranks by the proposed salary system. First, the Union refutes the Employer's implied criticism of long-serving Associate Professors as those who have failed to be promoted. Promotion, unlike tenure, does not occur on a schedule, and it is possible to serve satisfactorily through an entire academic career without seeking promotion to Full Professor. This is common at most universities. At most universities, compensation is produced through a combination of rank and years in rank; that is, someone who has been an Associate Professor for twenty years

makes more than someone who has been an Associate Professor for five years, and usually more than someone who has been a Full Professor for only a few years.

3.2.3 Under UNBC's current salary system, as detailed in the Union's initial submission, this association of rank and years in rank with compensation is broken. The UNBC-FA proposals actually restore the association rather than distorting it. Moreover, the UNBC-FA proposals, like all comparator grid systems, reward those who are promoted quickly more than those who remain at any rank for longer; therefore, the Employer's allegation that those who do not seek promotion will be more highly rewarded is incorrect. Consider the case of two hypothetical Assistant Professors, both of them appointed to tenure-track positions at the salary floor on 1 July of year 1, both of them (like the vast majority of UNBC-FA Members) consistently performing satisfactorily according to their professional activity reports and assessments thereof. Let us assume that both of them are evaluated at the three-year mark and found worthy of renewal in their tenure-track appointments.

3.2.4 Dr Tortoise applies for tenure on schedule, at the beginning of his fifth year of appointment, and is granted tenure, which takes effect at the beginning of year 6. But Dr Tortoise does not apply for promotion to Associate Professor until the year after he is granted tenure, commencing his application in year 6. He therefore is promoted to Associate Professor on 1 July of year 7. Dr Hare, by contrast, applies early for both tenure and promotion, at the beginning of her fourth year, and is granted both, therefore promoted to the rank of Associate Professor on 1 July of year 5. Under the UNBC-FA's proposals, Dr Hare will be making \$5000 more per annum than Dr Tortoise by the beginning of their seventh year of employment.

3.2.5 Let us assume they continue on the same trajectory. After five more years, Dr Hare again seeks promotion. Both professors have now been in their positions for 11 years. Their salaries remain \$5000 apart. However, at the commencement of year 12, Dr Tortoise is still an Associate Professor, while Dr Hare moves to the floor of Full Professor. Her salary is now \$9500 above that of Dr Tortoise. Let us say that Dr Tortoise remains at the rank of Associate Professor until both professors have been at UNBC for 15 years. At this point, his salary will be still be \$9500 below that of Dr Hare and his career earnings to date \$75,000 below hers. If Dr Tortoise gets promoted at this point, his salary will track below Dr Hare's at the same rate for the next six years; another 57,000 in extra career earnings will accrue to Dr Hare, meaning that at the 21-year mark she will have earned \$132,000 more than Dr Tortoise for seeking promotion earlier. Should Dr Tortoise *never* seek promotion, the scenario will be even more to Dr Hare's advantage; his salary will reach the ceiling for rank, and from that point on will be capped, except that it will likely increase as affected by GWI. PTR, however, will have reached an end. If this is the case, at year 25 Dr Hare will have accrued \$195,000 more in career earnings than Dr Tortoise, and will still not have reached the salary ceiling for her rank. At this point, Dr Hare's salary will be \$19,500 per year higher than Dr Tortoise's.

3.2.6 Despite the Employer's portrayal of the Union's proposal, it is Dr Hare who wins: she is rewarded much more highly by the UNBC-FA's proposed system than is Dr Tortoise. There would be nothing noteworthy about this had the Employer not implied the opposite was true of

the Union’s proposal. In fact, career-long rewards for early promotion are typical of the sector, and typical of the comparators on whose grid systems the Union’s proposal was modelled.

3.3 The Employer misrepresents the Union’s proposals as “breakthrough” provisions

3.3.1 As discussed above at 1.2.3, the Union’s proposals are not “breakthrough” provisions but provisions in effect at the vast majority of comparators.

3.3.2 Therefore, the Union firmly rejects the mischaracterization of its proposal by the Employer and reasserts the compatibility of its proposal with the *Yarrow* principles of objective criteria (as provided by comparator agreements) and equity and consistency among employees.

3.4 The Employer’s submission misleadingly asserts that the Employer’s proposal will meaningfully address the compensation gap

3.4.1 In addition to misrepresenting the Union’s proposals, the Employer’s submission misleadingly asserts that the Employer’s proposal will meaningfully address the gap between UNBC faculty and faculty at other comparable universities. In fact, the Employer’s proposal will worsen the compensation gap between UNBC-FA Members and those performing identical work at comparable institutions. Moreover, the proposal would worsen the compensation gaps among Members at equal ranks and years in rank.

3.5 The Employer’s proposal would worsen the unacceptable internal inequities in the UNBC salary system

3.5.1 It is clear that the Employer has made little effort to respond to the UNBC-FA’s insistence that the significant internal inequities that existed at UNBC before certification be dealt with in the first collective agreement. If implemented in the first collective agreement, the Employer’s salary proposal would establish a salary system at UNBC with significant internal and external inequities. To do so would contravene *Yarrow*’s guideline that “There must be internal consistency and equity amongst employees” (**BoA, Tab 2 at pp. 59 – 60**).

3.5.2 We reiterate what we have said in our initial brief: that the Employer and the Union have both acknowledged these significant inequities at the table; that the Employer and the UNBC-FA have previously negotiated corrections to salary compression; that rectifying inconsistencies and inequities was a major goal of UNBC-FA Members when they certified; and that the UNBC-FA in this round has proposed a salary grid that would prevent the development of inconsistencies and inequities in the future. Thus, the Employer’s proposal does not meet the *Yarrow* guidelines, but the UNBC-FA’s proposal does.

3.5.3 When we turn to the *external* inequities—the gap between UNBC faculty and faculty performing identical work at comparator institutions—the Employer’s proposal fares no better, whether we consider the proposed increments or the so-called “remapping adjustments.”

3.6 The Employer's proposed increments are inadequate

3.6.1 The concept of Progress Through the Ranks (PTR) has been discussed in our initial brief (5.3.10). PTR increments (or Career Development Increments, at UNBC) are not GWIs, but are awarded to faculty as they gain expertise. PTR increases (CDIs) are a fundamental feature of the academic salary structure rather than “wage increases” per se. They reward satisfactory career progress for rank and are the very heart of the “deferred compensation model” that is the faculty norm. Increments, indeed, are a sacrosanct part of that compensation structure at any university. It is worthwhile attending to the findings of Arbitrator Teplitsky in an award at Trent University, in which he dealt with the issue of increments withheld by the Province of Ontario’s Act 179:

[T]here are several cogent reasons for acceding to the Association’s request in the special circumstances of this case. The most important of these is that I am satisfied on the data presented to me that their earnings are somewhat behind the earnings of comparable professors at other Universities. I am including both small and large universities. Although size may support some differences, no cogent reason exists for a difference of the magnitude described by the evidence. Compensating for increments which were lost reduces the differential in the most equitable way.

It is the most fair way, in my opinion, because **the commitment to an increment structure is a long-standing matter between these parties. In fact, a commitment is made to a Professor at the commencement of his employment that he can expect a certain career pattern.** A legislative interference with an increment structure is more disruptive than a limit generally of wage increases.
Trent University and the Trent University Faculty Association (Teplitsky) (1985) (unreported, BoA, Tab 17 at pp. 4—5, emphasis added)

3.6.2 As is made clear above, articles already concluded by the parties to this dispute stipulate that any increments (whether they be in the form of CDI or grid steps) would be awarded on the condition of satisfactory performance. However, the norm in the university sector is that PTR is separate from merit pay. The UNBC-FA would never have accepted the non-sector norm merit scheme that has been introduced at UVic. That system is completely at odds with the university sector in Canada. It is normal that, where merit pay exists, it supplements adequate CDIs/grid steps.

3.6.3 In ¶12, the Employer acknowledges the inadequacy of the PTR steps at UNBC. In fact, as the UNBC-FA demonstrated in the 2012—2014 round of negotiations and again in the current round, the abysmally low CDIs at UNBC are *a major factor in the production of its current anomalous salary system*. In response to ¶12 (a) the Union says that it is difficult to know in what way the Employer’s offer re PTR structure would make it comparable with comparator institutions, because the Employer has not provided relevant data. By contrast, the UNBC-FA has shown in its initial brief that the Employer’s offer is not only uncompetitive with comparators, but actually will make matters worse as the contract goes on.

3.6.4 In response to ¶12 (b), the Union states firmly that contrary to the assertion of the Employer, the FA did *not* provide for automatic progression through the ranks. To be appointed at a rank or promoted to a rank requires a rigorous process of peer assessment. To move *through* a rank requires one's professional activities to be reported and judged satisfactory for career stage. Such a PTR structure is entirely consistent with the collective agreements at UNBC's comparators.

3.6.5 Our initial brief (5.3.10) showed that the CDIs at UNBC are far out of step with the university sector. The Employer proposes insubstantial changes to those CDIs, as can be seen below.

	2014-15	2015-16	2016-17	2017-18	2018-19
Lecturer	1111	1111 + 361	1111 + 395	1200	1200
Assistant Professor	1111	1111 + 461	1111 + 495	1200	1200
Associate Professor	1111	1111 + 561	1111 + 595	1200	1200
Full Professor	1111	1111 + 761	1111 + 795	1200	1200
Librarian I, II, III, IV	1111	1111 + 486	1111 + 520	1200	1200
SLI I, II, III	1111	1111 + 486	1111 + 520	1200	1200
Comparator average	2691	2795	2795+	2795+	2795+

Figure 5. Employer's CDI/Remapping Adjustment Proposal, 2014-2019

**In each case, the Employer proposes two CDIs (2x1111 or 2x1200) for each member during his or her first three years at rank.

3.6.5 Figure 5 shows what the Employer is proposing. The increments of \$1111 rising to \$1200 are an insult. As we explained in our initial brief, grid steps/CDIs at comparator institutions averaged \$2691 in 2014-15 at our unionized comparators and will average \$2795 in 2015-16 at those comparators. We have every reason to believe that the average will grow between now and 2019. Only one of our comparators has negotiated salaries to 2019, but that case is instructive. Full Professors at Brandon University received increments of \$3,347 in 2014. Those increments will grow to \$3,641 by 2019. To accept the Employer's proposal would mean accepting that over the next five years, the compensation of the average Faculty Member at UNBC will fall yet *at least an additional* \$7,000 behind the compensation of faculty performing identical work at similar rank at comparator institutions.

3.6.6 The Employer attempts to argue, at ¶215—217, that its proposals will meaningfully address the wage gap because “the average Member could expect a salary increase of between \$10,000 and \$12,000 during the course of the University's proposed five-year term,” half of which would come from GWI and half of which would come from PTR.

3.6.7 In response, the Union asserts again and unequivocally that a PTR step is not a salary increase, as has been repeatedly found by arbitrators. As Arbitrator Sims wrote in an award at the University of Calgary,

Before we look at salary and increase levels directly, TUCFA asked that we reflect on the long term nature of academic remuneration and the academic's career progression. An academic career requires a high level of education (both in years of work and quality of work). It takes 8—12 years of post-secondary non-remunerative (or at least poorly remunerated) training, often accompanied by accumulated debt, before the academic starts to work, usually not until age 30 or so.

Once a position is obtained, the academic then serves a relatively long probationary period before tenure is achieved. Their start levels are relatively low, but this is accepted by academics because they can expect to receive regular increases during a successful career based on their continued performance. The benefit to the University of this “back-end loaded” compensation scheme is that it provides regular awards (and thus incentives) for meritorious service.

Increments, seen in this light, are a form of deferred income rather than real increases. They are the quid pro quo for low and late starting salaries. As such they should not be charged back again as part of any negotiated settlement. They are also a feature of the compensation arrangements at every other University. These incremental costs are not counted as part of the overall settlements in other Universities and so should not be counted as part of the University's offer here. (*The University of Calgary and the University of Calgary Faculty Association* (2001) (Sims) (BoA, Tab 18 at p. 8)

3.6.8 Similarly, in his 2013 award at UBC, Arbitrator Taylor confirmed the distinction between PTR and GWIs:

I also accept the Association's submission that PTR rewards individuals' career advancement; it is not a substitute for a general wage increase to keep pace with inflation and the general state of salaries elsewhere. As noted by Arbitrator Burkett in *The University of Toronto and the University of Toronto Faculty Association*, unreported, June 3, 1982:

The P.T.R. increases received by a faculty member over time are given in recognition of his increasing contribution to the University. ... The purpose of the P.T.R. increase, therefore is not to advance the salary ranges but to recognize merit by moving individual faculty members through the salary ranges. Upward movement of the salary ranges is achieved by means of, and in the amount of, the annual economic increase. It follows that only the amount of economic increase should be included for purposes of determining how faculty salary ranges have fared over time. (para.27) (**Taylor, 2013, *supra*, BoA, Tab 13 at p. 51**)

3.6.9 The Employer's attempting to blur the lines between PTR and salary increases clouds what is actually very clear: the obvious inadequacy of the Employer's proposal as demonstrated by its own brief. Here the Employer clearly admits that even combining the GWI and PTR portions of its proposal will not bring UNBC-FA members, by 2019, to the point that our comparators are at *today*.

3.6.10 In fact, at our comparators, faculty doing exactly the same work “or arguably lesser work in the case of those comparators lacking a research profile or graduate student supervisory

responsibilities” (Ready) can expect their salaries to “increase” (by the Employer’s definition) *at least* an average of \$13,455 [5 x average CDI] through increments alone. In addition, they can expect GWIs. Assessing what might be “fair and reasonable” requires separating the components of faculty salary at our comparators and at UNBC. These components are: existing salaries at various benchmarks; CDI/PTR structure; and GWIs already in place at our comparators. The Union has presented, in its initial brief, ample evidence on each of these matters.

3.6.11 Thus the Employer’s own brief demonstrates that the Employer’s offer, far from addressing the problems with UNBC’s faculty salary structure, will exacerbate them. Indeed, UNBC *does* have a “structural problem”; it systematically and knowingly undercompensates its faculty, and it proposes to do so in perpetuity, to the point where the problem will become truly unfixable. Under the Employer’s compensation proposal, the average UNBC Faculty Member will reach retirement age without once having enjoyed compensation equivalent or even close to that enjoyed to other employees performing the same work in similar workplaces.

3.6.12 It is noteworthy that the Employer is proposing that, following the implementation of its proposed short-lived “remapping adjustment,” increments revert to their anomalously low levels (that is, to \$1200, a mere \$89 increase to the current abysmally low CDI). The UNBC-FA rejects the notion that an arbitration award should include a measure that make the increments temporarily less dreadful, only to revert to bad increments—*less than half of comparator average*—by the end of the contract.

3.7 The Employer’s “Remapping Adjustments” would worsen rather than ameliorate existing inequities

3.7.1 As can be seen in Figure 5 above, the Employer proposes two ironically named “Remapping Adjustments” to each Member’s salary. The naming is ironic because there is nothing about these increments that “remaps” Member salaries. First, they are puny relative to the degree of inequity that exists. Second, they are distributed to all Members rather than those whose salaries require remapping. And third, they would give small lifts to Members’ base salaries for two years only (1 July 2015 and 1 July 2016), with the size of the adjustment dependent on that person’s rank rather than on distance from appropriate salary. This proposal is unacceptable for the reasons outlined below.

3.7.2 The Employer’s remapping adjustments would be offered equally to all persons at a certain rank, regardless of whether their salaries were anomalously high or low. Thus, they would do nothing to address the problems with inconsistencies and inequities—nothing to “remap” salaries at all.

3.7.3 These remapping adjustments would depart from the practice adopted by the parties in the past, which used one-time adjustments to correct only those salaries identified as anomalous for rank and years in rank.

3.7.4 Indeed, the new adjustments would introduce *new* inconsistencies and inequities, because they would be applied equally to the salaries of our highest-paid Members, whose salaries do not

require “remapping,” and those whose salaries are most out of step. Moreover, someone who is already a Full Professor now would thus experience, by 1 July 2016, a \$1556 boost to his or her base salary that he or she would enjoy for the rest of his or her career at UNBC (his or her lifetime earnings would be increased by \$1556 times the number of years his or her career continued). On the other hand, his or her colleague, promoted to Full Professor in 2017, would cease to benefit from this boost upon promotion (because his or her salary would go to the salary floor of the Full Professor rank). Thus, the benefits of the “remapping adjustments” would be very inequitably distributed among faculty and over people’s careers. They do not represent any meaningful kind of remapping, nor do they address the inequities that already exist in salaries.

3.8 First collective agreements should not include temporary measures to deal with chronic problems

3.8.1 To the extent that “Remapping Adjustments” accomplish anything, they would for two years bring annual increments for UNBC-FA Members somewhat closer to the sector norm. However, they would do that only temporarily. By offering these “remapping adjustments,” the Employer is *acknowledging* the inadequacy of annual increments at UNBC without meaningfully addressing the problem.

3.8.2 The UNBC-FA does not accept that, under a first collective agreement, a small and temporary boost in pay—something like a “signing bonus”—should be awarded instead of a salary system that addresses the real and pressing problems with the salary structure at UNBC. The conduct of the Members of the UNBC-FA throughout negotiations and their solid strike show that those members would not be mollified by small and temporary salary boosts that did make meaningful changes in the short term to create an equitable salary structure in the medium and long term.

3.9 The Employer’s proposed GWIs would put UNBC-FA salaries farther from sector norm

3.9.1 The UNBC-FA has already explained in its initial brief why *any* level of GWI would fail to deal with the fundamental structural flaws in the UNBC salary system. Thus, the UNBC-FA reiterates that it rejects the Employer’s proposal for GWIs.

3.9.2 Moreover, the UNBC-FA notes that the Employer has offered GWIs that would, if awarded, ensure that UNBC-FA Member salaries would fall farther and farther behind the salaries of their comparators. Most of our comparators have already negotiated salaries for 2014-2015 and 2015-2016, and a few have negotiated salaries beyond that. Already-negotiated GWIs at our comparators are considerably higher than what the Employer is offering (See Figure 28 below). We reiterate, however, that even if large GWIs were awarded, those GWIs would not be able to achieve the internal consistency and equity required by *Yarrow*.

3.10 The Employer's salary floors and ceilings are inadequate

3.10.1 At ¶188 of its brief, the Employer describes how salary floors establish salaries. However, as the UNBC-FA explained in its brief (5.3.8.i) salary floors are not particularly good indicators of actual salaries at universities. This is because newly hired Faculty Members (Assistant Professors) are often placed above the salary floor. More importantly, at other universities, the salaries of many faculty members rise quickly enough through PTR increases that, when they are promoted, their salaries already exceed the salary floor of the next rank. For example, an Associate Professor's salary exceeds the salary floor of the Full Professor Rank in seven years at UPEI, and in nine years at Acadia University, Mount Allison, St. FX, Trent, and Regina (without including any merit pay, even where it exists). Because of the anomalously small PTR increases at UNBC, it takes thirteen years for an Associate Professor's salary to rise above the floor of the Full Professor rank here. For that reason, salary floors are not particularly good indicators of typical salaries.

3.10.2 Still, as the UNBC-FA demonstrated in its brief, UNBC's salary floors are low. At ¶190, the Employer misleadingly states that the salary floors at UNBC are "roughly average" for the BC comparator group. The "roughly average" standing of UNBC's salary floors is possible only when TRU and RRU are included: that is, when the comparator group is the member institutions of RUC-BC. Again, as we establish above in 2.1, there is no validity to this comparison, nor has the Employer ever asserted that either TRU or RRU might be an appropriate comparator for UNBC. As we detailed above, neither of them is defined as a research university by legislation, and both of them have unique missions and histories; neither of them has the same funding model or level that the four designated research universities enjoy. The Employer's comparison here is self-serving and disingenuous.

3.10.3 When the average is made among the four research universities (or rather, the three that have defined salary floors), UNBC's salary floors are clearly well below average. However, the Union reiterates that it made its salary proposals on the basis of more appropriate comparators, as detailed and defended in its brief.

3.10.4 As when it focuses on GWIs and wage *settlements* rather than overall salary scales, the Employer focuses on salary floors in an attempt to deflect attention from actual earnings and benchmark positions—reckoned by arbitrators to be more objective measures of actual compensations. However, since the Employer has not presented information on actual earnings and benchmark positions, and because benchmark positions are difficult to glean from its data, we assert that the discrepancy in salaries at BC universities is better understood by examining average salaries. Figure 3 above shows the average salaries at BC research universities. As the table clearly demonstrates, *actual* salaries at UNBC—as opposed to theoretical floors—are far out of step with the Employer's proposed comparators.

3.10.5 The UNBC-FA acknowledges that salary floors and ceilings are normal features of the faculty salary system. However, the Employer's proposal for salary floors and ceilings is unacceptable. Figure 6 shows the salary floors at comparator universities, the Employer's proposals for 2014-15, and the Employer's own assumptions about the salaries it will need to

offer new faculty when they are hired. The table shows out of step the Employer's proposal is, not only with the sector, but with its own assumptions.

	Assistant Professor	Associate Professor	Full Professor
Acadia	70,210	86,490	102,770
Brandon	68,647	89,778	111,931
Lakehead	71,000	87,000	107,000
Lethbridge	60,000	75,000	100,000
Mount Allison	68,899	83,686	107,344
PEI	68,455	84,473	106,311
Regina	79,387	94,965	117,981
St. F-X	67,705	82,125	103,155
Trent	83,443	99,520	120,958
Average	70,862	87,004	108,606
Average (unionized)	72,218	88,505	109,681
Employer's Proposed Salary Floors	64,069	77,916	94,644
Employer's Stated Assumption Regarding the Salaries it will offer new faculty, 2015	69,624	82,360	99,089
Sources: Individual faculty agreements, Employer's offer, and Employer's costing spreadsheet provided to the Union			

Figure 6. Comparison of Faculty Member salary floors at comparator universities and the Employer's proposed salary floors, 2014 – 2015

3.10.6 Our initial brief noted that the Employer has stated in connection with its salary proposal that it “assumes that all replacements will be recruited at a salary level equal to the top of the Assistant rank.” (“New Article 48—Compensation” in BoE, Tab A-15). Indeed, the Employer has, in recent years, been in the habit of offering to newly hired faculty salaries much above the salary floors. Thus, the Employer has acknowledged that it would be unrealistic to assume that it could recruit new faculty if it offered new appointments salaries at the salary floor. However, the Employer proposes that faculty promoted to a new rank at UNBC should be placed at a salary far below the salary it is assumes that it would offer to newly hired faculty.

3.10.7 Under the proposed salary system UNBC-FA Members who spend an entire career here, and are promoted through the ranks at UNBC, would be treated very inequitably compared to colleagues who are hired at the Associate or Full Professor ranks.

3.10.8 The Employer's salary ceilings are also far out of step with the sector, as Figure 7 reveals.

	Assistant Professor	Associate Professor	Full Professor
Acadia	88,525	108,875	137,365
Brandon	96,688	125,605	152,090
Lakehead	107,820	154,660	173,000
Lethbridge	No ceiling	No ceiling	No ceiling
Mount Allison	107,344	131,003	145,790
PEI	93,703	123,134	143,394
Regina	102,171	122,541	147,564
St. F-X	89,007	116,452	143,748
Trent	123,754	154,523	176,899
Average	101,127	129,599	152,899
Average (unionized)	101,127	129,599	152,899
Employer's Proposed Salary Ceilings	82,162	102,428	no ceiling [ceiling of 147,261 proposed for 2015]
Source: Individual faculty agreements			

Figure 7. Faculty Member salary ceilings at comparator universities, compared with the Employer's proposed salary ceilings (2014 – 2015)

3.11 Illustrations of the effects of the Employer's salary proposals

3.11.1 If the Employer's proposal were to be accepted, UNBC-FA salaries would fall farther behind comparator salaries than they were before the UNBC-FA was certified.

3.11.2 Graphs illustrate the inconsistencies and inequities of the Employer's proposal very clearly. Figure 8 compares the salaries of individual Assistant Professors at UNBC on 30 June 2014, with their salaries at 1 July 2014, as proposed by the Employer. The Employer proposes no GWIs for 2014-15. Thus, according to the Employer's salary proposal, salaries would increase as of 1 July 2014 only by the rate of the Employer's proposed CDI. Red diamonds show individual salaries. The black dots above each red diamond indicate the increase in pay (through CDIs) that the Employer proposes for each Assistant Professor. It is clear that the inconsistencies and inequities that existed before certification would be retained in the first collective agreement.

3.11.3 It is also noteworthy that the Employer's proposal will exacerbate inconsistencies and inequities at UNBC. Not only does the Employer seem untroubled by the fact that (as Figure 8 shows) a newly-hired Assistant Professor was, as of 30 June 2014, earning only \$81 less than one of his colleagues who has been an Assistant Professor for fourteen years, the Employer is proposing that, as of 1 July 2014, that new Assistant Professor's salary should leapfrog the salary of his more senior colleague, so that he would be paid more than a thousand dollars more than his colleague with fourteen years in rank.

3.11.4 Furthermore, the Employer's hiring intentions show that the salary compression would be exacerbated in the future. The Employer's costing of the UNBC-FA's proposal indicates that the Employer expects to offer salaries of \$69,624 to incoming Assistant Professors. As Figure 8 clearly reveals, this would greatly prejudice the salary positions of other Assistant Professors, particularly those Assistant Professors who have been at UNBC for more than a few years.

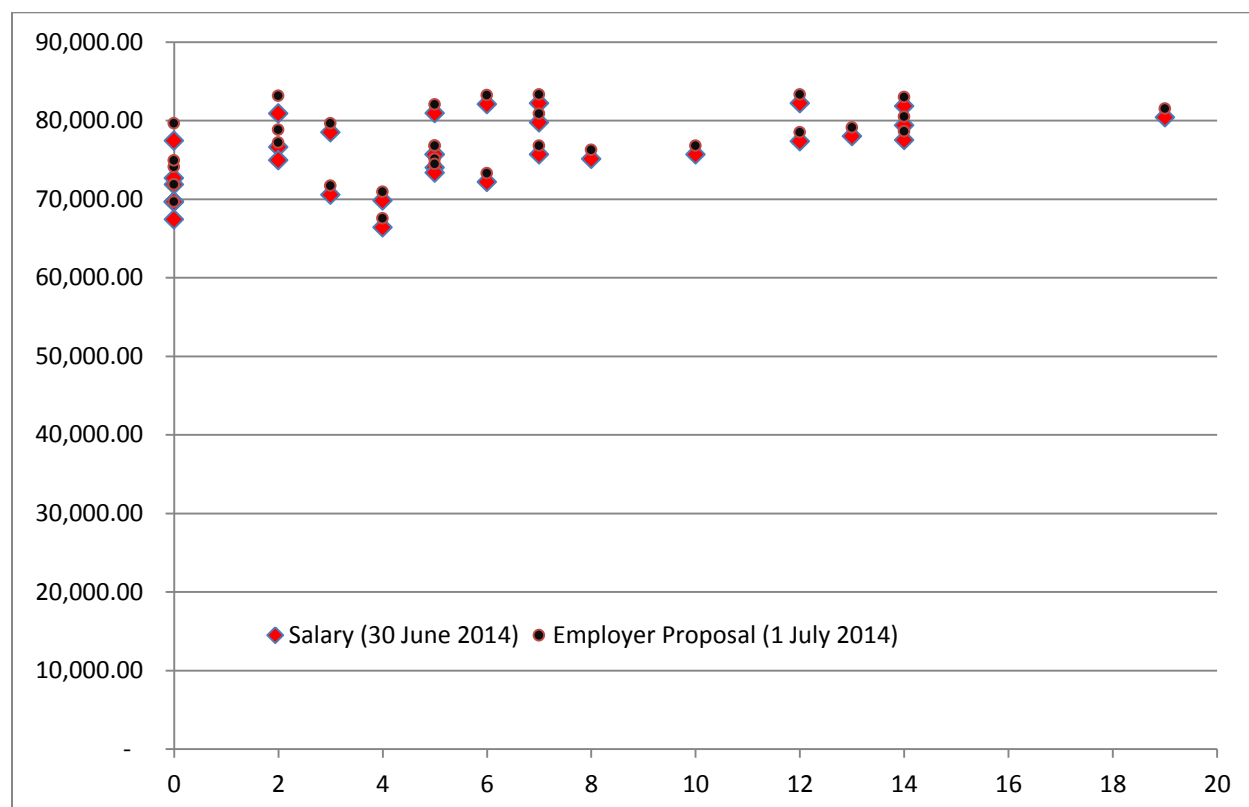


Figure 8. Assistant Professor Salaries at UNBC (30 June 2014) and Employer's Proposed Salaries (2014-15)
Source: Employer's Spreadsheets provided to UNBC-FA

3.11.5 Figure 9 shows the same evidence for Associate Professors, and the consequence of the Employer's proposal is the same: significant internal inequity. The Employer proposes that the Associate Professor two years in rank making \$102,317 on 30 June 2014 should gain further ground on a colleague with twenty years in rank earning \$98,965 and should leapfrog the person with twenty years in rank now earning \$102,429. There is no justification for creating such inconsistencies and inequities in a first collective agreement, particularly when the UNBC-FA Members showed such resolve to put an end to this inequitable salary system.

3.11.6 In the case of Associate Professors, the Employer's costing of the UNBC-FA's proposal indicates that the Employer expects to offer salaries of \$82,360 to newly hired Associate Professors. Ironically, it proposes that an Assistant Professor already employed at UNBC and promoted to Associate Professor on 1 July 2014 should expect a salary of only \$76,016. Thus,

the Employer's proposal would have a very significantly inequitable effect on Associate Professor salaries.

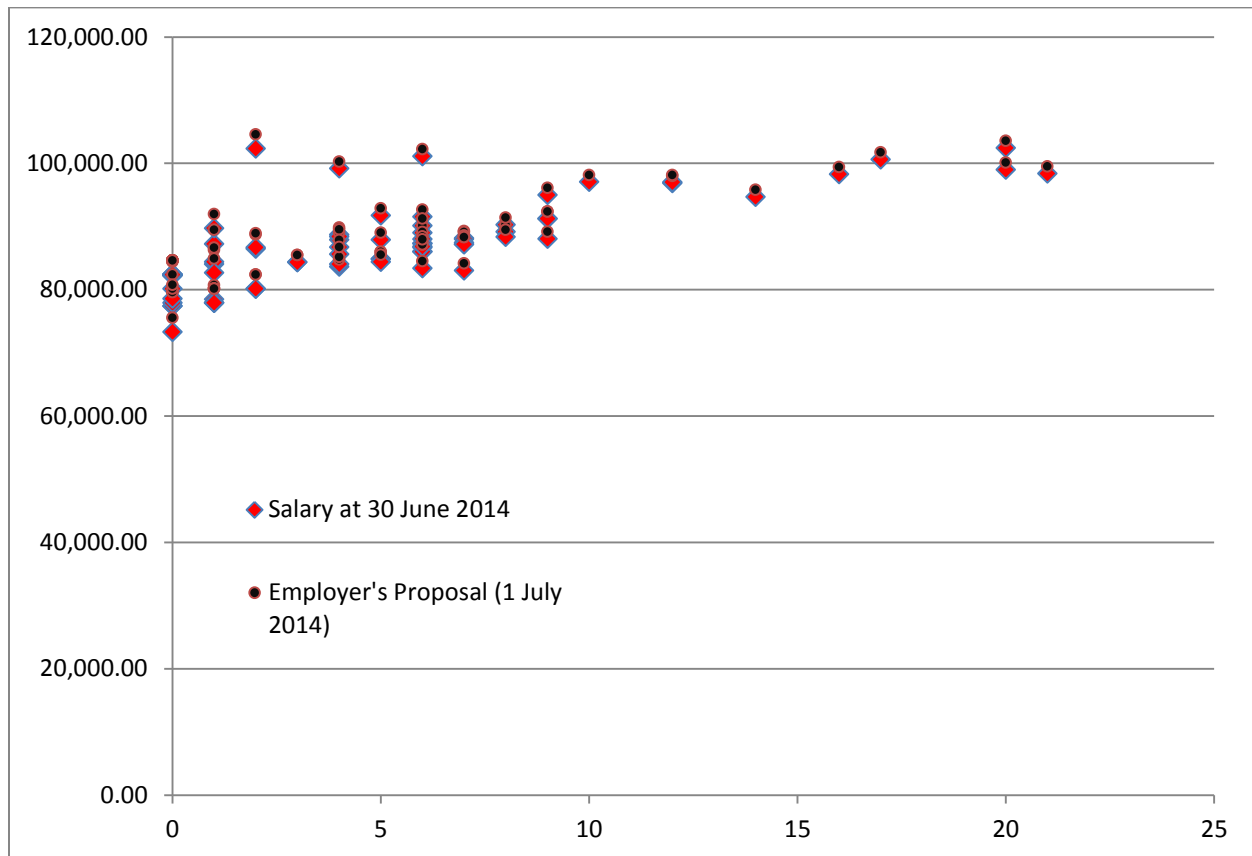


Figure 9. Associate Professor Salaries at UNBC (30 June 2014) and Employer's Proposed Salaries (2014-15).
Source: Employer's Spreadsheets provided to UNBC-FA.

3.11.7 The situation for Full Professors (Figure 10) is much the same. Significant salary inequities would exist in the first collective agreement if the Employer's proposals were awarded. Marked salary compression affects Members, particularly after they have been in the rank for more than three years. In the case of Full Professors, the Employer's costing of the UNBC-FA proposal assumes that a Full Professor hired in 2015 would be offered a starting salary of \$99,089, despite the fact that, under the Employer's proposal, a Faculty Member promoted to Full Professor in 2015 should expect a salary of only \$96,360. Worse, several Full Professors with many more years in rank would be earning only slightly more than the newly promoted Member.

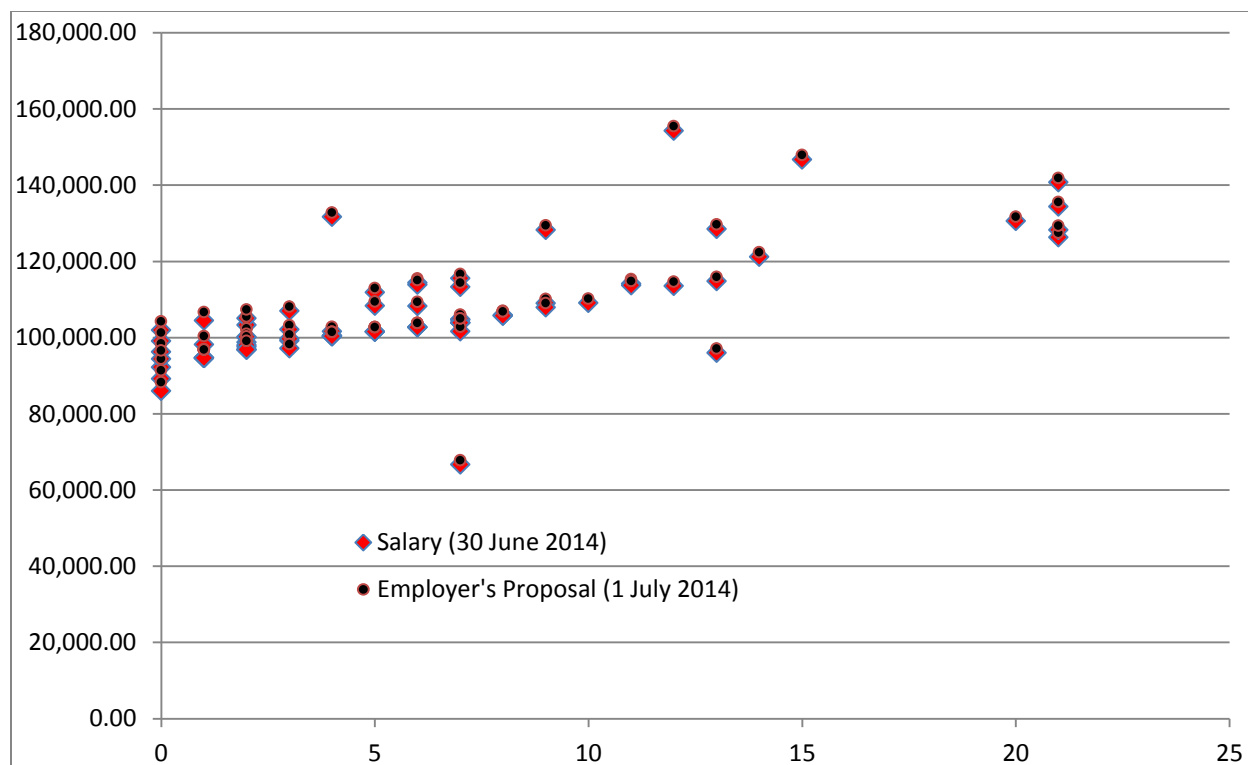


Figure 10. Full Professor Salaries at UNBC (30 June 2014) and the Employer’s Proposed Salaries (1 July 2014).
Source: Employer’s Spreadsheets provided to UNBC-FA

3.11.8 It is easy to imagine the effect that the Employer’s proposed “remapping adjustment” would have on salaries in the subsequent year. In each graph, each salary would be increased by the same amount. Thus, the inequities that existed before the “remapping” would continue to exist after the “remapping.”

3.12 The Employer’s proposal would worsen UNBC-FA salaries compared with salaries at comparators in both 2014—2015 and 2015—2016

3.12.1 The Employer not only proposes an internally inequitable salary system in a first collective agreement, but also seeks a salary system that worsens UNBC-FA salaries relative to those of colleagues doing similar work at exactly the same rank at other small primarily undergraduate universities. The evidence is clear that the salaries of UNBC-FA Members would deteriorate compared with the salaries at comparator institutions in 2014-15 and 2015-2016. Although few collective agreements at comparator institutions extend beyond 30 June 2016, the Employer’s proposed increases are far smaller than have been typical in the sector. Moreover, the Employer’s proposals for UNBC-FA salaries for 1 May 2019 would look poor when compared even with *current* salaries at our comparators.

3.12.2 The Employer is proposing that UNBC-FA Members lose further ground vis-à-vis comparators in 2014-15

3.12.2.1 Figure 11 shows the Employer's Assistant Professor salary proposal together with salaries at comparator institutions. The graph shows that the Employer's proposal does not address the external inequities that afflict UNBC-FA salaries. Indeed, even though our comparators enjoyed salary increases in 2014-15 that averaged about 1.8%, the Employer proposes that the salaries at UNBC remain stagnant. The graphs below require little commentary because they eloquently show in graphic form what the Employer proposes: that the disparity between faculty at UNBC and comparators should grow in the 2014-2015 year.

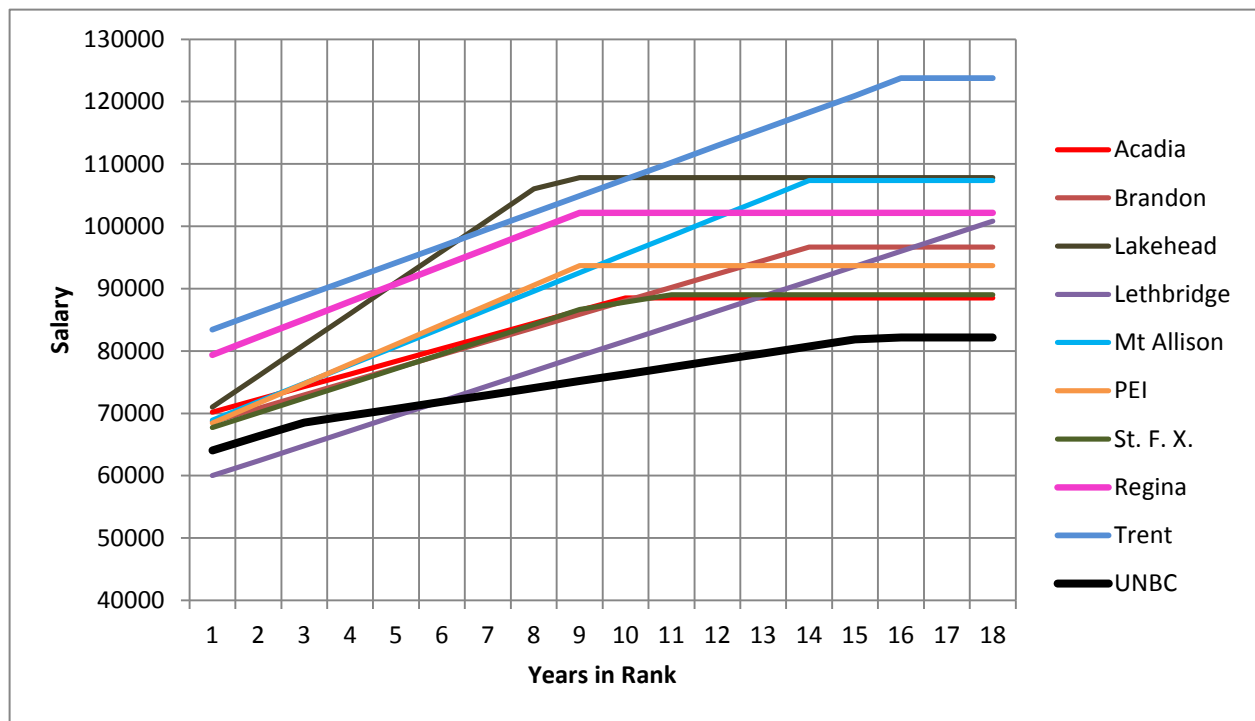


Figure 11. Employer's proposed salaries for Assistant Professors compared with salaries at comparator universities (2014 – 2015).

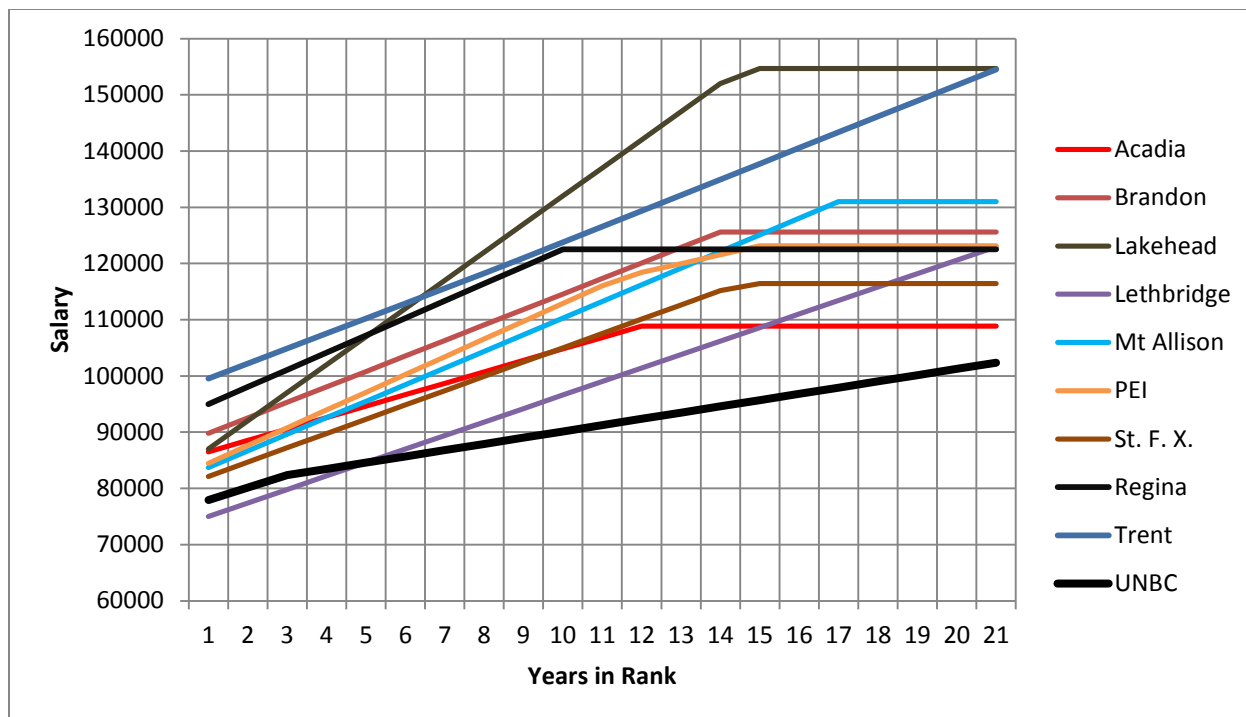


Figure 12. Employer's proposed salaries for Associate Professors compared with salaries at comparator universities (2014 – 2015).

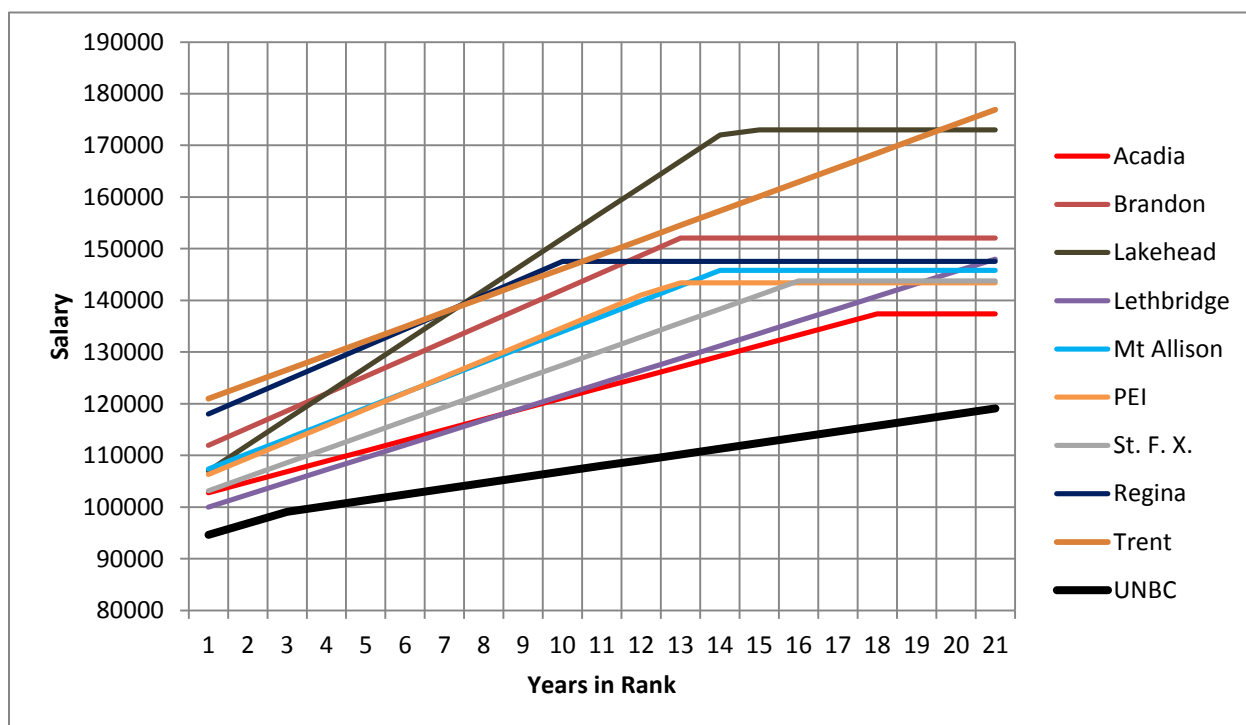


Figure 13. Employer's proposed salaries for Full Professors compared with salaries at comparator universities (2014 – 2015).

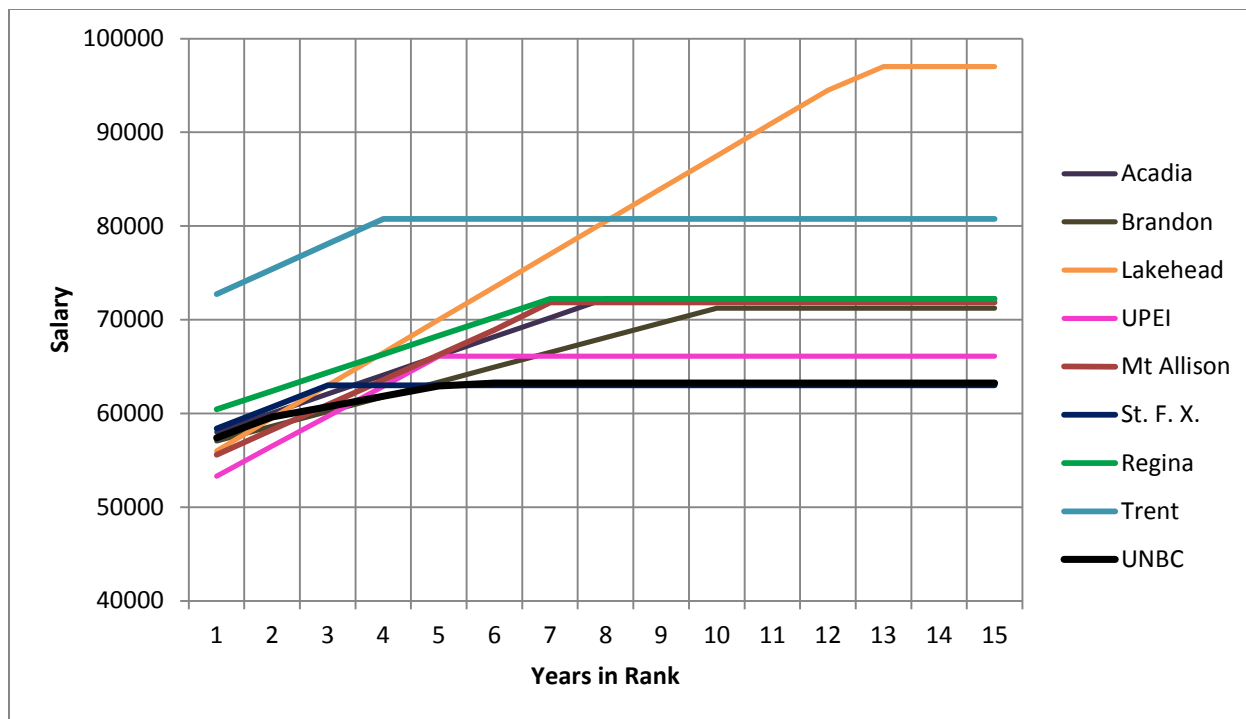


Figure 14. Employer's proposed salaries for Librarians I compared with salaries at comparator universities (2014 – 2015).

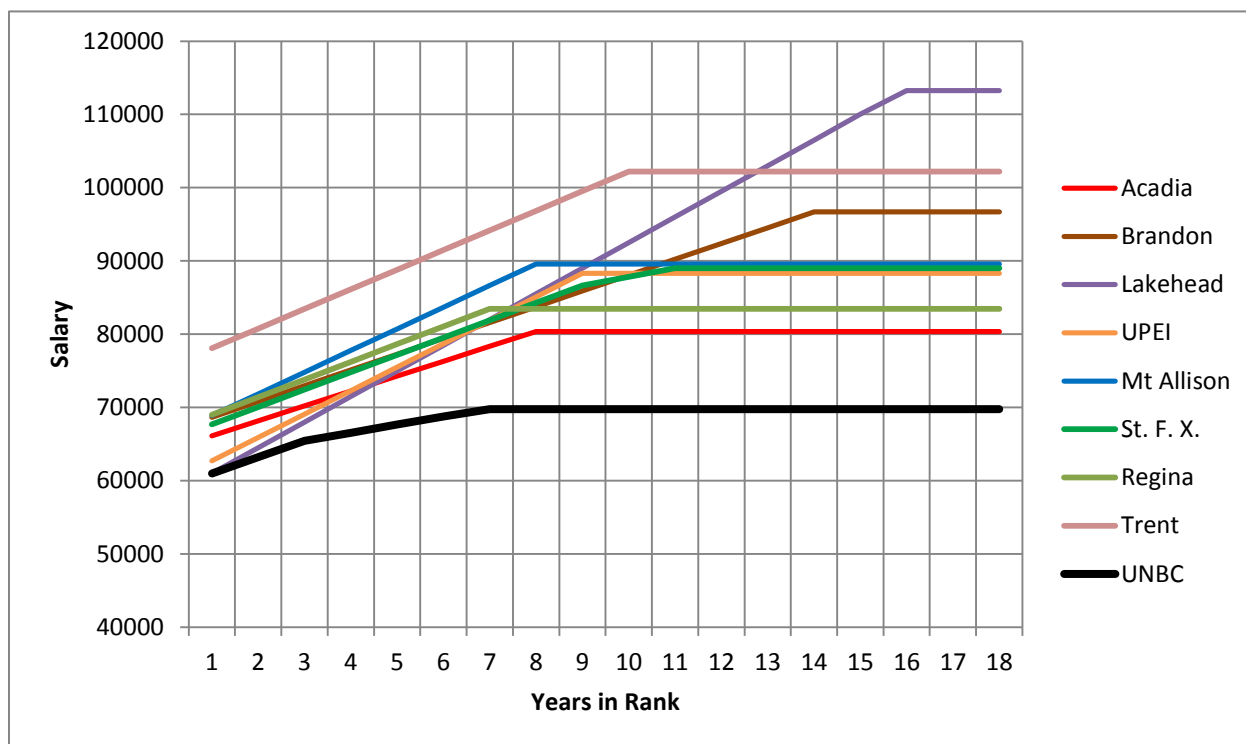


Figure 15. Employer's proposed salaries for Librarians II compared with salaries at comparator universities (2014 – 2015).

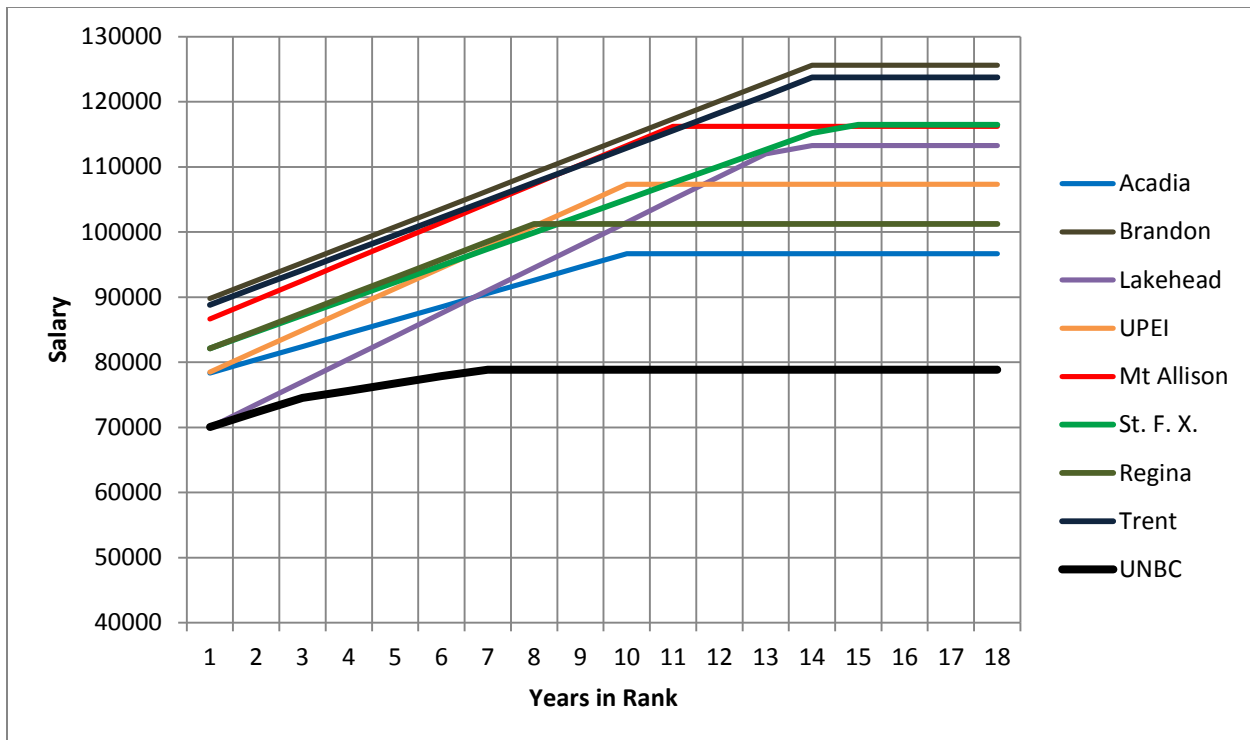


Figure 16. Employer's proposed salaries for Librarians III compared with salaries at comparator universities (2014 – 2015).

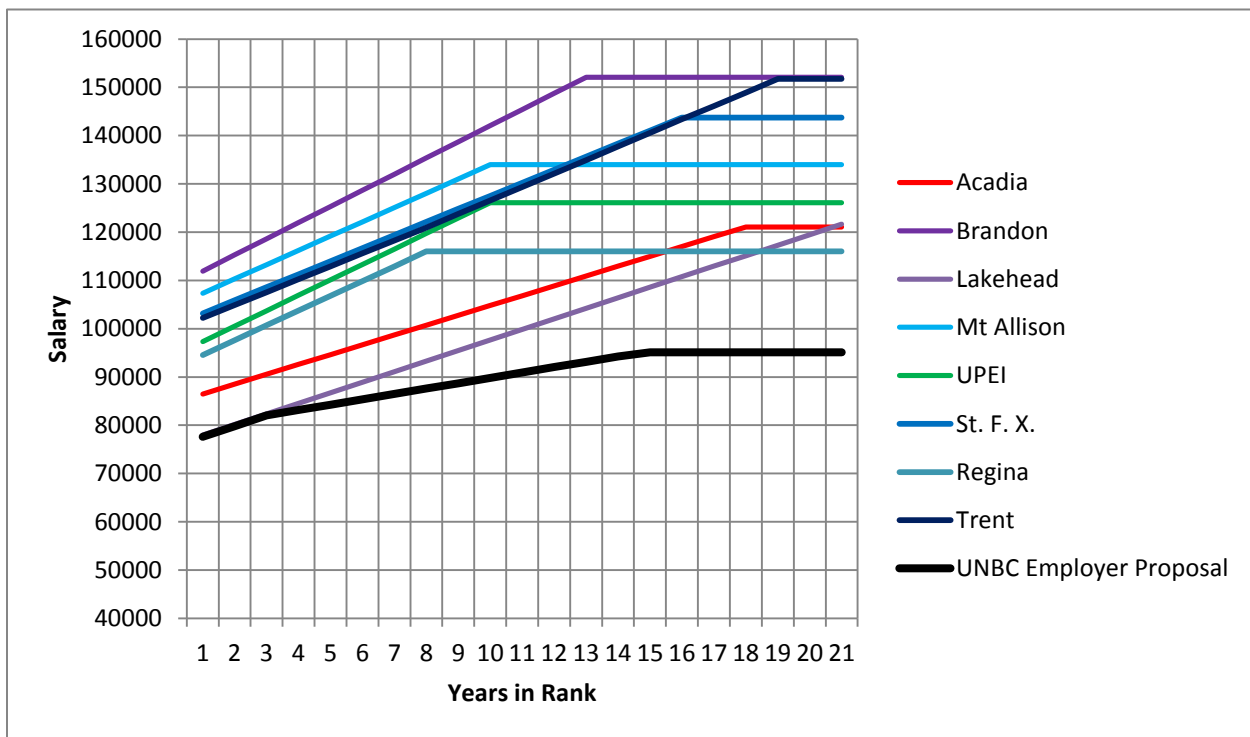


Figure 17. Employer's proposed salaries for Librarians IV compared with salaries at comparator universities (2014 – 2015).

3.12.3 The Employer's proposal would see UNBC-FA Members lose further ground in 2015-16

3.12.3.1 Under the Employer's proposals, UNBC-FA Faculty Members would continue to fall farther behind over the years. As noted, the Employer has proposed two one-time "remapping adjustments," which slightly ameliorate the worst consequences of the Employer's proposal for those two years. The UNBC-FA rejects any notion that a first collective agreement awarded by an arbitrator should include any temporary provision that, after offering a small adjustment, only perpetuates thereafter an unacceptable salary structure.

3.12.3.2 Figure 18 shows what UNBC Assistant Professors could expect under the Employer's proposal for 2015-16. Indeed, the reality for many UNBC-FA Members would be worse than the graph suggests. The graph incorporates the temporary "remapping adjustments" that the Employer proposes to add to salaries only on 1 July 2015 and 1 July 2016. That explains why the salary increases of UNBC-FA Assistant Professors appear to be at sector norm for the first three years. That, however, would be a temporary phenomenon. Under the Employer's proposal, the salary increases for Assistant Professors in their first two years in rank would revert to a level below sector norm after 2016. As a result, if the Employer's proposal were to be accepted, the salaries of Assistant Professors at UNBC would be worse compared to comparator institutions than they were on 30 June 2014. We reiterate: the Employer proposes that the Arbitrator should, by setting back the relative position of salaries at UNBC, punish the Members of the UNBC-FA for unionizing and holding a very successful strike.

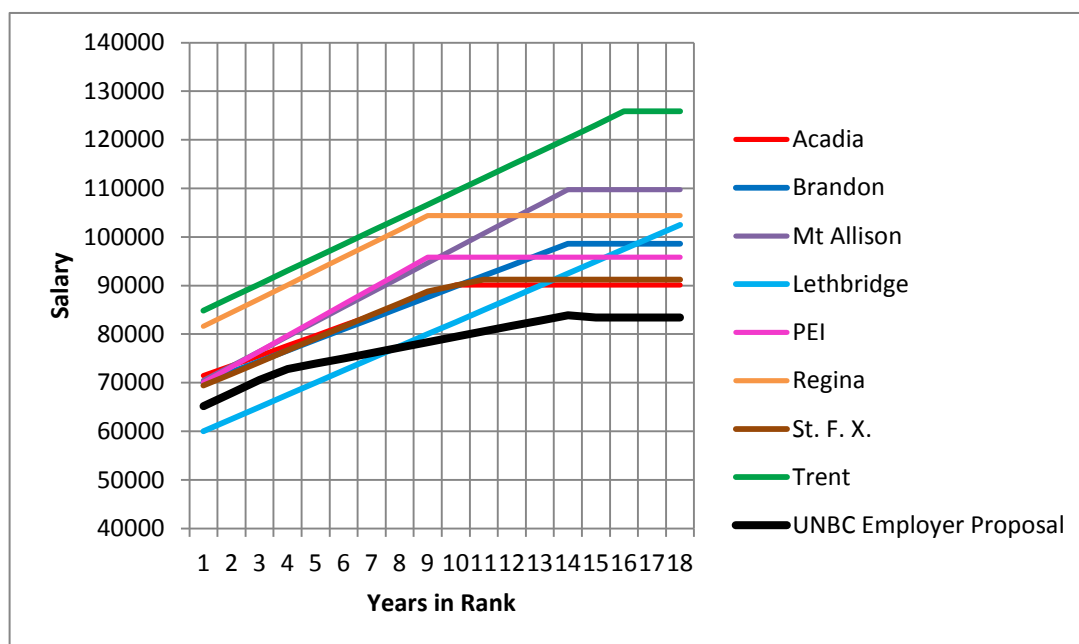


Figure 18. Employer's proposed salaries for Assistant Professors compared with salaries at comparator universities (2015 – 2016).

3.12.3.3 Figure 19 shows the Employer’s proposal for Associate Professors at UNBC. Again, the graph must be read cautiously, because the UNBC line is artificially steep in the first two of the years. The line includes “remapping adjustments” of \$561 and \$595 in 1 July 2015 and 1 July 2016 only. Thus, after 1 July 2016, that line will become considerably flatter (\$2400 for the first three years instead of \$2961 in 2015 and \$2995 in 2016.)

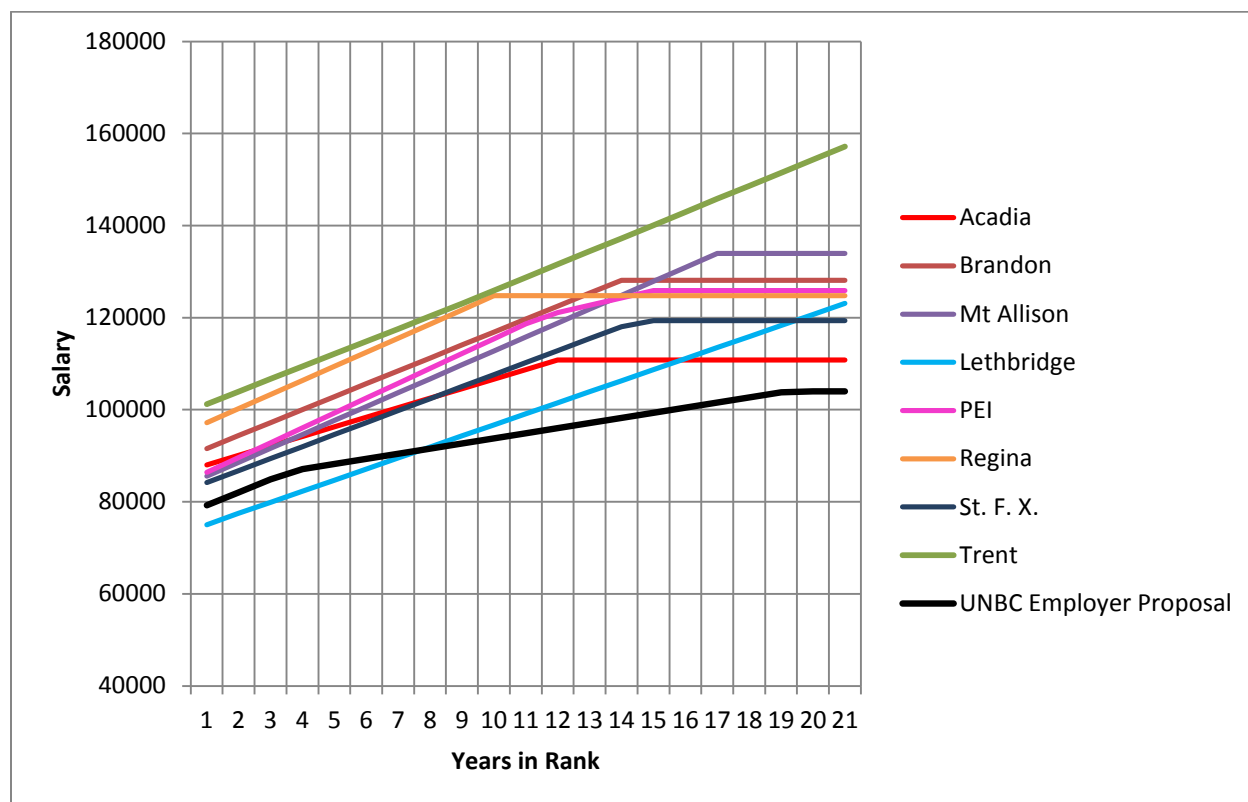


Figure 19. Employer’s proposed salaries for Associate Professors compared with salaries at comparator universities (2015 – 2016).

3.12.3.4 Figure 20 shows the Employer’s proposal for Full Professors at UNBC. The graph shows that salaries of Full Professors under that proposal would still lag far behind salaries at unionized comparators. Once again, the graph can be misleading, because the UNBC line is artificially steep in two of the years. Thus UNBC appears to make up some ground for the first two years, but the line includes the “remapping adjustments” of \$761 and \$795 that would be in place only for 1 July 2015 and 1 July 2016. Thus, after 1 July 2016, that line will become flatter than the University of Lethbridge line (\$2400 for the first three years instead of \$2983 in 2015 and \$3017 in 2016.) We reiterate what we assert in 3.82 above: the UNBC-FA does not accept that, under a first collective agreement, a small and temporary boost in pay should be awarded instead of a salary system that addresses the real and pressing problems with the salary structure at UNBC. The conduct of the Members of the UNBC-FA throughout negotiations and the solid strike shows that those Members would not be mollified by small and temporary salary boosts that did not address their valid concerns.

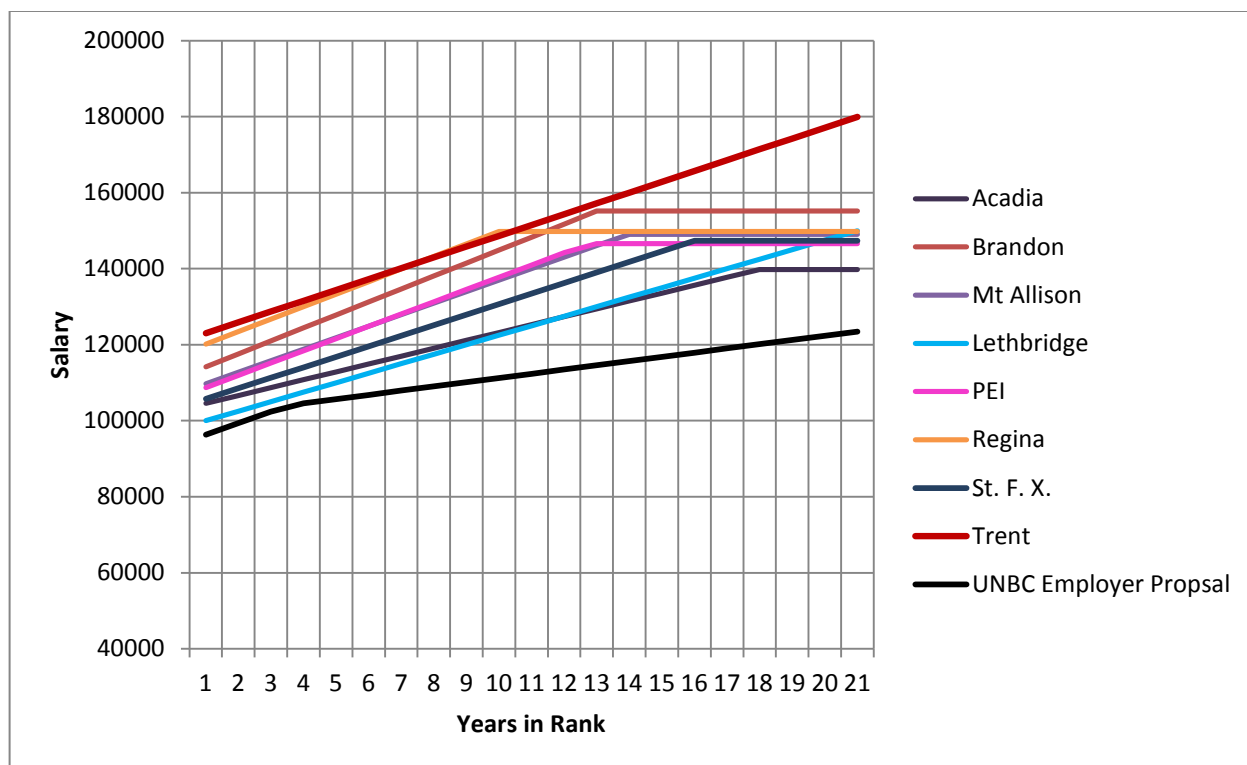


Figure 20. Employer's proposed salaries for Full Professors compared with salaries at comparator universities (2015 – 2016).

3.12.3.4 The graphs of the Employer's proposals for Librarian salaries reveal the same flaws in the Employer's proposal as did the graphs of professoriate salaries. The Employer's proposal does not address the lagging salaries at UNBC. The discrepancies are particularly large in the salaries of the more senior Librarian ranks (where most of our Members are located) compared with their colleagues at other universities.

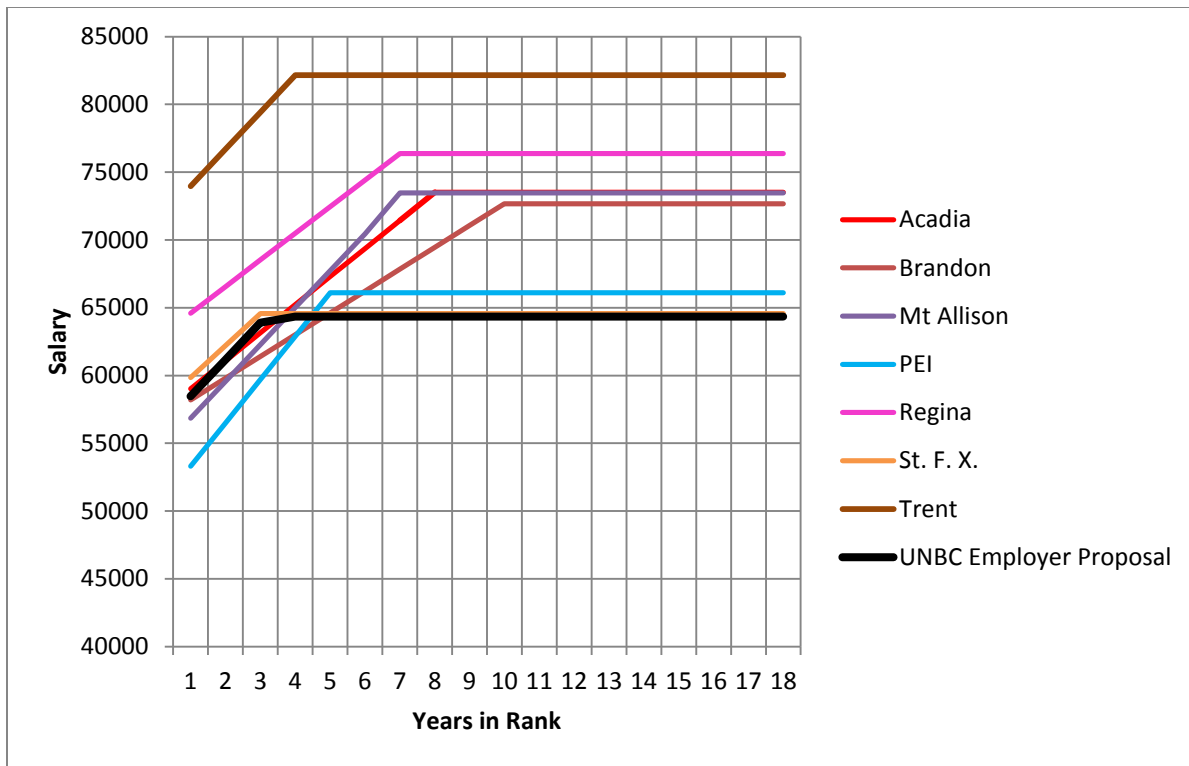


Figure 21. Employer’s proposed salaries for Librarians I compared with salaries at comparator universities (2015 – 2016).

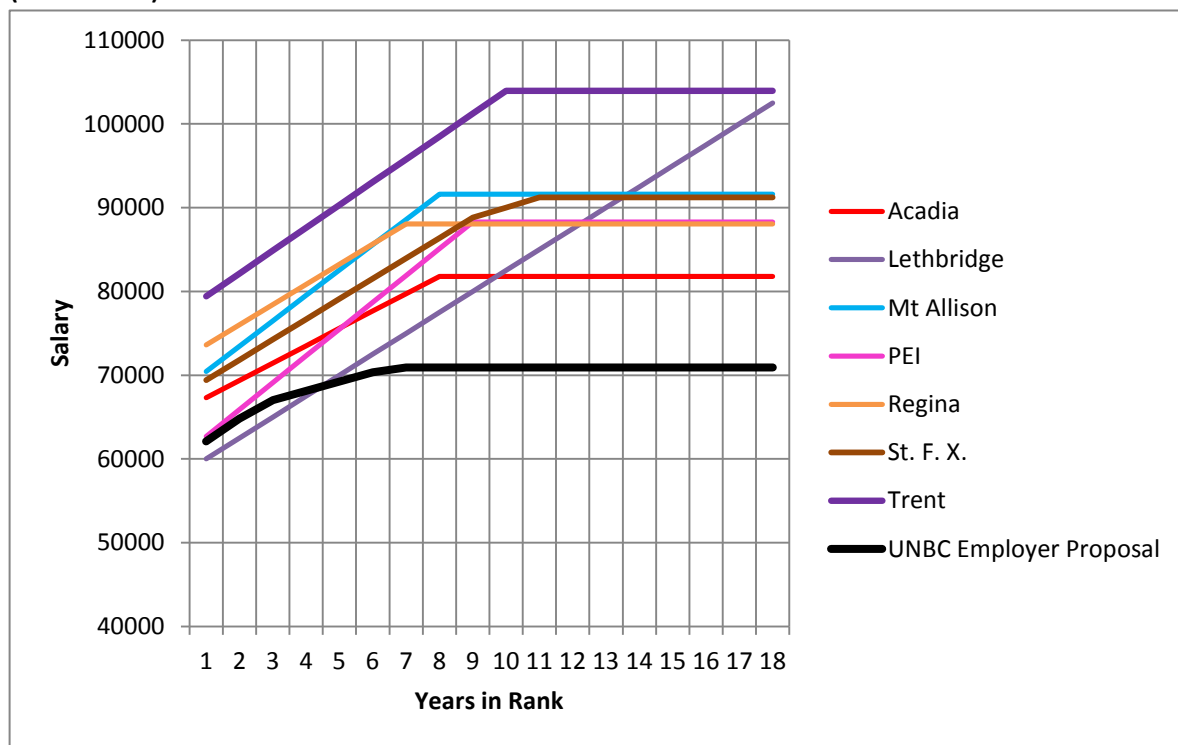


Figure 22. Employer’s proposed salaries for Librarians II compared with salaries at comparator universities (2015 – 2016).

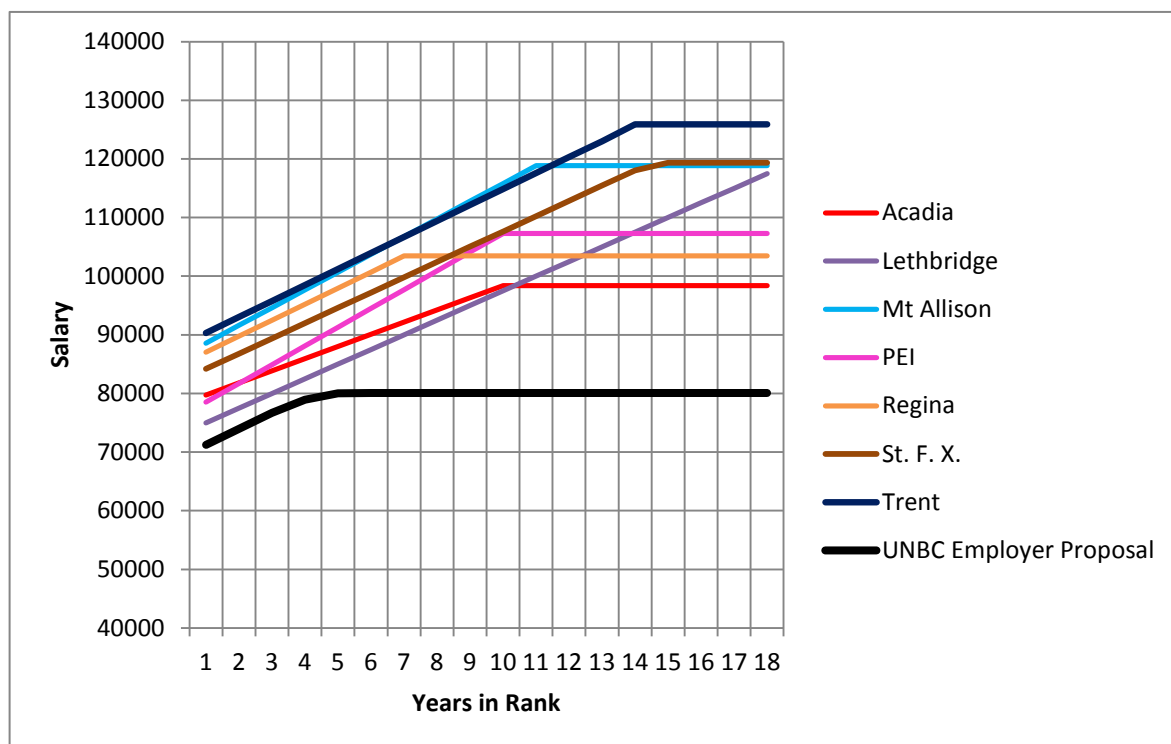


Figure 23. Employer's proposed salaries for Librarians III compared with salaries at comparator universities (2015 – 2016).

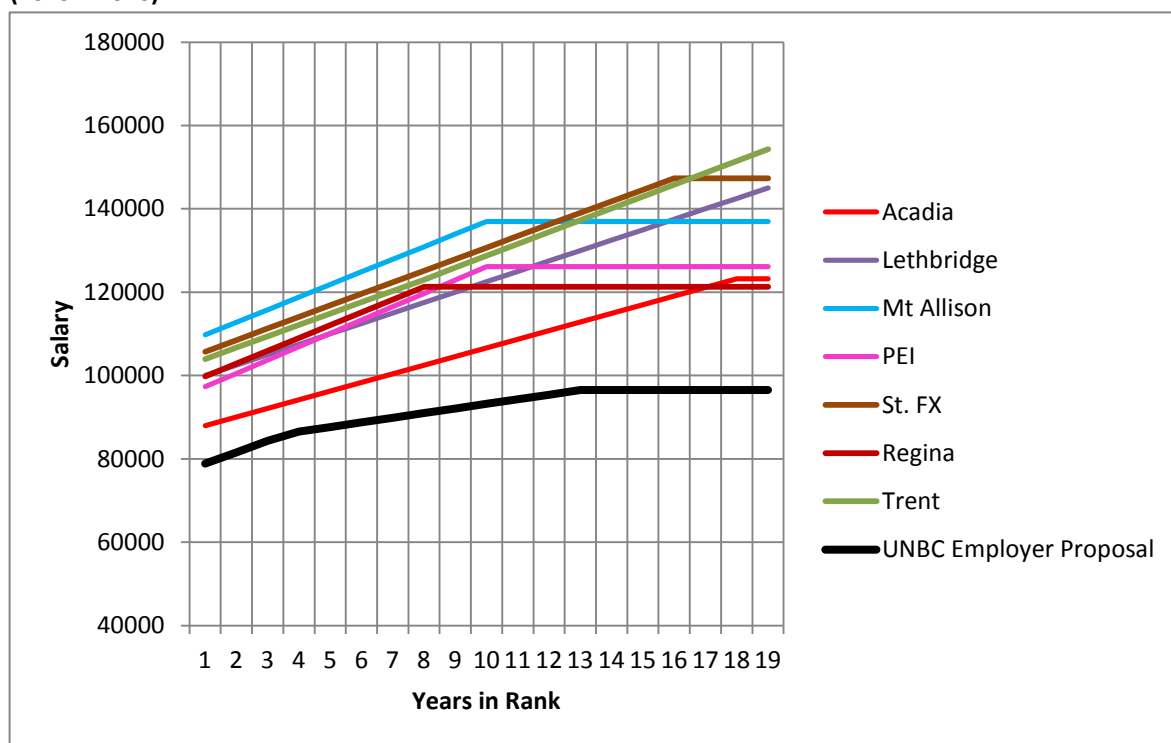


Figure 24. Employer's proposed salaries for Librarians IV compared with salaries at comparator universities (2015 – 2016).

3.12.4 The Employer's proposal would see UNBC-FA members lose further ground after 2016

3.12.4.1 Only a few of our comparators have negotiated salaries beyond 30 June 2016, but the trends make it a virtual certainty that, if the Employer's proposals were accepted, the salaries of UNBC-FA Members would continue to fall compared to salaries of other faculty in Canada. The fact that Employer proposes eliminating the "remapping adjustments" after 2016 means that CDIs of only \$1200 would apply. Indeed, so inadequate is the Employer's proposal that their proposed salary floors, salary ceilings, and increments for *five years from now* (1 May 2019) compare poorly with the salaries at our comparators *now*.

3.13 Merit pay

3.13.1 The Employer portrays its merit-based compensation proposals as a sectoral norm and an important priority. In fact, the Employer introduced merit proposals late in bargaining. The Employer showed no reluctance to eliminate merit pay in past rounds of bargaining, nor did it introduce merit proposals in this round of bargaining until the eleventh hour.

3.13.2 Merit pay should not exist in place of normal progress through the ranks

3.13.2.1 The Employer presents no evidence that its merit pay proposal is normal in the sector. The UNBC-FA presented, in its brief, evidence that merit pay is *not* the norm at small, primarily undergraduate universities. It is difficult to discern a sector norm from Figure 25, but the table reveals that merit pay is far from universal even at larger universities. Several universities have no merit pay at all. Several others have only a relatively small number of merit awards.

3.13.2.2 In one respect it *is* possible to discern a sector norm from Figure 25: it *is* the sector norm that larger research universities have grid steps or CDIs that are roughly equal to the CDIs available at smaller universities. To the extent that there are merit awards, they are awarded over and above CDI/PTR steps that are about as large as those at UNBC's comparators.

3.13.2.3 It is also evident from the table that the combination of CDI and merit at UVic—where available CDI is dwarfed by a merit component—was (and remains) entirely outside the norm among universities, whether medical/doctoral, comprehensive, or small, primarily undergraduate universities. Thus, rejecting a merit scheme was entirely consistent with the UNBC-FA's insistence on a sector-norm first collective agreement. The UNBC-FA would never have agreed to the Employer's proposal. Thus, the Arbitrator must reject the Employer's merit pay proposal on the grounds that it is a breakthrough proposal, and on the ground of replication.

University	Merit Increment or equivalent (\$)	CDI/Grid step or equivalent (\$)	Average Annual Increment (4)
Alberta	n/a	2,452 to 3,697	3,144
UBC	842 to 5,052	1854 to 3708	4,978
Calgary	n/a	1,200 to 2,700	2,400
Carleton	2,170 to 3,250	3,250	
Dalhousie	2,464	2,464	
Guelph	450 to 1,600	2,100	3,000
Manitoba	n/a	1,388 to 3,549	2,744
McMaster	Combined	1,858.25 to 3,716.50	3,716
Memorial	n/a	2,039	2,039
New Brunswick	n/a	Formula related to salary floors	2,784
Ottawa	2,326 to 4,392	3,747	
Queen's	Combined	Up to 6,686	3,039
Saskatchewan	Formula related to CPI	2,890	3,100
Simon Fraser	n/a	1,320 to 5,280	2,600
Toronto	Formula related to CPI	2,245 to 3,655	3,655
Victoria (pre-certification)	0 to 2,920	945	2,405
Waterloo	Formula based on salary	3643 threshold	
Western	906 per point	2,174	
Wilfrid Laurier	3,000, but very few	2,918	2,918
Windsor	n/a	2,550	2,550
UBC	842 to 5,052	816 to 3,264	4,978
Calgary	n/a	1,200 to 2,700	2,400
Carleton	2170 to 3,250	3,250	
York	250 @ 2,000 each + 75 @ 3,000 each	2,700	2,700

Figure 25. Merit Pay and CDI/Grid Steps as found in Faculty Agreements at Comprehensive and Medical/Doctoral universities in Canada

3.13.3 Merit pay was not proposed by either of the parties until after a strike vote was taken

3.13.3.1 Merit pay was clearly not a priority of the Employer during negotiations. Neither the Employer or the Union tabled a merit proposal at any time before a strike vote was taken. Then, after the Membership gave the Union an 85-percent strike mandate, the Employer first introduced its merit pay scheme. These facts are consistent with the interpretation that merit pay was not a priority for the Employer, but rather represented an attempt by the Employer to divide the membership of the union.

3.13.4 The majority of the UNBC-FA Membership clearly opposes merit pay at UNBC

3.13.4.1 The FA negotiating team immediately rejected the Employer's merit scheme when it was presented. When the UNBC-FA Membership became aware of the proposal, they clearly signaled their rejection of merit pay. Generally speaking, those most likely to benefit from a merit scheme would be research chairs and those who have won teaching awards. Thus, it is

noteworthy that *all* of UNBC's research chairs signed a letter (BoE at Tab A-6) to clarify that they rejected the concept of merit pay. Their principled stand was clearly expressed:

we collectively subscribe to the view that individual success, in the past and in the future, is truly built upon collaborations and work with our excellent faculty colleagues, students, and staff at UNBC. Merit-based salary systems, with their outdated and inappropriate metrics, do not recognize the fact that a university is much more than just the sum of its people; it is about how these people work together and how the synergy of their talents, their sacrifices, and their achievements across teaching, research, and service combine to enrich the entire university, its students, and the various communities it serves. A true university recognizes and values all of its constituent parts, and the UNBC ethos of interdisciplinarity, collaboration, and working in common purpose is what has allowed our small, new university to achieve so much so quickly.

3.13.4.2 The teaching-award winners signed a separate letter explaining why they rejected the notion (BoE at Tab A-7).

Merit pay has been tried at UNBC. By 2010 the University and the Faculty Association had completely eliminated merit pay because of the difficulties of implementing it and the divisiveness of the process. Now the University's bargaining team has proposed a merit-based Enhanced Career Development Increment scheme. That is, they are asking to bring back a version of a system that has already been shown not to work at UNBC. In his *Harvard Business Review* article "Six dangerous myths about pay," Jeffrey Pfeffer of the Stanford Graduate School of Business writes that "Individual incentive pay, in reality, undermines performance -- of both the individual and the organization. Many studies strongly suggest that this form of reward undermines teamwork, encourages a short-term focus, and leads people to believe that pay is not related to performance at all but to having the *right* relationships and an ingratiating personality." In other words, merit pay works against teaching excellence, where success depends upon teamwork (the sharing of ideas and responsibilities), mentorship (both of students and junior faculty members) and a long-term focus allowing for pedagogical experimentation.

3.13.4.3 These letters show that our Membership has rejected not just the *specific* merit scheme proposed by the Employer, but the very *concept* of merit pay, arguing that the introduction of merit pay at UNBC would undermine the ability of the university to fill its mandate. The Membership's objections are principled and based upon the excellence of UNBC.

3.13.4.4 It is noteworthy that the above-cited letters also reveal the degree to which UNBC-FA Members were informed and attentive to the progress of negotiations.

3.13.5 Merit pay would undermine the quality of UNBC

3.13.5.1 At ¶231 of its submission, the Employer attempts to assert a link between its merit proposal and the quality of the Canadian university system. But the Employer provides no

evidence that merit-based increases in compensation encourage productivity. The letters written by Research Chairs and teaching-award winners at UNBC cite and quote literature that argues to the contrary. Moreover, UNBC's rise from #3 to the top of the *Maclean's* rankings has occurred without merit pay, and merit pay is not in effect at our top-ranked comparators. The Employer's argument is specious.

3.13.5.2 While there is no evidence that merit pay would enhance the quality of UNBC, there is reason to believe that merit pay would have a deleterious impact on morale and collaboration. Here we need only cite the eloquent statements of our colleagues regarding the damaging effects of merit schemes on the quality of universities (quoted above and found in the BoE, Tab A-6 and A-7). In fact, the success of small universities depends much more on collegiality and cooperation than does that of large ones. The focus on competition and individual achievement that merit systems produce militates against the collegial, cooperative model that has made UNBC a top-ranked institution.

3.13.5.3 The excellence of UNBC, as we stated in our initial brief, is disproportionately the result of the excellence that the Members of the UNBC-FA exhibit in their work. Moreover, the letters of the Members of the UNBC-FA show the degree of commitment that they have to the excellence of UNBC. The UNBC-FA stands by the position of its Members as expressed in their letters.

3.13.6 The Employer's proposal, if awarded, would represent a breakthrough item

3.13.6.1 The Employer's merit scheme would be a breakthrough in several respects.

3.13.6.2 First, as noted above, merit schemes of any kind are uncommon among UNBC's comparators. Where they exist, they have been negotiated, not imposed.

3.13.6.3 Second, the Employer's specific merit scheme is unlike any merit scheme at any of our comparators. Indeed, the scheme is unlike any merit scheme at any other university of which we are aware, though it resembles the unusual system in effect at the University of Victoria. In our case, the Employer has proposed actually reducing the already-very-small CDIs available to Members in the first three years in rank, in exchange for a complex, multi-tier merit scheme that has no parallel among small universities.

3.13.6.4 Third, the awarding of the Employer's merit scheme would require the reopening of Article 21, which has already been signed off by the parties after extensive negotiation. The UNBC-FA does not consent to the reopening of Article 21.

3.13.6.5 Fourth, the Employer's merit scheme is poorly thought out. For example, the Employer's proposal does not explain how a Department Chair might be considered for merit. It would be inequitable if chairs were to be excluded from considerations for merit, but the Employer's oversight would make it impossible for chairs and non-chairs to be considered equitably. Awarding an inequitable merit scheme would be contrary to the principles of *Yarrow*.

3.13.6.6. Fifth, the scheme proposed by the Employer would empower the Provost to allocate the merit pay, but does not stipulate how the allocation should be made, beyond stipulating that it be made for “sound reasons.” There is no precedent for such a merit scheme in our sector.

3.13.6.7 The Employer’s proposal increases the potential for arbitrary pay allocations. The proposal states that “The decision of the Provost may be grieved only if the decision is arbitrary or made in bad faith.” Given that the proposal does not stipulate how it will be determined whether or not a decision was arbitrary or made in bad faith before a grievance is heard, and given that the Provost would be required only to have “sound reasons” for his or her allocation of merit pay, the Employer’s proposal would offer no obstacles to having the Provost exercise sole discretion as to the criteria upon which the increments would be awarded. The effect of these flaws is such that the Employer could use the merit scheme for virtually any purpose, including rewarding UNBC-FA members who oppose the Union. At universities where merit does exist, merit awards are usually allocated by a committee of peers, and in all cases, the criteria by which the awards are allocated are carefully laid out.

3.13.6.8 There is no precedent at UNBC for the merit scheme proposed by the Employer. It is fundamentally different from the merit scheme that did exist at UNBC before 2010. Between 2006 and 2010, the scheme was merely a relatively small award, not added to base salaries. Before 2006 it was added to base salaries, but the awards were relatively small (and smaller than CDI), and were awarded by a committee consisting of peers.

3.13.6.9 The UNBC-FA would never have accepted the non-sector norm merit scheme that has been introduced at UVic. That system is completely at odds with the university sector in Canada. It is normal that, where merit pay exists, it supplements adequate CDIs/grid steps.

3.13.6.10 Finally, the merit scheme proposed by the Employer would greatly hinder all future efforts to address the internal salary inequities at UNBC. As soon as such a scheme were to be implemented, the Employer would have the ability to attribute the inevitable and growing disparities in faculty salaries to the different levels of performance of different faculty.

3.13.6.11 The merit proposal presented by the Employer is, therefore, consistent with an attempt not only to divide the Union membership in the present but to achieve the means by which to undermine the Union in the future.

3.14 Market Adjustments

3.14.1 At ¶s242-243 the Employer describes the operation of Market Differentials before the unionization of the UNBC-FA. As the Employer notes, a University policy governed the payment of market differential stipends. That policy was the result of the work of a Joint Committee to which both parties named representatives. Therefore, even before the UNBC-FA was a certified sole bargaining agent, the Employer had tacitly recognized the role of the Faculty Association in determining guidelines for compensation of its Members. Market Differential has therefore not been a matter of sole Employer discretion as ¶s242-243 may imply.

3.14.2 The Union informed the Employer before bargaining began that it would assert its right as sole bargaining agent for its Members, and thus claim its right to negotiate any Market Differentials that might exist at UNBC. In a formal memorandum, the Union advised the following: “please note that as legally recognized and certified sole bargaining agent, the UNBC-FA’s position is that market differential is a matter for collective bargaining and must be negotiated with the Association as part of a first collective agreement” (**Appendix A**). The UNBC-FA never wavered from this position. The Employer, however, appears flippantly to have assumed that it could ignore the Union’s warning. After the Employer tabled a Market Differential proposal that has no precedent, the Union replied with a Market Adjustment article normal in the sector. The Employer never responded with any sector-norm language, and never showed any concern at the table about the lack of agreement on Market Adjustment salaries.

3.14.3 At ¶246 the Employer asserts its inability to attract Nursing and Business faculty without the ability to offer market differentials. If it is true that the Employer needs to offer Market Differential salaries, the UNBC-FA asks why the Employer made no effort to *demonstrate* a need either during bargaining or in its arbitration brief. The UNBC-FA asserts that, should the Arbitrator award the Members of the UNBC-FA competitive salaries as per the UNBC-FA’s Article 48 proposal, the Employer would also be able to offer competitive Market Adjustment salaries to any Members who might be eligible for Market Adjustments. The increase in base salaries would reduce the necessary size of Market Adjustments, and the growth in the overall salary mass would mean that the 2.5% maximum specified by the UNBC-FA proposal would be adequate.

3.14.4 In contrast, the Employer’s Market Differential proposal, which purports to be part of the Agreement but stipulates that its provisions are *not* to be considered part of the agreement, is bewildering and completely contradictory.

3.14.5 The UNBC-FA has, for years, called on the Employer to propose a new category of instructor – nursing or clinical instructor. Such positions exist at other universities with nursing programs. A category of nursing instructor, with its own duties and responsibilities, and potentially with its own pay grid, would greatly reduce the need for Market Differential salaries at UNBC. The Employer has not proposed such a category despite the Union’s urging. The Arbitrator should reject the Employer’s Market Differential proposal in part because the Employer is in a position to negotiate a category of nursing instructor. If the awarded agreement is a short one, such a category could be negotiated in a timely manner.

3.14.6 The Arbitration should also reject the Employer’s Market Differential proposal because it will almost inevitably lead to exaggeration of existing problems with Employment Equity. Research shows that Market Differential Salaries at universities in Canada tend to be inequitably distributed by gender, unless the conditions under which Market Differentials are offered are tightly constrained.

3.14.7 The Market Differentials at UNBC in the past, applied under considerable constraints, reflected these inequities. The gender inequities of the Market Differential Salaries offered at UNBC as of November 2014 are shown in Figure 26. In sum, the evidence at UNBC reflects the

evidence from universities across the country: Market Differential salaries are inequitably distributed by gender, and where the constraints upon the Employer's discretion are fewer, the inequities are greatest.

3.14.8 The inequities that have existed at UNBC have developed *despite* the fact that the Market Differentials at UNBC have been subject to considerable constraints. Given that the Employer's MD proposal *removes* these existing constraints, it is entirely contrary to the principles of employment equity and an equitable salary structure.

	Number receiving Market Differential Salaries	Total Dollars allocated to Market Differential Salaries	Average Market Differential Salary per Recipient
Men	24	531,822	22,159
Women	16	274,810	17,175

Figure 26. The allocation of Market Differential salaries at UNBC, November 2014. Source: The Employer.

3.14.9 The Employer's Market Differential proposal would give the Employer absolute discretion to award any amount of Market Differential to any person, for any length of time. Such a provision is contrary to sector norms and thus a breakthrough item, contrary to the criteria set forth in *Yarrow*. Such sweeping discretion for the Employer is also contrary to the UNBC-FA's legal status as sole bargaining agent for its Members.

3.14.10 The Employer's proposal, if accepted, would give the Employer the ability to award Market Differential for any reason, and without relation to any impartial assessment of salaries offered at other universities in Canada. The Employer's proposal is therefore entirely at odds with a first collective agreement awarded under Section 55 of the LRC.

3.14.11 Finally, the Employer has failed to present any evidence that it requires the ability to offer Market Differential salaries at all. The UNBC-FA asserts that the Employer may not require the ability to offer Market Differential salaries if it offers competitive salaries in its compensation proposals. Furthermore, the Employer has already taken advantage of its ability to offer Market Differential salaries before the first collective agreement is in place. Both Nursing and Business have recently renewed their program Market Differentials. Thus there is no demonstrated need for the Arbitrator to make an award on Market Differential.

3.14.12 In sum, the Employer has proposed Market Differential provisions that exist nowhere in the unionized sector. No union could possibly agree during collective bargaining to the Employer's proposal. To have done so would be to voluntarily relinquish the Union's rights as sole bargaining agent for its members—rights it won on 29 April 2014. For the Arbitrator to impose provisions in a first collective agreement that have the effect of stripping the Union of its legally enshrined right as sole bargaining agent would be unprecedented. Thus, if the Arbitrator were to award any Market Differential provisions at all, only the UNBC-FA's Market Adjustment proposal could possibly be awarded.

3.15 Duration of the Agreement

3.15.1 The final compensation-related issue relevant to this rebuttal is the duration of the agreement, addressed further below. Here, the Union submits simply that should the Arbitrator elect to award a three- or four-year contract, salaries at UNBC should reach average salaries among our comparators. That would require (a) a further adjustment to the value of the grid step or CDI and (b) an appropriate GWI—that is, one larger than the average negotiated at comparator institutions. Tables of already-negotiated GWIs in the university sector and at comparator institutions are provided below.

University	2014-15	2015-16	2016-17
Cape Breton	1.5%	2%+0.75%	
Dalhousie	2%	1.75%	1.5%
Memorial	0%+\$1,400 one-time bonus	2%	3%
Mount Saint Vincent	1.75%		
St. Mary's	2%	1.75%	1.75%
St. Thomas	1.75%	1.5%	
U of New Brunswick	4%	5%	
Bishop's	2.5%		
Brock	1.75%	1.5%	1.5%
Carleton	1.7%	1.6%	
Guelph	0%	2%	2%
Laurentian	2%	2%+0.7%	1%+0.4% 1%+0.4% 0.7%
McMaster	1%+\$1,250	1.5%+\$1,850	1.5%+\$1,925
Alberta	1.65%		
Nipissing	1% (non-compounded)		
Ottawa	2%+1.5%		
Queen's	1%	1.25%	1.5%
Western	1.25%+0.81% to base	1%+0.78% to base	1%+0.76% to base
Waterloo	1.95%	1.95%	1.5%
York	2%		
Calgary	0%		
Manitoba	2%		
Saskatchewan	2.25%	2.25%	2.75%
Windsor	0%+\$1,250 lump sum payment	0%+ \$1,250 lump sum payment	3%
Winnipeg	0.9% GSI (non-compounded)+ 0.9% to grid 2% GSI +2% to grid +\$450 GSI		

Figure 27. General Wage Increases already negotiated at Canadian universities

University	2014-15	2015-16	2016-17	2017-18	2018-19
Acadia	1.75%	1.75%	1.75%		
Brandon	2%	2%	2%	2%	2.5%
Lethbridge	1.75%	\$100 to increments			
Lakehead	\$2,300				
Mount Allison	2%	2.25%			
UPEI	1.75%	2.25%			
SFX	2.0%	2.5%			
Trent	2.5%	1.7%			
Regina	\$1625	\$2200	\$2200		

Figure 28. General Wage Increases already negotiated at UNBC Comparators

4. On the “Reviving” of Articles

4.1 At paragraph ¶65 the Employer lists Article 21 as in dispute. However, the parties have signed off on Article 21. The Union never agreed to reopen this article. Such a reopening would have occurred *only had the parties reached agreement on a compensation proposal that required its reopening, and only if the parties agreed to reopen Article 21*. The Employer is here unacceptably attempting to change the meaning of a major signed-off article.

4.2 At ¶s67-69, in contrast, the Employer claims that Union is “impermissibly trying to revive” two matters (XX and 19A) and “recharacterizing the language as a new proposal.” We note that the Union tabled proposals entitled Article 19 and Article 19A on 11-12 June 2014 as part of our entire contract proposal. A portion of Article 19 was signed off and agreed to on 7 February 2015 (after the agreement mentioned by the Employer in ¶69). It is noteworthy that neither party then exhibited any belief that, by signing off *part* of the article, the rest of the article had been dropped by the other party. Indeed, *another* portion was signed off and agreed to on 26 February 2015 without any confusion. The UNBC-FA asserts that we did not drop the rest of the proposal on 26 February 2015 any more than we dropped the rest of the proposal on 7 February 2015.

4.3 The UNBC-FA is perplexed about the Employer’s insistence that Article 19A is impermissible. The Union asserts that the contents of Article 19A, if awarded, would benefit both the Employer and the Union, by potentially increasing the value to our retired members of post-retirement benefits, without assuming or requiring that the Employer will contribute more money to post-retirement benefits at UNBC. The Employer’s attempt to remove such a “motherhood” article from consideration is inexplicable to us. Given the age profile of our Members, it would seem to us that the Employer should welcome the implementation of any cost-neutral ways to reduce the uncertainties its employees would face when making decisions regarding future retirement.

4.4 As regards XX, the Union tabled an entirely new Article 46 on 11-12 June 2014 as part of our entire contract proposal. In response, the Employer proposed retaining a portion of Article 46 of the 2012-2014 FA Agreement under the name J-7. The parties agreed to the Employer’s J-7. However, the Union’s 46 remained outstanding. In order to avoid confusion with the old unrelated Article 46, the Union merely renamed the proposal Article XX.

4.5 The UNBC-FA is also perplexed by the Employer’s insistence that Article XX not be permitted. It merely enshrines rights that unionized workers are generally assumed to have and that the other two bargaining units on campus already enjoy, as is detailed in the Union’s submission. It bears no costs and should be uncontroversial.

5. The Financial Position of the University

5.1 *Yarrow* indicates that

the financial state of the employer is crucial to any imposed settlement. However, it is clear that no judgement concerning the financial viability of the employer can be made or considered unless such evidence is placed before the arbitrator. ...

An employer who relies on this criteria, and can demonstrate to an arbitrator's satisfaction, that the position it is taking in bargaining is consistent with its available financial resources, is entitled to have its position given significant weight.

5.2 Critically, *Yarrow* adds that

Conversely, an employer who attempts to rely on this factor, but refuses to reveal evidence that would support its position, or gives insufficient evidence or perhaps misrepresents its position, will have little or no weight assigned to this factor or its position.

5.3 In the present case, the Employer has attempted to rely on this factor without revealing sufficient evidence to support its position. Furthermore it has misrepresented its financial circumstances. Thus, according the guidelines of *Yarrow*, the arbitrator must assign little or no weight to this factor.

5.4 *Yarrow's* guidelines generally reflect the arbitral jurisprudence going back several decades. Arbitrator Sims (2011) wrote that

a party asserting a particular position carries the onus of presenting cogent evidence to support its position.

Sims (2011), *supra* (BoA, Tab 5 at p. 8)

5.5 Arbitrator Larson has elaborated in some detail upon the evidence that the Employer should present:

In order for an employer to establish the level of its ability to pay, it will be required to present a board of arbitration with **full and complete financial data**. It will be necessary to show not only the amount of funding available, but also evidence on the application of those funds and the net amounts available for wages and salaries. It will be **necessary to permit an arbitration board to examine budgets, financial statements, accounts and any other relevant data through witnesses qualified and authorized to speak to the allocation of those funds**. It will be necessary to show the total financial resources available to the employer.

This cannot be done by the presentation of incoherent financial data. **Nor will it be sufficient to present a budget. Without more, a budget represents estimates of spending but not ability to spend. One would expect that the ability of an employer to spend would be shown rather by demonstrating that the funding available is**

limited, that there is no possibility of allocating funds between accounts, that there are no surplus or secret funds available to the employer; that there are no supplementary funds available to the employer and that there is no ability to raise and/or carry a deficit.

That list is not necessarily exhaustive. But we trust that the point has been made. In order to determine the employer's financial ability to pay any given level of compensation increase, **it will be necessary to present the financial data necessary to establish it.**

Crossroads Treatment Centre Society and Hospital Employees Union, Local 180 (Employee Status Grievance), [1983] BCCAAA No. 652 (Larson) (BoA, Tab 19, emphasis added)

5.6 It is clear that the Employer has met neither the standards of *Yarrow* nor the standards set forth by Larson.

5.7 Additionally, although *Yarrow* does not differentiate between private-sector and public-sector arbitrations, arbitrators normally have done so. In fact, in 2010 Arbitrator Teplitsky wrote that in the public sector

ability to pay has been rejected by interest arbitrators for at least 4 decades (**Teplitsky (2010), *supra*, BoA, Tab 6 at p. 5).**

5.8 In 1990 Arbitrator Shime explained why this is so. He wrote that the role of arbitrators,

is to determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls (**Shime, *supra*).**

5.9 In 2006, Arbitrator Warren Winkler quoted, and explicitly adopted a previous argument of Arbitrator Shime (***supra*, 1990, BoA, Tab 9**) that in the public sector,

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. ... Thus, for example, **if I were faced with data showing that the salary scale for assistant professors at McMaster was less than that of other universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standard for McMaster regardless of the university's fiscal position.** ... The universities are funded by the provincial government. In recent years the funding has not been as generous as it might be, which no doubt had eroded the salaries of university professors. ... **If arbitrator/selectors were to consider the funding level of universities for the purpose of salary determination, they would in effect, become handmaidens of government. Arbitrator/selectors have always maintained an independence from government policies in public sector wage determinations and have never adopted positions which would in effect make them agents of the government for the purpose of imposing government policy. Their role**

is to determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls.
Winkler, *supra* (BoA, Tab 8 at p. 7, emphasis added)

5.10 Thus, as earlier arbitrators have already established, if arbitrators were to attach weight to public-sector Employers' "ability to pay" arguments or their "government bargaining mandate" arguments they would have to surrender the very essence of their task—independent adjudication. They would, in effect, embrace a role as "handmaidens of government."

5.11 To be clear, in this case, even if the Employer were to be able to demonstrate an inability to pay (which it cannot, as discussed below), the Arbitrator should not automatically assume the relevance of that fact, because the university is funded by a government that clearly does have the ability to pay.

5.12 As Arbitrator Jackson has asserted in 1997 in regards to a dispute between the Niagara Police Services Board and the Niagara Region Police Association (BoA, Tab 20),

We define "ability to pay", not as an employer's short-term *fiscal* capacity but as its presumptive ability to justify to the public the necessity of any tax increase that might be required to pay for the award.

5.13 Arbitrator Jackson went on to write

Logically, what is fair and reasonable in the circumstances should not be influenced by the fact that one level of government has made a policy decision with respect to public finances. **That government has said nothing, and has offered no evidence, of police salaries being too high or of police compensation being too generous; it has simply said that aggregate public spending is too high, and that it is reordering provincial finances. . . . Without some convincing evidence that police salaries and benefits are too high, relative to those of other occupations and professions, it would be completely unjust and inappropriate for this arbitration board to conclude that, of the three variables -- provincial grants, local taxes and police compensation -- it is police compensation that has to give.** We anchor this logic, again, in the proposition that, if the public wants a service, then it should be prepared to pay a fair price for it. ***Niagara (Regional Municipality) Police Services Board and Niagara Region Police Assn. (Re)*, [1997] OLAA No. 1116 (Jackson) (BoA, Tab 20 at p. 23)**

5.14 The same reasoning applies to the present case. No one—neither the Employer nor the government—has said that salaries of faculty at UNBC are too high, or that the UNBC FA's proposal would make the salaries of faculty too high. Without any evidence that that they are too high, it would be unjust and inappropriate for an arbitrator to conclude that of the variables—provincial grants, university budgets, and faculty compensation, it is faculty compensation that has to give. If the public, and the government, want a university in northern British Columbia, they should be prepared to pay a fair market price for it.

5.15 In this case, the possibility of “the necessity of any tax increase” does not arise, because the Employer can afford the increased faculty salaries out of its present funding. If it had imprudently spent so much money in 2014-15 that it could not cover the increased salary costs, the Employer will need only receive ministerial permission to dip into its accumulated savings. But that has not been the case. The surplus for the 2014-15 year is already known to be sufficient to cover the costs.

5.16 So, all that is required is for the public to be made to understand the necessity of public sector workers in northern British Columbia—the region from which much of the provincial government’s resource revenues are derived—to be paid salaries comparable to salaries earned by similar employees doing similar work. Alternatively, to suggest that it is proper for UNBC-FA salaries to be far below the salaries of their colleagues is to suggest that UNBC should properly be the employer of last resort for university professors in Canada.

5.17 In his 2013 award in relation to faculty salaries at the University of British Columbia, Arbitrator Taylor stated that “It is fair to say that the general ‘ability to pay’ analysis in the public sector is a notorious quagmire” (**Taylor, 2013, *supra*, BoA, Tab 13 at p. 12**). In its brief, the Employer has not provided evidence that would assist the Arbitrator through the quagmire. Indeed, its presentation of evidence unnecessarily obfuscates.

5.18 In a final-offer-selection award at McMaster University in 1987, Arbitrator Kennedy dealt with evidence of a “regression” of faculty salaries on one hand, and of difficulties in university funding on the other. His decision is worth quoting at length:

The Association materials satisfy me that there has been economic erosion in faculty salaries, though I am not satisfied that it is of the total magnitude asserted by the Association. The indicators are, however, not only that erosion exists, but that its magnitude to some extent at least will exceed the amount of the claim that is being asserted at this time. The University on the other hand does clearly have legitimate funding problems and the awarding of the Association offer will require hard financial decisions on the part of the University that may have a negative effect on programme. However, **I do not consider that it is appropriate to look at faculty salaries as being the residual component of a budget, and I think the materials are adequate to establish that the time has come that some restoration of the economic position of faculty is justified.**

[...]

I do not consider that the ability to pay argument is sufficiently strong to offset the preferability of the Association position. In a case of ability to pay, there is a heavy onus upon the party pleading poverty to establish that fact. **I do not think that the financial problems outlined by the University in its brief are significantly different from those being experienced by other universities in the Province**, and ultimately hard financial decisions may have to be made with respect to programme and other matters to meet economic constraints. It may be reasonable to require faculty to assume some of this burden in the sense of postponement of legitimate claims but not all of it.

5.19 A history of the Employer's declarations of poverty

5.19.1 The Employer's brief asserts that the Employer, after several years of very large surpluses, now faces the prospect of future "structural deficits." It should be noted that the Employer did not make this assertion during negotiations.

5.19.2 The Employer has pleaded impending poverty at UNBC for many years. Some of the Employer's language in this brief recalls language the Employer used about a decade ago. Therefore, we reprise some of the history of the Employer's predictions of financial crisis at UNBC.

5.19.3 In 2006, the Employer hired consultants (Leading By Design, Inc.) who produced a report that asserted that:

While UNBC has a balanced budget for 2006-07, this situation is not sustainable ... Leading by Design's analysis confirms UNBC's own estimates of the magnitude of its budget problem. Left unaddressed, by 2010-11 the gap between annual income and expenditures will have grown to \$7.9 million. and the cumulative budget shortfall will have reached \$22.9 million. (**Appendix B, p 4**)

5.19.4 Thereafter, the Employer continually referred to an imminent financial crisis. For example, the minutes of Senate for 17 January 2007 note that the president of UNBC spoke of "budget issues surrounding the structural budget imbalances," which were the "result of expenditure management, not revenue." (**Appendix C**)

5.19.5 The audited financial statements for 2006 showed a surplus. The Senate minutes of 10 October 2007 record that

A Senator commented that, although the President had provided a budget report, it was lacking in detail with regard to how a large portion of the \$6 million deficit has been expunged in a relatively short time frame. (**Appendix D**)

5.19.6 The audited financial statements for 2005 showed an excess of revenue over expense of \$2.162 million. In 2006 the surplus had risen to \$3.376 million. After a surplus of \$1,284 million in 2007, surpluses began to grow very significantly until they reached an extraordinary \$10.3 million dollars (over 10 percent of the University's revenues) in 2013. The predicted financial crisis never actually developed at UNBC.

5.19.7 The UNBC-FA asserts that it is predictable that a sense of crisis will damage an organization. In the case of UNBC, in 2006, the institution had just begun to fall behind enrolment targets in the face of competition with a number of newly created "special purpose

universities” located in more southern communities and therefore more appealing to most students.

5.19.8 It is impossible to know whether potential students may have been lost to UNBC since 2006 because of continual talk of crisis at UNBC. However, it is reasonable to believe that wise parents will have warned their children (if those children had not already understood) about the dangers of attending a young postsecondary institution that was in financial crisis. On 26 May 2006, Neil Godbout, editor of the Prince George *Citizen* wrote that “As an alumni [sic](master of arts 2004) and a part-time instructor, the university’s future progress will enhance the value of my graduate degree and hopefully allow more teaching opportunities.” There is good reason to believe that many intelligent parents and potential students understand what Neil Godbout understood: that the value of one’s university degree is tied to the status of one’s *alma mater*. It is an open question to what extent the university’s strategy has contributed to the enrolment decline at UNBC over the years.

5.19.9 The Employer did not plead poverty during the 2010-2012 round of negotiations. However, during arbitration with Mr Ready, the Employer submitted vague and misleading statements in its brief, suggesting that the university was facing financial difficulties despite large past surpluses.

5.19.10 The assertions of the Employer were explicitly rebutted by the UNBC-FA in its rebuttal brief submitted to Arbitrator Ready. The UNBC-FA also brought in an expert witness, Eleanor Joy of KPMG. Ms Joy submitted an independent expert report and testified under oath at the 2013 arbitration hearings that the Employer had the ability to pay the salary increases then proposed by the UNBC-FA. (Ms Joy’s report is available to the Arbitrator upon request.)

5.19.11 During the 2013 arbitration hearings, the Employer also brought in an expert witness, Paul McEwan, of Ernst and Young. Mr McEwan’s independent report and testimony under oath only strengthened the UNBC-FA’s position. (Mr McEwan’s report is available to the Arbitrator upon request.)

5.19.12 In his report, dated 18 October 2013, Mr McEwan noted that as background information, he had assumed that “one of the factors that an Arbitrator should consider in making an award is the University’s ability to pay salary and benefits increases.” Oddly, however, his scope of work *did not include assessing the Employer’s ability to pay*. Indeed, his scope of work was limited. He indicated that “we have accepted the financial and other information provided as accurate and complete. We have not audited or independently verified its accuracy.” Still, after reviewing a remarkably small list of documents (listed in his Appendix C), when Mr McEwan testified he did not contradict Eleanor Joy’s finding that the university had the ability to pay—his findings merely amounted to the obvious fact that the university would have to reallocate money to salaries if Mr Ready awarded a salary increase!

5.19.13 Thus, Mr. Ready’s findings were not surprising. He concluded that the facts “do not, by any measure, create the impression of a dire financial circumstance, or of a situation preventing

the institution from re-ordering its spending priorities.” The Employer’s constant references to a financial crisis were shown to be false.

5.19.14 The Employer’s approach in the 2012—2014 round of negotiations was similar to its conduct in the current round. The Employer did not plead poverty at the table in the present round of negotiations. However, the Employer has presented a brief with incomplete financial information that misrepresents its real financial position, just as it did in the previous arbitration, in many cases merely revising paragraphs from the 2012-14 brief. However, after having watched its expert accountant’s evidence actually support the UNBC-FA’s position in 2013, the Employer has chosen not to bring in an expert accountant in 2014. *Yarrow* (and abundant other arbitral jurisprudence quoted above) speaks to this exact situation:

an employer who attempts to rely on this factor, but refuses to reveal evidence that would support its position, or gives insufficient evidence or perhaps misrepresents its position, will have little or no weight assigned to this factor or its position.

5.19.15 Given the Employer’s history trying to support its pleadings of poverty by presenting misleading information, the Arbitrator ought to be particularly cautious when confronted by such pleadings now. Further, in the present arbitration, because the Employer gives insufficient information, and because the Employer misrepresents its case, the Arbitrator must give the financial state of the Employer no weight.

5.19.16 Furthermore, jurisprudence states that, even if the Employer could demonstrate financial difficulties, because UNBC is a public sector employer, the “ability to pay” considerations are not relevant. The relevant question for the Arbitrator is, as Arbitrator Jackson noted, the government’s “presumptive ability to justify to the public the necessity of any tax increase that might be required to pay for the award,” and as Arbitrator Shime has noted, to “determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls.”

5.20 There is no “structural deficit” at UNBC

5.20.1 In its arbitration brief the Employer has returned to a strategy that it has employed more than once in the past: pleading poverty when its finances are healthy. The Employer now posits a “structural deficit” and imminent financial crisis at UNBC, when an analysis of the facts demonstrates that UNBC has a structural surplus.

5.20.2 The Employer’s brief argues that in the brief time period since Arbitrator Ready found that the University was in a sound financial position and could, if it chose to do so, re-order its expenditure priorities, the University’s finances have changed so radically that it faces a “projected structural deficit” (Sub-heading after ¶143). The Employer makes this claim without providing a definition of the term “structural deficit.”

5.20.3 Responding to this claim is therefore difficult, since the Employer’s definition of “structural deficit,” although never clearly stated, is apparently unorthodox.

5.20.4 It should be noted that the University has never posted an actual deficit but instead substantial surpluses as indicated elsewhere in this rebuttal.

5.20.5 It should also be noted that the reduction in Operating Grants (§134) from the provincial government was not specific to UNBC but was a province-wide reduction. UNBC did not incur disproportionate reductions, and the FA is not aware that any other institution has invoked “structural deficits” as result of these provincial government funding changes.

5.20.6 Turning to the issue of “structural deficits” directly, in the absence of a definition provided by the University, the FA will address the claim by working from generally accepted definitions of “structural deficits.” Widely accepted definitions of “structural deficit” say that a structural deficit exists when a government spend more than it takes in (that is, incurs an actual deficit), regardless of how well the economy is performing. The Organization of Economic Cooperation and Development (OECD) explains that structural deficits reflect long-term underlying fundamental factors. Short-term or cyclical factors are not part of structural deficits although they may also lead to expenditures exceeding revenues and contribute to ‘fiscal deficits.’”²

5.20.7 UNBC has never run *any* deficits, either fiscal or structural.

5.20.8 Certainly given the Employer’s history of predicting large deficits before experiencing large surpluses, the Employer, if it truly is facing changed circumstances, would have presented clear and sufficient evidence, and bolstered its argument by employing an independent expert accountant.

5.20.9 In summary, the arguments presented in the University’s brief do not point to a “structural deficit” in the commonly accepted definition of the term. The use of the term in the University’s brief would appear to be motivated more by an attempt to deflect attention away from the actual substantial surpluses.

5.20.10 Indeed, the practice of invoking “structural deficits” while running *actual* surpluses is not new to the Employer’s behaviour. The FA has seen this before. This was precisely the practice used by former President Cozzetto. He arrived, set up a planning process asking the university community to “embrace change.” and declared a “structural deficit” to make sure we did. He lasted two years in his post. The sky did not fall, UNBC returned to its normal budgeting procedures, annual surpluses were recorded, and reserves continued accumulating to the extent that the Arbitrator declared the university to be in good financial shape just two years ago. Now,

² For discussion by the Organization of Economic Cooperation and Development (OECD) See http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/03/12/index.html?contentType=&itemId=%2Fcontent%2Fchapter%2Fgov_glance-2011-18-en&mimeType=text%2Fhtml&containerItemId=%2Fcontent%2Fserial%2F22214399&accessItemIds=%2Fcontent%2Fbook%2Fgov_glance-2011-en

a new president has arrived, set up a planning process designed to lead to changes, and declared a structural deficit to force them. History is repeating itself. The Employer's bargaining team, which made no mention of structural deficits during negotiations, has now adopted the language in its submission. The language of "structural deficit," like the Employer's overall pleading of poverty, should be viewed in the wider context and treated with the appropriate degree of suspicion and incredulity.

5.21 Arbitrator Ready found no evidence of financial crisis at UNBC

5.20.1 Arbitrator Ready had access to far more detailed evidence and independent assessments in 2013 than have been provided to the Arbitrator in 2015. Therefore, it is noteworthy that, after taking into account the evidence in the Employer's brief, the UNBC-FA's brief, and the testimony of two independent expert accountants, Mr Ready wrote:

After a careful review of the evidence and expert reports in this case, the following is revealed:

- costs and revenues are relatively fixed and predictable with minimal fluctuations;
- there is a history of general operating fund (GOF) surpluses up to and including the present time (albeit mindful of the considerable restrictions on reallocation of same);
- international student tuitions considerably offset domestic under enrollment;
- that allocation of funding to labour costs has decreased over the last five years while salary savings have increased
- the authority to hire and layoff (thereby effectively controlling labour costs) lays within the purview of the University generally;
- the Board of Governors has further specific discretion to move funds to self-determined priorities; and,
- As previously noted in this Award, there are discrepancies between the expert reports respecting the future cost of the bargaining proposals. It is noteworthy that the University expert report makes clear that the costing does not directly correlate to the University's ability or inability to pay the proposed salary and benefit increase. Such characteristics do not, by any measure, create the impression of a dire financial circumstance, or of a situation preventing the institution from re-ordering its spending priorities.

University of Northern British Columbia and University of Northern British Columbia Faculty Association (2014) (Ready) BoA, Tab X at pp. 13-14

5.21.2 There is no evidence that the financial situation of UNBC has deteriorated significantly since late 2013. The university enjoyed a surplus in 2014 considerably larger than it budgeted and considerably larger than the amount it would be required to pay out if the Union's salary proposals were awarded. The history of General Operating Fund surpluses throughout the past years reveals that the Employer can afford the salary grid proposed by the UNBC-FA. Indeed, the evidence shows that the Employer will not even need to re-allocate its spending.

5.21.3 In other words, there is no reason to believe that the university will need to reduce its budget in any other area to meet the increased salary expenses that it would incur if the UNBC-FA's salary proposals were awarded.

5.21.4 It is noteworthy that, despite all of its predictions of financial crisis since 2006, the Employer has never indicated that it might have to resort to the "Financial Exigency" article in the UNBC-FA Faculty Agreement. Neither has it done so to this day. In the highly unlikely event the university should face a bona fide financial crisis, the Employer and the UNBC-FA will be happy that they have already settled a "Financial Exigency" article to be included in the first collective agreement. That article will enable the institution to make the necessary adjustments to any financial crisis to ensure its continued viability.

5.22 UNBC has a history of large General Operating Fund surpluses

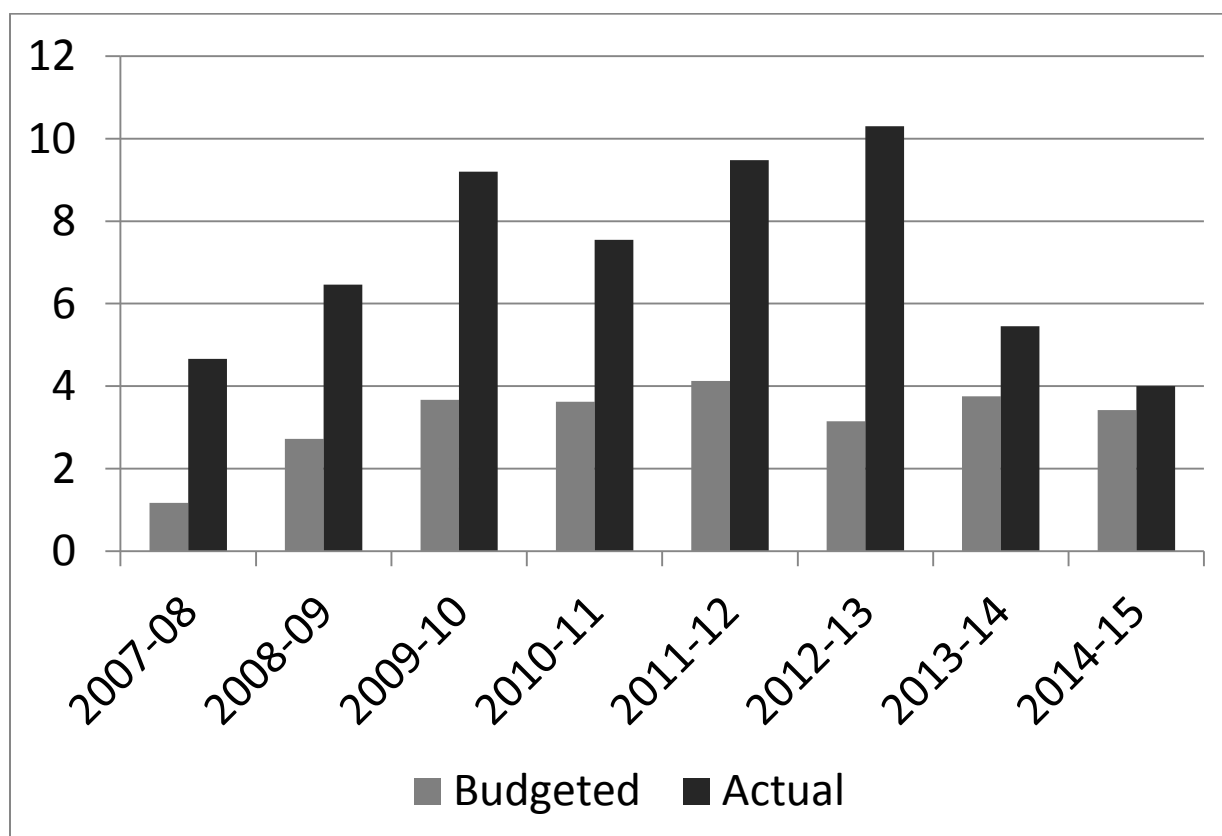


Figure 29. UNBC Budgeted and Actual General Operating Fund Surpluses (in millions of dollars), 2008-2014.

5.22.1 Figure 29 shows the size of surpluses in UNBC's General Operating Fund, as shown in the institution's audited financial statements (**Appendix F**) and documented in Ms Joy's 2013 report. The graph shows that actual surpluses in each year have been considerably more than budgeted—sometimes twice what was budgeted. In total, between 2008 and 2013, UNBC

budgeted an aggregate GOF Excess of \$18.5 million, but actually generated an aggregate GOF Excess of approximately \$47.4 million. The graph also shows that UNBC has had very large surpluses indeed. In some years, the institution has had surpluses equivalent to more than 10 percent of its revenues. These are surpluses very much larger as a percentage of revenue than is typical among UNBC's comparators.

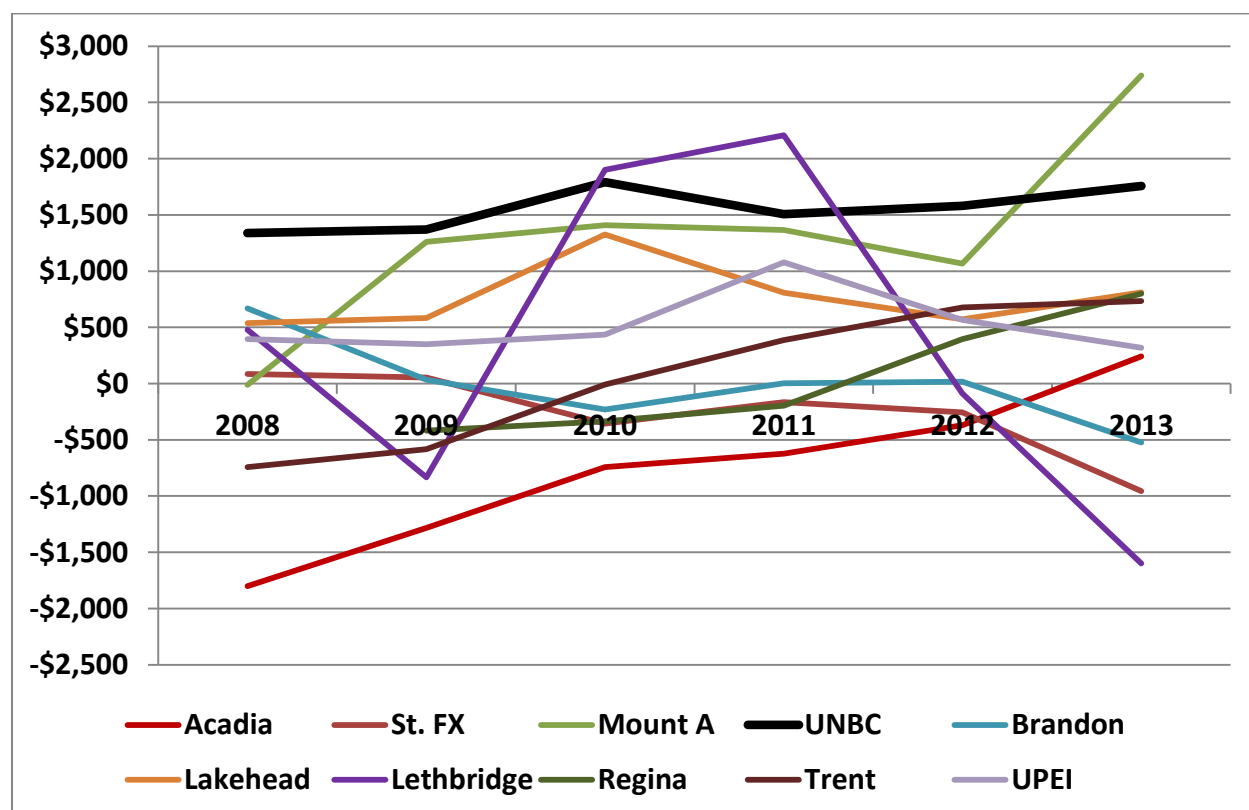


Figure 30. Surplus/Deficit per Year per FTE Student (CAUBO data)

5.22.2 Figure 30, derived from data gathered by the Canadian Association of University Business Officers (CAUBO), shows that UNBC has, over the past six years, consistently had a sizable surplus per FTE Student. Furthermore, amongst our comparators, UNBC has had either the highest or second highest surplus per FTE over that period.

5.23 UNBC's net debt is diminishing significantly

5.23.1 The University's net indebtedness is showing significant improvement over the years. The Employer's net debt in 2014 (\$132,234,000) was only 85% of what it had been only three years earlier (\$155,329,000). (Source: Audited financial statements, **Appendix F**)

Year	Net UNBC Debt (x \$1000)
2012	155,329
2013	141,923
2014	132,234

5.24 UNBC revenues are strong relative to those of comparators

5.24.1 If there were a financial crisis at UNBC, one might expect to see evidence of it in the University's revenues. However, the evidence shows that UNBC is exceptionally well funded in relation to comparators. Figure 31, again derived from CAUBO data, shows the level of provincial government funding enjoyed by UNBC per FTE student. The graph shows that UNBC receives more funding per student than any of our comparators, and very considerably more than the average. The difference is stark when UNBC is compared with a similarly remote university such as Lakehead University, which, notwithstanding its considerably lower funding, can pay its faculty much higher salaries than the UNBC-FA proposes for its Members. Similarly stark is the distinction between UNBC's revenues per FTE and those of Trent University, which also compensates its faculty far above the level of the UNBC-FA proposals. While Lakehead and Trent are larger than UNBC, the UNBC advantage in per-FTE funding can also be seen in comparisons with smaller institutions such as UPEI, Mount Allison, Brandon, and St Francis Xavier.

5.24.2 UNBC also receives more funding per FTE student than UBC, SFU, and UVic. The UNBC-FA acknowledges that larger universities experience economies of scale. That is why the UNBC-FA, following the lead of past arbitrators, has emphasized comparators of similar size to UNBC.

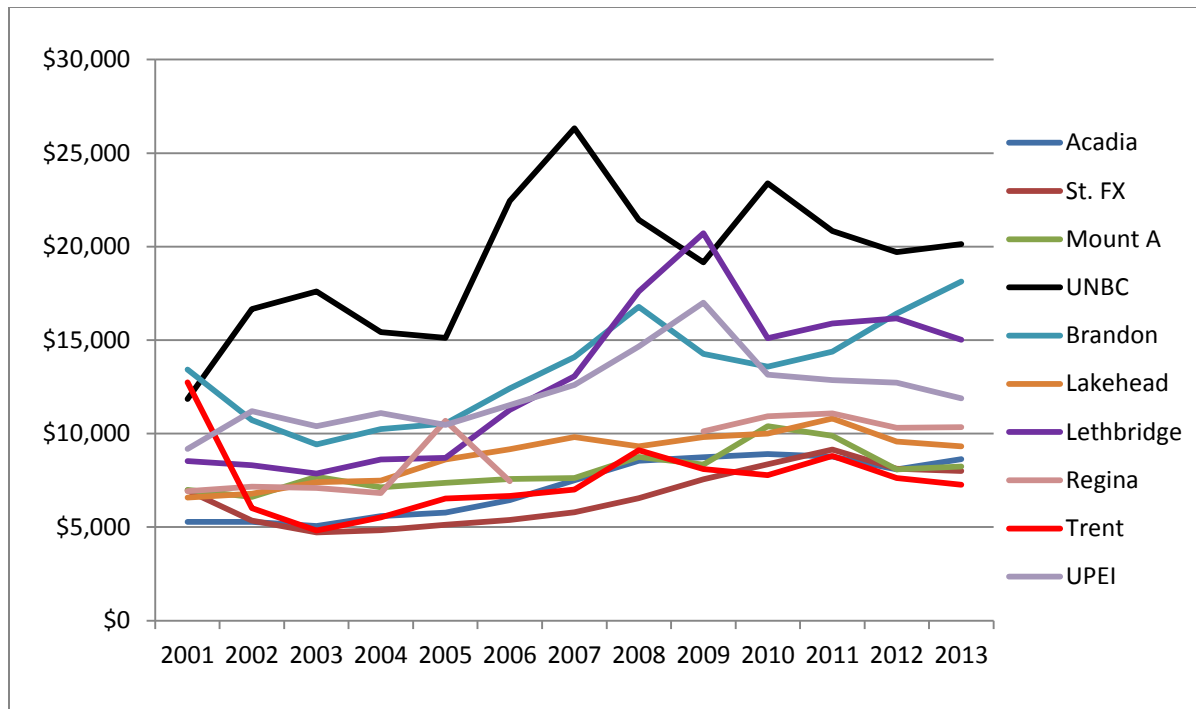


Figure 31. Provincial government funding per FTE student (CAUBO data)

5.24.3 An examination of overall revenue per FTE student reinforces the impression that UNBC is very well funded. Figure 32, also generated using CAUBO data, shows that among its comparators, UNBC's revenue per Full-Time Equivalent (FTE) student has been rising in comparison with the its comparators so that it is now atop the rankings.

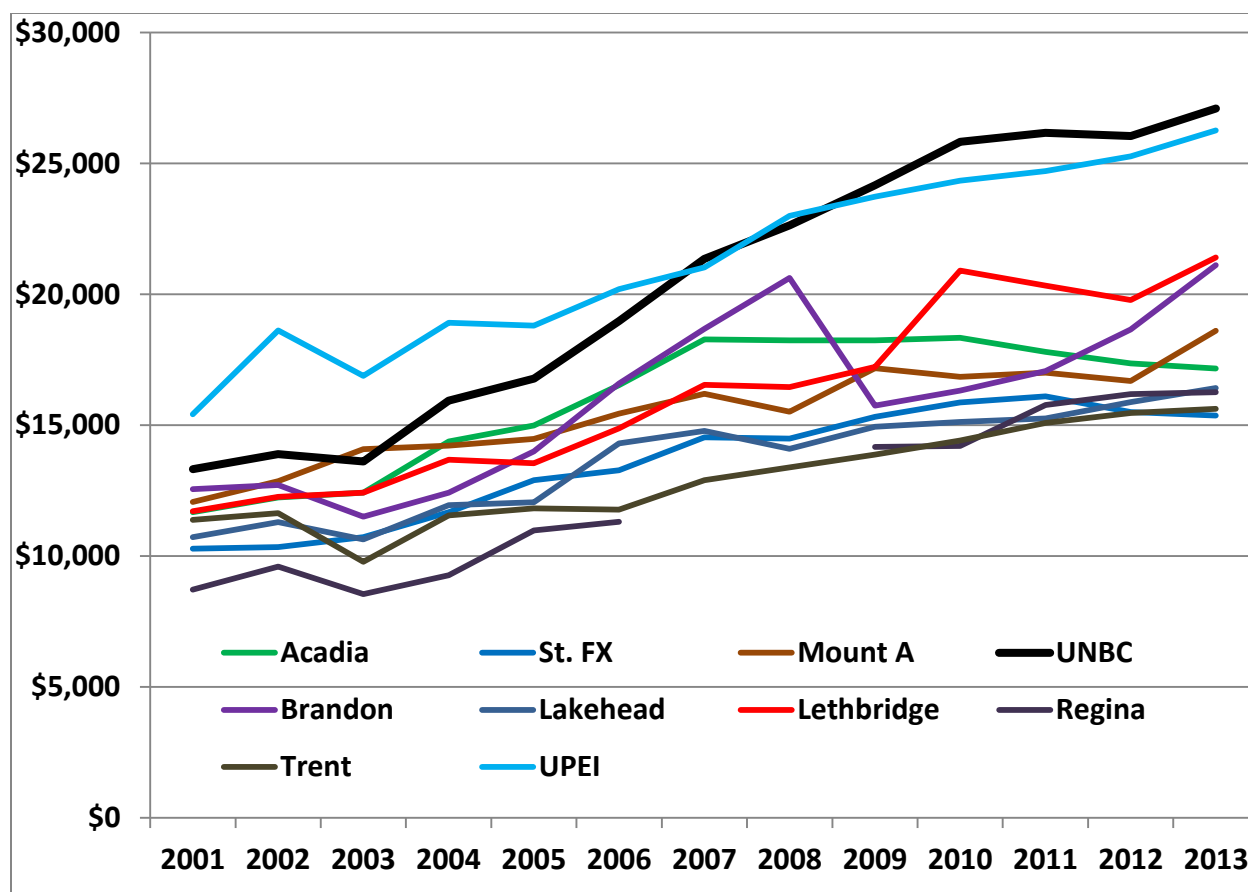


Figure 32. Operating revenues per FTE student at UNBC and its comparators (CAUBO data)

5.24.4 In ¶ 5 the Employer asserts that there has been a “marked decline” in two major sources of revenue, the Operating Grant and tuition. While the short-term tuition decline is undeniable, it should be noted that the decline is relatively small, particularly considering that tuition revenues constitute a much smaller share of overall revenue (18.4 percent) than the provincial grant. Therefore, declines in tuition revenue have a lesser impact than would proportional declines in grants. The decline in Operating Grant is actually minor, and the University’s audited financial statements show that the University continues to enjoy sizable General Operating Fund surpluses (**Appendix F**).

5.24.5 In ¶6—7 the Employer projects a revenue shortfall and structural deficits. The Employer however, does not account convincingly for any projected future deficits. Revenue and expenses at UNBC are relatively fixed. There would need to be a very drastic decline in revenue and/or increase in expenses (millions of dollars) before a deficit was incurred. That increase in expenses would have to be considerably more than the cost of the Union’s salary proposal.

5.24.6 Publicly funded universities in Canada habitually present very tight budgets, we assume in order to bolster their case to provincial governments that their funding is inadequate (and more recently also to convince their employees to reduce their salary demands). It is not a difficult

matter to produce such tight budgets. Often, universities' audited financial statements reveal that many universities are very healthy, financially speaking. That is certainly the case at UNBC. Figure 29 shows that, each year, UNBC has experienced GOF surpluses far greater than budgeted. Thus, university budgets generally, and the UNBC-FA budgets in particular, need to be understood as political documents, particularly in years of contract negotiations.

5.24.7 Given the extraordinarily high revenues of UNBC compared with other small primarily undergraduate universities in Canada, and given its history of extraordinary surpluses (occasionally about 10 percent of the total budget), the Employer would have to mismanage the revenues of the University very badly before the institution was faced with a financial crisis.

5.24.8 At ¶103 the University acknowledges that its costs are relatively fixed. It is also true that its revenue is relatively fixed. As Arbitrator Ready noted, "costs and revenues are relatively fixed and predictable with minimal fluctuations." Under those conditions, the surpluses that the university experienced in the past were also predictable. Likewise, it is possible to predict that, even if all of the UNBC-FA's proposals were awarded, the university would continue to be able to enjoy surpluses.

5.25 Human resource costs at UNBC have plateaued and are diminishing as a proportion of expenditures

5.25.1 At ¶107 the Employer asserts that "the vast majority of university's committed expenditure relates to the salaries and benefits which are paid to the University's employees." On one level, this is an obvious truth, as relevant at any university as it is at UNBC. But UNBC has benefitted from very controlled labour costs. The UNBC-FA reiterates that the cost of salaries for UNBC-FA members has been relatively stable. According to the Employer's own figures, the cost of faculty salaries and benefits has plateaued at UNBC even as other salary costs have increased. Moreover, *overall* salary costs at UNBC (for all employees) have not kept pace with the growth of other expenses: salary costs grew by 10.7 percent between 2008 and 2013, while the university's operating expenses have grown 13.7 percent (**Appendix G**).

5.25.2 At ¶149 the Employer asserts that HR expenditures account for 70 percent of all university expenditures. In fact, the percentage of its revenues that the Employer pays in salaries appears to have diminished over time. At ¶ 56 of the Employer's 2013 arbitration brief, the Employer asserted that "The total labour budget ... represents the allocation of about 74% of the University's total GOF revenue." In her testimony before Arbitrator Ready, Ms. Colleen Smith admitted that the total actual labour cost in 2013 was 65 percent of revenue. That compares with 72 percent in 2008. Thus, according to the testimony of the Employer's own witness, the percentage of the university's revenues actually allocated to labour costs fell from 72 to 65 percent between 2008 and 2013. It should be noted that 65 percent was the university's *total* labour cost for all employees. (This and subsequent information about testimony at the 2013 arbitration hearings appear in our rebuttal brief of 2013 and were never disputed by the Employer. The rebuttal brief is available to the Arbitrator upon request.) Since 2013, the comparable figure has fallen to 61.1 percent, according to CAUBO data (**Appendix H**).

5.25.3 In such a context, it is perhaps not surprising that the University has achieved substantial salary savings, which can be used to pay faculty salaries. In ¶ 58 of the Employer’s 2013 arbitration brief, the Employer stated that “In 2011/12, the University included approximately \$683,000 of ‘salary saving’ in its budgeted labour costs.” In her testimony before the Arbitrator Ms. Smith admitted that the total *actual* salary saving in 2013 amounted to \$1,200,000.

5.25.4 According to ¶ 59 of the Employer’s 2013 arbitration brief, “For 2012/13 and going forward, the university increased the amount allocated to ‘salary savings’ to about \$833,000.” In her testimony before the Arbitrator, Ms. Smith admitted that the total *actual* salary saving in 2012/13 amounted to \$1,500,000. This represents a substantial sum of money from which salaries can be paid. It also suggests that the Employer’s “temporary” increase in salary savings projection for 2015/2016 (\$1,033,000) is a very safe bet indeed. Indeed, given the size of the salary savings that the Employer has experienced over the past five years, and the number of vacant positions, this is a very conservative estimate of salary savings.

5.25.5 To ¶152 the UNBC-FA replies that the Employer has consistently experienced salary savings considerably exceeding the estimated amount. Despite its history of recurrent, consistent, and substantial salary savings, however, the Employer continues to describe salary savings as if they were wholly unpredictable windfalls: a form of “one-time funding.” However, when the Employer knowingly overestimates its expenditures year after year, as the Employer does, the savings essentially become predictable surpluses.

5.25.6 Yet despite this the Employer states at ¶153 that “if all budgeted positions were filled at the authorized level, the above-noted salary savings would not be realized and the University’s spending on human resources would exceed budget.” However, the Employer knows that it never happens that all budgeted faculty positions are filled. This is because, the normal flow of faculty resignations and replacements, and the lengthy processes involved when faculty are hired, mean that there will always be salary savings in a given year. Even if positions were immediately filled—a virtual impossibility—they would be filled by faculty earning less, in almost all cases, than the faculty who had resigned. In ¶155 the Employer asserts that it “recruits for and fills budgeted, vacant positions on an ongoing basis.” In fact, positions have been left vacant for years, and it is the Employer, not the Union, that decides when positions will be filled. Thus the Employer enjoys discretion over the filling of positions and therefore over the salary savings generated.

5.25.7 Moreover, since one year of the Agreement (2014-2015) has already gone by, the salary savings for that year are totally realized. There remain only five months of fiscal 2015-16. The following is noteworthy with regard to the current fiscal year:

- There were 14 vacant positions in 2014-2015, 6 resignations in 2014, and 19 retirements/resignations (and one demise) in 2015 among faculty;³

³ Source: Employer’s costing spreadsheet, 27 October 2015

- The pattern and nature of faculty hires is that searches generally take at least six months, with appointments generally commencing in July; and
- Only 10 faculty hires are currently underway (**Appendix I**).⁴

Thus the salary savings for 2015-16 appear ready to set a new record high.

5.25.8 Indeed, given that appointments of new faculty generally begin in July, salary savings are *guaranteed* to extend into the 2016/17 fiscal year, even if there are no new vacancies and all present vacancies are filled. **Thus, it can be said with absolute certainty that the University has the ability to pay the salaries of faculty for 2014-15 and 2015-16—the bills are all in; there can be no unanticipated cuts or expenses, and the surplus is already in the bank.**

5.25.9 As detailed above, the University's human resources costs have not increased markedly, and in fact have stagnated relative to other expenditures. To the extent that human resources costs have increased slightly, those increased costs are not attributable to the cost of compensation for Members of the UNBC-FA but to the Employer's choices to change its staffing model, **greatly increasing the number of administrative staff and Exempt employees while reducing the number of faculty.**

5.25.10 Indeed, the Employer, by its actions, has shown its lack of concern about possible funding shortfalls. Between 2010 and 2015, the number of CUPE Employees at UNBC has grown almost 13 percent, and the ranks of Exempt employees by more than *46 percent*, while the ranks of Full-Time UNBC FA Members have declined by 8.2 percent (see Figure 33). We also note that, at present, the Employer is advertising three new Exempt positions (at more than \$50,000 per year each) in the Human Resources Office, and that two new senior administrative positions have been added: the position of University Secretary, previously held by the Registrar but now a separate position; and the position of Associate Vice-President and Vice-Provost Academic, responsible for (among other things) faculty relations. This administrative expansion does not suggest the caution of an Employer facing a deficit (**Appendix E**).

⁴ In addition to reviewing listed positions, the Union canvassed program chairs regarding any hirings approved but not listed on the HR website. None was reported.

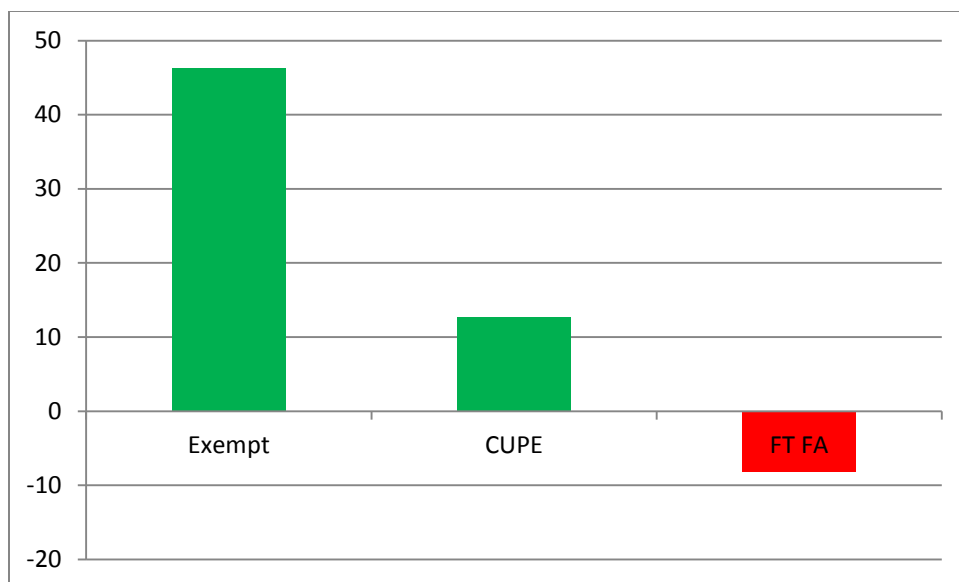


Figure 33. Percentage Increase (Green) or Decrease (Red) in the Number of Exempt Employees, CUPE Employees, and Full-Time FA Employees, 2010-2015. (Data source: The Employer, September 2015)

5.25.11 If increasing revenue is the institution’s goal, these staffing changes appear misguided. As one senior academic administrator from a large research university said recently, “faculty do the only work that the university gets paid for: research and teaching.”⁵ In other words, the Members of the UNBC-FA are the revenue-generators of the university: they teach the courses and conduct the vast majority of the research that generates grants and contracts. Indeed, given the rate at which the faculty complement has diminished over the past five years, there is good reason to believe that the failure of the University’s management to replace faculty may be misguided if the goal is to increase UNBC’s revenues.

5.25.12 The Employer notes a recent decline in international student enrolments at ¶129. In response, the UNBC-FA replies that given the rate at which the number of full-time faculty has been declining in the past five years, it is an open question whether or not the decline in enrolments has been driven—at least in large part—by the Employer’s failure to fill vacant faculty positions. As academic departments have become smaller and are able to deliver fewer courses, their programs are less attractive to students, particularly as those students enter their senior undergraduate years. The predictable result is that fewer students will opt to come to UNBC, and fewer of those who come for their first year or two will opt to stay after discovering that they cannot get the courses they want. The failure to fill vacant positions has even greater consequences for graduate student enrolment because graduate students are overwhelmingly taught by permanent, full-time Faculty Members. Moreover, as departments have gotten smaller, their capacity to accommodate graduate students has diminished significantly. The UNBC-FA recognizes the urgency of enrolments to any university. But if the Employer had wished over the

⁵ Ernie Barber, Interim Provost and Vice-President Academic, University of Saskatchewan. Keynote address to the CAUT Western Regional Conference, 23 October 2015. Saskatoon, Sask.

last few years to maintain or increase enrolment, it should have hired within the category of Employees who actually teach students.

5.25.13 In an effort to justify its human resource reallocation and argue that faculty consume excessive university resources, at ¶192 The Employer asserts that UNBC has the lowest student/faculty ratio among small universities. In fact, the blank spaces in the Employer's accompanying table are telling. According to the just-released *Maclean's* rankings, UNBC's student/faculty ratio is third lowest. The student/faculty ratio at UNBC is 14.8. The ratio at Brandon is 11.2, while at Moncton it is 13.6. Mount Allison, a truly undergraduate university, is slightly higher, which is to be expected given its mandate. UNBC is small and is a designated research university governed by the *University Act*. Given its size and its graduate and professional mission, a slightly lower faculty-student ratio than Mount Allison's is to be expected. Indeed, according to *Maclean's* UNBC's student/faculty ratio is not very far off those of some of the larger universities. Memorial University's ratio is 15.8, Sherbooke's is 15.2, and UBC's is 16.5. The fact that UNBC has a lower ratio of students to faculty than universities such as UVic, SFU, and UBC speaks to the fact that UNBC is better compared with small, primarily undergraduate universities.

5.25.14 In ¶164 the Employer says that faculty positions "represent approximately 42% of the University's overall expenditure in the 2015-16 budget." The Employer exaggerates the actual cost of salaries of UNBC-FA Members. The salaries of UNBC-FA Members has never approached 42 percent of the Employer's *actual* expenditures, and surely will not do so in 2015-16. The UNBC-FA believes that Employer exaggerates the numbers in several ways. First, the Employer includes the salaries of Academic Administrators in its figures. Second, it includes a costing of vacant positions as if those positions were filled by actual employees. Third, it exaggerates by referring to the 2015-16 budget, rather than referring to actual expenditures. The distinction is significant because the Employer has always spent considerably less on UNBC-FA Member salaries than it budgeted.

5.25.15 At ¶138 The Employer asserts that salary costs will rise steadily because of progress through the ranks. In fact, in most cases progress through the ranks is reckoned to be cost-neutral or only a nominal cost. (At UBC, with its very high annual increments, 2.5 percent of salary mass is dedicated to progress through the ranks. The UNBC-FA's proposals are for much lower increments.) Cost-neutrality is often achieved because as younger faculty's salaries rise, older ones retire, replaced by junior faculty with much lower salaries and thus generating savings that in turn fund the progress of others. In UNBC's case, there is reason to expect this general trend to be, if anything, exaggerated in favour of cost savings. At present, 41 percent of full-time UNBC-FA Members are 55 years old or older, and 7 percent were 65 years old as of 1 March 2014. The Employer acknowledges that a wave of retirements has already begun, and is expected to continue. Retiring members are normally replaced by Members with much lower salaries; in general, Members are replaced by junior tenure-track faculty at the rank of Assistant Professor. Thus PTR is unlikely to require higher levels of funding. Indeed, given the age profile of the Members of the UNBC-FA at present, the opposite is likely to be true.

5.26 The Employer enjoys considerable discretion to reallocate its spending priorities

5.26.1 Furthermore, the Employer continues to enjoy considerable discretion over cost-saving measures such as the decision to hire and lay off employees, the decision to fund or not fund self-determined priorities, etc. The discretion the Employer enjoys can be seen in the diminishing size of UNBC's faculty complement relative to other employee groups. The reduction of faculty complement was not part of any academic plan; rather, it fell within the discretion of the Employer and is being carried out almost imperceptibly.

5.26.2 The Employer's discretion to reallocate funds was acknowledged explicitly and publicly by senior administrators in the course of the past year's budget processes. For example, at a Senate Committee on the University Budget meeting on 22 May 2015, Acting Vice-President Administration Jack Falk stated that the Board of Governors could decide to reallocate internally restricted funds if it wished. Questioned about the stability of UNBC's funding and possible reductions in revenue, Provost and Vice-President Academic William Krane stated that "we have no indication of any plan to change the funding model." Thus there is evidence that the Employer enjoys not only considerable stability but considerable discretion in the allocation of its revenues, and there is little evidence of any impending financial crisis at UNBC that would prevent it from paying its faculty fairly. In fact, relative to the situation in which many employers—including the UNBC-FA's chosen comparators—find themselves, the Employer's financial state is enviable.

5.26.3 In ¶164 the Employer says reordering of spending priorities means eliminating positions, programs, and/or services. The Employer misleadingly states that its "ability to eliminate faculty positions ... is contractually restricted." This statement ignores the high degree of the Employer's discretion over hiring. While the Employer has limited ability to terminate existing faculty, turnover in faculty positions is constant, and the Employer has the discretion, as described above, to fill, leave vacant, or eliminate positions as they fall vacant. Indeed, the Employer has been using that discretion to eliminate faculty positions. Second, as mentioned above, should the Employer enter conditions of financial exigency, it has access to a financial exigency article that greatly increases its flexibility.

5.26.4 The Employer's budget for 2015-2016 reveals that the Employer intends to spend less money on the salaries of Full-Time Staff, Faculty, Librarians, and SLIs while significantly increasing the budget for Part-Time Instructors.

	2013/14	2014/15	Change from Prior Yr.	
			\$	%
Salaries - Staff	16,458	16,113	(345)	(2.10%)
Salaries - Faculty/Librarians/SLI	20,290	20,251	(39)	(0.19%)
Salaries – Instructors	2,497	2,903	406	16.26%
Salaries – Other	2,500	2,591	91	3.64%
Hourly Wages	1,094	1,149	55	5.03%
Total Salary and Wages	42,839	43,007	168	0.39%
Anticipated Salary Savings	(833)	(833)	-	0.00%
Benefits	8,299	8,287	(12)	(0.14%)
Total Labour and Benefits	50,305	50,461	156	0.31%

Figure 34: Changes in Labour and Benefits Costs (\$ Thousands) (UNBC Approved Budget, 2015-16)

5.26.5 At ¶112 the Employer notes the existence of internally restricted funds. Once again, the Board of Governors has the full freedom to transfer money in and out of internally restricted funds, as Jack Falk confirmed at the Special Meeting of the Senate Committee on the University Budget on 22 May 2015. At ¶174 The Employer here refers only to its small (\$3.5 m) unrestricted reserve without admitting that the University’s restricted funds are mostly *internally* restricted; that is, the Board of Governors places restrictions upon them, and has the complete freedom to move money out of these funds and to change the nature of the restrictions and the amounts of the transfers.

5.26.6 This discretion was confirmed in 2013 by the University’s witness, Ms Smith, who admitted under cross-examination that UNBC’s Board of Governors enjoys the discretion to allocate funds to fund the UNBC-FA’s proposals. She also stated that the Board makes a “discretionary decision” to restrict funds for projects determined to be a priority in a given year. The Board has apparently been doing so regularly, since the transfers to such funds have been growing substantially in recent years, as the University’s own data show. Clearly, then, **the Board could certainly make a “discretionary” expenditure to give UNBC-FA members industry-standard salaries rather than transferring surpluses to internally restricted funds.**

5.26.7 The Employer does not enjoy full discretion over its fees, because the BC government limits tuition increases to 2 percent per year. But the Employer does enjoy discretion to increase its international fees. At ¶123 the Employer’s chart does not break out international graduate students. The chart below breaks them out. The chart reveals that the number of international graduate students has been growing, so that UNBC has marginally more graduate students overall now than it did in 2010—11—largely because of the growth of international student enrolment. For reasons that are unclear, UNBC does not charge international graduate students higher tuition than domestic graduate students. If the Employer exercised its discretion to charge international graduate students a higher tuition than it charges domestic students, the international students would generate considerably more revenue.

	2010-11	2011-12	2012-13	2013-14	2014-15
Domestic Undergraduate	2401	2322	2349	2265	2110
Domestic Graduate	459	487	463	473	439
International Undergraduate	154	183	203	194	170
International Graduate	74	75	76	95	104
TOTAL	3088	3067	3091	3027	2823

Figure 35. UNBC Enrolments 2010—2015

5.27 The Employer presents insufficient and misleading financial evidence

5.27.1 In ¶126 the Employer states that it is projecting a 1.4m shortfall in tuition revenues. The Employer does not provide the information the Arbitrator needs to understand the significance of this statement. It does not explain what that shortfall is compared to. It does not explain when it anticipates this shortfall. It is also significant that the Employer on 22 May 2015 admitted that it saved that much during the UNBC-FA strike.⁶ It is difficult for the UNBC-FA to understand why a shortfall of such magnitude is forecast, except that tuition revenues may have been rather exuberantly estimated for fiscal 2015. Figure 36 below shows that the declines in *actual* grants and tuition have been modest, and partly predictable, given the fact that the employer has been leaving faculty positions vacant.

Fiscal year	Grant: budget	Grant: actual	Tuition budget	Tuition actual
2013	47,450,000	49,597,000	19,195,000	19,308,000
2014	47,524,000	49,348,000	18,854,000	18,935,000
2015	47,045,000	48,818,000	19,387,000	18,822,000
2016	47,692,000	n/a	18,078,000	n/a

Figure 36. Provincial grant and tuition revenues, budgeted versus actual. Sources: 2013—2015 audited financial statements; *2015/16 Financial Overview & Budget Framework*, available at <http://www.unbc.ca/sites/default/files/sections/about-unbc/reports/20152016financialoverviewandbudgetframework6.2senate.pdf>

5.27.2 Given that the Employer asserts “the need to be cautious in projecting that revenue number [tuition]” (*2015/16 Financial Overview & Budget Framework*, at p. 7), it seems odd that for the fiscal year 2015, based on an *actual* tuition revenue for the previous year of \$18.8m, someone saw fit to abandon the Employer’s wonted caution and project that tuition fees would increase by almost \$500,000. When the Employer asserts that it has reduced its projected tuition income by \$930,000 (or \$925,000 as reported on 22 May), it is referring to a reduction from that buoyant estimate of 2015, which appears in longitudinal perspective ill-advised and even inexplicable.

⁶ It is true that under Section 30 of the *University Act*, the Employer might have been asked to repay strike savings to the provincial government. However, it has presented no evidence that such has been the case and has reported the savings as salary savings.

5.27.3 Indeed, the confusing nature of the Employer’s budgeting and projections points to one of the key problems with using budget projections to determine the state of financial health of any organization. Budgets are plans to spend. We recall that Arbitrator Larson has explained that “Nor will it be sufficient to present a budget. Without more, a budget represents estimates of spending but not ability to spend.” ***Crossroads Treatment Centre Society and Hospital Employees Union, Local 180 (Employee Status Grievance), [1983] BCCAAA No. 652 (Larson) (BoA, Tab 19)***

5.27.4 The confusing and often contradictory nature of budget reporting is further demonstrated at ¶131a, when the Employer asserts that for 2013/2014 the Employer learned that its tuition revenues were \$385,059 less than budgeted. Oddly, this assertion does not accord with the Employer’s audited financial statements. According to those, the amount budgeted for tuition was \$18.854m, while the actual tuition received was \$18.935m: a small *increase*, not a \$385,059 decrease and not, significantly, less than budgeted.

5.27.5 At ¶131c, the Employer confuses matters more when asserting that it has taken into account increased revenue from the Masters of Engineering program, when its budget documents (2015/16 *Financial Overview & Budget Framework* at p. 15) state that it *excluded* those revenues from its estimate of income, though it *included expenditures* of \$1.25m per annum in the next three years for “support for new programs” (presumably the Masters of Engineering).

5.27.6 The Employer’s tendency to insinuate that its expenses are mounting is seen at ¶163, where the Employer refers vaguely to the costs of utilities without providing sufficient information for an arbitrator to make any judgment about the significance of this factor. The UNBC-FA asserts that the Employer should provide such evidence. What has the university budgeted for utilities in the past five years? What has it actually spent? How much more expensive is a severe winter than a mild winter? What has the university done with the significant savings (approximately \$700,000 per annum) it has experienced since its bio-energy facility was built?⁷ With the \$230,000 it has saved, since 2010, by installing efficient lighting (**Appendix J**)? Should utility costs be found relevant, the UNBC-FA asserts that, in fact, it is very likely that UNBC’s utilities costs are considerably lower than those of comparators such as Brandon University and Lakehead University. Comparators have older and less efficient buildings, lack award-winning \$16m bio-energy facilities, and experience considerably colder winters on average. For example, the average temperature in January in Prince George is -7.9°C, while the average in Brandon, Manitoba is -16.5°C, in Thunder Bay is -14.3°C, and Peterborough is -8.5°C. If the Employer expected the Arbitrator to place any weight on the content of this paragraph, it should have provided the Arbitrator with sufficient evidence.

5.27.7 This vague way of dealing with expenditures can also be seen at ¶175, the Employer notes that \$8,600,000 is allocated to projects and capital purchases “which may occur over a period of

⁷ Andrew Macklin, “Bioenergy Expansion at UNBC: UNBC Continues to Expand its Bioenergy Capacity,” *Canadian Biomass Magazine*, February 2015, available at www.canadianbiomassmagazine.ca/education/bioenergy-expansion-5087

one to several years.” This is another example of the Employer’s giving insufficient information. The Employer gives no information about actual expenses on projects and capital purchases over the past five years. Neither does it explain what projects or capital projects are necessary in the foreseeable future. It should also be noted that UNBC’s stock of buildings is far newer than the stock of buildings at its comparators. Also, there is every reason to believe that facilities have been maintained, repaired, and renovated in a very timely fashion at UNBC.

5.27.8 Because budgets are plans to spend, audited financial statements are more reliable indicators of actual financial status. At UNBC, however, an added layer of complexity is added because UNBC does not present its budgets and financial statements according to the principles outlined by Public Sector Accounting Standards. According to PSAC Standards on Financial Statement Presentation (1201), “The statement of operations should present a comparison of the results for the accounting period with those originally planned. Planned results should be presented for the same scope of activities and on a basis consistent with that used for actual results” (<https://www.bdo.ca/en/Library/Services/assurance-and-accounting/Documents/PSAB-at-a-Glance/PSAB-at-a-Glance-Section-PS-1201.pdf>). That is, budgets and financial statements should “map onto one another” so that they are easily comprehensible. At UNBC this is not the case. These issues no doubt demonstrate why, in the previous arbitration before Mr Ready, both parties found it necessary to resort to expert financial assessment and testimony to untangle the web. The result of that untangling is as both parties have stated: Mr Ready found that the facts before him “did not, by any measure, create the impression of dire financial circumstances, or of a situation preventing the institution from re-ordering its spending priorities.”

5.27.9 In this round, based on the Employer’s *never having mentioned its financial situation* during negotiations, and based on the Employer’s statement that it intended to call no financial expert, the Union decided against hiring its own expert. The Union is forced to wonder why, if the Employer’s situation is so dire that it prevents fairly compensating an already-diminishing faculty complement, the Employer did not present the sufficient evidence in a clear and consistent way, supported by the findings of an independent expert accountant.

5.28 In sum, UNBC has the ability to pay

5.28.1 At ¶156 of its submission, the Employer asserts that *if* the Employer decided to pay higher compensation to its employees without increasing the amount it budgets (that is, if it decided to reduce its allocation to salary savings in order to fund increased compensation); and *if* all budgeted positions were then actually filled (a matter that falls to the Employer’s discretion, as discussed above), then “the University would be in a position where actual costs exceeded budgeted costs by a substantial amount.” This, the Employer states, would create a “fiscal deficit,” which would “lead to layoffs and other budget reductions.” The Employer has patently *not* demonstrated that this is true. If the above-mentioned conditions were met (which is in itself highly unlikely), there might occur an excess of actual expenditures over budgeted ones in that important salary line. But would this create a deficit? The Employer has not proved that at all. It is true that, *if* the Employer has not budgeted faculty salary costs equivalent to the Union’s proposal for 2014, and *if* the Union’s salary proposal were awarded, and *if* the Employer were

not able to cover the difference out of the budgeted amount for salary savings, it would have to pay the difference out of the surplus that it has already realized for that year. So, while actual costs might exceed budgeted costs, those actual costs would not produce a deficit in the year-end General Operating Fund. Once again, as in its assertions of “structural deficits,” the Employer seems to play fast-and-loose with the definition of “deficit.”

5.28.2 In sum, the UNBC administration has demonstrated nothing more than the unwillingness to pay industry-standard salaries. In an analogous case (2004), Arbitrator Kaplan noted that

while the employer sought to rely on its inability to pay, the evidence compelling [*sic*] demonstrates an unwillingness not an inability to pay with the justification and the criteria of “ability to pay” **advanced in order to avoid the normative application of the results of replication and comparability, the most important of all the commonly accepted and applied criteria.**

The Ottawa Police Services Board and The Ottawa Police Association (2004) (Kaplan)
(BoA, Tab 22 at pp. 2—3, emphasis added)

6. The Arbitrator is not constrained by any purported mandate from the Public Sector Employers' Council (PSEC)

6.1 In ¶10 and in ¶43-48 the Employer asserts that it was “restricted to bargaining within the mandate established by the Public Sector Employers’ Council.” The following section is a response to that assertion in relation to this arbitration.

6.2 By acquiescing to third-party intervention in its affairs, the Board of Governors of UNBC violates its legislated obligation to guard the institutional autonomy of the University

6.2.1 Section 27 (1) of the *University Act* stipulates that “The management, administration and control of the property, revenue, business and affairs of the university are vested in the board [of the university].” Section 27(2)(g) further notes that this power explicitly includes the power

to appoint the president of the university, deans of all faculties, the librarian, the registrar, the bursar, the professors, associate professors, assistant professors, lecturers, instructors and other members of the teaching staff of the university, and the officers and employees the board considers necessary for the purpose of the university, **and to set their salaries or remuneration, and to define their duties and their tenure of office or employment;**

6.2.2 It is inconceivable that, without the interference of a third party (the provincial government), the Boards of Governors of all British Columbia universities would have independently arrived at the same bargaining mandates when their circumstances are so different. The very fact that the Employer here appeals to a PSEC mandate, by which it claims to be restricted, is clear evidence that the Employer has failed to exercise the powers given to it by legislation. Of the PSEC mandate, Taylor wrote, “that mandate is not based on UBC’s unique circumstances” (**Taylor, *supra***, BoA, Tab 13 at p. 31). The fact that the PSEC mandate is not based on unique circumstances at particular universities clearly shows that the mandate is the product of third-party interference.

6.2.3 Section 19 (1) of the *University Act* of British Columbia stipulates that “The members of the board of a university must act in the best interests of the university.” Section 19 (1) recognizes the traditional institutional autonomy of universities in the Western world. Rooted in the earliest medieval universities, institutional autonomy is essential to the function of universities in a free and democratic society. Thus, the obligation of Boards of Governors of Universities to exercise their legislated right to act in the best interests of the university—and to resist the incursions of any third party, including government, into the autonomy of universities—is of the greatest importance in a free society.

6.2.4 Thus, the members of the Board of Governors of UNBC, failing to reject the very concept of government intervention in the affairs of the university by acquiescing to the PSEC mandate

(which is not legislation), have failed to adhere to their legislated obligation to act in the best interests of UNBC.

6.2.5 There is no evidence that the Board of Governors at UNBC has carefully considered and adopted the PSEC mandate as its own bargaining mandate. Indeed, by offering salaries far below salaries at other institutions when it clearly has the resources to compete for faculty with other universities, the Board of Governors of UNBC is clearly in violation of Section 19 (1) of the *University Act*.

6.3 The Employer has provided no evidence of the details of a PSEC mandate

6.3.1 While the UNBC-FA reiterates that it rejects the notion that a third party's interference in the affairs of a university should carry any weight, it also notes that the Employer presents no evidence of its purported PSEC mandate except an assertion.

6.3.2 The UNBC-FA notes that the Employer has not included the PSEC mandate—upon which the Employer heavily relies—in its Book of Evidence. Neither, crucially, has it provided any evidence that a third party (PSEC) has stipulated that its mandate should apply to the context of a first collective agreement.

6.3.3 In ¶44 the Employer asserts that “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.” The Employer has provided no evidence that this is true. Indeed, given the stipulations of the *University Act* 27(2)(g), this assertion is clearly false. To the extent that a third party (PSEC or any other third party) actually exercises the right to approve an agreement, that third party will clearly be in violation of the *University Act*.

6.3.4 In ¶48 the Employer asserts what it purports to have been told by PSEC. Again, however, there is no evidence presented as to the nature of this warning or information. Moreover, PSEC does not have the legal right to impose a mandate, and the Board of Governors of UNBC has the legislated right to negotiate with its own employees. The apparent implication of the Employer’s statement is that, should the Arbitrator award a Collective Agreement with a duration of less than five years, the Union should expect nothing more than the PSEC mandate in any subsequent negotiations governing any of those five years. To the extent that the Arbitrator considers this threat relevant, he should consider it evidence that, in order for this Section 55 award to serve a stabilizing effect, the first collective agreement must include sector-norm salaries for UNBC-FA Members before the end of the contract.

6.3.5 As Arbitrator Sims (2011) asserted, “Arbitration is not a scientific process capable of being reduced to a formula, but neither is it arbitrary... a party asserting a particular position carries the onus of presenting cogent evidence to support its position” (**Sims, 2011, *supra***, BoA, Tab 5 at p. 8). In this case, the Employer has presented no cogent evidence regarding a PSEC mandate.

6.3.6 Over the course of negotiations, the Employer itself has put forward proposals that exceed what the Employer has purported to be the PSEC mandate. The \$2,000/member “Enhanced CDI” exceeded what the Employer claimed was the PSEC mandate. Clearly, the PSEC mandate was a bargaining position—a bargaining position that was abandoned during the strike.

6.4 The Board of Governors of UNBC, not the Province of British Columbia, is the Employer of the Members of the UNBC-FA

6.4.1 The Board of Governors of the University of Northern British Columbia, not the Province of British Columbia, is the Employer of the Members of the UNBC FA (See the *University Act* 27(2)(g), as discussed above).

6.4.2 Any mandates that might be considered by the Arbitrator should be the legitimate bargaining mandate placed upon the UNBC-FA bargaining team by the UNBC-FA Executive, and the mandate imposed upon the UNBC Board of Governor’s bargaining team by the UNBC Board of Governors.

6.4.3 UNBC is an autonomous institution. It receives only a portion of its revenue from the government of the Province of British Columbia.

6.4.4 To the extent that the Board of Governors of UNBC has abrogated its legal obligations and has adopted a third party’s mandate as its own, such a bargaining mandate has no more weight than any other bargaining mandate, including the mandate placed upon the UNBC-FA bargaining team by the UNBC-FA Executive.

6.4.5 Arbitrators have never considered themselves bound by government bargaining mandates in the university sector, because they know that government intrusion into negotiations represents a clear violation of **free** (where representatives of Employers and Employees are **free** of third-party intrusion) collective bargaining. Indeed, because interest arbitrators in disputes such as this one are mandated to determine what agreement the parties might have agreed to under the terms of **free** collective bargaining (not **constrained** collective bargaining), the Arbitrator must in this case necessarily attempt to determine what the parties might have agreed to the parties had been free to negotiate without third-party interference.

6.5 Arbitrators are not bound by government bargaining mandates

6.5.1 Arbitrators have never considered themselves bound by government bargaining mandates.

6.5.2 In order to understand the various relevant arbitrators’ awards, it is important to examine them chronologically. In 1994, when PSEC was still relatively new, and when its attempts to interfere in free collective bargaining at universities were far less aggressive than they are today, and when arbitrators may not yet have appreciated the implications of those government mandates, Arbitrator Getz (SFUFA vs. SFU, 1994), referred to in Arbitrator Kelleher’s award, wrote

while the arrangements that have been established under the provincial *Public Sector Employers' Act*, and in particular the Guidelines published by the Sector Employers' Council, are relevant as part of the total context of the salary determination process, they are not dispositive of the selection. That is, *I would not be foreclosed from making a selection if I thought it appropriate on an application of the criteria generally used in these cases, even if the result of doing so would be to exceed those Guidelines.* (cited in *University of Victoria and University of Victoria Faculty Association Award No. A-92/96 (1996) (Kelleher)* BoA, Tab 22 at p. 2, emphasis added)

6.5.3 This passage suggests that Arbitrator Getz thought of the PSEC guidelines as “relevant,” but shows that he distinguished them from “the criteria generally used in these cases.” Thus he indicated that the PSEC guidelines were not to be considered as a new “criterion” or “factor,” but were “relevant to the total context of the salary determination process.” He then explicitly indicated that he was not bound by the PSEC mandate.

6.5.4 Arbitrator Kelleher, in his UVic Award of 1996, ruled that he was not bound by a PSEC mandate. Citing Arbitrator Getz, Mr Kelleher referred (his paragraph 16) to the *approach* of PSEC towards the way increments were costed. However, when discussing the role of the PSEC mandate in his process of adjudication, he also wrote as follows (his paragraph 52):

A third factor I have considered is the Public Sector Employers' Act and the guidelines published by the Public Sector Employers' Council. Under the guidelines, employees at the salary level of the Faculty Association members are entitled to 0.8 per cent. **I do not consider that I am bound by these guidelines. If the criteria in Article 14.11 of the Framework Agreement pointed in favour of an award which exceeded the guidelines, I might well have made such an award.** (Kelleher, *supra*, emphasis added)

6.5.5 This is a very significant statement because Arbitrator Kelleher, based on his assessment of the criteria in Article 14.11 of the (then) UVic Framework Agreement, ruled in favour of the University. (Arbitrator Kelleher was required under the circumstances to choose one of the party's final offers. It is interesting to note that the Employer itself had made a final offer that exceeded the purported PSEC mandate of 0.8%.) However, in his Award, Arbitrator Kelleher was at pains to make it explicitly clear that “I do not consider that I am bound by these guidelines.” In other words, Arbitrator Kelleher went out of his way to ensure that his award would not be interpreted by others to suggest either that his decision was influenced by the PSEC mandate, or that he believed that arbitrators ought to give any weight to the Public Sector Employer's Act, or the PSEC mandate.

6.5.6 As governments' interference in free collective bargaining has grown, and as the consequences of such interference upon universities had become clearer, arbitrators have been more explicit in asserting that they are not bound by government policies—or even legislation.

6.5.7 On 25 March 2010, the Ontario government passed its Budget Bill (Bill 16), which froze wages in the public sector for a two-year period. Unable to negotiate any increase in salary, the

University of Toronto Faculty Association filed for arbitration. In October 2010 Arbitrator Teplitsky, in awarding a GWI of 2.25% to University of Toronto faculty, went so far as to state explicitly why he would not be bound, not only by policy or statements, but *even by legislation* that prohibited universities from offering wage increases. He wrote that:

the parties in their bargaining should have known that an interest arbitrator would not take legislation into account. ... **I agree with the UTFA that recognizing the “Act” as relevant would be a recognition of ability to pay as a relevant criterion and recognizing the policy statement would compromise my independence. I would appear as a minion of government. Thus, in fashioning this award, I have not taken into account either the legislation or the policy.** Teplitsky, 2010, *supra* (BoA, Tab 6 at p. 6, emphasis added)

6.5.8 Similarly, Arbitrator Sims (2011) wrote that:

if interest arbitration is to be used as, and to retain credibility as, a fair and reasonable alternative to strikes and lockouts, then it cannot be, or be seen as being, an indirect way of imposing Government’s fiscal ambitions on unwilling employees. This is increasingly so as governments become more and more sophisticated in influencing the options open to, and the choices made by, nominally autonomous but fiscally dependent institutions like Universities that lack their own taxing powers or other methods for controlling their revenues. The reality and the perception is that government itself is, to a considerable extent, if not the employer, then at least the proverbial “ghost at the table.” (Sims, 2011, *supra*, BoA, Tab 5 at p. 12)

6.5.9 In 2013, the scene shifted back to British Columbia, where Arbitrator Taylor concurred with his Ontario colleagues on arbitral independence. Colin Taylor, in his UBC award of 24 July 2013, explicitly rejected the relevance of the PSEC mandate when he wrote that

the PSEC mandate does not have legislative force, and therefore does not override the parties’ Agreement legislatively (Taylor, *supra*, BoA, Tab 13 at p. 31).

6.5.10 Again, on 20 November 2013 (University of Victoria), Taylor indicated that he did not feel bound by the PSEC mandate:

The PSEC mandate is neither an esoteric nor unanticipated feature of public sector bargaining in British Columbia. As the Association submits, if the University wanted it to be one of the factors used in determining the appropriate Award, it should have negotiated that. In fairness to the University, the Association is not suggesting it would have been amenable to doing so. But, in any event, my role is to apply the parties’ Agreement. (Taylor, 2013, *supra*, BoA, Tab 14 at p. 22)

6.5.11 In his UNBC award of February 2014, Arbitrator Vince Ready wrote

Given the lack of collective agreement direction in the instant case, I consider myself even less restricted by the PSEC mandate than was the case in the collective agreement specified decision making processes facing either Kelleher or Taylor. ... I view it simply as an aspect of the general economic situation facing these and other parties engaged in public sector negotiations throughout the Province of British Columbia” (**Ready, *supra*, BoA, Tab 12 at p. 9**).

6.5.12 Mr. Ready then exceeded what was purported to be the PSEC mandate for salary increases.

6.5.13 The UNBC-FA urges the Arbitrator in this case to follow all precedents, in British Columbia and elsewhere in Canada, and disregard the PSEC mandate, and to state explicitly in his award that he was not bound by any PSEC mandate.

6.6 Government mandates and Section 55 arbitrations

6.6.1 Given that Mr Ready and other arbitrators have awarded increases exceeding the purported PSEC mandate in the context of the *renewal* of contracts, certainly an Arbitrator should be free to do in the context of a first collective agreement. Under the terms of a first collective agreement, there is considerable question as to what salary any PSEC salary mandate might be applied.

6.6.2 Very few, if any, Section 55 arbitrations have had to deal with the PSEC mandate. In 1995, however, Arbitrator Blasina pondered the weight of the CSSEA, a member of PSEC and therefore adherent to its guidelines. Arbitrator Blasina rightly pointed out the dangers in granting too much weight to such guidelines. He stated that the guidelines for percentage increases, if adopted in the Section 55 arbitration, would “attach to the present low rates,” ensuring that the affected employees would barely achieve parity with other unionized employees by 1998 (that is, in three years from the time of the adjudication). That is, he recognized the illogic of applying “mandate” percentages to the already-low salaries of the employees he was considering. He wrote that:

This is not to suggest that the CSSEA guidelines should be simply dismissed. They are not statutorily binding but they are still a factor for consideration.

However, while bearing in mind Yarrow Lodge, *supra*, *it is the other collective agreements which were offered for comparative analysis that are more influential*. Indeed comparative collective agreements will always be quite useful whenever any consideration is given to the replication principle.

Governing Council of the Salvation Army Operating the Nanaimo Youth Resource Centre (Wiseman House) and Health Sciences Assn. of British Columbia, 1995 (Blasina), BoA, Tab 24 at paras. 14—15, emphasis added.

6.6.3 Clearly, then, government bargaining guidelines should bear no weight or extremely limited weight—much *less* weight than objective criteria, for example—in Section 55

arbitrations. Arbitrator Blasina further stated that “The provincial government has legislated provisions for mandatory first collective agreements. Clearly movement in wages and benefits toward union-scale would have been anticipated.” Thus, Mr Blasina recognized that there was a fundamental contradiction between the goals of Section 55 legislation and any sort of “mandate” from government. This contradiction must be resolved—as Mr Blasina resolved it—in favour of Section 55 legislation and the long-existent, tried-and-true criteria of *Yarrow*.

6.6.4 Given the reality that the renewal of collective agreements in the public sector in British Columbia has clearly been influenced by the existence of PSEC mandates, applying the mandate (or considering it a significant factor) in the context of a Section 55 arbitration would mean, taken to its logical conclusion, that compensation gaps such as that facing UNBC-FA Members could never be remedied. ‘Barely achieving parity,’ in Mr Blasina’s words, would not happen—not in three years, and not in many. The Arbitrator can anticipate that, unless political circumstances change significantly before the next round of negotiations, the Employer in this case will again hide behind a supposed PSEC mandate. That probability only makes it all the more urgent that the salary system at UNBC is comprehensively dealt with in this Section 55 Arbitration.

7. Conclusion

7.1 Throughout its initial submission and this rebuttal, the UNBC-FA has presented an argument based on substantial evidence and “objective criteria” as required by *Yarrow* and as demonstrated by the terms and conditions of employment enjoyed by those performing identical work at comparable institutions.

7.2 The Employer has not attempted to deny the most salient facts in this Section 55 arbitration, namely:

- the great distance between the compensation of UNBC-FA Members and those performing identical work at comparable institutions;
- the validity of comparisons with Canadian primarily undergraduate universities selected on the basis of demonstrated criteria of comparability *and* on the basis of prior use by the parties;
- the internal inequities and fundamental distortion within the UNBC faculty salary system; and
- the reasonableness of the compensation proposals made by the UNBC-FA.

Instead, the Employer has sought refuge in a nebulously defined “structural deficit,” unsubstantiated assertions of financial fragility, and a purported mandate from the provincial government.

7.3 In this situation, the UNBC-FA once again submits that for the purposes of this Section 55 arbitration, its proposals should form part of a first collective agreement, while the proposals of the Employer should remain excluded on the substantial grounds argued above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE UNIVERSITY
OF NORTHERN BRITISH COLUMBIA FACULTY ASSOCIATION THIS 18TH DAY OF
NOVEMBER 2015

ALLAN BLACK, Q.C.

Counsel for the University of Northern British Columbia Faculty Association