

ARBITRATION AWARD

BETWEEN:

MEMORIAL UNIVERSITY OF NEWFOUNDLANDE
FACULTY ASSOCIATION
(hereinafter called “MUNFA” or the “Association”)

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND
(hereinafter called the “University” or the “Employer”)

GRIEVANCE: Re Appendix K Joint Gender Equity Salary Adjustment Committee

COUNSEL: For the Association

Christina Kennedy

For the Employer

Raelene Lee

ARBITRATION BOARD: James C. Oakley, K.C., Chairperson
Gary Paterno, MUNFA Nominee
Alice Collins, University Nominee

Background

1 The arbitration hearing was held by videoconference on May 3, 2024. The parties agreed as follows:

- The Arbitration Board was acceptable.
- The Arbitration Board had jurisdiction to hear the grievance.
- The grievance procedure was properly followed or any requirements waived.
- The Arbitration Board would remain seized of the matter for sixty (60) days following publication of the Award within which time either party could notify the Chairperson of the Arbitration Board in the event of an issue of interpretation or compensation arising from the Award.

2 The grievance concerns the interpretation of Appendix K in the Collective Agreement between Memorial University of Newfoundland and Memorial University of Newfoundland Faculty Association, April 30, 2019 to August 31, 2020. The parties dispute whether the amount of the Gender Equity Fund established by Appendix K of “one million dollars (\$1,000,000) in total”, is inclusive or exclusive of Employer payroll costs.

Evidence

3 The parties submitted an Agreed Statement of Facts and Consent Exhibits. The parties did not call any witnesses at the hearing. The parties made available for questions, if any, the chief negotiator for each party at the relevant round of collective bargaining. The parties agreed as to the truth of the contents of the Consent Exhibits. The parties also agreed to stipulate that there was no discussion in collective bargaining, when negotiating Appendix K, of the issue of the Employer’s payroll costs.

4 The grievance concerns the interpretation of Appendix K of the Collective Agreement, which states as follows:

Memorandum of Understanding

between

Memorial University of Newfoundland

and

Memorial University of Newfoundland Faculty Association

“Without Prejudice”

Joint Gender Equity Salary Adjustment Committee

1. The University shall establish a Gender Equity Fund of one million dollars (\$1,000,000) in total in order to address gender-based inequities in total salary for women ASMs when compared men ASM counterparts.
2. The Gender Equity Fund shall be administered by a Joint Gender Equity Salary Adjustment Committee (JGESAC) composed of five (5) persons, two (2) ASMs appointed by the Association, two (2) individuals appointed by the University, and a mutually-agreed upon Chair. The appointments shall take into account the need for Grenfell Campus representation. This Joint Committee shall determine its own procedures and shall complete its work within three (3) years following the signing of this Collective Agreement.
3. The JGESAC shall examine and compare all ASM salaries at the University. Adjustments to women ASMs’ salaries shall be assigned to women ASMs whose salaries are judged to be inequitable, when compared with the salaries of men ASMs within their Academic Unit, taking into consideration years of service and rank. The Committee shall take into consideration how to assess salary inequities in units which are predominantly comprised of women.
4. The Committee’s decision shall be communicated in writing to the ASM no later than 30 April each year and shall include a written statement of the reasons for the decision in respect of the criteria set out herein. The Committee shall notify the Association and the Administrative Head, the Dean, and the Provost and Vice President (Academic) or Vice President (Grenfell Campus) of its decision.
5. Salary adjustments in the total salary of a woman ASM shall take effect on 1 July following the Committee’s decision.

5 The parties submitted the following Agreed Statement of Facts:

The parties agree to the following Consent Documents and facts:

1. Consent Exhibits are as follows:
 - (1) MUNFA-MUN Collective Agreement, effective April 30, 2019 (C#1);
 - (2) *Final Report of the Joint Gender Equity Salary Adjustment Committee*, a Joint Committee of MUN and MUNFA, dated April 2021(C#2);
 - (3) Email from Kelly Martin, Payroll to Faculty Relations dated May 27, 2021. (C#3)
 - (4) Email from the University to MUNFA, dated June 1, 2021. (C#4);
 - (5) Gender Equity benefits calculation explanation (C#5)
 - (6) Correspondence to the University from Sheila Singleton, Chair of the JGESAC, dated June 11, 2021 (C#6)
 - (7) Correspondence to Sheila Singleton, Chair of the JGESAC from the University from, dated June 28, 2021 (C#7)
 - (8) Email from Payroll Manager to Faculty Relations dated June 29, 2021. (C#8)
 - (9) July 2, 2021, template email sent to 415 female ASMs. (C#9)
 - (10) Association Grievance bearing MUNFA File No. A-21-09, dated July 8, 2021(C#10);
 - (11) University Response to the Grievance, dated November 9, 2021 (C#11).
2. The grievance stems from the interpretation of an MOU located at Appendix K of the Collective Agreement (the “MOU”) regarding the Joint Gender Equity Salary Adjustment Committee (“JGESAC”).
3. At all relevant times, Jon Church was the Chief Negotiator for MUNFA. Geoff Williams was the Chief Negotiator for the University.
4. The MOU stated at paragraph 1:

The University shall establish a Gender Equity Fund of one million dollars (\$1,000,000) in total in order to address gender-based inequities in total salary for women ASMs when compared to men ASM counterparts.”
5. There was no discussion during collective bargaining pertaining to the allocation of the fund by the JGESAC.

6. The JGESAC was formed and determined, among other things that:
 - “The Gender Equity Fund is to be distributed as Steps. With the current Step Value of \$2142, the Fund translates to 466 steps.”
7. The Office of Faculty Relations attempted to action the recommendation of the JGESAC with the Payroll Office at Memorial and was advised on May 27, 2021 that there were employer costs associated with the JGESAC recommendations. As such the \$1,000,000 was “inclusive of employer costs. This means we have only 415 steps to allocate, rather than 466”. (see Tab #3)
8. On or about the same day, the University informed MUNFA that the University would have 415 steps available for allocation to cover its costs associated with the step increases. (See Tab#4)
9. Employer costs of 12% are budgeted for all salary increases. These costs are for employer contribution to pension (approximately 10.8%), Workplace Health Safety and Compensation costs (.27%) and payroll tax (2%). (See Tab#5)
10. The Chair of the Committee asked that the interpretation be corrected by correspondence dated June 11, 2021, which was replied to by Memorandum dated June 28, 2021. (Tabs 6&7)
11. Ultimately 418 steps were awarded for a total cost of \$895,356 plus cost of benefits pursuant to Payroll Manager by email of June 29, 2021. (see Tab C#8)
12. On or about June 2, 2021, the University informed 415 female ASMs (via the template email format) that they would be entitled to a “*one step market differential*” or “*two step market differential*” effective July 1, 2021, further stating, in part, “*This will form part of your base salary.*” (See Tab C#9)
13. On July 8, 2021, the grievance was filed with University response dated November 9, 2021. (Tabs 10&11)

6 The Arbitration Board has considered the Agreed Statement of Facts and the contents of the Consent Exhibits filed by the parties. The content of the Consent Exhibits provides information that supplements the Agreed Statement of Facts.

7 Pursuant to Appendix K, the parties appointed members to the Joint Gender Equity Salary Adjustment Committee (the “JGESAC” or the “Committee”). The Committee issued its report, setting out Decisions and Recommendations, dated April, 2021. The Report of the Committee states, in part, as follows:

FINAL REPORT of the
JOINT GENDER EQUITY SALARY ADJUSTMENT COMMITTEE

A Joint Committee of
Memorial University of Newfoundland
and
Memorial University of Newfoundland Faculty Association

April, 2021

1. Background

A Memorandum of Understanding was signed by the University and the Faculty Association on February 26, 2019, allocating \$1,000,000 “to address gender-based inequities in total salary for women ASMs when compared to men ASM counterparts.”

The term ASM in this context was interpreted as tenured and tenure-track Faculty, Librarians, and Coordinators with permanent appointments.

The Joint Gender Equity Salary Adjustment Committee (JGESAC), a joint Memorial-MUNFA committee, was struck in late 2019 to address the issue. Kara Arnold and Nicole Power are MUNFA appointees, Jennifer Lokash and Ian Sutherland are Memorial appointees, and Sheila Singleton, a Memorial retiree, serves as Chair. Ian Sutherland resigned from JGESAC in September 2020 due to other work commitments and was not replaced by the University.

JGESAC was asked to “examine and compare all ASM salaries at the University. Adjustment to women ASMs’ salaries shall be assigned to women ASMs whose salaries are judged to be inequitable, when compared with the salaries of men ASMs within their Academic Unit, taking into consideration years of service and rank.”

The Gender Equity Fund is to be awarded as steps. With the current step value of \$2142, the Fund translates to 466 steps.

Memorial has several women serving in academic administrative roles who, before the administrative appointments, were members of MUNFA and who will again be members of MUNFA when the term of the administrative appointment

ends, provided they do not retire, resign, or accept another administrative appointment. It is the decision of JGESAC that these women receive the same salary adjustments as women ASMs currently in MUNFA as they have been subject to the same inequities during their careers. It is only because of the timing of the MOU and its implementation that they are not currently members of MUNFA.

2. Research

With a brief hiatus during the first COVID lockdown, JGESAC met regularly since its formation. The Committee reviewed literature, consulted with the Centre for Institutional Analysis and Planning (CIAP) on available data, and identified further information we hoped to glean. CIAP gave three presentations of their work to the Committee. We are grateful for their expertise and support throughout the process.

Gender pay gaps are a reality facing universities across Canada, and many are grappling with the same issue as Memorial - how to best identify and compensate women receiving inequitable salaries.

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3. Data Analysis and Findings

At the time of appointment of its members, JGESAC was provided with a dataset of all current full-time tenured and tenure-track Faculty, Librarians, and Coordinators in MUNFA. This dataset included:

- Gender (based on a binary model);
- Academic Unit;
- Current salary, both with and without market differential;
- Years of service, derived from the hire date;
- Current rank; and,
- Years at current rank, derived from date of last appointment.

It did not include salary and rank at time of appointment, type of appointment (such as spousal hires and Canadian Research Chairs), sabbaticals and leaves of absence, or time to promotion. Annual snapshots were not available.

No data were provided for those serving in academic administrative roles who, before the administrative appointments, were members of MUNFA. No data were provided for ASMs who were hired and subsequently left the University through resignation or retirement.

While the dataset did not include salary and rank at time of appointment, we later obtained this data for appointments made after 2007, in part from the Provost's Office and in part by Faculty Relations reviewing paper files. This included about half the dataset. These salaries at time of appointment were given in dollar figures

and had to be converted to steps by applying the Collective Agreement in effect at the time of appointment in order to allow comparisons across time. CIAP completed this work.

...

While the dataset was sparse, the Committee was able to draw limited conclusions:

- In recent years the gender balance in hiring has improved, primarily with hiring at the rank of Assistant Professor;
- All other cohorts contribute to gender imbalance; more men are hired at the more senior ranks;
- The gender imbalance is greatest at the rank of Full Professor, both in hiring and in Memorial's population of ASMs as of December 2019;
- There is an increasing equality in base salaries at the time of appointment. However, this is mitigated in part by the inequitable award of market differentials: proportionally fewer women receive a market differential, and the amount of the differential remains greater for men; women at the rank of Associate Professor make the least gains through market differential; men at the rank of Full Professor make the most gains through market differential;
- Salary gaps at time of appointment carry forward throughout one's career; and,
- Memorial is not unique - these trends are reported to be common in Canadian universities.

4. Decisions

As of March 2021, there were 299 women ASMs (excluding term appointments), plus 32 women administrators formerly in MUNFA. All of these women are to each receive an increase in salary of one step.

This leaves 133 steps still available to be allocated (this number might change slightly should the above number change due to resignations or retirements). Taking into account years of service, women with the least recent appointments will each receive an additional (second) increase in salary of one step until the fund is depleted. JGESAC reached this decision on the basis that women with the greatest years of service have been subject to inequities the longest and have fewer years to benefit from the adjustment than more recent hires.

A review of appointment dates suggests that this will mean awarding a second step to women appointed before 2005. This date is used because funds exist only to provide a second step for this group and not because the date has any intrinsic meaning. Because appointment dates within a year might not accurately reflect the date at which an individual joins the University, JGESAC recommends that funds be made available to provide all women hired in the cut-off year a second step.

...

5. Recommendations

While many Canadian universities have analyzed and reported on salary inequities at their institution in recent years - 2015 and later - Memorial last reported an analysis in 1985. It is not surprising, then, that no robust database exists to support analysis of gender pay gaps, pay gaps for underrepresented and equity-deserving groups, and pay gaps across disciplines.

...

In order to more accurately understand pay gaps based on demographics, the University ought to track descriptive variables, including but not limited to:

- All intersectional self-identification categories as they appear on Memorial's Employment Equity Survey (1. Gender, 2. Membership in a Racialized Group/Visible Minority, 3. Indigenous Peoples, 4. Persons with Disabilities, 5. Sexual Orientation);
- Date of birth;
- Salary and rank at time of appointment;
- Factors included in application of Article 32 of the MUNFA Collective Agreement (Setting Basic Annual Salaries for ASMs At The Time of Hiring) to determine salary and rank at time of appointment (years of experience in academia including post-docs, years and types of experience outside academia);
- Information regarding term appointments at Memorial prior to a tenure-track appointment (e.g., length, number, etc.);
- Type of appointment (e.g., spousal hires and Canadian Research Chairs);
- Number of steps of market differential awarded at time of appointment, and reasons for same;
- Market differential awarded during one's career at Memorial together with effective dates and reasons for same;
- Tenure date;
- Dates of sabbaticals;
- Time to promotion through the ranks (dates of promotion through the ranks); and,
- Periods (dates) in an administrative role, and what role.

Research suggests that other factors impact gender salary gaps indirectly. For example, taking medical and parental leaves have been found to negatively impact promotions, which in turn impact salary, and women are more likely than men to use leaves. Therefore, we recommend the inclusion of dates of leaves of absence and reasons for same (e.g., assisted educational leave, extended sick leave, maternity and parental leave, political leave, special leave) in the database.

Such a robust and detailed year over year database would inform longitudinal pay gap studies that consider the broad array of reasons why women or other equity-deserving groups in academia earn less than men or other comparator groups. Both employment inequity and pay inequity for all potentially marginalized

groups merit exploration at a more granular level, The literature abounds with work completed at other universities, providing models for data analysis.

8 The JGESAC Report stated that the Gender Equity Fund was to be awarded as steps, and with the current step value (at that time) of \$2142, the fund translated to 466 steps ($\$2142 \times 466 = \$998,172$). The Committee identified the academic staff members to receive a gender equity salary adjustment, with all women (approximately 331) to receive at least one step salary increase. The Committee calculated that there were 133 steps available to be allocated as a second step to ASMs. The Committee decided that a two step salary adjustment would be allocated to the ASMs with the least recent appointments.

9 The JGESAC Report was communicated by the Office of Faculty Relations, to the Department of Human Resources, for the purpose that the payroll office would implement the salary adjustments effective July 1, 2021. By email dated May 27, 2021, Kelly Martin, Payroll Manager, advised Geoff Williams and Ian McKinnon, Office of Faculty Relations, as follows:

I just heard back from Lori Pike. She told me that the \$1 million budget is inclusive of employer's costs. This means we have only 415 steps to allocate, rather than 466.

10 Geoff Williams, Director of the Office of Faculty Relations, sent an email dated June 1, 2021 to MUNFA stating that the fund was inclusive of Employer costs, with the effect there were 415 steps, and not 466 steps available. The email stated as follows:

We have recently been advised by Finance that the million dollars allocated for the above noted initiative is inclusive of employer costs. This means that we have 415 steps available for allocation. During our prior discussions we were of the view that there was a total of 466 steps available. Obviously this will impact the number of individuals who will receive a second step.

11 Sheila Singleton, Chair of the JEGSAC, sent a memorandum dated June 11, 2021 to Dr. Mark Abrahams, Provost and Vice-President (Academic), stating as follows:

Subject: Interpretation of Human Resources regarding distribution by JEGSAC of the \$1,000,000

Since its inception the members of JEGSAC has understood that the \$1,000,000 to be allocated (as steps) to women ASMs at the University translated into 466 steps and the Committee made its decisions in the context of that understanding. This number was confirmed implicitly in the JEGSAC/MUN/MUNFA meeting of February 5, 2021 in that no one disagreed with the statement in the Meeting Notes “The Gender Equity Fund is to be awarded as steps. With the current step value of \$2142 the Fund translates to 466 steps.”

On June 1, 2021, Ian McKinnon, Faculty Relations, advised “We met with Payroll to begin the process of implementing the 467 steps for July 1. Following that meeting we were advised that the \$1,000,000 would also have to cover employer related salary costs. As a result we will only have 415 steps to award. Very disappointing as this will mean that fewer ASMs will receive a second step.”

This was indeed disappointing news for the Committee as well as for Faculty Relations and does not feel to be in the spirit of the Memorandum of Understanding signed by the University and the Faculty Association. All parties JEGSAC/MUN/MUNPA - understood this fund was to be allocated in its entirety by the Committee.

I am writing now on behalf of the Committee to ask that this interpretation by Human Resources be corrected and that the 466 steps be distributed in accordance with the understanding of all parties. The greatest spirit of collegiality is demonstrated when honest mistakes/ misunderstandings are corrected in the best and most appropriate light.

The Committee anticipates your positive reply.

12 Mark Abrahams, Provost and Vice President (Academic) replied to Ms. Singleton, Chair of the JGESAC, by Memorandum dated June 28, 2021, stating that the University was upholding its commitment in Appendix K to provide \$1,000,000 in total salary, when employer payroll costs were included.

13 Exhibit C#5, described as the Gender Equity benefits calculation, shows a breakdown of the Employer’s costs, with an explanation of the calculation. The Employer applied payroll costs of 12% for salaries paid “using the market step scale”, based on the payment of a market differential as decided by the Committee. The breakdown comprises 10.7% pension costs on gender equity step, 0.3% workers’ compensation costs and 2% payroll tax incurred on all

University salary costs. The document explained that there were no additional costs to the Employer for Canada Pension Plan (CPP), Employment Insurance (EI) or group insurance, as a result of the step increases, because CPP and EI were already capped out, and the group insurance rate did not change. The Employer stated that its actual payroll costs were closer to 13%, but that 12% was used as a reasonable approximation.

14 In a subsequent email, dated June 29, 2021 (C#8), Kelly Martin, Payroll Manager, noted that the gender equity step was implemented, and that 418 steps were awarded for a total of \$895,356 plus cost of benefits. The email stated that the payment would appear on the employee pay stub as “Gender Equity Step”.

15 Templates for emails sent to ASMs receiving one step or two steps were entered as C#9. The template for one step stated that “JGESAC has determined that you are entitled to one step of market differential effective July 1, 2021. This will form part of your base salary. The pay increase was implemented for the July 1 pay period.” The template for two steps was identical, except it referred to “two steps of market differential”.

16 The Agreed Statement of Facts, Appendix K and the consent documents refer to various words and phrases that appear in the Collective Agreement. The Arbitration Board has reviewed the Collective Agreement and notes that the following Articles provide context for the language in Appendix K.

Article 1 Framework and Implementation

...

Definitions

1.03 For the purpose of this Collective Agreement

...

(h) “Basic Annual Salary” shall be the annual salary as determined in Article 32. It shall not include payment for extra duties nor stipends.

...

Article 32 Salaries and Benefits

Setting Basic Annual Salaries for ASMs at the Time of Hiring

Faculty Members

32.01 The minimum starting Basic Annual Salary of a Faculty Member appointed on or after September 1, 2005 shall be determined by adding:

- (a) the number of years of experience in the rank of Lecturer or equivalent or above in a university or degree-granting equivalent institution as calculated in accordance with Clause 32.04;
- (b) a number for the highest degree achieved
 - (i) for a Master's degree or equivalent: 1
 - (ii) for a Ph.D. or equivalent: 6
- (c) a number for the rank
 - (i) for Associate Professor: 2
 - (ii) for Professor: 5;
- (d) a number to represent other relevant experience calculated in accordance with Clauses 32.05 and 32.06.

The resulting numbers represents the lowest salary step number on the scale in Appendix D.1 or D.2 at which the Faculty Member may be paid upon appointment expect in accordance with Clause 32.02. If the step is higher than the highest step for the rank, the highest step for the rank is substituted.

...

Treatment of Basic Annual Salary for Faculty Members Following Initial Appointment

32.15 No ASM's total salary (Basic Annual Salary plus market differential) shall be lowered from its value as of August 31, 2017 as a result of the implementation of this Article.

32.16 This section of the Collective Agreement details the manner in which Basic Annual Salaries of Faculty Members holding appointments as of the date of signing of this Collective Agreement shall change throughout the life of this agreement. In addition, the Basic Annual Salaries of Faculty Members hired after the date of signing of this Collective Agreement shall change in accordance with the remainder of this Article wherever the dates specified follow their date of hiring.

32.17 Effective September 1, 2017 the Basic Annual Salary of all Faculty Members shall be in accordance with the table shown in Appendices D.1 and D.2. Salary floors and caps for Faculty Members shall be as follows:

...

Appendix D.2 (Faculty Members except Lecturers)
[note: floor and cap step levels]

Step	2,142	
	1-Sep-17	
0	65,640	
1	67,782	
...		
8	82,776	Assistant Floor
...		
14	95,628	Associate Floor
...		
18	104,196	Assistant Cap
...		
22	112,764	Professor Floor
...		
36	142,752	Associate Cap
...		
51	174,882	Professor Cap

Association Submission

17 The Association requested that the Arbitration Board interpret Appendix K of the Collective Agreement to give effect to the decision of the Committee, and that the amount of one million dollars (\$1,000,000) be fully allocated in 466 steps, in place of 418 steps, to women ASMs, retroactive to July 1, 2021. The Association requested an order to give effect to the intent of the parties as negotiated. The Association's primary submission was based on principles of collective agreement interpretation. The Association made alternative submissions based on estoppel and mutual mistake of fact.

18 The Association referred to principles of interpretation, including having regard to the intent of the parties as stated in the evidence, having regard to the plain meaning of the language used, applying dictionary definitions, applying extrinsic evidence of the surrounding circumstances based on the Supreme Court of Canada decision in *Creston Moly Corp. v Sattva*

Capital Corp. 2014 SCC 53 (the “*Sattva*” case), and considering the context of the language in the Collective Agreement. The Association referred to the discussion of the principles of interpretation of collective agreements in *Public Service Alliance of Canada, Local 90120 and I.M.P. Group Ltd. (Stone)*, 2023 C.L.A.S. 894 (Oakley).

19 The Association submitted that Appendix K provided for a fund of one million dollars (\$1,000,000) in total to address gender-based inequities in salary. The dictionary definition of “salary”, in *Webster’s Dictionary*, meant fixed compensation paid for services. The payment of compensation to employees did not include employer costs. There was extrinsic evidence of the intent of the parties in the Committee Report and the memo from the Committee Chair to the University Provost and Vice-President (Academic). The memo stated that it was understood by all parties on the Committee that \$1,000,000 was to be allocated to salaries of ASMs. The intention of the Employer, based on the email communication from the Office of Faculty Relations, indicates that the Employer had the same understanding as the Association, namely, that the entire \$1,000,000 would be allocated to salaries of ASMs to address gender equity. Mr. Williams’ email, dated June 1, 2021, stated that the Employer had been previously unaware of these Employer costs, and the Employer wished to include the Employer costs in the fund. Paragraph 5 of Appendix K stated that the salary adjustment would take effect based on the Report of the Committee, which also meant that the entire fund would be used for salaries. The Committee was not mistaken in its interpretation of Appendix K. The intent of the parties was clear from the evidence.

20 The Association disputed the Employer’s submission that, based on evidence of surrounding circumstances, the knowledge that the fund included the Employer’s costs would be reasonably within the contemplation of the parties. The Employer’s submission, that costs of pension, Workers Compensation and payroll tax, should have been known by the Association, was not supported by the evidence. If the parties had intended costs to be included, then it should have been expressly stated in Appendix K. According to the Employer’s interpretation, if the Employer’s costs were included in the fund, and the Committee was not informed of the amount of the costs, then the Committee would not know exactly the amount of the fund available to be distributed. Appendix K did not state that the fund included Employer costs. The

Employer's submission had the effect of adding language to Appendix K, which was not permitted by the principles of interpretation. The Association submitted that the parties expected the Employer to be bound by the decision of the Committee to allocate the fund.

21 The Association made alternative submissions based on estoppel and mutual mistake. The Association submitted that estoppel applied. The Employer made a clear and unequivocal representation by its failure to raise any issue with respect to Employer costs when the language of Appendix K was negotiated. No one raised the issue of Employer costs when the Committee made its decision. Estoppel may be based on a representation made by silence. The Association relied on the Employer's silence at the bargaining table to the detriment of ASMs. The grievance should be upheld by the application of estoppel.

22 The Association also submitted that there was a mutual mistake by the parties that would justify rectification of the Collective Agreement. The mutual mistake by the parties was failure to consider or discuss the issue of the Employer's costs. The mistake may be rectified with the effect that the Collective Agreement can be read according to the intention of the parties. With respect to mutual mistake and rectification, the Association referred to the case authorities in *P.S.A.C. v. NAV Canada*, 2002 CarswellOnt 1063 (ONCA) and *Detroit Windsor Tunnel LLC and Unifor, Local 195 (Cost of Living Allowance)*, 2013 CarswellNat 4620, 237 L.A.C. (4th) 423 (Chauvin).

23 The Association submitted that, to meet the objective and the purpose of the language in Appendix K, the fund of \$1,000,000 should be directed to be fully allocated to ASMs in 466 steps, as decided by the Committee.

Employer Submission

24 The Employer requested an order to confirm its interpretation of the Memorandum of Understanding in Appendix K. The Employer did not dispute that salary meant compensation. The purpose of Appendix K was to increase the salary of female ASMs compared to male ASMs. The Committee was entitled to distribute the fund to meet the objectives of the MOU.

The method of distributing the fund was left to the Committee. The distribution of the fund of one million dollars (\$1,000,000) in total, including the Employer's costs of approximately one hundred thousand dollars (\$100,000), met the objective of the fund to improve gender equity. The inclusion of the Employer's costs in the fund did not impact the intent of the MOU. The Employer's interpretation was consistent with its requirement to retain control over its finances and spending.

25 The Committee did not have authority to determine the amount in the fund for distribution. The total amount was set out in Appendix K. The Committee misunderstood the amount stated in Appendix K. The Committee had authority to decide the method to divide the amount in the fund but not to decide the total amount. The Committee decided to award a gender equity adjustment as a step increase. The Committee made an incorrect calculation of the number of steps available for distribution, when it assumed that one million dollars (\$1,000,000) was available for step increases. When the Office of Faculty Relations took action to implement the Committee Report, the Payroll Office advised that part of the costs of the salary increases included the Employer's cost of pension, Workers Compensation and payroll tax. The pension cost was the largest percentage of the Employer's cost. The pension cost was a direct benefit to employees. Only a small amount of the Employer's costs did not benefit the ASMs. The misunderstanding by the Committee is indicated in paragraph 1 of its Report, which omits reference to the amount of the fund "in total". The reference in Appendix K to a fund of one million dollars (\$1,000,000) "in total" meant that everything was included in the fund, including the Employer's costs, when making the payment. The memo from the Committee Chair, with respect to discussions by the Committee members, did not have any impact on the meaning of the Collective Agreement, or the intention of the parties, at the time of collective bargaining. The Employer stated at the time that the miscalculation was regrettable, but that did not change the amount of the fund available to be distributed.

26 The Employer referred to principles of interpretation of collective agreements, as discussed in the authorities, including Brown & Beatty, *Canadian Labour Arbitration*, 5th edition, at paragraphs 4:21 and 4:22. In particular, the Employer referred to the principles that the language should be viewed in its normal or ordinary sense, unless the context indicated the

words were used in some other sense, that it should be presumed that all the words were intended to have some meaning, and that a clear expression of intention was required to confer a financial benefit. With respect to principles of interpretation, the Employer also referred to *International Association of Firefighters, Local 1075 and City of St. John's*, August 3, 2023 (Conway) and *CUPE, Local 5050 and Cape Breton Victoria Regional Centre for Education*, 2020 CarswellNS 271, 312 L.A.C. (4th) 196 (Richardson). Having regard to the normal or ordinary meaning of the language, it was necessary to apply the words in the Collective Agreement. Appendix K referred to the fund of one million dollars (\$1,000,000) “in total”. It must be presumed that the word “total” had some meaning to the parties. The Employer submitted that “total” included the Employer’s costs, in this case the base cost plus the payroll burdens of pension, Workers Compensation and payroll tax. The Employer referred to the *Cambridge Dictionary* definition of “total” as “including everything”, and “the amount you get when several smaller amounts are added together”. In this case “everything” included the Employer’s costs.

27 The Employer submitted that, if the Employer’s costs were not included, then the amount to be paid out by the Employer would exceed one million dollars (\$1,000,000), and would also include the Employer’s costs calculated at the rate of about 12%, or an extra \$120,000. If the parties had intended a commitment of \$1,120,000, then clear language would be needed to have that effect. When determining the intention of the parties, the words used were paramount. The Employer referred to the principle that an important promise is likely to be clearly and unequivocally expressed. In this case there was no clear statement of a promise to pay an additional 12% above the one million dollar (\$1,000,000) fund. There was no evidence of any discussion at the bargaining table with respect to the issue of the Employer’s costs. There was no evidence of an objective intention of the parties on the issue of costs. The Employer submitted that its interpretation did not add words to the Collective Agreement, but applied the language in Appendix K, in particular, the words “in total”. Appendix K did not link the fund to the application of step increases, and did not state any particular number of steps to be applied.

28 The Employer submitted that estoppel did not apply. There was no representation by the Employer to the Association. The discussions of Committee members at meetings did not amount to a representation by the Employer to the Association. The Committee discussed the

application of step increases, but did not discuss costs. The mistake was discovered and corrected when the Employer took action to implement the Committee decision. There was no issue of past practice. The correction was made before there was any communication to ASMs. The Employer submitted that this was not a case of a mutual mistake that justified rectification. There was no evidence of any discussion of the issue at the bargaining table and no evidence of a mutual mistake. This was not a case where the parties made an agreement that was incorrectly reduced to writing in the Collective Agreement.

29 The Employer submitted that there was no violation of the Collective Agreement and requested that the grievance be dismissed.

Considerations

30 The grievance concerns the interpretation of the Memorandum of Understanding, headed “Joint Gender Equity Salary Adjustment Committee”, in Appendix K of the Collective Agreement effective April 30, 2019. Appendix K was signed by the Chief Negotiators for the parties on February 26, 2019. Appendix K states that the University shall establish a Gender Equity Fund (the “Fund”) of \$1,000,000 in total in order to address gender-based inequities in total salaries for women ASMs when compared to men ASM counterparts. Appendix K states that the Fund shall be administered by a Joint Gender Equity Salary Adjustment Committee (the “Committee”) composed of two ASMs appointed by the Association, two individuals appointed by the University and a mutually agreed upon Chair.

31 The Committee Report, dated April, 2021, decided to assign salary adjustments by awarding to female ASMs either a one step increase or a two step increase. The value of a step at that time was \$2,142. The Committee assigned the entire fund of \$1,000,000 as salary adjustments, based on a total of 466 steps. When the University Office of Faculty Relations requested the Payroll Office to implement the salary increases, the Payroll Office advised that the Fund included Employer payroll costs, calculated at approximately 12%. The effect was to reduce the total amount assigned as salary adjustments to female ASMs by approximately 12%.

32 The University's interpretation of Appendix K is that the Fund of \$1,000,000 in total includes the Employer's payroll costs, in particular, the cost of Employer contribution to pension, workplace health safety and compensation costs and payroll tax. The Employer allocated approximately \$105,000 to Employer payroll costs, and allocated the remainder of the Fund to female ASMs as step increases. The Employer reduced the total number of steps assigned to female ASMs from 466 steps to 418 steps, with the effect that a number of female ASMs were assigned a one step increase in place of a two step increase. The Association submits that the correct interpretation of Appendix K is that the parties intended the entire Fund of \$1,000,000 to be assigned as salary increases to female ASMs, and that a total of 466 steps should be assigned. Therefore, the parties dispute whether the Fund of \$1,000,000 includes or excludes the Employer's payroll costs.

33 The facts are set out in the Agreed Statement of Facts and the consent documents filed by the parties. The parties advised that the Arbitration Board could refer to the facts as stated in the consent documents when considering the context of the dispute. The parties also stipulated that there was no discussion during collective bargaining of the inclusion or exclusion of the Employer's costs in the Fund. The Arbitration Board has considered the Agreed Statement of Facts and the documents submitted by the parties.

34 The position of the Association was based on its interpretation of Appendix K, and, in the alternative, was based on the application of estoppel and mutual mistake. The position of the University was based on its interpretation of Appendix K, and based on its submission that the evidence did not support a finding of estoppel or mutual mistake. The University requested that the grievance be denied.

35 The Arbitration Board will first consider the issue of interpretation of Appendix K. The Board refers to the principles of interpretation of collective agreements as applied by arbitrators. The principles are set out, in part, in the following paragraphs of Brown & Beatty, *Canadian Labour Arbitration*, 5th edition:

§ 4:21. Normal or Ordinary Meaning

In searching for the parties' intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless to do so would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense.

...

§ 4:22. Presumption that all Words Have Meaning

Another related general guide to interpretation is that in construing a collective agreement, it should be presumed that all of the words used were intended to have some meaning. As well, it is to be presumed that they were not intended to be in conflict. However, if the only permissible construction leads to that result, resolution of the resulting conflict may be made by applying the following presumptions: special or specific provisions will prevail over general provisions; where a definition conflicts with an operative provision, the operative provision prevails; where the same word is used twice it is presumed to have the same meaning; where two different words are used, they are intended to have different meanings; where an incorporated document conflicts with an incorporating document, the conflicting provisions of the incorporated document will not be incorporated by reference; and a clear expression of intention is required to confer a financial benefit, or other important provision.

...

36 It is also a principle of interpretation applied by arbitrators to consider the surrounding circumstances. This principle was discussed by the Supreme Court of Canada in *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 (the “*Sattva*” case). The *Sattva* case addressed contractual interpretation, and stated, in part, as follows:

[48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see *Moore Realty Inc. v. Manitoba Motor League*, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, per Hamilton J.A.; see also Hall, at p. 22; and McCamus, at pp. 749-50). As stated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.):

The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]

...

(b) The Role and Nature of the “Surrounding Circumstances”

[56] I now turn to the role of the surrounding circumstances in contractual interpretation and the nature of the evidence that can be considered.

...

[58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (*King*, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (*Investors Compensation Scheme*, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

37 The *Sattva* case and other principles of interpretation were applied in recent arbitration awards in *International Association of Firefighters, Local 1075 and City of St. John's*, August 3, 2023 (Conway) and *Public Service Alliance of Canada, Local 90120 and I.M.P. Group Ltd. (Stone)*, 2023 C.L.A.S. 894 (Oakley).

38 The Arbitration Board will apply the principles of interpretation to the issue in dispute in this case. The Board will consider the interpretation of Appendix K, having regard to the ordinary meaning of the language, the context of the language within the collective agreement as a whole, the object or purpose of the language, the surrounding circumstances, the reasonableness of the effect of the interpretation, the requirement that clear language be used to confer a financial benefit and other applicable principles of interpretation.

39 The Board will consider the plain and ordinary meaning of the words used. It is useful to examine the words used by the parties in Appendix K and the structure of Appendix K. The heading of Appendix K is “Joint Gender Equity Salary Adjustment Committee”. The words in the heading are given meaning by the content of Appendix K. “Gender Equity” is used in paragraph 1, which states that the University shall establish a “Gender Equity Fund”. Paragraph 1 also gives meaning to the Gender Equity Fund (the “Fund”) by stating the purpose of the Fund

is “to address gender-based inequities in total salary for women ASMs when compared to men ASM counterparts”. It follows from this sentence in paragraph 1 that gender-based inequities are differences in total salary, between female and male ASMs, and that the purpose of gender equity is to address those differences. Paragraph 2 states that the Fund shall be administered by the Committee, and describes the composition of the Committee. The Committee has 5 persons, 2 ASMs appointed by the Association, 2 individuals appointed by the University and a mutually agreed upon Chair. Paragraph 2 establishes that the Committee has representation of both parties, and is therefore described as “Joint”. Paragraph 2 also states that the Committee shall determine its own procedures and shall complete its work within 3 years.

40 Paragraph 3 of Appendix K addresses “Salary Adjustment”, which is included in the title of the Committee. Paragraph 3 also addresses how “Salary Adjustment” is related to “Gender Equity”. The tasks of the Committee are described in paragraph 3. The Committee is directed to examine and compare all ASM salaries, and to assign “adjustments” to women ASM salaries, whose salaries are judged to be inequitable compared to men ASMs. Paragraph 4 states that the Committee communicates its decision to the ASM, and notifies the Association and University. The effect of paragraphs 3 and 4 is that the Committee decides on the amount of the “salary adjustment” to women ASMs, and communicates its decision. Paragraph 5 states that salary adjustments in total salary take effect on July 1 following the Committee’s decision. The plain and ordinary meaning of “adjustments”, in the context of addressing gender-based inequities, means increases in salaries to be assigned to female ASMs. Appendix K states that the Fund of \$1,000,000 in total is to be used by the Committee to address gender-based inequities by deciding the “adjustments”, meaning increases, in female ASM salaries. The statement in paragraph 2 that the Fund is “administered” by the Committee is given meaning by the Committee’s task to assign adjustments to female ASM salaries using the Fund. The total amount available to the Committee for salary adjustments, when deciding individual female ASM salary adjustments, is the amount in the Fund. Whether the entire Fund amount of \$1,000,000 is available for salary adjustments is the issue in dispute in this case.

41 The University refers to the ordinary meaning of “total” and the description of the Fund in paragraph 1 of Appendix K as “one million dollars (\$1,000,000) in total”. The University submits that it is significant that the parties inserted the words “in total” after the amount of “\$1,000,000”. The ordinary meaning of the words used may be based on dictionary definitions. The University submits that dictionary definitions of “total” support its interpretation that the fund includes the total of all amounts to be spent by the University to implement the Committee’s decision, in particular, the Employer’s payroll costs,. The *Cambridge Dictionary* defines “total” as “including everything” or “the amount you get when several smaller amounts are added together”. The University submits that “everything” and the “smaller amounts added together”, includes the Employer’s payroll costs. When considering the ordinary meaning of the word “total”, one interpretation consistent with establishing a fund that is funded by the Employer, for the payment of salary adjustments to women ASMs, is that the fund would include the Employer’s payroll costs. However, it would also be consistent with establishing a fund for salary adjustments to interpret “total” to mean adding together the amounts of all the individual salary adjustments assigned to female ASMs. Appendix K states that the Committee has the authority to make a decision with respect to adjustments to women ASMs’ salaries, where the salaries were judged to be inequitable. When the individual adjustments are “added together”, the result is a “total” amount. Appendix K did not give direction to the Committee on any specific method to assign salary adjustments. The Committee decided to assign the salary adjustments using steps on the salary scale. With a step value of \$2,142, the Committee calculated there were 466 steps available to be assigned. When added together, 466 steps would be about equal to the total Fund amount of \$1,000,000. Therefore, it is also consistent with the ordinary meaning of the word “total”, to interpret “total” as the sum of the individual salary adjustments, with the total of all salary adjustments being equivalent to the Fund of \$1,000,000.

42 The ordinary meaning of “total”, based on dictionary definitions of “total”, is consistent with either the University’s or the Association’s interpretation of Appendix K. It is necessary to consider other principles of interpretation, including how the words are used in the context of Appendix K and the Collective Agreement as a whole, the surrounding circumstances, the purpose of Appendix K, and the effect of the interpretation.

43 The Arbitration Board will consider the principles that the language should be interpreted to be consistent with Appendix K and the Collective Agreement as a whole, and that the same words are presumed to have the same meaning when used in different parts of the Collective Agreement. The structure of Appendix K is that the University establishes the Fund of \$1,000,000 in total to address gender-based inequities in total salary for women ASMs when compared to men ASM counterparts. The parties agreed in Appendix K that the task of the Committee was to examine and compare ASM salaries and to assign salary adjustments to women ASMs. The comparison of salaries was to take into consideration years of service and rank. The task of the Committee was to decide how to assign adjustments using the total amount of the Fund. The Committee decided to assign salary adjustments by step increases, in particular, a one step increase or a two step increase assigned to individual women ASMs. An adjustment of at least one step was assigned to all eligible female ASMs. The Committee determined that the amount in the Fund did not allow for an assignment of two steps to all female ASMs. The Committee decided that the female ASMs with the longest service, who had therefore experienced the longest period of the effects of gender-based inequity, would be assigned a two step salary increase.

44 Appendix K may be interpreted in the context of the Collective Agreement as a whole. Appendix K uses words and phrases that appear in other parts of the Collective Agreement. In particular, the words in Appendix K, and other parts of the Collective Agreement, include “salary”, “total salary”, “ASM”, “years of service”, “rank” and “salary adjustments”. The Committee Report refers to “step” and “market differential”, which are also words used in the Collective Agreement. Article 1.01 (h) of the Collective Agreement defines “basic annual salary” as “the annual salary as determined in Article 32”. Article 32 includes provisions for setting the basic annual salary for ASMs at the time of hiring. For faculty members, Article 32.01 provides for the assignment of numbers for various factors, such as experience, highest degree achieved and rank, with the resulting number representing the lowest salary step number on the scale. Salaries are determined by the step on the salary scale, in accordance with the applicable Appendix. For example, Appendix D.2 lists annual salary amounts for faculty members for each step from step 0 to step 51. Article 32.15 refers to total salary as the basic annual salary plus market differential step. The Collective Agreement provides detail with

respect to salary structure. The usage of “salary” in Appendix K should be interpreted to be consistent with the usage of “salary” in other parts of the Collective Agreement.

45 The Committee Report discusses “salary” and “salary adjustments”. The Committee was assigned the task to make “adjustments” to women ASM salaries. The task of making the adjustments may be giving meaning within the context of the salary structure in the Collective Agreement. The Committee decided to assign salary adjustments by assigning step increases. Appendix K stated that the Fund would be used to address gender-based inequities in total salary. When read together with the task assigned to the Committee in Appendix K, the inequities were to be addressed by assignment of adjustments, meaning increases, to women ASMs salaries. The interpretation that the total amount of the Fund of \$1,000,000 is to be assigned as salary adjustments is an interpretation that is consistent with the language of Appendix K in the context of the Collective Agreement as a whole.

46 The Arbitration Board has also considered the surrounding circumstances as part of the context of the language used in Appendix K. As described by the Supreme Court of Canada in the *Sattva* case, evidence of surrounding circumstances may be considered to give meaning to the language used in the Collective Agreement, whether or not there is a prior finding of ambiguity in the language. According to the *Sattva* case, the surrounding circumstances consist of objective evidence of background facts that are known by the parties, or that reasonably ought to have been known by the parties, at the time of the negotiations. In this case, there was no evidence of discussions in collective bargaining that will provide assistance with respect to the knowledge or intention of the parties at that time. The parties agreed that there was no discussion at the bargaining table of the issue of the Employer’s payroll costs. The Board will consider other evidence of the background facts.

47 The Arbitration Board has considered that the Committee Report includes background information with respect to the surrounding circumstances, in particular, facts that were either known to the parties, or reasonably ought to have been known, at the time Appendix K was negotiated. Appendix K refers to a Fund to address gender-based inequities. The context includes an understanding of the meaning and causes of gender-based inequities, and how a Fund

would address those inequities. There is information in the Committee Report relevant to the context of the meaning and causes of gender-based inequities, and the method of addressing those inequities by administration of the Gender Equity Fund. The Committee Report decides to assign step increases to individual female ASMs. The objective of the step increase is to increase salaries to correct and adjust salaries deemed to be inequitable. The Committee Report refers to work done by the Committee, including a literature review, and a review of the database for female and male ASMs at the University. The Report refers to some of the causes of gender-based inequity, including, rank on appointment, step level on appointment, the awarding of market differentials, and the impact of leaves of absence. The Committee observes that gender-based inequity is reflected in the step level and the resulting salary amount paid to female ASMs. The Committee concludes that increasing the step level would provide a salary adjustment to address gender-based inequity. The Committee Report concluded that, with a Fund value of \$1,000,000, and a step value of \$2,142, there were 466 steps available to be assigned to female ASMs. The Committee proceeded on the basis that the total amount of \$1,000,000 was available to be assigned as salary adjustments.

48 With respect to the surrounding circumstances, it was either known, or reasonably ought to have been known, by the parties, at the time of collective bargaining, that there were multiple causes of gender-based inequities in total salaries for women ASMs, that the purpose of the Fund was to address and correct the gender-based inequities, and that the method to address the inequities was by an adjustment, meaning an increase, in salary levels of female ASMs. The parties recognized that there was an issue to be addressed, that the issue would be addressed by the University establishing the Fund, and that the Fund would be administered by the Committee. The context of the surrounding circumstances provides information about the purpose of the Fund. It is consistent with the surrounding circumstances, and the purpose of the Gender Equity Fund, that the entire amount of the Fund be assigned to adjustments to female ASM salaries. In other words, it is consistent with the surrounding circumstances that the total of 466 steps be assigned, as decided by the Committee. The purpose of the Fund is more closely met by assigning the total amount of the Fund to step increases, and not by including Employer payroll costs in the Fund, which has the effect of reducing the amount available to be assigned as salary adjustments.

49 The Arbitration Board has considered, with respect to the surrounding circumstances, whether the parties knew, or reasonably ought to have known, that the University would have payroll costs associated with the salary adjustments decided by the Committee, and that those costs were included in the Fund. The parties agreed that payroll costs were not discussed during collective bargaining in 2019. The issue did not arise until 2021, when the Office of Faculty Relations requested the Payroll Office to implement the salary adjustments decided by the Committee. The parties reasonably ought to have known that the Employer would have payroll costs associated with payment of the salary adjustments. However, the parties would also reasonably have known that salary amounts are exclusive of Employer payroll costs. The *Webster's Dictionary* definition of "salary", as compensation for services, is consistent with exclusion of payroll costs. Appendix K states that the Fund is to be used to address gender-based inequities by assigning salary adjustments. It is consistent with the context of the surrounding circumstances, and the ordinary meaning of "salary", that the parties would reasonably expect salary amounts to be exclusive of Employer payroll costs. It follows that the parties would reasonably expect that the Fund used to assign salary adjustments would also be exclusive of Employer costs.

50 The Arbitration Board has considered the principle that the collective agreement should be interpreted to avoid an absurdity. In this regard, the Board will consider which interpretation is more reasonable in its application or effect. The Board refers to its preceding discussion of the surrounding circumstances and the purpose of the Fund. The Board has considered the Committee's interpretation of Appendix K, in relation to the reasonableness of the effect of each party's interpretation. The Committee included members appointed by the University and by the Association. The composition of the Committee was the subject of comment by the Chair of the Committee in her memo to the Vice President, dated June 11, 2021, which stated "All parties - JEGSAC/MUN/ MUNFA - understood this fund was to be allocated in its entirety by the Committee". The Committee was formed in late 2019 and issued its report in April, 2021. The Committee made decisions on the assignment of the Fund and made additional recommendations with respect to other actions related to gender equity. Based on the content of the Committee Report, and the memo from the Committee Chairperson, the expectation of the Committee was

that Employer payroll costs were not included in the total amount of the Fund. The Committee proceeded on the basis that the total amount of the Fund was available to be assigned as salary adjustments to female ASMs. The Committee Report and the Committee Chair's memo supports the reasonableness of the Association's interpretation having regard to the effect of the interpretation on the amount available for salary adjustments.

51 The Arbitration Board has also considered the effect of each party's interpretation on the Committee's task of administering the Fund. The effect of the University's interpretation is that the total amount to be assigned by the Committee as salary adjustments is subject to a deduction of the amount of payroll costs. In the event that payroll costs were included in the total amount of the Fund, then the Committee's task would be to assign salary adjustments in a total amount that would not be known until a calculation of payroll costs was made. This effect may be compared to the effect of an interpretation that the total amount of the Fund is to be assigned as salary adjustments. In that event, it is clear what amount is available to the Committee to assign as salary adjustments. Had the parties intended that the Committee would administer a Fund, with the total amount available to be assigned subject to a calculation of Employer payroll costs, then the parties would have been expected to have stated language to that effect in Appendix K. The fact that Appendix K is silent on the issue of Employer payroll costs supports the Association's interpretation of Appendix K.

52 The Arbitration Board has considered the principle of collective agreement interpretation that clear language is needed to confer a financial benefit. In this case, the adjustment to salaries of female ASMs is a financial benefit to those individual ASMs. The difference in the effect of the positions of the parties is that more female ASMs would receive a two step increase under the Association's interpretation compared to the University's interpretation. The Arbitration Board finds that there is clear language in Appendix K to state that the Fund of \$1,000,000 in total is to be assigned as salary adjustments to female ASMs. There is no clear language in Appendix K to state that Employer costs are included in the Fund. As stated, the context of the surrounding circumstances, including the purpose of the fund, is more consistent with the assignment of the total amount of \$1,000,000 to salary adjustments.

53 Having considered and applied the principles of collective agreement interpretation, the Arbitration Board agrees with the Association's interpretation of Appendix K. The Committee's decision to assign 466 steps as salary adjustments is based on the correct interpretation of Appendix K, having regard to the principles of interpretation.

54 The Arbitration Board decides the issue in dispute based on the interpretation of Appendix K. Therefore, it is unnecessary for the Board to consider the alternative submissions made by the Association based on principles of estoppel and mutual mistake.

55 The Arbitration Board finds that the Gender Equity Fund in Appendix K does not include the Employer's costs. The Arbitration Board's interpretation of Appendix K is that the total amount of the Fund of \$1,000,000 is available to be assigned by the Committee as salary adjustments to address gender equity.

Decision

56 The grievance is allowed. The Arbitration Board declares that the Gender Equity Fund in Appendix K of \$1,000,000 in total does not include the Employer's costs. The Board upholds the decision of the Joint Gender Equity Salary Adjustment Committee, to assign the total amount of the Fund as salary adjustments to female ASMs, in particular, by assigning the total amount of 466 steps, effective July 1, 2021. The University is directed to implement the decision of the Committee.

Dated this 8th day of July, 2024



James C. Oakley, K.C.
Chairperson



Gary Paterno
MUNFA Nominee

Dissent

Alice Collins
University Nominee

DISSENT

The central statement, with the phrase “one millions dollars... in total” ... and “in total salary” is as follows:

The University shall establish a Gender Equity Fund of one million dollars (\$1,000,000) in total in order to address gender-based inequities in total salary for women ASMs when compared men ASM counterparts.

A Joint Gender Equity Salary Adjustment Committee (JGESAC) was established and was directed to determine its own procedures.

The University and the Faculty Association (MUNFA) extended what might be unprecedented authority to a committee without any requirement of reporting to both prior to implementing their decision to award 466 steps. When the University became aware of the increased \$100,000 that would be required under this method, the VPA Dr. Abrahams said it would not proceed. Sheila Singleton, Chair of the JEGSAC, sent a memorandum dated June 11, 2021 to Dr. Abrahams stating as follows:

“Since its inception the members of JEGSAC has understood that the \$1,000,000 to be allocated (as steps) to women ASMs at the University translated into 466 steps.”

Be it noted that the Committee was not directed to allocate the fund ‘as steps’.

Further Ms Singleton stated: “The greatest spirit of collegiality is demonstrated when honest mistakes/ misunderstandings are corrected in the best and most appropriate light.”

From the University argument:

“The mistake was discovered and corrected when the Employer took action to implement the Committee decision. There was no issue of past practice. The correction was made before there was any communication to ASMs. The Employer submitted that this was not a case of a mutual mistake that justified rectification”

The Award requires the University to exceed expenditure that was mutually and collegially agreed on. If the University had done something wrong, it would be reasonable to require compensation. This is not the case.

I understand that ‘in total’ may be understood one way or the other. There is no compelling argument or evidence why it would be interpreted as it is by the Association or the Award.

In conclusion: I cannot support requiring Memorial University to spend beyond the amount mutually and collegially agreed upon. Lacking legal argument, I submit there is a moral perspective to demonstrate fairness and shared responsibility.

A. Collins

July 7/24