

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

Ontario College of Art & Design

and

OCADFA

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: Margot Blight
Borden Ladner Gervais
Barristers & Solicitors

For the Association: Cathy Lace
Sack Goldblatt Mitchell
Barristers & Solicitors

This matter proceeded to a hearing in Toronto on February 26, 2012.

Introduction

OCAD University (“the University”) is the premier art and design educational institution in Canada. It received University degree granting status in 2002. The Ontario College of Art and Design Faculty Association (“the Association”) represents faculty and academic staff. The previous Memorandum of Agreement (“the MOA”) between the parties expired on June 30, 2010. On March 1, 2010, the University advised the Association that it was late in serving notice to bargain. Article 11.2.1 of the MOA requires that any party seeking a change to the MOA for a forthcoming academic year serve notice to bargain to the other party by November 30 of the previous year. The Association served notice to bargain on March 8, 2010 and the parties agreed to commence bargaining in the fall of 2010. Subsequently, the University took the position that the Association’s failure to provide it with timely notice led to the roll-over of the MOA, and that the new three-year term should begin effective July 1, 2011 with no retroactivity or changes for the rolled-over year (2010-2011). The Association disagreed and argued that the term of the renewal MOA should begin July 1, 2010 and end on June 30, 2013.

Having carefully considered the submissions of the parties – extensively argued in the briefs, reply briefs, and at the hearing – I am of the view that the term of the MOA is July 1, 2010 until June 30, 2013. In reaching this conclusion, I take into account the past bargaining practices of the parties, where MOAs are often reached long after they expire, the belated nature of the University’s objection and the waiver and estoppel that results thereby, and the complete lack of any prejudice to the University, not to mention the extreme prejudice to the Association and its members if the University’s position were to

prevail. There is little dispute, in any event, of an interest arbitrator's jurisdiction to award retroactivity even if the University's objection was somehow maintained.

In determining the outstanding issues in dispute between the parties, interest arbitration criteria have been considered and applied. The University acknowledged that "faculty salaries (except sessionals) appear to be lower than those of its Ontario peer set, particularly at the Professor and Associate Professor ranks" and that faculty compensation is "lower than the norm." For its part, the Association takes the position that catch-up is required for all of its members. As is customary, both sides presented copious data in support of their positions.

It should be noted that a number of matters were agreed to in bargaining, at mediation and during the course of the hearing that took place in Toronto on February 26, 2012. These agreed-upon items are to be incorporated into the MOA settled by this award, together with the award of the Board and any un-amended portions of the expired MOA. Unless specifically addressed in this award, all outstanding University and Association proposals are dismissed.

Award

Across the Board Increases

July 1, 2010	2%
July 1, 2011	2%
July 1, 2012	2%

PD Allowance (Faculty)

Association proposal awarded, to be incorporated into MOA. Effective July 1, 2012, increased to \$500.

Sabbatical Fund

Effective July 1, 2012, formula generating funds changed to C2 salary x .80% x 7.

Grid Steps – Assistant, Associate & Full Professor

Effective July 1, 2012, one new step added to each of these grids.

Sessional Faculty

New 16.1.7

Subject to the foregoing, once a person has taught five or more 0.5 courses on a sessional basis, he or she shall automatically be short-listed for consideration for any sessional course that the person taught when the course was last offered or for any sessional course that is closely related to a course he or she taught previously, whether or not the person is currently a sessional faculty member.

Sessional Pay Scale

Effective July 1, 2012, new step, S4, added to Sessional Grid - \$5543. One time only, every sessional who has been at his or her current step for at least three years, advanced to the next step.

Sessional Pay in Lieu

Effective July 1, 2012, increased to 7%.

Conclusion

I remain seized with the implementation of my award.

DATED at Toronto this 8th day of March 2012.

“William Kaplan”

William Kaplan, Sole Arbitrator