

SFU AND APSA BASIC AGREEMENT
COMPENSATION NEGOTIATION IMPASSE RESOLUTION
ARBITRATION ACT, SBC 2020, c. 2

SIMON FRASER ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

APSA

SIMON FRASER UNIVERSITY

UNIVERSITY

(Re: Final Offer Interest Arbitration of Economic Benefits)

Arbitrator:	James E. Dorsey, Q.C.
Representing APSA:	Allan E. Black, Q.C. and Stephanie T. Mayor
Representing the University:	Patrick Gilligan-Hackett
Hearing Consultation:	November 25, 2021
Online Hearing:	December 7, 2021
Decision:	December 13, 2021

APSA Negotiators:	Kris Nordgren, Chair, Salary & Benefits Committee (SFU Assistant Registrar, Senate & Academic Services) • Jill Sutherland, Vice-president (SFU Director, University Curriculum and Institutional Liaison) • Ellen Siew Meng Yap, Member, Salary & Benefits Committee (SFU Manager, Academic and Administrative Services, School for International Studies) • Andrew Boden, Executive Director • Lakshmi Gosyne, Communication Coordinator • Angela Vass, Member Services Coordinator • John S. Wilson, Salary & Benefits Committee Consultant
University Negotiators:	Chris Hatty, Executive Director, Human Resources • Elsa Plican, Director, HR Research Personnel and HRIS • Tanya Morrison, Director, Total Compensation • Mark Lalonde, Chief Safety Officer • Andy Cheung, Labour Relations Advisor • Sukhdeep Kaila, Labour Relations Advisor • Lea Tsang, Labour Relations Specialist

Contents

1.	Delay and Impasses in Negotiations and Mediation	1
2.	Disclosure Decision and Clarifications Before Final Positions of Record	6
3.	British Columbia Arbitrators' Approach to Interest Arbitration.....	8
4.	Influence of PSEC Bargaining Mandate in Interest Arbitration	10
5.	Positions of Record (November 16, 2021).....	12
	A. Professional Development Reimbursement Increase and Extension.....	13
	B. Tuition Reimbursement Increase for Continuing Employees.....	16
	C. Temporary Employee Sick Leave Entitlement.....	17
	D. Extended Health Care Enhancements with Offset Drug Plan Savings.....	18
6.	Final Offer Arbitration Selection and Award.....	18
	Appendix 1 – APSA Position of Record	20
	Appendix 2 – University Position of Record	25

1. Delay and Impasses in Negotiations and Mediation

[1] This interest arbitration decision is to resolve an impasse in negotiations on an agreement on salaries and economic benefits between APSA and the University under their Basic Agreement for collective bargaining and consultation. The Basic Agreement, first entered into in 1983 and amended to extend to December 31, 1992, automatically renews annually unless “six months in advance of the expiry date either party has given the other written notice of its intention to renegotiate” (Article 13).

[2] In each salary year that an existing agreement on salaries and economic benefits is to expire, there are to be negotiations for a new agreement on salaries and economic benefits. Article 8.2 states:

8.2 Negotiators

Not later than October 15 of the salary year (July 1 - June 30) in which an agreement on salaries and economic benefits for the bargaining unit is to expire, each of the parties shall select not less than three (3) and not more than five (5) negotiators to bargain a new agreement on salaries and economic benefits and shall forward to the other party the names of its negotiators. Negotiators for each party may utilize the services of such consultants and resource persons as they see fit. Negotiators shall not suffer loss of salary while in attendance at negotiation sessions.

[3] The University provided a summary statement of the agreements on salaries and economic benefits in 2010 and 2012 for 2-year and 4-year terms and the Public Sector Employers' Council's (PSEC) bargaining mandates in effect for those negotiations.

2010-2012 – PSEC Net Zero Mandate – ratified before June 21, 2010

1. Wage and benefits shall remain as currently in effect.
2. Effective July of 2010 and 2011, unless otherwise mutually agreed to, step progression shall occur in accordance with Policy AD 10.6.
3. Letter of Agreement on Patrol Supervisors, signed March 31, 2006, will be renewed.

2012-2014 – PSEC Cooperative Gains Mandate – signed June 24, 2013

1. The carry forward of Unused PD funds, as provided in AD 10.11 5.02 will be amended as follows:
 - a. Effective Jan 2013 - \$2,100
 - b. Effective Jan 2014 - \$2,800
2. Effective July 1, 2013, the Extended Health provision for vision care will be amended to provide for a maximum of \$500 in a 24-month period.
3. Through the JUAC [Joint University Association Committee] committee process, the University and APSA will review and make joint recommendations to adjust Employment Policy AD 10.6 5.01 and 5.02, as necessary.
4. Effective July 1, 2012, a 2% salary increase will be applied to the salary scale.
5. Effective July 1, 2013, a 2% salary increase will be applied to the salary scale.

[4] Some components of an agreement on salaries and economic benefits do not require amendments to the University's AD 10 Administrative Policies for staff represented by APSA. Some may. Some may require amendment to benefit plans, but not AD 10 policies. Contrary to assertions by APSA,¹ the University says its proposals are complete and can be implemented without further negotiation or direction by the final offer arbitrator.

[5] Negotiations and mediation/arbitration for a new agreement on salaries and economic benefits in 2014 resulted in a 5-year agreement from July 1, 2014 to June 30, 2019. At that time, the PSEC Economic Stability Mandate allowed longer-term agreements.

[6] The new agreement on salaries and economic benefits included annual general wage increases; a letter of agreement on annual economic stability dividend payments from

¹ See for reference *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 30

2016 to 2019; an increase to the carry forward amount for individual unused professional development reimbursement to \$3,500; and a change to the vision care benefit. Through interest arbitration, a Joint Compensation Review Committee was established. Its work was to be funded by the University in the total amount of \$485,000. Arbitrator Taylor's award states:

The University and APSA recognize that a fair and equitable system of total compensation is important for the successful recruitment and retention of professional and managerial staff.

The parties also recognize that while salary makes up an important component of total compensation, the various other benefits and entitlements which are provided to APSA employees form an integrated system of total compensation.

The University and APSA will establish a Joint Compensation Review Committee (JCRC) consisting of three representatives each from the University and APSA, to consider and make recommendation(s) towards the development and implementation of a total compensation package.²

[7] The JCRC work came to an impasse which was not resolved until February 2021 with the assistance of mediation.³

[8] Negotiations for a new agreement on salaries and economic benefits did not begin in 2019 because the Basic Agreement provides that negotiations on a new agreement cannot begin "until the agreement on the previous year's salaries and economic benefits has been concluded" (Article 8.5). Because of the JCRC impasse, negotiations were delayed until April 2021. Lost opportunity for economic benefits was a negotiation issue for APSA.

[9] For the University, the operation of PSEC's 3-year term, 2019 Sustainable Services Negotiating Mandate was an imperative consideration. This Mandate allows public sector employer to agree to general wage increases of 2% in each of the three years and a modest service delivery allocation up to 0.25% of the total labour costs of the fiscal year prior to the term of an agreement.⁴ The service delivery allocation gives an employer the:

Ability to negotiate conditional and modest funding that can be used to drive tangible service improvements for British Columbians. An example would be targeted funds to address existing, chronic labour market challenges where employers need to meet service delivery commitments or changes that achieve service enhancements such as innovations, modernization or efficiencies.⁵

² *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University*, unreported, February 5, 2015 (Taylor), pp. 3-4

³ See *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 44

⁴ See *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 45-63

⁵ See <https://www2.gov.bc.ca/gov/content/employment-business/employers/public-sector-employers/public-sector-bargaining/mandates-and-agreements>

[10] Determining what is acceptable to PSEC within this service delivery improvement for an employer's organization can be a voyage of discovery during collective bargaining and other negotiations. The University did not come to the negotiations in April with specific proposals. On April 12, it proposed:

A conditional fund of 0.25% of total payroll may be available through this mandate to support core priorities and enhance and modernize the delivery of our service to students. The Parties agree to consult on opportunities available to apply this conditional funding. Any agreement to apply the 0.25% must be consistent with the 2019 Sustainable Services Negotiating Mandate and meet the prior approval of PSEC.

[11] On April 12, the University proposed improvements to three traditional benefits – implementing pay direct prescription drug cards; adding Clinical Counsellors and Social Workers as providers for psychological paramedic coverage; and changing the referral requirement for massage therapy from 6 to 12 months. These benefit improvements were not to be funded from either the 2% general wage increase or the 0.25% service delivery allocation. They were to be funded by three cost saving changes to the prescription drug plan – priority use of generic drugs; a dispensing fee cap; and changing from an open to a managed formulary.

[12] The University had adopted these cost saving changes to the prescription drug plan for its group of 98 excluded executive employees (APEX), who are not represented by APSA. No trade union representing University employees has agreed to similar changes to the prescription drug plan for employees they represent.

[13] The University made proposals in 2014 for changes to the prescription drug plan in negotiations with APSA, which are reported in the minutes of the December 2014 APSA annual general meeting.

8. Committee Reports

Salary & Benefits Committee. Report by KC Jones, Chair of the Salary & Benefits Committee. APSA served notice to SFU in October, and have been negotiating since then. At the table, the Committee addressed some other issues like the Direct Pay Card. Over 50% of members were interested in the card. The University's position was that in exchange for the Direct Pay Card, they would like to increase the deductible to \$100, create a dispensing fee cap, and restrict coverage to generic drugs only. For member's who require a brand name drug, they would have to get a costly letter from their doctor every 3 months. APSA views this as a concession and decided to pull the Direct Pay Card from the table, however the University is now refusing to withdraw it even though they did not bring it to the table originally.

[14] The University envisions that its 2021 proposals will align the prescription drug plan for APSA represented employees with the plan for APEX employees, which has a

dispensing fee cap of \$10.25 and provisions on when plan members will be reimbursed for the cost of a brand name drug in place of the cost of an available generic drug.

[15] After 7 years since the last negotiations and relationship friction at both JUAC and JCRC, APSA came to negotiations with an extensive and ambitious agenda of 54 conceptual proposals. Making proposals or reaching an agreement within the PSEC mandate was not a priority. Its proposals, tabled at the same time as the employer's proposals, included employer provision of pay direct prescription drug cards.

[16] On May 6, 2021, APSA and the University agreed to a three-year term from July 1, 2019 to June 30, 2022 for the new agreement on salaries and economic benefits and general wage increases of 2% on July 1 of each year. They agreed the July 1, 2019 and 2020 wage increases are retroactive from the date of payment. For this interest arbitration, all resolved items must be part of the Position of Record of each party (Basic Agreement, Article 8.6(b)(i)).

[17] APSA's appended Position of Record extends the May 6 agreement on retroactivity to July 1, 2021 and particularises who will be paid and when they will be paid. Although included in its Position of Record as part of the agreed items, these elaborations are more properly additional non-agreed items. I have considered these elaborations as non-agreed proposals when considering APSA's Position of Record.

[18] On May 10, the University proposed spending the available 0.25% service delivery mandate funds on tuition reimbursement and professional development expenses, which were items among APSA's proposals. The University proposed:

- 1) Pursuant to AD 10-10, an increase to the tuition reimbursement from \$1000 to \$1600 effective January 1, 2022.
- 2) Pursuant to AD 10-11, an increase to the professional development expenses from \$700 to \$800 effective January 1, 2022.
- 3) The University proposes a one-time contribution of \$1100 made to Professional Development fund for each eligible APSA employees under AD 10-11.
- 4) Should the fund exceed the \$3500 limit set out in AD 10-11 (4.2), the university will allow a one-time exemption to exceed this limit for a time period which will begin on January 1, 2022 and will expire on December 31, 2022.

[19] The next day, after nine negotiating sessions in which bargaining had not achieved any real traction, I was appointed as mediator/arbitrator. Confidential mediation briefs were

filed on June 21. Mediation continued to July 14 and again on September 27. Obtaining data and costing was a priority for APSA.⁶

[20] Following an impasse in mediation, a December 7 arbitration hearing date was scheduled. November 16 was the date to exchange Positions of Record (Basic Agreement, Article 8.2(b)(iv)).

[21] The University had staked out its position before mediation. APSA was refining its final position throughout and after mediation. On November 3, APSA applied for an order for further disclosure by the University by November 12. Some of the matters for which it sought data disclosure are not included in its final Position of Record.

2. Disclosure Decision and Clarifications Before Final Positions of Record

[22] On November 10, I issued a decision on APSA's application.⁷ Later that day, APSA requested clarifications.

We write on behalf of APSA to seek clarification of your decision and to ensure we understand the process going forward.

First, in relation to your ruling concerning request #2 (increases to individual benefits), you identify that this request is in relation to psychological services and rule that the crux of the difference between the parties is usage assumptions (of which we generally agree). You then order that the University provide "the number of enrollees, the monthly rate and the percentage cost increase it used in its costing." We write to clarify whether reference to "the number of enrollees" refers to the number of members making claims for psychological services (consistent with the underlying proposal and crux of the difference) or to the number of members generally enrolled in the entire extended health benefits plan.

Second, in relation to your ruling concerning request #5 (maternity and parental leave), we requested an order that the University provide costing information on this proposal. You ordered that the University provide "the number of maternity and parental leaves in the Association Group initiated in each of the fiscal years 2019, 2020 and 2021." We have assumed that this order includes disclosure of how the University arrived at those numbers and/or how they were calculated (particularly given members may be on leaves that span years and we have an interest in ensuring those numbers are accurate).

Finally, we seek clarity of certain comments made in your decision that affect the process going forward. At para. 30, you refer to each party's "proposal" being "complete, precise and able to be implemented without further negotiation or direction." APSA understood that the Position of Record would include the final proposed items but would not include specific language amending the policies. Rather, that would be submitted as part of final submissions in the hearing. Accordingly, we are clarifying whether the reference to "proposal" relates to the Position of Record to be provided on November 16, 2021 or final submissions in the hearing scheduled for December 7, 2021. Although not raised in your decision, given the parties' past experience in final offer selection, we are confirming that we will be exchanging Positions of Record between

⁶ See *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 72-80

⁷ See *Simon Fraser Administrative and Professional Staff Assn. v. Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey)

the parties and yourself (as opposed to confidentiality submitting Positions of Record solely to the interest arbitrator as has been done in previous arbitration processes).

[23] I gave the requested clarifications the following morning.

Because of the impending date to deliver statements of Positions of Record, I send this clarification without waiting for representations by the University.

#1 – The “number of enrollees” is the number that was determined by the University for its spreadsheet costing provided to APSA during negotiations. Implicit is a University explanation why it used whatever parameters it used to determine the number. Perhaps, APSA will dispute those parameters.

#2 – Your assumption is correct.

#3 – I have not been given information about past final offer selection arbitration processes other than Arbitrator Kelleher and Taylor’s awards.

Article 8.7(b)(i) addresses delivery to one another of written statements of Records of Position, which absence mutual agreement, cannot be altered. Article 8.7(b)(iii) addresses delivery of the statements to the arbitrator.

I have assumed each written statement of Position of Record will include all implementation details and consequences of each proposal in the Position of Record so the other party knows fully the implications of each proposal.

Mediator/arbitrator Colin Taylor states he met with each bargaining committee on January 29, 2015 in the process he fashioned under Article 8.7(b)(iv). He does not report which Position of Record he selected.

On November 3, 1994, counsel and a very capable lay advocate represented the parties at the hearing. Arbitrator Kelleher reports he selected the University’s Position of Record. The 1994 reported Positions of Record addressed amendments to specific policies.

My statements in ¶30 are a signal that I expect that I will be able to make an award selecting a Position of Record and not depend on JUAC, the JCRC, further negotiation, mediation or arbitration jurisdiction retained into 2022 to bring finality to the current round of compensation negotiations.

After months of mediation, I am acutely aware of the challenges in the relationship between APSA and the University and the degree of difficulty they have achieving joint decisions. With the 2014 negotiations round continuing through JCRC into 2022 and a new round to begin in 2022, I consider there to be value for the relationship to have the current round fully completed by an award for which I am not required to provide reasons and which does not have further ongoing process for implementation.

If APSA and the University agree otherwise, I will respect that agreement. However, absent a clear agreement, I do not consider my role as mediator or final offer arbitrator to extend beyond the date of my award. This includes avoiding any necessity to provide any interpretive clarification of the unalterable statement of Position of Record selected.

To be precise, “proposal” in ¶ 30 under the Basic Agreement is the statement of Position of Record to be delivered on November 16, 2021.

[24] On November 16, APSA and the University exchanged their Positions of Record.

3. British Columbia Arbitrators' Approach to Interest Arbitration

[25] The evolved consensus among British Columbia arbitrators on the guiding principles for interest arbitration was summarized in 2010 by Arbitrator McPhillips⁸ in a fire fighters interest arbitration under the *Fire and Police Services Collective Bargaining Act*.⁹

First, replication is the desired outcome and that refers to the notion that an interest arbitration board should attempt to duplicate what the parties themselves would have arrived at if they had reached an agreement on their own. In *City of Vancouver and Vancouver Fire Fighters, Local 18*, [2001] B.C.C.A.A.A. No. 49, Arbitrator Korbin determined that "the guiding arbitral principle in interest arbitration is the replication theory – an award should replicate what the parties would have concluded themselves, had they successfully settled their collective bargaining dispute. This is a principle which arbitrators have long accepted." Similarly, in *Board of School Trustees, School District No. 1 (Fernie) and Fernie District Teachers Association*, (1982), 8 L.A.C. (3d) 157, Arbitrator Dorsey stated, at p. 159 that "...the task of an interest arbitrator is to simulate or attempt to replicate what might have been agreed to by the parties in a free collective bargaining environment where there may be the threat and the resort to a work stoppage in an effort to obtain demands ... and arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities". That principle has been adopted in numerous other awards: ...¹⁰

A second principle is the requirement to be "fair and reasonable" in the sense that the award must fall within a "reasonable range of comparators" even if one party could have imposed more extreme terms. ...¹¹

Third, the exercise of interest arbitration has been described as a "conservative process" and that it "ought to supplement and assist the parties' collective bargaining relationship and not unravel or depart from it":¹² ... In his 1995 decision in *City of Vernon and Vernon Fire Fighters*,

⁸ *Nelson (City) v. Nelson Professional Fire Fighters' Assn. (Wages Grievance)*, [2010] B.C.C.A.A.A. No. 174, (McPhillips, ¶ 6-9; See also *Thompson Rivers University v. Thompson Rivers University Open Learning Faculty Assn. (Online Modality Pay Rate Grievance)*, [2012] B.C.C.A.A.A. No. 71 (Hall), ¶ 11

⁹ RSBC 1996, c. 42

¹⁰ Decisions cited by Arbitrator McPhillips: *Vancouver Police Board and Vancouver Police Union* [1997] B.C.C.A.A.A. No. 621 (Lanyon); *City of Burnaby and Burnaby Fire Fighters Union, Local 23*, [2008] B.C.C.A.A.A. No. 220 (Gordon); *Beacon Hill Lodges of Canada*, 19 L.A.C. (3d) 288 (Hope); *Corporation of City of Calgary and IAFF, Local 255*, December 22, 1999 (Tettensor); *City of Regina and Fire Fighters Association, Local 181*, September 21, 2005 (Paus-Jenssen); *City of Richmond and Richmond Fire Fighters Association*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *City of Vancouver and Vancouver Fire Fighters Union, Local 18*, [2008] B.C.C.A.A.A. No. 182 (Korbin)

¹¹ Decisions cited by Arbitrator McPhillips: *City of Vancouver and Vancouver Fire Fighters (2001)*, *supra*; *Yarrow Lodge Ltd.*, (1993) 21 C.L.R.B.R. (2d) 1 (B.C.L.R.B.); *Vancouver Police Board (1997)*, *supra*; *City of Richmond and Richmond Fire Fighters Association*, *supra*; *City of Campbell River and Campbell River Fire Fighters Association (I.A.F.F., Local 1668)*, October 19, 2005 (Gordon); *City of Burnaby and Burnaby Fire Fighters (2008)*, *supra*; *City of Regina and Regina Professional Fire Fighters' Association, Local 181 (IAFF)*, (2005), *supra*; *City of Moose Jaw and Moose Jaw Fire Fighters' Association, IAFF Local 553*, August 30, 2007 (Paus-Jenssen); *McMaster University and McMaster University Faculty Association*, 13 LAC (4th) 199 (Shime); *Temiskaming Lodge and Canadian Union of Public Employees*, September 11, 2007 (Shime); *Governing Council of the University of Toronto and the University of Toronto Faculty Association*, March 27, 2006 (Mr. Justice Winkler); *City of Vancouver and Vancouver Fire Fighters' Union, Local 18*, (2008) *supra*; *City of Vancouver and Vancouver Fire Fighters' Union Local 18*, (2001) *supra*

¹² Decisions cited by Arbitrator McPhillips: *City of Campbell River and Campbell River Fire Fighters Association*, *supra* at pa. 18, see also: *Vancouver Police Board and Vancouver Police Union*, (1997), *supra*; *City of Vernon and Vernon Fire Fighters Association, Local 1517*, [1995] B.C.C.A.A.A. No. 432, December 28, 1995 (Hope); *Okanagan Mainline Municipal Labour Relations Association and International Association of Fire Fighters, Locals 953, 1339 and 1746*, 6 L.A.C. (4th) 323 (Hope); *City of Vancouver and Vancouver Fire Fighters Union, Local 18 (2001)*, *supra*; *City of Burnaby and Burnaby Fire Fighters Union, Local 323 (2008)*,

Local 1517, *supra*, Arbitrator Hope stated, at paragraph 76, that "interest arbitration is not an appropriate medium for the imposition of fundamental changes in collective agreement relationships ..." Similarly, in *Okanagan Mainline Municipal Labour Relations Association and IAFF Locals 953, 1399 and 1746*, (1997) *supra*, Arbitrator Hope stated, at page 43, that "it is trite for me to observe that interest arbitration holds little potential for innovation. Interest arbitrators are enjoined to replicate the collective bargaining process. Thus, it is predictable, and perhaps inevitable, that they will follow bargaining trends, not set them".

Fourth, as a result of this reluctance to innovate, historical patterns of negotiated settlements between the parties will carry significant weight:¹³ ... It is well established that interest arbitrators will attempt to respect historical relationships and the party seeking to disrupt that "voluntarily negotiated historical pattern" will have to identify persuasive reasons for doing so: *Kootenay Boundary (Regional District) and Trail Firefighters Association, Local 9411* [2009] B.C.C.A.A. No. 173, No. A32/09 (Gordon).

[26] Inherent in the four guiding principles – replication, using a reasonable range of comparators, taking a conservative approach and giving significant weight to historical patterns of negotiated settlements – is a choice by arbitrators to exercise restraint in the use of their adjudicative authority in order to support and encourage party self-governance. The intent is to avoid giving either party an incentive to choose interest arbitration for impasse resolution in place of making the difficult decisions, choices and compromises necessary to achieve a negotiated settlement.¹⁴

[27] In addition to the guiding principles, arbitrators must consider factors listed in any statute under which the interest arbitration is conducted, such as the *Fire and Police Services Collective Bargaining Act* or section 55 of the *Labour Relations Code*,¹⁵ and factors agreed between the parties to the interest arbitration.¹⁶

supra; *City of Vernon and Vernon Fire Fighters Association, IAFF Local 1517*, [1999] B.C.C.A.A.A. No. 182 (Hope)

¹³ Decisions cited by Arbitrator McPhillips: *City of Richmond and Richmond Fire Fighters Association (2008)*, *supra*; *District of Chilliwack and Chilliwack Fire Fighters Association (1999)*, *supra*; *City of Vancouver and Vancouver Fire Fighters Union Local 18 (2001)*, *supra*; *City of Burnaby and Burnaby Fire Fighters Union, Local 323, (2008)*, *supra*; *City of Vernon and Vernon Fire Fighters Association, Local 1517*, [1995] B.C.C.A.A.A. No. 432 (Hope).

¹⁴ See for example the approach in *Vancouver (City) Police Board v. Vancouver Police Union (Collective Agreement Renewal)*, [2014] B.C.C.A.A.A. No. 95 (Lanyon); *University of British Columbia –and- Faculty Association of the University of British Columbia (Interest Arbitration 2013)*, unreported, July 24, 2013 (Taylor); *University of British Columbia –and- Faculty Association of The University of British Columbia (Interest Arbitration – 2014)*, unreported, March 13, 2016 (Taylor); *University of Northern British Columbia –and- University of Northern British Columbia Faculty Association*, unreported, February 4, 2014 (Ready)

¹⁵ See for example *University of Northern British Columbia v. University of Northern British Columbia Faculty Assn. (First Collective Agreement Grievance)*, [2015] B.C.C.A.A.A. No. 138 (Lanyon)

¹⁶ See agreed factors in *University of Victoria –and- University of Victoria Faculty Association*, [1995] B.C.C.A.A.A. No. 14 (Munroe); *University of Victoria (Re)*, [1996] B.C.C.A.A.A. No. 162 (Kelleher); *University of Victoria –and- University of Victoria Faculty Association (Interest Arbitration – 2013)*, unreported, November 20, 2013 (Taylor); *University of British Columbia –and- Faculty Association of the University of British Columbia (Interest Arbitration 2013)*, unreported, July 24, 2013 (Taylor); *University of British Columbia –and- Faculty Association of The University of British Columbia (Interest Arbitration – 2014)*, unreported, March 13, 2016 (Taylor)

[28] Article 8.1 of the Basic Agreement states:

8.1 Items for Negotiation and Statement of Intent

Annual general salary increases, pensions and other generally available economic benefits for administrative and professional employees in the Association Group shall be determined in accordance with the procedures outlined in this Article. The provisions of this Agreement reflect the mutual commitment of the parties to:

- (a) maintain a harmonious working relationship and to achieve a mutually acceptable negotiated settlement of total compensation, including annual salaries, pensions and economic benefits; and
- (b) seek a negotiated settlement consistent with the need to maintain the quality of the administrative and professional staff, the need to provide fair compensation for members of the bargaining unit, and the need to maintain and to develop the quality of education.

[29] In APSA's advocacy for its Position of Record, APSA places greater weight on the mutual commitments in 8.1(a) and (b) than on the PSEC bargaining mandate. The University places more weight on the PSEC mandate.

4. Influence of PSEC Bargaining Mandate in Interest Arbitration

[30] Application of the guiding principles requires consideration of all the circumstances that are influencing the negotiations that came to impasse and require resolution. In interest arbitration for parties in the British Columbia public sector this includes the current PSEC bargaining mandate.

[31] PSEC bargaining mandates do not have legislative force,¹⁷ but are a real bargaining constraint for employers subject to them. PSEC bargaining mandates do not have binding effect on interest arbitrators, but as Arbitrator Ready wrote in 2014: "I do not, however, dismiss the PSEC mandate as irrelevant. Rather, 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."¹⁸

[32] This is similar to what Arbitrator Kelleher said in 1994 in an interest arbitration between APSA and the University.

In the first place, the University referred me to the Compensation Guidelines issued by the Public Sector Employers' Council.

Those guidelines are not of the same legal effect, as say, the Regulations made under the Federal *Anti-Inflation Act* or the *Compensation Stabilization Act* here in British Columbia.

¹⁷ See *University of Northern British Columbia v. University of Northern British Columbia Faculty Assn. (First Collective Agreement Grievance)*, [2015] B.C.C.A.A.A. No. 138 (Lanyon), ¶ 94

¹⁸ *University of Northern British Columbia -and- University of Northern British Columbia Faculty Association*, unreported, February 4, 2014 (Ready), p. 9

The guidelines do not provide a legal obstacle to an Award which is in excess of the Guidelines. Rather, they serve as evidence of the context in which bargaining takes place. To the extent that they shape the Employer's approach to bargaining, they are relevant.

The general approach of interest arbitrators is to replicate to the extent possible the agreement which would have been reached if the parties had been able to reach their own agreement. In that context the Guidelines are relevant in the sense that the Employer would have felt constrained to respect them. That does not mean that the Employer would necessarily have succeeded.¹⁹

[33] In 1996, a university employer made a wage proposal exceeding the PSEC mandate, which Arbitrator Kelleher awarded.²⁰ In 2013, that employer argued the PSEC mandate was no more than another factor to be considered. Arbitrator Taylor did not give it a greater weight than the factors agreed between the parties.²¹

[34] In 2014, Arbitrator Ready awarded a wage increase greater than the PSEC mandate.

At the same time I recognize in granting a wage adjustment over and above the provincial pattern of 2% each year of the Collective Agreement that it must be done by taking into account the current financial status of the university and the bargaining history between the two parties. Though the economic environment, PSEC mandate included, creates a milieu mitigating the kind of substantive increase sought by the Union here, sufficient justification exists for an increase above 2% + 2%.

As such, and relying on the above factors including the extensive comparators advanced by both parties, I award a general wage increase of 2.5% in the first year of the Collective Agreement (effective July 1, 2012) and 2.5% in the second year (effective July 1, 2013).²²

[35] PSEC bargaining mandates for public sector employers employing almost 500,000 employees are applied in many varied circumstances in differing service sectors. While the mandate constrains employers, it does not place each of them in a straight jacket.

[36] Probably for valid collective bargaining and other reasons, the PSEC mandates and their component elements have a degree of opaqueness, some say flexibility, behind their synoptic title. There are no publicly accessible mandate interpretation bulletins or other aids available to non-employer parties to negotiations. PSEC does not publicize whether it has preferred or mandatory costing methodologies or the extent to which it must approve employer proposals before they are tabled in negotiations. Employers generally maintain confidential their communications with PSEC about an ongoing negotiation. The

¹⁹ *Simon Fraser University v. Administrative and Professional Staff Assn.*, [1994] B.C.C.A.A. No. 437 (Kelleher), ¶ 23-25

²⁰ E.g., *University of Victoria (Re)*, [1996] B.C.C.A.A. No. 162 (Kelleher), ¶ 52-56

²¹ *University of Victoria -and- University of Victoria Faculty Association (Interest Arbitration – 2013)*, unreported, November 20, 2013 (Taylor), ¶ 51-53. See also *University of British Columbia -and- Faculty Association of The University of British Columbia (Interest Arbitration – 2014)*, unreported, March 13, 2016 (Taylor)

²² *University of Northern British Columbia -and- University of Northern British Columbia Faculty Association*, unreported, February 4, 2014 (Ready), p. 15

consequence for an employer, if any, for exceeding a PSEC mandate is a matter between the employer, PSEC and government funding agencies.

[37] During negotiations in the period for each PSEC mandate, a range of agreements are reported or rumoured among negotiators to have received recognition as mandate compliant by an employer and PSEC. The University provided negotiated agreement summaries of several collective agreements under the current PSEC mandate that list various cost items in addition to 2% general wage increases that apparently were permissible for those employers under the PSEC service delivery mandate.

[38] At interest arbitration, when a specific agreement is cited as a mandate compliant comparator or a proposal is argued to be or not to be compliant with a PSEC mandate, arbitrators have avoided venturing into the murky waters of interpreting the permissible limits of PSEC mandates. Interest arbitrators have refrained from evaluating whether all or part of a proposal is PSEC mandate compliant.

[39] This restraint is consistent with the approach adopted by interest arbitrators to treat PSEC bargaining mandates as one of many elements, but not a determinative element, in the negotiating environment and context of the parties' relationship.

5. Positions of Record (November 16, 2021)

[40] The Positions of Record by APSA and the University include competing proposals on professional development expenses; a University tuition reimbursement proposal; an APSA sick leave proposal for eligible temporary employees; and the University's proposed three benefit improvements and prescription drug plan changes.

[41] Neither the University nor APSA considers any of the proposals in the Positions of Record to be outside the scope of compensation negotiations under Article 8.1 of the Basic Agreement.

[42] Both APSA and the University cost their proposals to be within PSEC's 0.25% service delivery allocation mandate.

[43] Differing assumptions about the extent of employee future utilization of benefit proposals produce different cost projections in dollars and as a percentage of total labour costs. Utilization assumptions are a key variable in APSA and the University's perspectives on whether the total annual cost of the other's proposals fit within the 0.25% of total labour

cost envelope, which for this employee group is \$296,250 [$\$118.5\text{m} \times 0.25\% = \$296,250$] per year and, without compounding is \$888,750 over three years [$\$296,250 \times 3 = \$888,750$].

A. Professional Development Reimbursement Increase and Extension

[44] University Administrative Policy AD 10-11.3.02 states:

The following expenses incurred by a Continuing Employee on his/her own behalf are eligible to be reimbursed:

- a. professional dues, subscriptions, journals and books,
- b. equipment, including computer hardware and software, and
- c. conference fees, including travel and associated expenses.

[45] APSA proposes, effective July 1, 2019, increasing the annual reimbursement fund for professional development expenses for continuing employees from \$700 to \$1,100 with the annual carry forward amount increased from \$3,500 to \$5,500.

[46] APSA proposes extending annual reimbursement for professional development to temporary employees who have a minimum one-year contract period in the amount of \$550 per calendar year effective July 1, 2019.

[47] APSA proposes that the retroactive “unspent amount” calculated at five-sixths of the increased and new amounts for the 2.5-year period between July 1, 2019 and December 31, 2021 be paid to employees within the next 90 days in accordance with a proposed formulae regardless whether they actually incurred reimbursable expenses.

[48] The University agrees the annual reimbursement increase for professional development expenses for continuing employees and the new future reimbursement payments to eligible temporary employees is within the 0.25% service delivery improvement component of PSEC’s mandate. It says the payment of unused, “unspent” or retroactive funds in the proposals is outside the mandate because it is not being expended to pay for tangible service improvements. It amounts to an additional general wage increase with no benefit for the University and an incentive to employees to simply wait for the cash and not incur reimbursable professional development expenses.

[49] For its costing and calculation of the “unspent amount,” APSA says it used the most supportable data and assumptions at the time of negotiations and subsequent to making its proposals. It costs the “unspent amount: to be paid out at \$719,630 using a continuing employee population of 1,225.15 FTEs provided by the University in May 2021 and a

population of 105 FTEs for temporary employees with contracts for a duration over 6 months provided by the University in November 2021.

[50] The continuing employee utilization of professional development reimbursement provided by the University for 2017 to 2019 was:

	2017	2018	2019
Employees claiming	299	290	299
Total reimbursed	\$426,166.65	\$438,479.54	\$450,636.96
Average amount	\$1,425.31	\$1,512.00	\$1,507.15

[51] To calculate the percentage of utilization of this benefit, APSA calculated the total amount available for reimbursement in 2019 at \$700 per continuing employee to have been \$857,605 [1,225.15 x \$700 = \$857,605]. The amount claimed (\$450,636.96) is 52.5460% of the available amount.

[52] APSA uses this percentage as its assumption of annual utilization of the professional development reimbursement benefit for both continuing and eligible temporary employees to calculate the values for each of the three years of the term of the new agreement on salaries and economic benefits. [1,225.15 FTE x \$400 = \$490,060 x .52546 = \$257,507 and 105 FTE x \$550 = \$ 57,750 x .52546 = \$30,345]. The utilization percentage assumption is also what drives the calculation of the “unspent amount.”

APSA Proposal	Annual \$\$ and % Cost		Retroactive: one-time payment of unspent amount for 2.5 years
Continuing professional development \$400 increase	\$ 257,507	0.2173%	\$643,767
6-month Temporary professional development \$550 increase	\$ 30,345	0.0256%	\$ 75,863
Totals	\$ 287,852	0.2429%	\$719,630
Sick Leave: removal of 3-weeks uninterrupted service between leaves	\$ 8,591	0.0072%	
Totals	\$ 296,443	0.2501%	
GWI as 2% of \$118.5m	\$2,370,000	2.0000%	
Totals	\$2,666,443	2.2501%	

[53] In its costing of APSA’s professional development proposals, the University uses 1,284.28 continuing employee FTEs as of November 30, 2021 and 95 FTEs for eligible temporary employees. It assumes 100% utilization, which it says occurs over time because employees claim their individual amounts carried forward and do not forego accumulating entitlement.

[54] The University says the cost for continuing employees will be 0.4335% [$\$400/\text{yr.} \times 1,284.28 \text{ FTEs} = \$513,712 \div \$118.5\text{m} = 0.4335\%$]. For eligible temporary employees, it will be 0.0441% [$\$550/\text{yr.} \times 95 \text{ FTEs} = \$52,250 \div \$118.5\text{m} = 0.0441\%$]. The total annual cost is \$565,962 [$\$513,712 + \$52,250 = \$565,962$]

[55] The total costing difference, driven almost entirely by the 52.5460% and 100% utilization assumptions, is \$278,110 [$\$565,962 - \$287,852 = \$278,110$] or 0.2353%.

[56] For the one-time payout of unspent funds in APSA's proposal, the University also uses an assumption of 100% utilization. For continuing employees, it calculates $\$400 \times 1,225.15 \text{ FTEs} = \$490,060$ per annum. For 2.5 years, the cost is \$1,225,150. For temporary employees, it calculates $\$550 \times 95 \text{ FTEs} = \$52,250$ per annum. For 2.5 years, the cost is \$130,625. The sum of these amounts is \$1,355,775 or 1.144% of the 118.5m total labour cost, a substantial bonus payment is not incorporated into wage rates and does not compound.

[57] The University proposes (1) increasing the annual reimbursement amount for continuing employees from \$700 to \$800 effective January 1, 2022; (2) paying a one-time additional reimbursement amount of \$1,100 for each eligible employee; and (3) granting a one-time exemption to exceed the \$3,500 carry forward amount by \$1,100 during the 2022 calendar year. The University says the second and third proposals do not require any change to the AD 10-11 policy because both have limited duration; the \$1,100 contribution is a one-time contribution; and the carry forward proposal is a one-time exemption. There is no retroactivity.

[58] In May, the University costed its \$100 increase proposal at 0.1607%. APSA says this is an overvaluation based on 100% utilization and the maximum potential payout. From 2017 to 2019, between 200 and 299 employees were paid a reimbursement. Therefore, the rate of employee utilization is closer to 28.5% than 100% and a costing of 0.0543% is more appropriate than 0.1607%.

[59] The University's spreadsheet costing during negotiations of its proposed one-time additional reimbursement of \$1,100 was \$1,347,665 [$\$1,100 \times 1,225.15 \text{ FTEs} = \$1,347,665$]. APSA says this amount is unrealistically high because the University uses a totally improbable utilization value. It says the proposed exemption period for one-time contribution, which is 137.5% of the annual amount ($\$1,100 \div \$800 = 137.5\%$), is arbitrary.

[60] APSA says the one-time carry forward exemption in excess of \$3,500 for six months is a disguised claw-back. It should be for at least 16.5 months, the time it would normally take to earn \$1,100 reimbursement entitlement.

[61] APSA says both proposals require changes to the language of the AD 10 policies to be implemented and enforceable.

B. Tuition Reimbursement Increase for Continuing Employees

[62] An APSA initial proposal in negotiations was to increase annual tuition reimbursement from \$1,000 to \$2,000. It was relying on an April 28, 2016 communication from Sandi de Domenico, Interim AVP, Human Resources on tuition reimbursement.

APSA and the University support the goals of enhancing opportunities for employees to acquire job specific knowledge and skills to enable them to more effectively perform their jobs and to increase their opportunities for promotion and advancement at the University.

Together, through the Joint University Association Committee (JUAC), we have been reviewing our current learning and development policies to ensure that they are in alignment with these goals. While the longer-term plan is to develop a more comprehensive learning strategy, we did want to communicate an immediate change. We are clarifying, that going forward, the AD 10.10 Tuition Reimbursement Policy that provides for a maximum of \$1000 per calendar year for costs related to job related learning opportunities, will be interpreted as including courses (credit and non-credit), seminars, webinars, round tables, conferences or workshops. These changes will be effective January 1, 2016.

[63] The University costed APSA's proposal at 1.08% based on 100% utilization (\$1,000 x continuing FTEs), which APSA disputed as tenfold or more than the actual employee utilization and ignores the average cost of \$500 per reimbursement claim. APSA's final Position of Record has no proposal to increase the annual tuition reimbursement.

[64] The University proposes an increase in annual tuition reimbursement effective January 1, 2022 from \$1,000 to \$1,600. Based on 100% utilization, the University's projected cost is 0.6203% of total labour cost.

[65] APSA says the more appropriate costing is 0.0319% because the University's costing is based on an inaccurate estimate of utilization and an average per employee cost from 2020, which was the highest average reimbursement amount in the last three years. In May, the University used 1,225.15 FTEs. It now uses 1,284 FTEs. The utilization in the last three years was 100, 141 and 140 employees. Costing at 100% creates a phantom benefit for employees and a windfall for the University.

C. Temporary Employee Sick Leave Entitlement

[66] APSA proposes temporary employees be given the same entitlement to sick leave as continuing employees by amending 7.01(d) of Policy AD 10-08 as follows:

A Temporary Employee with more than three (3) weeks of ~~uninterrupted~~ service in his/her current position ~~prior to each period of sick leave~~ is eligible for the entitlement as a Continuing Employee as stated in Section 7.01 (a) above. ~~Following each instance of employee absence, a new period of three (3) weeks of uninterrupted service in his/her current position is required to be eligible for sick leave as stated in Section 7.01(a) above.~~

[67] In its costing of this proposal, APSA assumes a 2% incidence of multiple sickness leaves per year for an additional 1-week sick leave for the temporary employee population which has an average annual salary of \$70,823 or \$1,361.98 per week.

[68] During mediation the University provided sick leave data. In the past year, sick leave utilization by 275 of 1,428 or 19.26% of employees represented by APSA was:

- 36 to 72 hours: 160 employees
- 73 to 144 hours: 51 employees
- More than 144 hours: 64 employees

APSA calculated the weighted average at 4.24 days.

[69] APSA calculates the number of temporary employees affected by the 3-week requirement rounded up to be 6 employees and their total number of sick leave days rounded up to be 26 days. Using an average daily cost of \$330.43, it calculates an annual total of \$8,591 or 0.0072% of total labour costs.

[70] The University's costing is 0.1262% or \$149,547 based on sick leave usage by temporary employees in 2020, which was lower than 2019 despite Covid-19.

[71] This must be a far greater sick leave utilization by eligible temporary employees than APSA's assumption. Using APSA's daily average cost, the \$149,547 equates to an additional 452.58 sick leave days among temporary employees [$\$149,547 \div \$330.43 = 452.58$]. For 105 FTEs, it is an average of 4.31 more days [$452.58 \div 105 = 4.31$] per temporary FTE (or 4.76 days with 95 FTEs), which temporary employees cannot now claim as paid sick leave because they do not have three weeks of uninterrupted service prior to each sick leave.

[72] The University says this APSA proposal and cost will not lead to tangible service delivery improvement intended by the PSEC service delivery improvement mandate.

D. Extended Health Care Enhancements with Offset Drug Plan Savings

[73] Apart and separate from the PSEC service delivery improvement mandate, the University proposes three extended health care benefit enhancements to better align its group benefits with industry best practices – pay direct drug cards; adding Clinical Counsellors and Social Workers as providers for psychological paramedic coverage; and changing the referral requirement for massage therapy from 6 to 12 months. For implementation, revisions would be made to the employees' group benefit booklet. The cost of these enhancements is to be offset by three cost saving changes to the prescription drug plan.

[74] Each of the three benefit enhancements was initially proposed by APSA in the negotiations, but none is in APSA's final Position of Record.

[75] APSA says the University's costing is completely arbitrary with no explanation of the methodology. There is no increased benefit amount being made available to employees even if some barriers to access are lowered. A dispensing fee cap above the current average cost is not a savings. A managed formulary has no definition or understandable meaning. There is no disclosed costing by Pacific Blue Cross, which provide the administrative services for the group benefit plans. APSA calculates that the savings from reduced prescription drug plan benefits will be significantly higher and provide a windfall to the University. APSA disputes that this proposal accords with the PSEC service delivery improvement mandate.

6. Final Offer Arbitration Selection and Award

[76] The Basic Agreement provides that, for final offer interest arbitration, in which an arbitrator must select one of the two Positions of Record with no other discretion, "the arbitrator is not required to state reasons for the award" (Article 8.6(b)(vii)).

[77] I have decided the parties' relationship and impending negotiations for a new agreement on salaries and economic benefits will have a better chance of successfully achieving agreement on all terms if I do not state reasons for my award.

[78] The preceding portions of this decision are not reasons for my award. They are to demonstrate I have heard both parties; understand and carefully considered all aspects of their Positions of Record; and adopt the British Columbia arbitral consensus on the guiding principles for interest arbitration and the influence of PSEC bargaining mandates.

[79] Pursuant to Article 8.6(b)(v) of the Basic Agreement, I select and award APSA's Position of Record.

[80] The term of this new agreement on salaries and economic benefits expires in just over six months - June 30, 2022. I wish the negotiators more success in their ongoing relationship and meeting their mutual commitments in 2022.

DECEMBER 13, 2021, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey

Appendix 1 – APSA Position of Record

Agreed Upon Items:

Pursuant to Section 8.1 of the Basic Agreement, APSA lists the following items that have been resolved by the parties prior to referral to final offer selection:

1) Term of the revised basic agreement:

3-year agreement, July 1, 2019 to June 30, 2022.

2) General Wage Increases of 2% in each of the three years of the revised basic agreement as follows:

July 1, 2019	2.0% retroactive from payment date
July 1, 2020	2.0% retroactive from payment date
July 1, 2021	[2.0% retroactive from payment date]

In accordance with past practice, the University will ensure all eligible APSA employees, including former Continuing Employees who have retired or are no longer employed by the University and former Temporary Employees who were employed between July 1, 2019 and the date of implementation of the arbitrator's award, are paid out retroactively within 90 days of the implementation of the arbitrator's award.

3) APSA Temporary Employee Library Membership:

As noted in the University's letter of September 14, 2021 to Arbitrator Jim Dorsey: "all APSA members have Library membership". As such, APSA's proposal is moot and has been withdrawn. The University must update the Temporary Employees' Benefits website noting this benefit, as it is not currently listed (<https://www.sfu.ca/human-resources/apsa/benefits/summary-temp.html>).

Non-Agreed Upon Items:

APSA has calculated its proposals based on \$118.5 million in total labour costs as mandated in Arbitrator Dorsey's decision of *Simon Fraser Administrative and Professional Staff Association v. Simon Fraser University (Re: Final Offer Arbitration: Prehearing Disclosure)* (November 10, 2021).

Pursuant to Section 8.1 of the Basic Agreement, APSA provides the following unresolved items for final offer selection:

1. Professional Development

Policy AD 10.11 Reimbursement of Professional Development Expenses

The amount of reimbursement available for professional development expenses will be increased to \$1,100 per calendar year, up to a maximum of carry forward amount of \$5,500.

The difference in reimbursement funds (calculated from the current annual amount and the newly increased figure, amounting to \$400 per year) unable to be spent between July 1, 2019 to December 31, 2021 (the "Unspent Funds") will be paid out as a one-time amount to all eligible continuing APSA members within 90 days of the arbitrator's award. The Employer will equally divide the Unspent Funds amongst all eligible continuing APSA members, prorated for Part-Time Employees, and distribute cheques at that time. Eligible employees are continuing APSA members who would normally be eligible to access reimbursement of Professional Development Expenses (regardless of whether they actually incurred expenses) for the above-referenced time period pursuant to the amended Policy AD 10.11.

This proposal is consistent with continuing faculty members under the Simon Fraser University Faculty Association ("SFUFA") Collective Agreement who are entitled to more reimbursement for professional development expenses (See SFUFA Collective Agreement, Article 43: Economic Benefits, paragraph 43.46).

APSA costing: 0.2173%

Amend Policy AD 10.11 Reimbursement of Professional Development Expenses as follows (deletions crossed out and additions underlined):

4. Entitlement

4.01 The amount of reimbursement available for Professional

Development is: ~~effective January 2009~~ ~~————~~ ~~\$700 per~~
calendar year

effective July 1, 2019 \$1,100 per calendar year.

[...]

5. Procedures

[...]

5.02 Unused Professional Development funds in a calendar year may be carried forward to the next calendar year but in no case will a Continuing Employee's total entitlement be greater than:

~~effective January 2014~~ ~~————~~ ~~\$2,800~~

effective January 2016 \$3,500.

effective July 1, 2019 \$5,500.

On termination of employment, unused Professional Development will revert to the University.

2. Temporary Employee Redress and Equity – Temporary Employee Sick Leave

Policy AD 10-08 Leaves With and Without Pay

Remove the three weeks of uninterrupted service prior to each period of sick leave required for Temporary Employees.

This proposal is consistent with limited term (i.e. temporary) faculty members under the SFUFA Collective Agreement who are entitled to the same sick leave provisions without the requirement for three weeks of uninterrupted service (See SFUFA Collective Agreement, Article 44: Sick Leave and Long-term Disability, paragraph 44.2).

APSA costing: 0.0072%

Amend Policy AD 10-08 Leaves With and Without Pay (deletions crossed out):

7. Sick Leave

7.01 Entitlement

- a. For a Continuing Employee, University sick leave for non-occupational illness or injury will be based on length of service as follows:

Service Period	Entitlement
Less than three (3) months	One (1) week (36 hrs) at 100% of salary
Three (3) months but less than one (1) year	Four (4) weeks (144 hrs) at 100% salary, then twelve (12) weeks (432 hrs) at 75% salary, then ten (10) weeks (360 hrs) at 60% salary
One (1) year but less than five (5) years	Twelve (12) weeks (432 hrs) at 100% salary, then four (4) weeks (144 hrs) at 75% of salary, then ten (10) weeks (360 hrs) at 60% of salary
Five (5) years or more	Twenty-six (26) weeks (936 hrs) at 100% of salary

- b. In any seven-year period, an employee is eligible for an aggregate maximum of twenty-six (26) weeks sick leave for the same illness or injury. If the illness or injury occurs again within the seven-year period, and the employee has already taken twenty-six (26) weeks sick leave, he/she shall be eligible to apply for Long Term Disability. Any other illness or injury not directly related to the earlier illness or injury shall also carry an aggregate maximum entitlement of twenty-six (26) weeks of sick leave in any seven-year period.
- c. A Part-time Employee will be entitled to sick leave prorated accordingly.
- d. A Temporary Employee with more than three (3) weeks of ~~uninterrupted service~~ in his/her current position ~~prior to each period of sick leave~~ is eligible for the entitlement as a Continuing Employee as stated in Section 7.01 (a) above. ~~Following each instance of employee absence, a new period of three (3) weeks of uninterrupted service in his/her current position is required to be eligible for sick leave as stated in Section 7.01(a) above.~~

3. Temporary Employee Redress and Equity – Professional Development

Policy AD 10-11 Reimbursement of Professional Development Expenses

Temporary employees with a minimum contract period of one year will be eligible for reimbursement of professional development expenses of \$550 under Policy AD 10-11.

The funds unable to be spent between July 1, 2019 to December 31, 2021 (the “Unspent Funds”) will be paid out as a one-time amount to all eligible temporary APSA members within 90 days of the arbitrator’s award. The Employer will equally divide the Unspent Funds amongst all eligible temporary APSA members, prorated for Part-Time Employees, and distribute cheques at that time. Eligible employees are temporary APSA members who would normally be eligible to access reimbursement of Professional Development Expenses (regardless of whether they actually incurred expenses) for the above-referenced time period pursuant to the amended Policy AD 10.11.

This proposal is consistent with limited term (i.e. temporary) faculty members under the SFUFA Collective Agreement who are entitled to more reimbursement for professional development expenses (See SFUFA Collective Agreement, Article 43: Economic Benefits, paragraph 43.47).

APSA costing: 0.0256%

Amend Policy AD 10-11 Reimbursement of Professional Development Expenses (deletions crossed out and additions underlined):

3. Eligibility

[...]

3.01 A Continuing Employee or a Temporary Employee with a minimum contract period of one year whose start date falls between January 1 and September 30 is eligible for a reimbursement on January 1 the following year. A Continuing Employee or a Temporary Employee with a minimum contract period of one year whose start date falls between October 1 and December 31 of one year is not eligible for reimbursement on January 1 immediately following, but will be eligible on January 1 the subsequent year.

3.02 The reimbursement available for Professional Development will be prorated for a Part-time Employee in a Continuing or Temporary Position.

4. Entitlement

4.01 The amount of reimbursement available for Professional

Development is:[...]

For Temporary Employees, effective July 1, 2019 \$550 per calendar year.

4.02 The following expenses incurred by a Continuing or Temporary Employee on his/her own behalf are eligible to be reimbursed:

- a. professional dues, subscriptions, journals and books,
- b. equipment, including computer hardware and software, and
- c. conference fees, including travel and associated

expenses.[...]

5. Procedures

5.02 For Continuing Employees, unused Professional Development funds in a calendar year may be carried forward to the next calendar year but in no case will a Continuing Employee's total entitlement be greater than:

[...]

Appendix 2 – University Position of Record

With respect to the Final Offer Selection Arbitration, Simon Fraser University (“University”) makes the following final offer to resolve the compensation negotiation impasse which has arisen between the University and the Administrative and Professional Staff Association (“APSA”). On May 6, 2021, the University and APSA agreed to a three (3) year term (2019-2021) and a general wage increase of 2% in each of the three (3) years. The proposals below are in addition to those agreements.

Proposal 1

Pursuant to AD 10-10, the University proposes an increase in the tuition reimbursement from \$1000 to \$1600 effective January 1, 2022.

The current language in AD 10-10 subsection 4.01 states:

- a. Subject to (b), a Continuing Employee is eligible for reimbursement of 100% of the course costs of off-campus Job-Related Courses approved by his/her supervisor up to a maximum of \$1000 in any one calendar year. This amount is an annual eligibility and cannot be carried forward to future calendar years. The expenses covered by this fund may include tuition costs, examination fees, textbooks and required course material.
- b. A Part-time Employee in a Continuing Position is eligible for reimbursement of a percentage of the tuition costs of off-campus Job-Related Courses approved by his/her Supervisor based on the percentage of full-time hours the Employee normally works in a bi-weekly period. The maximum amount available in a calendar year will also be prorated as a percentage of \$1000 based on the normal hours worked in a bi-weekly period.
- c. Tuition Reimbursement is not an alternative to Tuition Waiver set out in Policy AD 10-12. Employees shall not be approved for Tuition Reimbursement if the Job Related Course or equivalent, is offered by the University. In circumstances where a Job Related Course or equivalent is not offered at the University or an Employee is inadmissible to a particular program or course at the University, then Tuition Reimbursement may be granted subject to evidence the program or course is not offered by the University or evidence of the Employee’s inadmissibility.
- d. In exceptional circumstances Tuition Reimbursement over the \$1000 maximum may be allowed with the approval of the appropriate Dean/Director and the Executive Director, Human Resources.

To implement proposal 1, the following revisions to Policy AD10-10 will be required:

- a. Subject to (b), a Continuing Employee is eligible for reimbursement of 100% of the course costs of off-campus Job-Related Courses approved by his/her supervisor up to a maximum of \$1600 in any one calendar year. This amount is an annual eligibility and cannot be carried forward to future calendar years. The

expenses covered by this fund may include tuition costs, examination fees, textbooks and required course material.

- b. A Part-time Employee in a Continuing Position is eligible for reimbursement of a percentage of the tuition costs of off-campus Job-Related Courses approved by his/her supervisor based on the percentage of full-time hours the Employee normally works in a bi-weekly period. The maximum amount available in a calendar year will also be prorated as a percentage of \$1600 based on the normal hours worked in a bi-weekly period.
- d. In exceptional circumstances Tuition Reimbursement over the \$1600 maximum may be allowed with the approval of the appropriate Dean/Director and the Executive Director, Human Resources.

Proposal 2

Pursuant to AD 10-11, the University proposes an increase to the reimbursement amount available for professional development expenses from \$700 to \$800 effective January 1, 2022.

The current language in AD 10-11 subsection 3.01 states:

- 3.01** The amount of reimbursement available for Professional Development is:
 effective January 2009 \$700 per calendar year.

To implement proposal 2, the following revisions to Policy AD10-11 will be required:

- 3.01** The amount of reimbursement available for Professional Development is:
 effective January 2009 \$700 per calendar year.
 effective January 2022 \$800 per calendar year.

Proposal 3

The University proposes a one-time contribution of \$1,100 to the reimbursement amount available for Professional Development for each eligible APSA employee under AD 10-11.

No wording changes to an AD policy would be required to implement Proposal 3 as it is a one-time contribution with limited duration. The University's Proposal 4, which provides for a one-time exemption, will address circumstances where an employee's Professional Development fund exceeds the \$3,500 limit set out in AD 10-11 subsection 4.02 as a result of the \$1,100 one-time contribution.

Proposal 4

Should the unused Professional Development funds exceed the \$3,500 carry forward limit set out in AD 10-11 subsection 4.02, the University proposes a one-time exemption that would allow employees who receive the one-time contribution to exceed the \$3,500 carry forward limit by \$1,100 between January 1, 2022 and December 31, 2022.

No wording changes to an AD policy would be required to implement Proposal 4 as it is a one-time exemption with limited duration.

Proposal 5

The University proposes the following benefit enhancements to align APSA with industry best practices, effective January 1, 2022. This is a comprehensive offering. In order to offer the benefit improvements in items 1 through 3, the University must achieve the cost savings through the cost neutralization mechanisms outlined in items 4 through 6.

No wording changes to an AD policy would be required to implement Proposal 5. Rather, the University will contact Pacific Blue Cross with instructions to implement the changes and a revision will be made to the PBC group benefits booklet for APSA employees.

Benefit Improvements:

- 1. Pay Direct Drug Cards (PDD):** A PDD allows pharmacists to submit drug claims to PBC on behalf of members. In addition, members will have access to better pricing resulting from the Pharmacy Agreement which is only accessible at the point of purchase through a PDD.
- 2. Access to Clinical Counsellors and Social Workers:** Add Clinical Counsellors and Social Workers to the current \$1000 annual limit for psychologist paramedical coverage to allow more affordable mental health support.
- 3. Massage Therapy:** Change the referral requirement from 6 months to 12 months.

In order to implement the above benefits, the University must achieve cost neutralization through the following mechanisms:

- 4. Generic Plan Drug Coverage:** Prices for generic drugs will be covered by the plan when a generic, as opposed to a branded, drug is available.
- 5. Dispensing Fee Cap:** A dispensing fee cap will be implemented to encourage members to shop at pharmacies with lower dispensing fees.
- 6. Managed Formulary:** A switch from the current open formulary to a managed formulary, which will be frequently updated to include the most cost-effective medication.