

IN THE MATTER OF A MEDIATION PURSUANT TO THE *BASIC AGREEMENT*

BETWEEN:

SIMON FRASER UNIVERSITY

EMPLOYER

AND:

ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

ASSOCIATION

RECOMMENDATIONS

Mediator:

Christopher J. Foy

Date of Recommendations:

September 10, 2026

I INTRODUCTION

[1] On June 25, 2026, Simon Fraser University (“SFU”) provided notice to the Administrative and Professional Staff Association (“APSA”) to renegotiate the “Basic Agreement”.

[2] The parties commenced negotiations on August 20, 21 and 25, 2026, but could not reach agreement. Their respective positions are diametrically opposed.

[3] SFU made three core proposals that the APSA considered they could never agree to.

[4] SFU has proposed eliminating the requirement under Article 8.7 of the Basic Agreement for an Arbitrator ultimately to decide compensation matters based on Final Offer Selection.

Instead, SFU would be the final decision-maker for compensation matters, after consultation with APSA.

[5] Additionally, SFU proposed to eliminate the requirement under Article 9.2 of the Basic Agreement that it not change the benefits contained in existing administrative and professional policies (“AD10 Policies”) without mutual consent during the term of the Basic Agreement.

[6] Finally, SFU proposed that APSA grievances under the Basic Agreement would no longer be decided by a mutually agreed upon Arbitrator, but instead through a reconsideration process to SFU’s Vice President, People, Equity & Inclusion.

[7] I accepted an appointment from the parties as Mediator and the mediation took place on September 8, 2026. Mediation did not resolve the matter.

[8] Under Article 13(b)(iii) of the Basic Agreement my mandate includes the making of non-binding recommendations that “shall be submitted to the Association Group for ratification and the Board of Governors for approval.”

[9] While I do not refer in these recommendations to all the information presented by the parties in relation to this matter, I have considered it and thank the parties for their respective briefs and participation in this process.

[10] My recommendations provide two options for the parties to consider:

a. Option One:

Allow the Basic Agreement to end and work as collaboratively as possible to manage the fallout so as to lessen any potential negative impact on both parties and in particular employees/members.

b. Option Two:

- i. Extend the Basic Agreement until June 30, 2029, the date when the recently negotiated compensation/benefit package expires;

- ii. Engage in a Relationship Enhancement program, similar to what is offered to Employers and Unions through the British Columbia Labour Relations Board; and
- iii. Have a third party provide recommendations to the Joint University/Association Committee (“JUAC”) on the following:
 - Alternative dispute resolution systems to the current SFU Policy AD 10.17 “Problem Resolution”;
 - Alternative dispute resolution systems to Article 8.7 in the Basic Agreement, which currently requires Binding Final Offer Selection (Full Package) by an Arbitrator;
 - Alternative dispute resolution systems to Article 10 of the Basic Agreement; and
- iv. Engage a Facilitator for six JUAC meetings post the recommendations for alternative dispute resolution systems.

[11] The following sets out a brief background for context and my reasons behind the two recommended paths for moving forward.

II BACKGROUND

[12] On December 13, 1982 SFU and the APSA entered into a contract called the “Basic Agreement”.

[13] The purpose of the Basic Agreement is to establish “formal procedures for the determination of compensation matters and administrative/professional personnel policies.”¹

[14] The Basic Agreement is automatically renewed annually on the 31st of December unless six months in advance of the expiry date either party gives written notice to renegotiate.

¹ Basic Agreement, Article 2.1 (Tab 1)

[15] If the parties fail to successfully renegotiate: “...either or both can walk away from their relationship, and let the chips fall as they may in terms of any form or continued relationship and consequential employee representation.”²

[16] The Basic Agreement is not a Collective Agreement. SFU and APSA do not have a relationship governed by the British Columbia *Labour Relations Code*, RSBC 1996 c.244 (“Code”).

[17] APSA is not a certified union, but a registered society. It currently represents more than 1600 members who hold a variety of positions at SFU, from front-line administrators to senior managers.

[18] In 2003, APSA applied under the *Code* to be certified to represent a bargaining unit described as "administrative and professional employees of the employer, except those employees represented by other bargaining agents; and those represented by Faculty Association".

[19] SFU did not oppose APSA's certification based on the presumption against multiple bargaining units. Despite this, the Labour Relations Board dismissed APSA's certification application.³

[20] The Basic Agreement has been re-negotiated only three times since 1982: in 1991, in 2023 and now in 2026.

[21] It is evident that by 2023 the relationship between SFU and APSA had become dysfunctional. Arbitrator/Mediator James E. Dorsey, K.C. in his March 22, 2023 “Mediation Binding Resolution” between the parties notes a “lapse in an underlying goodwill basis of the relationship” and states the following at para. 9:⁴

² *Recommendations For Settlement* dated May 15, 2024, Arbitrator/Mediator Christopher Sullivan (Tab 2)

³ *Re: Simon Fraser University* [2003] B.C.L.R.B.D. No. 274 (Tab 3)

⁴ *Mediation Binding Resolution* dated March 22, 2023, Arbitrator/Mediator James E. Dorsey, K.C. (Tab 4)

The unspoken question is whether the relationship can recover and become healthy and harmonious or whether this lapse is chronic and terminal for the relationship.

[22] In early 2023 both parties provided notice to renegotiate the Basic Agreement and were unable to reach agreement. Consequently, Arbitrator/Mediator Christopher Sullivan was appointed and engaged the parties in mediation in April 2024.

[23] The mediation was unsuccessful as both parties submitted proposals that were poles apart.

[24] On May 15, 2024, Mr. Sullivan made recommendations for settlement. He recommended both parties withdraw certain proposals, and that the Basic Agreement continue for a year, until December 31, 2025, and be renewed annually thereafter subject to the six-month notice of renegotiation.

[25] The rationale for the Basic Agreement to continue was to reactivate the JUAC with the assistance of a Facilitator as per Mr. Dorsey's March 22, 2023 "Mediation Binding Resolution". The JUAC had been inactive: no meetings between 2009 and May 2012 and no meetings between 2018 - May 2024 took place.

[26] On November 8, 2024, Arbitrator/Mediator Cathy Knapp was appointed as Facilitator for the JUAC. She met with the JUAC approximately monthly over a 20-month period.

[27] Over the course of that 20 months, Ms. Knapp assisted the parties with 33 items for discussion.

[28] In Ms. Knapp's July 17, 2026 "JUAC Post Appointment Report" she had the following observations of the JUAC:⁵

I am pleased to report that during my 20-month appointed term, I did not witness any conflicts or difficult dynamics amongst the Committee. While there were certainly disagreements at times, they were voiced and responded to

⁵ *JUAC Post Appointment Report* dated July 17, 2026 at pp. 4-5, Arbitrator/Mediator Kathy Knapp (Tab 5)

respectfully and did not prevent the Committee from moving forward with its mandate.

I found the Committee in its entirety to be very professional, committed to engaging in respectful dialogue, and dedicated to building understanding of one another's perspectives.

....

...I am convinced that they will be successful in their meetings going forward, as long as they continue to adhere to the agreed-upon principles for meaningful consultation.

[29] There has been an increase in the number of grievances filed by the APSA over the last several years:

Year	Number of APSA Grievances
2022	1
2023	3
2024	6
2025	9
2026 to date	10

[30] The parties currently have three or four outstanding grievances under the Basic Agreement and approximately between 14-18 outstanding grievances not under the Basic Agreement going through the Problem Resolution process under AD10 Policy 10.17.

III RECOMMENDATIONS

[31] My mandate is to make recommendations that will assist the parties to reach an agreement on their renegotiated Basic Agreement. However, I find myself in the same position as Mr. Sullivan during his efforts with the parties in 2024 where he found no compromise language changes were available that would bridge the significant chasm between the parties.

[32] Consequently, I have laid out two options for the parties to consider.

Option 1: Ending the Basic Agreement

[33] Certainly back in 2003, the parties were prepared to abandon the Basic Agreement and accept governance under the *Code*. That would have ended the relationship under the Basic Agreement as per Article 2.6: “Recognition of the Association and maintenance of this Basic Agreement shall cease if the Association obtains certification under the provisions of the Labour Code of British Columbia.”

[34] Perhaps it is time for the parties to revisit this option. Much has changed in the labour relations landscape since 2003. An application now for certification by the APSA might produce a different outcome.

[35] This option does not mean that the parties should let the Basic Agreement expire on December 31, 2026. If the parties choose to end their relationship of over 40 years, it makes sense to do so in a way that is the least disruptive for all concerned and should not be abruptly wound down prematurely if a more orderly path can be found.

[36] It will take a lot of time, expense, energy and cooperation to deal with the inevitable fallout from ending the relationship.

Option 2: Extend the Basic Agreement until June 30, 2029

[37] The recommendation to extend the Basic Agreement until June 30, 2029, brings the expiration date in line with the expiration date of the parties' agreement on compensation matters. It will be renewed annually thereafter, with the existing six-month notice period.

[38] This does not mean that the parties are idle until renegotiation of compensation matters. In fact, the opposite is recommended.

Relationship Enhancement

[39] Despite the parties successfully reaching agreement on compensation matters just recently without the need for Final Offer Selection by an Arbitrator, and despite the JUAC Post Appointment Report from Ms. Knapp evidencing a positive working relationship in that Committee, the parties would benefit from overarching relationship enhancement.

[40] The parties' relationship requires rehabilitation. It is significantly strained.

[41] Assistance can be provided through a third party, specializing in relationship enhancement in the University sector. I am not isolating this recommendation to JUAC, but to whomever is required to participate at all levels in order to improve the relationship.

Compensation Matters

[42] The compensation agreement between the parties expires on June 30, 2029. There is no urgency, in my view, to negotiate a new method of deciding compensation matters when the parties haven't had a more fulsome opportunity to canvass options other than Final Offer Selection.

[43] To that end, I recommend the parties engage a third party to provide recommendations to the JUAC on alternative dispute resolution systems to Article 8.7 in the Basic Agreement. The JUAC is to discuss those recommendations and canvass any possible consensus on what might, if anything, be recommended for the respective parties' bargaining committees to negotiate.

Grievances

Basic Agreement Grievances

[44] I recommend a third party be retained to provide recommendations to the JUAC on alternative dispute resolution systems to Article 10 of the Basic Agreement.

[45] The JUAC is to discuss those recommendations and canvass any possible consensus on what might, if anything, be recommended for the respective parties' bargaining committees to negotiate.

Non-Basic Agreement Grievances

[46] There are a number of existing grievances between the parties that would benefit from being resolved through an immediate expedited process as opposed to being left to fester and erode the relationship further. These grievances have already taken up too much time, energy, and monetary resources for both parties.

[47] I recommend the parties retain an Arbitrator to assist the parties to select what existing grievances are ripe for expedited decision-making.

[48] I recommend an expedited decision-making process for these existing selected grievances as follows:

- i. The parties have no lawyers present but only representatives from each party;
- ii. The parties' respective positions will be provided in advance in writing with a limited page number as per the Arbitrator's direction;
- iii. The parties will be limited in time for presentation as per the Arbitrator's direction; and
- iv. The Arbitrator is to provide a bottom-line decision orally at the time or in writing within seven days.

[49] I also recommend a third party be retained to provide recommendations to the JUAC on alternative dispute resolution systems to the current AD 10.17 Problem Resolution Policy.

[50] The JUAC is to discuss those recommendations and canvass any possible consensus on what might, if anything, be recommended for the respective parties' bargaining committees to negotiate.

[51] Finally, I would recommend the parties amend the Basic Agreement Article 1.3 to have APSA be the sole and exclusive representative for all members of APSA and remove the ability for individual members to have carriage over their grievance. This would mean that APSA would have sole and exclusive responsibility for deciding not to file a grievance on behalf of a member, or filing, withdrawing and resolving individual grievances.

JUAC Facilitator

[52] In my view it would be prudent to engage a Facilitator for six meetings post the recommendations for alternative dispute resolution systems. The purpose of the Facilitator is to assist the parties in coming to a consensus on which recommendations are of value to the parties.

IV CONCLUSION

[53] The recommendations allow for two paths forward, ending the relationship as it currently exists under the Basic Agreement, or continuing to work to improve it with the hope and anticipation that with significant effort it will be of greater benefit for the parties.

[54] I remain seized to clarify any aspect of my recommendations.

Christopher J. Foy, B.A., M.S. in Ed., LLB, LLM, Q. Med.
Arbitrator/Mediator

Dated this 10th day of September 2026

TAB 1

2023 Basic Agreement

Between

Simon Fraser University

And

Administrative and Professional Staff Association

The Basic Agreement for Collective Bargaining and Consultation between SIMON FRASER UNIVERSITY and THE SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

1. DEFINITIONS For the purposes of the Basic Agreement:

- "Agreement" means the Basic Agreement;
- "A.P.S.A." means the Simon Fraser University Administrative and Professional Staff Association;
- "Association Group" means all administrative and professional staff employed by the University except those excluded by Article 3.
- "Association Group Member" means those persons in positions, which, by agreement between the Association and Simon Fraser University are represented by the Association with respect to all matters relating to conditions of employment including salaries and benefits;
- "J.U.A.C." means Joint University Association Committee;
- "Parties" means Simon Fraser University and the Simon Fraser University Administrative and Professional Staff Association; and
- "University" means Simon Fraser University Board of Governors and its authorized officers.

Wherever the singular or masculine is used throughout this Agreement, it shall be deemed to include the plural or feminine or body politic or corporate wherever the context and the parties so require.

2. RECOGNITION OF THE SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

2.1 Purpose

The purpose of the Basic Agreement is to establish, for the administrative and professional staff employed by Simon Fraser University, formal procedures for the determination of compensation matters and administrative/professional personnel policies.

2.2 Intent

Both parties recognize that this relationship is intended to improve and maintain the efficiency and effectiveness of the University. In recognition of the need for the effective operation of the University, both parties to the Basic Agreement shall cooperate within the spirit and scope of the Agreement to promote harmonious relations and settled conditions of employment.

2.3 A.P.S.A. as a Society

The University hereby recognizes the Simon Fraser University Administrative and Professional Staff Association as a Society incorporated under the Societies Act of British Columbia.

2.4 Sole Representative

The University hereby enters into agreement with and recognizes the Association as the sole representative for all members of the Association Group.

2.5 No Other Agreement

The University shall not, after the date of accepting the Basic Agreement, enter into agreement with any individual Association Group Member or group of members of the Association Group which supersedes, amends, or contravenes the terms of the Basic Agreement.

2.6 Recognition Cease

Recognition of the Association and maintenance of this Basic Agreement shall cease if the Association obtains certification under the provisions of the Labour Code of British Columbia.

3. ASSOCIATION GROUP

3.1 Definition

The Association Group shall consist of all administrative/professional employees except those employees represented by other employee groups formally recognized by the University, those employees who have contracts of employment with the University, and those employees who hold the positions listed in Appendix A and who shall be available to represent the University in consultations and negotiations with A.P.S.A.

3.2 Excluded Positions

The University may add to or delete from the excluded positions listed in Appendix A, after consultation with A.P.S.A., but in no case will the number of positions listed in Appendix A exceed 14.8% of the total number of employees in the Association Group.

3.3 Association Membership and Payment of Dues or Equivalent

All employees who are now, or hereafter become members of the Association Group have the option of becoming members of the Association. Membership in the Association is not a condition of employment.

No member of the Association Group as of December 9, 1982, shall be required to pay dues or the equivalent as a condition of employment. However, it shall be a condition of employment that each member of the Association Group appointed subsequently shall pay dues or the equivalent sum to the Association. An exception shall be made to this latter provision for a person who affirms a conscientious objection to representation by the Association in which case that employee shall pay to a charitable recipient mutually agreed upon by the University, the Association and the employee involved, an amount equivalent to membership dues.

The University shall honour an Association Group Member's written assignment of salary to this effect:

"To Simon Fraser University: Until this assignment is revoked by me in writing, I hereby authorize you to deduct from my salary a sum equal to the membership dues in the Administrative and Professional Staff Association and pay that sum to the Association or to a charitable recipient as provided."

3.4 Income Tax Slips

The University shall include on the T4 Income Tax slips the amount of dues paid by each member of the Association Group in the previous calendar year.

3.5 Association Group List

The University will provide the Association with a list when requested, showing positions in the Association Group. These lists shall indicate the name of the incumbent, the incumbent's position title and the department in which the incumbent is employed.

3.6 List of Association Group Members

The Association will provide the University with a list of Association Group Members, when requested.

4. NO DISCRIMINATION

The University and the Association agree that decisions concerning the terms and conditions of employment of a bargaining unit member shall be made on the basis of performance and/or performance-related criteria. The University shall not discriminate against any member of the Association because of the Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status [except to avoid supervision of one family member by another], physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person or membership or non-membership in, or activities on behalf of, the Association or other factors unrelated to the performance of duties.

5. LIMITATION OF THE AGREEMENT

5.1 Governance

The parties believe that University policies and this Agreement are essentially compatible. However, should conflicts arise between University policies, and the express provisions of the Agreement, the latter shall prevail. Nevertheless, nothing in this Agreement shall be taken to limit the powers of Senate, the Board of Governors, the President or other administrative officers as those powers are established in statute, except to the extent required to implement the impasse resolution provision.

6. CORRESPONDENCE

All correspondence passing between the University and the Association out of the Basic Agreement, or incidental thereto, shall be addressed to the Director, Labour and Employee Relations and the Executive Director of the Association, except for matters for which the Director, Labour and Employee Relations or the Executive Director of the Association have made written delegation.

7. ASSOCIATION RELATIONS

7.a Office Space

The University in recognizing A.P.S.A. will provide A.P.S.A. with office space and other generally available services at cost.

7.b APSA Advocacy and Committee Duties

Association Group Members who have roles in advocacy for APSA, or on SFU/APSA committees or APSA negotiations support may request time off from their regular duties and shall not incur loss of pay while engaged in meetings in those roles. The request shall not be unreasonably denied.

8. NEGOTIATION ON COMPENSATION MATTERS

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.

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.

8.3 Mediators/Arbitrators

The parties agree to the following process for the selection of a mediator or arbitrator, as may be required in accordance with Article 8.7, as follows:

1. The person on the list at Appendix B having the earliest availability of at least 2 consecutive business days, provided those 2 days are no later than 60 calendar days from the commencement of negotiations;
2. If none of the listed persons at Appendix B is available under #1 above, then the parties will select by mutual agreement a mediator or arbitrator not on the list and who is available for 2 business days no later than 60 calendar days from the commencement of negotiations; and
3. Failing agreement under #2 above, the parties shall make a joint request of the Chair of the Mediation Division of the Labour Relations Board who shall make the appointment.

The parties agree to use the same person for both mediation and arbitration.

8.4 Exchange of Agendas and Proposals

If either party wishes to negotiate major items such as discontinuation or major revision of a salary scale or substantial restructuring of one or more economic benefits it will provide the other party with their negotiating agenda containing the details of those major items by October 1 so that the implications can be more fully studied before negotiations commence.

Within twenty-one working days of the receipt of the provincial government allocation letter, the parties shall commence negotiations. Comprehensive proposals shall be exchanged on the first day of negotiations. Additional items may be introduced subsequently by mutual agreement. All existing compensation provisions, including but not limited to existing salary scales, pension plans, leave provisions and other economic benefits, shall remain in force until such time as they are amended in accordance with a negotiated renewal agreement or the award of an arbitrator.

8.5 Period of Negotiation

During the thirty calendar days following the exchange of proposals, the parties shall bargain in good faith and make every reasonable effort to reach an agreement. Negotiations on salaries and economic benefits may not commence until agreement on the previous year's salaries and economic benefits has been concluded.

8.6 Ratification and Approval

When a tentative agreement has been reached between the parties' Negotiators, the tentative agreement shall be referred to the Association Group for ratification and to the Board of Governors for approval. The approval procedures for both parties shall be concluded within thirty (30) days of the day of completion of negotiations. In the event that the Association Group fails to ratify the tentative agreement, or the Board fails to approve it, the negotiations may, by agreement of the parties, be resumed for a further period up to two-weeks before proceeding to impasse resolution in accordance with Article 8.7.

8.7 Impasse Resolution

The parties desire to reach a negotiated settlement and will make every effort to do so.

- (a) During the period of negotiation, should the parties determine that they cannot reach agreement without assistance, they may agree to call on a mediator in accordance with Article 8.3
- (b) In the event that the negotiators do not reach a settlement on all of the items for negotiation during thirty calendar days, or if the negotiators fail to reach a revised settlement after reconvening under 8.6, the following procedure shall apply:

- i) within seven calendar days the parties shall meet and each shall deliver to the other a written statement of its Position of Record with respect to all unresolved items in negotiations. The statement shall also list any of the items for negotiation which the negotiators had resolved prior to the cessation of negotiations and these items shall form part of the Position of Record of each party. Thereafter, neither party may alter its Position of Record except by mutual agreement;
 - ii) the negotiators shall move immediately to appoint an arbitrator in accordance with Article 8.3;
 - iii) within seven calendar days of the date on which an arbitrator has been determined, each party shall deliver to the arbitrator the written statement of its Position of Record referred to in 8.7(b) i);
 - iv) within twenty-one calendar days of the submission of the Positions of Record to the arbitrator, the arbitrator shall hold one or more hearings with the negotiators, giving each party opportunity to make presentations using a format determined by the arbitrator in consultation with the parties;
 - v) within twenty-eight calendar days of the submission of the Positions of Record to the arbitrator, the arbitrator shall select either the position of APSA or the University;
 - vi) the award of the arbitrator shall be binding on the Board of Governors and the Association;
 - vii) the arbitrator is not required to state reasons for the award.
- c) Each party shall pay one half of the fees and expenses of any mediator or arbitrator called upon to act under this agreement.
- d) In the event that any of the dates and timelines specified above cannot be met due to circumstances beyond the control of the parties the dates and timelines may be adjusted by mutual consent.

9. NEGOTIATION ON OTHER MATTERS

9.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 9.2 and 9.3 below.

9.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing AD10 policies except by mutual consent of the parties. The University reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

9.3 Consultation on New Policy Development

The development of new personnel policies affecting members of the Association Group and the development of other University policies on matters materially affecting members of the Association Group which do not fall under 9.2 above, shall be subject to consultation between the parties. If agreement is not reached, it shall remain the right of the University to determine policy.

10. GRIEVANCES

10.1 Definition

A grievance is a dispute concerning the interpretation, application, or alleged violation of this Agreement.

10.2 Scope

- (a) Grievances under this Agreement may be presented only by the Association or the University, subject to 10.2(b), and only where:
 - i) provisions of this Agreement directly affecting the Association or the University are at issue; or
 - ii) the issue directly affects the rights of the Association Group or the University.

- (b) The grievance procedure described herein shall not be used to resolve any dispute between individual Association Group members and the University, whether raised by the members of the Association or by the Association on their behalf. Such matters will be resolved pursuant to the procedure contained in Administration Policy AD 10-17 (Problem Solving). Where any dispute or issue may be dealt with in accordance with that Policy (AD 10-17) the dispute or issue must be resolved pursuant thereto and the grievance procedure described herein shall not apply.

10.3 Grievance Processing

- (a) A grievance must be submitted in writing within twenty (20) working days after grounds for a grievance are known or ought reasonably to have been known by the Association. The grievance shall be submitted to the Executive Director, Human Resources and Labour Relations or designate.
- (b) If not resolved within five (5) working days following submission to the Executive Director, Human Resources and Labour Relations or designate, the grievance shall be submitted, in writing, to the Vice President, People, Equity and Inclusion, with a copy to the Executive Director, Human Resources and Labour Relations or designate. The Vice President, People, Equity and Inclusion, shall respond to the Association, in writing, within fifteen (15) working days.
- (c) Grievances may be presented by the University, in writing, to the Association. The Association shall respond to the University, in writing, within fifteen (15) working days.

10.4 Grievance Arbitration

- (a) Failing a satisfactory resolution of the grievance in the grievance procedure, either party may, within fifteen (15) working days of receipt of the other party's written decision, submit the grievance to binding arbitration. The notice to proceed must contain a description of the grievance and the remedy sought. The other party shall within five (5) working days of the receipt of such notice similarly provide a summary of its position in the grievance.
- (b) The arbitrator shall be selected in accordance with Article 8.3. The arbitrator shall be governed by the Arbitration Act of B.C.
- (c) The arbitrator shall not be empowered to add to, subtract from, alter or amend the Agreement in any way.

(d) The arbitrator may hear a grievance with a minor technical deficiency (technical deficiency does not include whether or not an issue is arbitrable) if in their opinion the objection has been made solely to avoid dealing with a substantive issue. Technical deficiencies which relate to time may be waived by the arbitrator if such deficiencies occur as a result of actions or omissions arising in good faith and no prejudice has been suffered by the other side.

(e) The parties shall be responsible for their respective fees and expenses in the arbitration process and shall share equally the fees and expenses of the arbitrator.

11. STATEMENT OF INTERPRETATION AND AMENDMENTS

11.1 Statement of Interpretation

During the life of this Agreement, statements signed jointly by the President of the University or by their designate and the President of the Association or by their designate may be issued for the purpose of clarifying or implementing the terms of this Agreement. Such statements shall have the same force as the Agreement.

Such statements may not amend, add to, or subtract from the terms of the original Agreement.

11.2 Amendments to the Agreement

Amendments to this Agreement may be made at any time by agreement of the parties. They shall be subject to the same ratification procedure as the Agreement.

12. RATIFICATION AND ENTRY INTO FORCE OF BASIC AGREEMENT

Upon ratification by the Association Group and approval by the Board of Governors, the Agreement shall be signed by the President of the University and by the President of the Association and shall thereupon enter into force.

13. DURATION OF AGREEMENT

This Agreement shall commence on the date of signing and shall expire on December 31, 2025. It shall be automatically renewed annually unless six months in advance of the expiry date either party has given the other written notice of its intention to renegotiate.

Should the parties determine that they cannot reach agreement without assistance, at the written request of either party, the parties together shall select a mediation officer in accordance with Article 8.3. At such time as the mediation officer is named:

- (a) all unresolved items save those deleted by mutual agreement shall be submitted to the mediation officer;
- (b) the mediation officer shall
 - (i) where further direct negotiation would be meaningful, direct the parties to resume negotiation, without third-party assistance, for such period of time as the officer deems appropriate;
 - (ii) where third-party assistance is necessary to resolve a bargaining impasse, attempt to mediate a resolution; and
 - (iii) only after (i) and (ii) above have been exhausted without resolution, make recommendations for settlement which recommendations shall not be binding upon the parties and shall be submitted to the Association Group for ratification and the Board of Governors for approval.
- (c) each party shall pay one-half (1/2) of the fees and expenses of any mediation officer called upon to act under this Agreement.

By the signatures given below the parties agree to enter into force the foregoing.

Dated this _____

President, Simon Fraser University	President, Simon Fraser University Administrative and Professional Staff Association

APPENDIX A: LIST OF EXCLUDED POSITIONS AS AT JULY 19, 2024

Dept Descr	Position	Pos Descr
AVPSI Administration	00134402	Sr Director, Stdnt Well-Being
University Development	00132352	Exec. Dir. Advancement
Faculty Relations	00118740	Human Resources Prfsnl II
Centre for Dialogue	00133923	ED & Sr Advsr, Comm Eng & Dlg
People&Organization Developmnt	00130752	Specialist,Wellness & Recovery
VPFA Office	00131094	Exec Director, Office of VPFA
Labour Relations&Compensation	00031199	HR Business Partner
FASS Office of the Dean	00097451	Sr Dir, Fclty Fin & Strat Plan
Financial Services	00123865	Director Financial Services
AVPSI Administration	00133786	ED, Student Services Operation
Labour Relations&Compensation	00130444	Pension & Benefits Consultant
Equity, Diversity & Inclusion	00122227	Director, EDI
SFU Sustainability	00114915	Exec Director, Sustainability
Indigenous Council Office	00133893	Indigenous Executive Lead
Labour Relations&Compensation	00102562	HR Business Analyst
People&Organization Developmnt	00131690	Specialist, Learning & Develop
SFU Partnerships Hub	00128824	Executive Director, SPH
General Counsel	00123646	Legal Assistant
Presidents Office	00001727	Executive Assistant
Labour Relations&Compensation	00102112	Total Comp Business Analyst
Labour Relations&Compensation	00122488	Pension & Benefits Specialist
VP Academic Office	00077047	Dir Acdmc Plnng Qlty Assurance
General Counsel	00131491	University Policies Director
Campus Public Safety	00001034	Sr Dir, Campus Public Safety
People&Organization Developmnt	00133439	Assoc Dir, Wellness & Recovery
Environmental Health & Safety	00030355	Senior Dir Env Hlth&RschSfty
Treasury Office	00030941	Treasurer & Dir of Investment
Surrey Campus Administration	00096645	Executive Director SFU Surrey
General Counsel	00130703	Legal Counsel
Instl Research and Planning	00001277	Exec Dir Institut Rsch & Plang
Faculty Relations	00131867	Dir, Faculty Labour Relations
VPRI Administration	00133492	Exec Dir, Cmnty-Centrd Climate
People&Organization Developmnt	00126029	Specialist, Human Resources
Equity, Diversity & Inclusion	00128257	Dir, EDI Strategic Initiatives
People&Organization Developmnt	00128991	Specialist,Wellness & Recovery
People&Organization Developmnt	00134100	HR Business Partner
Labour Relations&Compensation	00132532	ED, HR & LR
Labour Relations&Compensation	00129353	Human Resources Prfsnl III
People&Organization Developmnt	00125507	HR Strategic Business Partner
Internal Audit	00001610	Internal Auditor

Presidents Office	00132242	Chief of Staff, President's
People&Organization Developmnt	00133387	HR Business Partner
People&Organization Developmnt	00126392	Specialist, Human Resources
Faculty Relations	00130347	HR Professional III (LR & ER)
Faculty Relations	00131299	Human Resources Prfsnl II
Ancillary Administration	00135687	Exec Director, Campus Services
Planning & Analysis	00102896	Director Planning & Analysis
Faculty Relations	00131299	Human Resources Prfsnl II
General Counsel	00134027	Mgr, Legal & Admin Services
VPPEI Office	00133022	Manager, Administration
VPFA Office	00116933	Dir Strategy Plng & Projects
Faculty Relations	00131101	Human Resources Prfsnl II
University Secretariat Office	00123134	Board Assistant
People&Organization Developmnt	00129970	Manager, HR Admin Services
VP Academic Office	00133213	Mgr, Office of the Prvst VPA
Faculty Relations	00134587	Lab and EE Relations Advisor
Internal Audit	00120182	Internal Auditor
Procurement Services	00126027	Director Financial Operations
Ext Rel Comm and Marketing	00128644	Assistant Dir, Communications
People&Organization Developmnt	00133716	Specialist, Talent Acquisition
Maintenance and Ops Admin	00031270	Dir Maintenance Operations
Ext Rel Comm and Marketing	00129230	Communications Officer
VPPEI Office	00133563	Dir, Indigenous Initiatives
Labour Relations&Compensation	00130445	Specialist, Labour & EE Relat
BC Ctr for Agritech Innovation	00131684	Dir, BCCAI
Faculty Relations	00118741	Human Resources Prfsnl II
Labour Relations&Compensation	00128954	Labour & Empl Relations Assist
Labour Relations&Compensation	00120980	Human Resources Prfsnl III
Labour Relations&Compensation	00121002	Manager, Immigration Services
VP Academic Office	00123280	Dir Strtgc Prjcts & Anlysis
Alumni Relations	00133238	Exec Dir, Alumn Relations
VP Academic Office	00134839	Exec Dir, Office of Provost
People&Organization Developmnt	00126393	Specialist, Human Resources
Labour Relations&Compensation	00135356	Job Design Specialist
FASS Office of the Dean	00135423	Sr Dir, Faculty Staffing & Ops
People&Organization Developmnt	00123912	HR Strategic Business Partner
VentureLabs	00118656	Exec Dir SFU VentureLabs
People&Organization Developmnt	00135438	Dir, Tlnt & Strteg Initiatives
TLO-Tech Licensing Office,	00128109	Dir, Technology Licensing & IP
Labour Relations&Compensation	00001062	Director Labour Relations
People&Organization Developmnt	00128898	HR Strategic Business Partner
People&Organization Developmnt	00113385	Specialist, Human Resources
AVPSI Administration	00101512	Rgstr & Exec Dir Stdnt Enrlmnt
Labour Relations&Compensation	00001062	Director Labour Relations
People&Organization Developmnt	00031895	HR Strategic Business Partner
People&Organization Developmnt	00131522	Exec Dir, POD
Capital Campaigns	00130457	Executive Director, Campaigns
CISO Office	00130796	Chief Info Security Officer
CIO Office	00104355	Chief Information Officer

General Counsel	00130182	Legal Counsel
VPPEI Office	00130842	Executive Assistant
General Counsel	00134027	Mgr, Legal & Admin Services
General Counsel	00132325	Paralegal
People&Organization Developmnt	00128897	HR Strategic Business Partner
AVPSI Student Services – EDI	00132048	Director, EDI
People&Organization Developmnt	00116395	Specialist, Human Resources
VPAAE SFU Medical School	00134200	Exec Dir, Advancement
People&Organization Developmnt	00111025	Specialist, Wellness & Recovery
Human Rights Office	00000493	Director Human Rights Office
Labour Relations&Compensation	00134102	Spclst, Cnflct Reso Investig
Presidents Office	00122791	Mgr, Prsdnt's Portfolio Admin
Labour Relations&Compensation	00129507	HR Coordinator
Presidents Office	00031151	Administrative Assistant
People&Organization Developmnt	00133714	Assoc Dir, Tlnt Acqu and Rec
Presidents Office	00001727	Executive Assistant
General Counsel	00125977	Legal Counsel
Labour Relations&Compensation	00007508	Director, Total Rewards
SFU International	00104916	Exec Director SFU Internationl
Van Campus Executive Director	00030417	Executive Dir SFU Vancouver
Lifelong Office of the Dean	00125847	Exec Dir Acadm Plng&Strgc Prjc
Faculty Relations	00134372	Dir, Faculty Relations Systems
Labour Relations&Compensation	00006810	Dir, HR Research Pers & HRIS
People&Organization Developmnt	00105757	Human Resources Prfsnl II
Chief Safety Office	00108148	Chief Safety and Risk Officer
Core Facilities	00131534	Dir, Public Knowledge Project
Budget Office	00106133	Director Budgets
Faculty Relations	00001176	Exec Dir Faculty Relations
Constituent Fundraising	00123680	Exec Dir, University Campaigns
Labour Relations&Compensation	00000842	Human Resources Prfsnl III
People&Organization Developmnt	00031895	HR Strategic Business Partner
VPRI Administration	00131332	Exec Dir, VPRI Office
Equity, Diversity & Inclusion	00122299	Director, EDI
FAS Office of the Dean	00127974	Snr Dir, Fclty Ops & Planning
MED Office of the Dean	00134720	Executive Director, Operations
Science Office of the Dean	00127181	Snr Dir, Fclty Ops & Planning
Research Ethics	00134491	Director, Research Security
Research Operations	00118585	Exec Director Rsrch Operations
VPA Strategic Initiatives	00130334	Dir Strtgc Prjcts & Anlysis
People&Organization Developmnt	00001130	HR Strategic Business Partner
AVPSI Administration	00134402	Sr Director, Stdnt Well-Being
Ext Rel Comm and Marketing	00116785	Exec Director, Strategic Comms
Internal Audit	00001162	Director Internal Audit

APPENDIX B: LIST OF MEDIATORS / ARBITRATORS

Ken Saunders

Chris Sullivan

Allison Matecheskie

TAB 2

**IN THE MATTER OF A MEDIATION ARISING FROM
2023 BASIC AGREEMENT NEGOTIATIONS**

BETWEEN:

**SIMON FRASER UNIVERSITY
("University" or "Employer")**

AND:

**ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION
("APSA" or "Association")**

RECOMMENDATIONS FOR SETTLEMENT

ISSUED BY CHRISTOPHER SULLIVAN ON MAY 15, 2024

I was appointed mediator by the parties to assist in the resolution of a bargaining impasse over changing certain provisions of the parties' "Basic Agreement". In anticipation of an agreement not being reached the parties included in my mandate to "make recommendations for settlement which recommendations shall not be binding upon the parties and shall be submitted to the Association Group for ratification and the Board of Governors for approval."

I engaged in three days of mediation with the parties on April 15, 16 and 17, 2024. The mediation did not resolve all issues and what follows are my recommendations for settlement, with necessary context for consideration of the parties' respective principals.

By way of general background to the current issues in dispute, it bears noting the parties' relationship is one of voluntary recognition. ASPA is not a certified union governed by the *Labour Relations Code*, RSBC 1996 c. 244. In the parties' Basic Agreement, which was entered into in 1982, the University agrees to recognize APSA as the legal representative of employees within its scope, which comprise of all administrative and professional staff employed by the University, with certain specified exceptions. The "Association Group" essentially comprises the University's mid-level managers; a group of professional, sophisticated employees who serve a

critical role in support of teaching and research at the University. There are currently about 1,700 employees in the group.

The parties' relationship is wholly contractual, the foundation of which is the Basic Agreement that addresses matters such as purpose and intent, fundamental principles, rules and processes, the scope of APSA's representation, payment of member dues, dispute resolution, the process for negotiating compensation matters, the process for negotiating the Basic Agreement itself, and the establishment of a joint consultative committee, which considers non-compensation policies applicable to members.

The Basic Agreement does not directly address the terms and conditions of employment of APSA members, but rather includes specific terms regarding compensation agreements, negotiated periodically between the parties, and a number of "AD 10" policies determined by the University following a process of consultation. The present AD 10 policies pertain to the following matters: employment policies; establishment of positions; posting and filling of positions; modification of appointments from full-time to part-time; position share; position evaluation and salary administration; group benefit plans; leaves with and without pay; professional development leave; professional development; reimbursement of professional development expenses; tuition waiver; work schedules; no discrimination; strike policy; performance development; problem resolution; elimination of positions and employment continuity; discipline and termination of employment; resignation; retirement; and probationary period.

The negotiation of the terms of the Basic Agreement itself only occurs where either party gives notice to bargain; it is otherwise automatically renewed every December 31.

The Basic Agreement has not been subject to negotiation since 1991, although certain provisions have been amended over the years either through the voluntary agreement of the parties, or because of an adjudication decision. The process for negotiating compensation includes a binding final-offer-selection arbitration dispute resolution mechanism.

On January 29, 2023, APSA provided the University with notice to bargain the Basic Agreement and four days later, on February 3, 2023, the University provided notice to APSA to do the same. On November 23, 2023, the parties entered into a protocol agreement to support the process for negotiations. Given the timeline and proximity to the expiry date of December 31, 2023, the parties agreed, on a one-time basis, to extend the expiry date to June 30, 2024. Subsequently, this was extended to December 31, 2024.

Negotiations between the parties took place on January 15 to 18, 2024, and February 1, 2024, after which it was agreed that the parties would proceed to non-binding mediation. As noted at the outset of this report, mediation occurred on April 15 to 17, 2024.

There are five outstanding issues in dispute, involving one party or the other seeking to amend a provision of the Basic Agreement and the other party opposing such. The disputed issues, and the changes sought, are as follows:

1. APSA seeks to change Section 2.4 to have it recognized as the “sole and exclusive representative” of its members. Section 2.4, entitled “Sole Representative”, currently states:

The University hereby enters into agreement with and recognizes the Association as the sole representative for all members of the Association Group.

2. The University initially sought to change Section 3.2 to eliminate the cap/ratio of excluded personnel altogether and it later amended this position to include a larger cap and exemption for the new medical school. Section 3.2, entitled “Excluded Positions” currently states:

The University may add to or delete from the excluded positions listed in Appendix A, after consultation with A.P.S.A., but in no case will the number of positions listed in Appendix A exceed 10% of the total number of employees in the Association Group.

3. The University seeks to change the language of Section 9, in particular Section 9.2, to reflect it having the ultimate right to determine, through policy, the non-compensation terms and

conditions of employment of APSA members. (Compensation matters are subject to bargaining with final offer selection arbitration to resolve a dispute). Section 9 currently states:

9 NEGOTIATION ON OTHER MATTERS

9.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 8.2 and 8.3 below. (should read: 9.2 and 9.3 below.)

9.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing policies (Section AD 9) (should be Section AD 10) except by mutual consent of the parties. The University reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

9.3 Consultation on New Policy Development

Development of new personnel policies affecting members of the Association Group and the development of other University policies on matters materially affecting members of the Association Group which do not fall under 9.2 above, shall be subject to consultation between the parties. If agreement is not reached, it shall remain the right of the University to determine policy.

4. APSA seeks to include, as Appendix C, a set of practice guidelines in relation to a tentatively agreed to definition of “Meaningful Consultation” to address the parties’ mutual view that the current JUAC is not working. APSA seeks to include a dispute resolution mechanism, as part of the JUAC process, that ultimately involves an objective third-party neutral. APSA seeks to expressly give credit to the source of its proposed practice guidelines language, which appears to be the Government of Canada and various Indigenous groups.

5. This issue pertains to the end date of the Basic Agreement. Section 13 currently provides:

13 DURATION OF AGREEMENT

This Agreement shall commence on the date of signing and shall extend to December 31, 1992. It shall be automatically renewed annually unless six months in advance of the expiry date either party has given the other written notice of its intention to renegotiate.

RECOMMENDATIONS

This is not a collective bargaining dispute involving a collective agreement that is renewed every few years or so, but rather the proposed changes from both sides concern the foundational Basic Agreement that has been in place since 1982. This is a matter that cannot be understated because ultimately, if the parties cannot come to an agreement, either or both can walk away from their relationship, and let the chips fall as they may in terms of any form of continued relationship and consequential employee representation.

My role as a mediator in making these recommendations is to essentially place myself in the positions of the respective parties and replicate what their principals would ultimately agree to, over and above what I was unable to get the parties' respective negotiation teams to agree to during our three-day mediation session.

As the title of this report indicates, these recommendations are made with a view to settling the parties' dispute and I have carefully considered the information and positions provided by both parties in assessing what they can live with going forward at this time.

As will become evident, there are some fundamental differences between how the parties view the role of APSA, with APSA essentially viewing itself as the sole bargaining agent of its members with regards to terms and conditions of employment; while the University sees APSA as the sole bargaining agent for compensation, and an agent to consult regarding non-compensation matters that are ultimately resolved by the University.

This fundamental underlying dynamic is manifested in the parties' respective proposals regarding Section 9, the role of JUAC, and practice guidelines for meaningful consultation. The rub between the parties is made evident when one considers that while the University has the right to unilaterally implement policy, the language indicates it requires mutual consent to change such, and the existing JUAC, which does not contain a third party dispute resolution mechanism, is dysfunctional and lacks the necessary trust for reaching agreement to make changes.

At these proceedings fingers were pointed by both parties regarding who bears responsibility for the dysfunction however, like most forty plus year relationships, both are probably complicit in one way or the other.

A fulsome description of historical background to the parties' relationship, and the current disputed issues, is contained in a relatively recent "Mediation Binding Report", issued by Arbitrator James Dorsey K.C. on March 22, 2023. That binding report was the outcome of a mediation that addressed some of the precise same issues in the present case, particularly in relation to the application or operation of Sections 9.1 and 9.2, and the interrelationship of these provisions with JUAC. Arbitrator Dorsey's "Mediation Binding Report" includes analysis in the context of fixing the main identified problems posed in the present case, particularly involving Article 9 and the role of JUAC.

Notwithstanding the distinction between the role of Arbitrator Dorsey and my own in the present case, I am unable to arrive at a different opinion regarding a fix to the parties' problems at this time. Essentially, both parties have submitted proposals that are diametrically opposed as indicated by APSA's proposal to include a third-party dispute resolution process for unresolved JUAC matters, and the University seeking to eliminate the existing requirement for mutual consent of those matters.

In 1982, when the parties agreed to their current language regarding Article 9 and the role of JUAC, they envisioned a functional JUAC operating in a cooperative trusting environment. Unfortunately, this did not play out as planned, as recounted in Arbitrator Dorsey's report and

made evident by the parties' respective and reciprocal notifications to amend the terms of the Basic Agreement.

Of significance to the present case is the fact that Arbitrator Dorsey's "Mediation Binding Report" included a "Protocol for Reactivated JUAC" that was never implemented, and the parties did not receive the benefit of the initiatives and conditions developed to assist the parties in achieving what they once believed was achievable.

To the extent the parties appear to be at an impasse in relation to their respective positions regarding Article 9 and the role of JUAC, it behooves the parties – if they are truly interested in a continued relationship at this time – to implement those changes prior to deciding their relationship, as it is currently defined, is over.

For those principals interested in the historical background and underlying dynamics to the current issues, or at least the main ones, I recommend reading the entirety of Arbitrator Dorsey's March 22, 2023, report. Below I quote significant portions of the report that are integral to my recommendations.

The first paragraph of the Mediation Binding Report sets the stage for the hearing that took place before Arbitrator Dorsey, and, to a degree, also the present proceedings:

1 APSA's April 27, 2022 grievance reveals serious, long-standing stress fractures in the 40-year voluntary, annually self-renewing, common law, recognition and relationship contract between APSA and SFU referred to as the Basic Agreement. The grievance seeks clarity of core terms and processes of the contract plus damages for SFU's actions in 2019-21 negotiations on compensation matters. APSA alleges SFU failed to bargain and act in good faith; to act in accordance with its duty of honest performance of the contract; to make every reasonable effort to reach an agreement; and to act reasonably and non-arbitrarily.

Arbitrator Dorsey continued with the following comments on the parties' relationship, and the mandate he received from the parties to address their problems.

9 While SFU did not respond to the grievance with recriminations, the grievance and subsequent proceedings reveal a lapse in an underlying goodwill basis of the relationship. The unspoken question is whether the relationship can recover and become healthy and harmonious or whether this lapse is chronic and terminal for the relationship.

10 In grievance mediation, APSA and SFU agreed to forego arbitration and to include efforts to reactivate and improve the operation and functioning of the Joint University/Association Committee (JUAC) within the parameters of its constitutional documents.

11 It was agreed there is a mutual interest in greater clarity of the scope of negotiations on compensation matters under Section 9.1 of the Basic Agreement. To the extent not agreed, the greater clarity would come from a binding statement of interpretation and guidelines, indicia or criterion issued by me.

12 It was agreed that in addition to the constitutional documents for JUAC, there should be an additional protocol or set of procedures and rules for its operation. To the extent a protocol is not agreed, its final terms are to be determined by me. ...

Under the heading “Reactivating and Seeking to Make JUAC Effective”, Arbitrator Dorsey wrote the following regarding an effective JUAC and the effect of such on Sections 9.1 and 9.2:

255 Unless there is agreement between SFU and APSA, JUAC has no role in monetary matters or the negotiation of compensation matters.

256 APSA says:

... the lack of proper functioning in JUAC is not a matter to recently arise. At least as far back as 2009, structural deficiencies with JUAC have resulted in: no meetings in JUAC from 2009 until May 2012; no meetings from 2018 to the present time; and it taken years to make minor and substantive changes to the AD 10 Policies even when meeting more regularly.

257 Accepting JUAC did not meet for several years in the late 1980’s and early 1990’s or from 2009 to 2012, periods when there were voluntary settlement agreements in negotiations on compensation matters, or from 2018 to date, the pattern over 40 years appears to be that the relationship at JUAC experiences respites or trial separations which either party could, but did not, end with a simple request to meet. (Section 9.1)

258 At other times, JUAC has been productive. There was the adoption of the AD 10 policies in 1999 and policy amendments in 2000, 2004, 2007, 2014 and 2018.

259 The minutes of the January 22, 2016, JUAC meeting, attended by some new representatives, record:

1. Introductions & Update

- The purpose of the Committee was reiterated; to resolve policy and application of policy issues, and create policies when necessary (ex. probation), according to AD10. The Committee does not negotiate changes that have a financial impact. Those are sent to salary and benefits negotiations. The final approval process includes the SFU Board of Governors.
- The Committee normally meets monthly, although, it was explained, since June, meetings have been cancelled or postponed due to a variety of issues. It was recommended to meet bimonthly.
- At a previous JUAC meeting, the group decided to review each policy, starting from the beginning, to determine if changes were needed based on current practice or arising issues.
- HR noted they are tentative to make any final decisions at this meeting, as they haven't had time to discuss all the agenda items.
- It was explained that the agenda is typically sent out two weeks before the meeting. All agreed, both parties will submit agenda items.

260 When actively meeting, the research, discussion and approval process for policy amendment can be slow. Several weeks' advance notice is required to place an item on the Board of Governors agenda.

261 APSA says:

The core problem with JUAC is that the parties can discuss matters but there is nothing to incentivize the parties to finally resolve such issues. Matters sit on the agenda and get pushed from meeting to meeting, and it takes years to get anything done. In that context, it is of little surprise that the parties have just decided not to meet at all.

262 APSA's solution to overcome stalemates is to expand the role of JUAC, when agreed, to include monetary benefits; have any matter raised that is not of

mutual concern go to negotiations on compensation matters; have issue timelines at the end of which there is agreement or a deemed impasse; and have impasses on single or bundled issues resolved by FOS arbitration. The effect is to bypass and negate the role of the Board of Governors on issues on which there is no agreement.

263 SFU says the current decline in the effectiveness of JUAC, regardless of who is responsible, is a failure of the relationship to fulfill the intended purpose of the Basic Agreement and to maintain the intended relationship under the agreement. The solution is not to ignore the agreed separation of processes for negotiations on compensation and other matters.

264 SFU's solution is to restore JUAC's effectiveness beginning with a renewed commitment to its purpose and a proportionate share of the work:

Each of SFU and APSA will appoint three persons to be members of the JUAC, each of whom must first confirm to the appointing party both a commitment to the effective functioning of the JUAC within the established terms and conditions which govern the mandate and operation of the JUAC and a willingness to take on a proportionate share of the JUAC's work to give effect to that commitment.

265 While both agree the relationship is not the intended harmonious working relationship, APSA says, as it did by applying for certification in 2003, the relationship can only function productively if there is an adversarial resolution process into which differences can be channeled for binding decision by an outsider. SFU suggests temporary assistance from an outside facilitator might be beneficial.

266 There are constraints on what can be binding recommendations in this mediation resolution of APSA's grievance that will not exist for APSA and SFU in renegotiation of the terms of the Basic Agreement for which each might constitute a Basic Agreement Review Committee (BARC), as APSA did in 1994.

267 The inviolable constraint in this process is that no third-party has the authority to ignore or amend the terms of the Basic Agreement or any AD 10 policy.

268 Within that constraint, I direct that the attached protocol shall govern the operation of JUAC for a limited reactivation period. The implementation delay in the protocol is to allow time for SFU and APSA to undertake renegotiation of the terms of the Basic Agreement, proceed through the upcoming period of negotiations on compensation matters and to appoint a protocol Facilitator.

As alluded to by Arbitrator Dorsey, the Basic Agreement as it currently exists, bars the University from unilaterally changing existing policies, and it also bars a third party from doing so; however, the document envisions changes to be made by agreement, using the JUAC process. In light of this practical reality, Arbitrator Dorsey sought to “reactivate” JUAC and make it “effective”. The protocol Arbitrator Dorsey developed is included in his “Mediation Binding Report” as follows:

Appendix 2: Protocol for Reactivated JUAC

The composition and operation of the Joint University/Association Committee (JUAC) is governed by Section 9 of the Basic Agreement and AD 10-1.4.

AD 10-1.4.02.c provides “Both APSA and the University may bring in resource people as deemed necessary.”

AD 10-1.4.03 sets the following procedures for JUAC:

4.03 Procedures

- a. JUAC meetings are scheduled monthly. JUAC will establish other meeting times to meet the requirements of Policies AD 10.5 [Position Share] and AD 10.17 [Problem Resolution] as is deemed necessary.
- b. Two APSA members of JUAC and two University members of JUAC will constitute a quorum. If a JUAC member is absent, neither APSA nor the University will provide a replacement.
- c. JUAC recommendations will be reached by majority agreement. If there is a "tie," both sides will provide written recommendations to the respective principals.
- d. Where appropriate, JUAC recommendations for a change to an AD 10 Policy will be forwarded to the respective principals. If the recommendations are approved by the Board of Governors of the University, the APSA Executive and, as deemed appropriate, by the APSA membership, they will be implemented within the timelines established. Extensions to timelines are subject to mutual consent that will not be unreasonable.

The following additional rules and procedures will apply to the operation of JUAC beginning February 1, 2024, for 12 months or a longer period if agreed by APSA and the University.

1. JUAC meetings maybe held in-person or virtually.
2. At six-month intervals and on a rotating basis, beginning with APSA, the University and APSA will appoint and pay any fees and expenses of a qualified person who is not a member of JUAC to take minutes at each meeting in conformity with the then current edition of Robert's Rules of Order.
3. No later than September 15, 2023, APSA and the University shall appoint a Facilitator to work with the members of JUAC for the 13 months beginning January 1, 2024. If no agreement on a Facilitator is reached by September 15, 2023, the Associate Chair of Adjudication and Mediation, Labour Relations Board shall be asked to appoint a Facilitator.
4. APSA and the University will each pay one-half of the fees and expenses of the Facilitator.
5. The Facilitator shall act as the non-voting Chair of JUAC with authority to prepare and distribute an agenda for each meeting of JUAC.
6. In addition to preparing meeting agendas and chairing JUAC meetings, the Facilitator will meet with the members of JUAC at intervals to be determined by the Facilitator for the purpose of working with them to enhance their contribution to the effective operation of JUAC.
7. APSA and the University may agree to extend the term of the Facilitator under the terms of this protocol for no more than additional 12 months.
8. Within one month after the end of the Facilitator's initial or extended appointment, as the case may be, the Facilitator will provide to APSA's President and the University's Vice-President, People, Equity, and Inclusion a written report containing the Facilitator's observations and comments on the effectiveness of JUAC's operations and recommendations on:
 - a. procedural or other changes to enhance the effectiveness of JUAC;
 - b. improving communication and a harmonious working relationship among JUAC members;
 - c. enhancing informed, meaningful and accountable consultation; and

- d. improving the timeliness of JUAC's management of issues and decision making.
9. APSA and the University will consider the Facilitator's report in good faith and may agree to appoint the Facilitator to mediate any differences over the acceptance and implementation of the recommendations.

As noted, the parties did not implement Arbitrator Dorsey's recommended protocol to reactivate JUAC. Instead, they both sought to change the terms of the Basic Agreement, and gave reciprocal notices of such, which led to the present mediation proceedings.

Having discussed all of the issues at length with the parties I have no confidence that recommending either of the parties' respective proposed changes to Section 9, in particular, will lead to a resolution going forward at this time. Nor do I see there being some sort of compromise language changes that would bridge the significant chasm between the parties based on some of their apparent philosophical differences, including those regarding the role of APSA and, perhaps, the intent of the Basic Agreement as provided for in Section 2.2. If there is a resolution going forward at this time it will be based on a wet blanket approach that may not give either party the victory they were seeking.

In the circumstances it would behoove the parties to give serious consideration to implementing Arbitrator Dorsey's recommended protocol that addresses JUAC prior to deciding such is not a worthwhile measure.

Certainly, the parties have not had the benefit of a Facilitator, who may be able to assist the parties in creating the necessary trust and respect for issues to be discussed in JUAC meetings in an environment conducive to achieving "mutual consent" in regards to matters, including those referred to in Section 9.2. Sometimes in a forty plus year relationship an objective third party can assist in opening channels and unblocking others that form the basis of consensus. While in 1982, when the relationship was young, the parties did not envision a need for assistance in resolving relationship matters that may develop over time, after forty plus years

together such assistance may be required, at least as a last gasp measure prior to calling it a game. The respective parties can assess whether they owe it to themselves to make this attempt at compromise, with the reality an end date for the Basic Agreement will be, as set out below, December 31, 2015, or six-months' notice.

It bears adding the parties themselves have not to date been able to specifically identify matters they dispute in relation to Article 9, and an important initial step in JUAC would necessarily include the parties, at their earliest convenience and with the assistance of a facilitator, undertaking a review of AD 10 policies and to table any amendments, updates, revisions.

My recommendations on all the outstanding matters are as follows:

1. Section 2.4: APSA to withdraw its proposal regarding “exclusive” representation and language to remain the same.
2. Section 3.2: The Basic Agreement be changed to include a 14.8% cap or ratio, in place of the current 10%.
3. Sections 9.1 and 9.2: The University to withdraw its proposal and language to remain the same. Arbitrator Dorsey’s “Protocol for Reactivated JUAC” be implemented, with time frames contained therein to be amended as follows:

...The following additional rules and procedures will apply to the operations of JUAC beginning **July 1, 2024**...

3. No later than **August 1, 2024**, APSA and the University shall appoint a Facilitator to work with the members of JUAC for the 13 months beginning **August 1, 2024**. If no agreement on a Facilitator is reached by **August 1, 2024**, the Associate Chair of Adjudication and Mediation, Labour Relations Board shall be asked to appoint a Facilitator.
4. Practice guidelines for “Meaningful Consultation”: I recommend this topic be addressed at an upcoming JUAC meeting and be developed and resolved by the parties who are involved in

that process. During the course of these mediation proceedings there was little or no objection regarding the reasonableness of the guidelines proposed by APSA. However, the practice/behavioral guidelines do not lend themselves to being part of the Basic Agreement.

5. I recommend the Basic Agreement expires on December 31, 2025, and be renewed annually thereafter, with the existing six-month notice period. This duration should allow for the reactivation of a functioning JUAC to address issues in the manner they were intended to be addressed.

Any other agreements between the parties in relation to their Basic Agreement negotiations shall be included in these Recommendations for Settlement.

I remain seized to clarify any aspect of my recommendations.

It is so recommended this 15th day of May, 2024.



Christopher Sullivan

TAB 3

Simon Fraser University (Re)

British Columbia Labour Relations Board Decisions

British Columbia Labour Relations Board

K. Saunders, Vice-Chair

Heard: August 11 - 15, 2003.

Decision: August 29, 2003.

Case No. 48874

[2003] B.C.L.R.B.D. No. 274 | BCLRB Letter Decision No. B274/2003

Between Simon Fraser University ("SFU" or "The University"), and Simon Fraser University Administrative and Professional Staff Association ("APSA"), and Canadian Union of Public Employees, Local Union 3338 ("CUPE")

(33 paras.)

Counsel

Patrick Gilligan-Hackett and Muriel Henry, for SFU. Mariam Gropper, Q.C. and Michelle Blendell, for APSA. Leo McGrady, Q.C. and Maria Koroneos, for CUPE.

DECISION OF THE BOARD

I. INTRODUCTION

1 APSA applies under Section 18 of the Labour Relations Code (the "Code") to be certified to represent a bargaining unit described as "administrative and professional employees of the employer, except those employees represented by other bargaining agents; and those represented by Faculty Association".

2 SFU does not oppose APSA's certification based on the presumption against multiple bargaining units. SFU's quarrel with the application is that APSA seeks to represent about 660 individuals, 314 of which SFU says are managers, persons employed in a confidential capacity with respect to labour relations and others who do not share a community of interest with members of the proposed unit.

3 CUPE appears as an interested party. CUPE opposes the application on two principle grounds. First, CUPE says that APSA is an employer dominated or influenced organization for the purposes of Section 31. In the alternative, CUPE argues that the certification of an additional bargaining unit is not appropriate for collective bargaining.

4 SFU takes no position regarding CUPE's objections to APSA's application albeit SFU disputes a number of factual assertions CUPE advanced in support of its position.

5 The adjudication of outstanding issues was divided into two stages. Given the threshold nature of issues raised by CUPE, the first stage focused on CUPE's employer influence/domination and appropriateness objections. At the end of the hearing I advised the parties that a quick decision would be issued in keeping with the expedited nature of the proceeding. To meet that objective I have considered all the evidence and submissions but only set out the facts, arguments and analysis necessary to make this determination. Given the outcome of CUPE's

Simon Fraser University (Re)

appropriateness objection it is not necessary to address the argument that APSA is employer dominated or influenced.

II. FACTUAL BACKGROUND

6 SFU employs about 3,600 persons and offers undergraduate, graduate and post-graduate education to about 24,000 students at three campuses. The University's administrative structure is broadly organized under academic and non-academic divisions. Each division is in turn managed by a complex and multi-layered bureaucracy.

7 As it presently stands, there are three certified bargaining agents at SFU. CUPE represents office, clerical and technical (including laboratory) employees. Janitorial, maintenance and service employees are represented by the Poly-party union. The Teaching Support Staff Union ("TSSU") represents sessional instructors.

8 Eight unions are certified to represent employees of eight employers that do business at SFU campuses. For example, CUPE Local 2396 is certified to represent employees of the Student Society.

9 The Faculty Association represents faculty in negotiations with SFU. The Faculty Association is not a certified bargaining agent.

10 APSA is a society incorporated for the purpose of negotiating its members' terms of employment with SFU. In Simon Fraser University, BCLRB No. B293/98 the Board observed that, "APSA is not a trade union and does not purport to negotiate a collective agreement as defined under the Code": para. 19. However, SFU has recognized APSA as the representative of its administrative and professional employees since December 1982 (the "group" or the "APSA group"). The group presently includes about 530 members. SFU and APSA have since negotiated terms of employment (the "Basic Agreement") setting out terms of employment as well as administrative policies governing the APSA group.

11 Persons in the proposed unit work at all three campuses. They are present throughout virtually all of the University's operations, and generally work in the middle reaches of the administration. Some supervise employees in other bargaining units in addition to performing other administrative tasks. The typical member of the APSA group is highly educated (the proposed unit includes a technical group), works independently and exercises decision-making authority. For these reasons APSA has identified itself as a group of "professionals" in counter-distinction to persons in other bargaining units. Gary Hall is the President of APSA. Hall characterized the APSA group as consisting of all the "white-collar" workers not included in other certified bargaining units or the Faculty Association. Hall testified that members of APSA would likely find working under the terms of the CUPE collective agreement to be too restrictive and would reject the external control exerted by CUPE.

12 The CUPE bargaining unit includes about 850 employees. CUPE has not attempted to organize the APSA group albeit it claims that up to 200 members of the APSA group are in its unit. CUPE would not refuse to organize the APSA group provided it was approached to do so. Members of the CUPE bargaining unit successfully apply for jobs in the APSA group on a frequent basis. There is a group of technical employees in the CUPE unit and some are highly educated. CUPE participates in a pension plan with APSA and other bargaining units at SFU.

13 APSA adduced evidence relating to the practice and history of collective bargaining in the university sector. The Professional Employees Association ("PEA") was certified to represent employees of the University of Victoria on September 7, 1995. The appropriateness of the PEA unit was not contested. The unit is described as "employees in British Columbia who are employed to perform Administrative and Academic Professional duties except professional librarians, faculty and those covered by Certifications held by Locals 957 and 951 of the Canadian Union of Public Employees". On March 31, 1998 CUPE Local 4163 was certified to represent a fourth bargaining unit of academic support employees at the University of Victoria. Again there was no dispute about whether this unit was appropriate for collective bargaining.

14 Since 1995 the PEA has negotiated three collective agreements with the University of Victoria without a strike or

lockout. Thomas Gore is a member of the PEA executive at the University of Victoria and is familiar with the history of the PEA's collective bargaining relationship with the University of Victoria. Gore testified that the certification of the PEA led to greater stability but only in the sense that it has contributed to a more supportive, collaborative and satisfying workplace for PEA members. Strikes, lockouts and jurisdictional disputes have not been significant features of the labour relations environment at the University of Victoria before or after the certification of PEA.

15 There have been seven strikes by unions bargaining with SFU as employer over the past twenty-nine years. Four of those disputes occurred between 1974 and 1979 and three occurred since 2000. There have been five further occasions where strike votes were taken and strike notice served in collective bargaining with SFU.

III. POSITIONS OF THE PARTIES

16 APSA says the proposed unit is appropriate for collective bargaining when assessed against the six factors identified in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), (1993) 19 CLRBR (2d) 161 ("IML"). Those factors are as follows: 1) similarity of skills, interests, duties and working conditions; 2) the physical and administrative structure of the employer; 3) functional integration; 4) geography; 5) the practice and history of the current collective bargaining scheme; 6) the practice and history of collective bargaining in the industry or sector: IML at page 192.

17 APSA submits that employees in the proposed unit work under a common framework of employment conditions, perform similar duties, share common interests and are similarly situated within SFU's physical and administrative structure. There is no functional integration of employees in and out of the proposed unit. APSA does not view the factor of geography as relevant to the analysis.

18 APSA says there is no evidence to suggest that certifying an additional unit at SFU would contribute to labour relations instability and notes that it is not SFU but CUPE that advances this position. APSA points to its relationship with SFU over the years and the existence of a relatively calm labour relations climate at the University despite the existence of multiple units. Given this context APSA contends that certifying one more unit will not contribute to instability. APSA says these factors, combined with the practice and history of a separate PEA unit at the University of Victoria, rebuts the presumption against multiple units enunciated in IML. APSA says the relevant sector under the sixth IML factor includes universities in British Columbia and observes that the PEA (at the University of Victoria) is the only union certified to represent professional and administrative employees in the university sector.

19 SFU takes no position regarding CUPE's appropriateness objection.

20 CUPE argues that APSA has not satisfied its burden to rebut the presumption against the proliferation of bargaining units. Therefore the unit is not appropriate for collective bargaining and the application should be dismissed. CUPE points to its ongoing claim that a large number of the APSA group belong in its unit and says that it is willing to organize the remaining employees in the proposed unit. Hence, there is no concern that APSA members will be denied access to collective bargaining. CUPE also says that because its members work closely with members of the proposed unit that they are functionally integrated. In CUPE's submission, these factors weigh against the application.

21 CUPE says that APSA failed to draw an adequate causal connection between the certification of a PEA unit at the University of Victoria and the incidence of labour relations instability (strikes/lockouts/jurisdictional disputes) with that employer. Moreover, CUPE disputes APSA's contention that the universities comprise the relevant sector under the sixth IML factor.

22 Lastly, CUPE emphasizes that the potential for more labour disputes at SFU engages an important public interest component given the wide-ranging effect of these disputes on the community served by the institution.

IV. ANALYSIS AND DECISION

23 The parties referred to a number of Board decisions in their submissions about the appropriateness of the proposed unit. Some of the decisions pre-date the Board's decision in IML and are of little assistance for that reason. The cases that post-date IML rest on distinct factual foundations. For the purposes of this decision it is only necessary to apply the community of interest factors and policy set out in IML.

24 APSA has demonstrated that persons in the proposed unit share a community of interest based on the first four IML factors identified above. Assuming they are employees, persons in the proposed unit work under a common framework of employment conditions, share common interests and in many cases perform similar duties. These conclusions largely flow as a natural consequence of the fact that the APSA group has negotiated with SFU for some twenty years regarding terms of employment. Given this history it is not surprising that APSA has developed an identity and culture in counter-distinction to persons outside the APSA group.

25 I reject CUPE's contention that there is significant functional integration of persons in and out of the proposed unit as defined in IML. Functional integration arises from the regular performance of shared/overlapping duties, integrated work processes or the regular interchange of employees in and out of the unit. At best the evidence demonstrates a close functional relationship between employees in and out of the proposed unit.

26 Despite the existence of a potential community of interest among persons in the proposed unit (when assessed against the first four IML factors), the outcome of this application does not turn on the first four IML factors alone. In IML the Board identified industrial stability as the most important consideration when existing units are in place with an employer. The primary rationale for this concern is simple and is borne out of the Board's real-life experience in labour relations. With each additional unit comes an additional round of collective bargaining along with the additional potential for a strike or lockout. As the number of units increases so too does the bargaining dynamic of "leapfrogging" and "whipsawing" between unions and the employer: IML at page 187-188. This dynamic further increases the potential for strikes and lockouts. In IML the Board held that the instability resulting from multiple units is axiomatic. Accordingly, there is a rebuttable presumption against multiple units with an employer. The presumption increases "markedly" with the number of units. In IML the Board's concern with the instability resulting from unit proliferation was also premised on the then Section 2(d) purpose of promoting conditions favourable to the orderly and constructive resolution of disputes between employers and unions. It is worth noting that since IML, Section 2 has been amended so that the Board now has a positive obligation to meet this objective.

27 There are three certified units in place at SFU. Accordingly, the community of interest factors governing this determination include a consideration of all six IML factors. The fifth and sixth factors boil down to the proposition that past conduct in collective bargaining sometimes provides a good prediction of future conduct in collective bargaining. If the parties (the fifth IML factor) or others in the sector/industry (the sixth IML factor) have established a record of conduct that allows the Board to reasonably conclude that an additional unit will not lead to instability, the Board may weigh this evidence along with other relevant factors to certify an additional unit.

28 Against the backdrop of this analytical framework there are a numbers of factors that do not figure prominently in the analysis. The first relates to APSA's suggestion that CUPE somehow has less of a legitimate interest with the proliferation of units than SFU. I recognize that the impact of the bargaining unit structure on SFU as an employer may differ from its impact on CUPE. SFU's interests and goals in this respect may differ from CUPE's. However, these facts do not support APSA's contention that SFU as the employer is the party primarily concerned with the issue of proliferation and that CUPE's submissions in this regard should be taken with a "grain of salt". In so far as the certification of additional units at SFU might impact the dynamic of collective bargaining at the University, CUPE's submissions deserve no less consideration than submissions that might be advanced by other parties. Moreover, the fact that employees chose to prefer one bargaining agent over another does not determine whether a unit is appropriate for collective bargaining: IML, at page 184. By parity of reasoning, when the appropriateness of a unit is contested, the Board's determination is not governed by an employer's preference for the additional unit or its decision to take no position about the issue.

29 This leads to a consideration of the fifth IML factor. APSA and SFU have bargained terms and conditions of

employment for the APSA group in a multiple bargaining unit environment for some twenty years. In light of this history it is understandable how APSA might view its certification as the recognition of, or at least a natural progression from, the existing status quo. Labour relations between SFU and its certified bargaining agents have not been marked by recurring job action. Thus APSA queries how its certification could negatively impact collective bargaining at the University. However, there remains a fundamental difficulty with APSA's reliance on the history of its relationship with SFU. The basic agreement is not a collective agreement as contemplated by the Code. No one argues that APSA's relationship with SFU was a collective bargaining relationship like that arising from a voluntary recognition. APSA has never had the right to strike and SFU has never had the right to lock out APSA members to press their demands in bargaining. Consequently, the fact that APSA and SFU have peacefully coexisted in a multiple unit environment does not speak directly to whether the certification of an additional APSA unit might not contribute to instability. Accordingly, this record of conduct cannot be given significant weight under the fifth IML factor. Even if I accept the proposition that SFU has enjoyed a history of relative labour peace, the fact that three units are presently certified only increases the threshold APSA must meet to rebut the IML presumption.

30 APSA points to the experience of the University of Victoria and the PEA in its submissions about the sixth IML factor. The PEA was certified to represent a third unit at the University of Victoria in 1995 and CUPE was certified to represent a fourth unit in 1998. Since that time the PEA has negotiated three collective agreements without a labour dispute. There is evidence employees in the PEA enjoy greater work satisfaction under the present regime but this does not directly relate to the stability concerns identified in IML. Further, even if I assume that the universities comprise the relevant sector under this factor, I am still not satisfied that the PEA's relatively short experience at the University of Victoria permits a reasonable judgment about the likely consequences of certifying an additional APSA unit at SFU. Likewise, there is an equally short record of collective bargaining at the University of Victoria with four units in place. This is not the type of sector/industry practice that can be given significant weight under the sixth IML factor.

31 I recognize that the Board certified third and fourth units at the University of Victoria. In light of those outcomes it might appear incongruous to find that a fourth unit is inappropriate at SFU. The answer to any apparent inconsistency is that the applications for third and fourth units at the University of Victoria were never opposed because of proliferation. The Board hears applications for certification on an expedited basis and in the context of an adversarial as opposed to inquisitorial proceeding. Hence, a practical matter it is often the parties who define the issues in dispute. This is consistent with the Section 2(e) duty to promote conditions favourable to the settlement of disputes and the Section 2(c) duty to promote the practice of collective bargaining. The Board retains the jurisdiction to consolidate bargaining units if the parties' arrangements contribute to instability.

32 In addition to the foregoing six factors, a number of other considerations inform this analysis. While it may be true that employees in the APSA group do not prefer to belong to CUPE, employee choice is not a determinative factor. Currently, there is no real issue regarding access to collective bargaining given CUPE's stated position in this proceeding. Further, the Board has recognized that the modern day collective agreement in the public sector may encompass a broad range of employees with different skills, interests and work duties, including different professional groups: IML at page 181. Lastly, CUPE raises an important point in that the application raises a significant public interest component that weighs against the appropriateness of the proposed unit. SFU is a public sector institution, employs a significant number of people and provides an important service to the community. A number of different employers do business at SFU's campuses. Thus, labour disputes at SFU have a substantial impact on the community. When existing units are in place with an employer the predominate purpose in certifying an appropriate bargaining unit is to foster industrial peace and stability. This objective not only accounts for the interests of the parties at the bargaining table but is also designed to protect the public interest by reducing the potential for work stoppages.

V. CONCLUSION

33 Weighing all six IML factors I find that the proposed unit is not appropriate for collective bargaining. Therefore, the application is dismissed.

K. SAUNDERS, VICE-CHAIR

End of Document

TAB 4

SFU AND APSA BASIC AGREEMENT GRIEVANCE
ARBITRATION ACT, SBC 2020, c. 2
MEDIATION BINDING RESOLUTION

SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF
ASSOCIATION

APSA

SIMON FRASER UNIVERSITY

SFU

(Re: Items for Negotiations on Compensation Matters and JUAC Protocol)

Arbitrator:	James E. Dorsey, K.C.
Representing APSA:	Stephanie T. Mayor and Kas Pavanantharajah, Counsel; Kris Nordgren, Chair, Salary & Benefits Committee; Andrew Boden, Executive Director; Lakshmi Gosyne, Communication Coordinator; Angela Vass, Member Services Coordinator
Representing SFU:	Patrick Gilligan-Hackett, Counsel; Chris Hatty, Executive Director, Human Resources and Labour Relations; Christine Palak, Director, Labour and Employee Relations
Mediation:	January 11; February 2, 3 and 6, 2023
Written Submissions:	January 19 and 27; February 28; and March 10, 2023
Mediation Binding Resolution:	March 22, 2023

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1. Grievance, Context, Mediation and Binding Resolution Process

[1] APSA's April 27, 2022 grievance reveals serious, long-standing stress fractures in the 40-year voluntary, annually self-renewing, common law, recognition and relationship contract between APSA and SFU referred to as the Basic Agreement. The grievance seeks clarity of core terms and processes of the contract plus damages for SFU's actions in 2019-21 negotiations on compensation matters. APSA alleges SFU failed to bargain and act in good faith; to act in accordance with its duty of honest performance of the contract; to make every reasonable effort to reach an agreement; and to act reasonably and non-arbitrarily.

[2] A final settlement was resolved by arbitration on December 13, 2021.¹ Before the arbitrated settlement, APSA gave notice of this grievance.

APSA provides the attached Position of Record without prejudice and without precedent to its position that a number of its proposals which were discussed during bargaining and mediation fall squarely within Article 8.1 of the Basic Agreement. That position was disputed by the University. Rather than advancing

¹ *Simon Fraser University (Final Offer Interest Arbitration of Economic Benefits Grievance)*, [2021] B.C.C.A.A.A. No. 196 (Dorsey)

these proposals to the Final Offer Selection Arbitration, APSA intends instead to pursue such matters through the grievance process to provide much needed clarification to the parties in advance of the next round of collective bargaining.²

[3] APSA followed-up by email to SFU on January 25, 2022 in which it wrote, in part:

During the most recent round of mediation and bargaining, the University appeared at times to take the position that certain matters were not “other generally available economic benefits” under Article 8.1 and so could not be subject to interest arbitration, despite a contrary position being taken by the University in the same proceedings or in other forums. We are writing to clarify the University’s position so APSA can determine how best to resolve such dispute(s), if one exists, well before the next round of bargaining.³

[4] On February 14, SFU replied, in part: “The manner in which the questions are currently presented give rise to countless variations and variables.”⁴

[5] APSA responded March 21, in part:

Regarding context, we noticed at the last round of bargaining a disparity between what University representatives have said in a forum like JUAC of a particular item raised by APSA versus what University representatives at the 2021 bargaining table said of the same or a similar item. We also noticed a similar disparity between what University representatives stated of an item brought forward by APSA at a previous round of bargaining and what was said during the 2021 round of bargaining of a similar item. The result is confusion on our part and the “double bind” of being unable to negotiate proposals in either forum (JUAC or bargaining, for example).

[6] APSA listed seven items it anticipated would be in its proposals for negotiations in 2022 and asked for SFU’s position on whether they were items for negotiations. “If I don’t receive a fulsome clarification of the items noted both here and, in my January 25, 2022 email, by April 5, 2022, I will presume that the University won’t be supplying this requested clarification and I will act accordingly.”⁵

[7] SFU replied:

The general approach is that bargaining is restricted to items which meet criteria laid out in 8.1 of the BA. JUAC is the appropriate forum for almost everything else. Individual proposals may fall within one basket or the other based on the specifics of each proposal as well as their monetary implications, if any.

Instead of rehashing and debating bargaining history, may we suggest that perhaps the more appropriate thing to do moving forward is to re-initiate JUAC. Between bargaining and JUAC, there would be a forum to discuss any number of matters including many of the items as you have outlined below. This, we believe, would help manage what you refer to as the “double bind”.

² APSA Counsel Letter, November 16, 2021

³ Email from APSA Executive Director Andrew Boden, January 25, 2022

⁴ Email from Labour Relations, February 14, 2022

⁵ Email from APSA Executive Director Andrew Boden, March 21, 2022

We would be happy to meet and discuss restarting JUAC.⁶

[8] APSA's response the next day foretold the grievance was pending. It wrote, in part:

We need clarity on this issue before bargaining. As you are likely aware, the next round of bargaining will soon be upon us and there will be very little time to resolve these matters in JUAC, especially given the glacial pace of JUAC's progress and JUAC's lack of an impasse resolution mechanism. As we already know from the aforementioned spreadsheet, the University opposes many of the proposed items that we brought forward at bargaining as falling in the scope of 8.1 and we take the contrary position.

If the University does not want this issue to proceed to arbitration through a grievance, would the University agree to the arrangement that we had previously (in the 1994 round of bargaining, for example, the agreement is referenced at para. 3 of Simon Fraser University, [1994] B.C.C.A.A. No. 437 (Kelleher), as well as para. 37 of Arbitrator Dorsey's Prehearing Disclosure Award recently) in which an interest arbitrator could decide at final offer selection if a particular proposal falls within article 8.1 and, if not, the entire position of record would not be rejected? ...

If I do not hear from you by Thursday, April 14, 2022, with either 1) a detailed and fulsome written response to my emails of February 14, 2022 and March 21, 2022; or 2) written agreement to return to our previous means of resolving 8.1 differences at interest arbitration, we will prepare our grievance and look forward to the clarity of arbitration.

As for your request to "re-initiate JUAC," we will consider this, but not for resolving this critical matter given there will not be sufficient time before bargaining to meet and address it. We will let you know our thoughts on JUAC soon.⁷

APSA filed the grievance on April 27, 2022.

[9] While SFU did not respond to the grievance with recriminations, the grievance and subsequent proceedings reveal a lapse in an underlying goodwill basis of the relationship. The unspoken question is whether the relationship can recover and become healthy and harmonious or whether this lapse is chronic and terminal for the relationship.

[10] In grievance mediation, APSA and SFU agreed to forego arbitration and to include efforts to reactivate and improve the operation and functioning of the Joint University/Association Committee (JUAC) within the parameters of its constitutional documents.

[11] It was agreed there is a mutual interest in greater clarity of the scope of negotiations on compensation matters under Article 8.1 of the Basic Agreement. To the

⁶ Email from Labour Relations, April 6, 2022

⁷ Email from APSA Executive Director Andrew Boden, April 7, 2022

extent not agreed, the greater clarity would come from a binding statement of interpretation and guidelines, indicia or criterion issued by me.

[12] It was agreed that in addition to the constitutional documents for JUAC, there should be an additional protocol or set of procedures and rules for its operation. To the extent a protocol is not agreed, its final terms are to be determined by me.

[13] It is agreed finality on these two matters through this process will be a final and complete resolution of the grievance. After reaching an impasse in mediation, written submissions were exchanged.

2. Notices During Mediation of Intention to Renegotiate Basic Agreement

[14] There was a most significant development during mediation. On Sunday, January 29, 2023, the weekend before the second day of mediation, APSA gave SFU notice of its intention to renegotiate the terms of the Basic Agreement. This includes the scope of items for negotiations on compensation matters and the role of JUAC.

[15] APSA proposed the renegotiation of the terms of the agreement occur at the same time as the upcoming round of negotiations on compensation matters. And, presumably, by the same set of negotiators.

[16] After impasse in the mediation sessions, SFU replied on Friday, February 3 with its notice of intention to renegotiate the terms of the agreement. It wrote, in part:

The process for negotiating compensation under section 8.1 of the Basic Agreement is separate from and unrelated to the process for renegotiating the Basic Agreement. Given that the Basic Agreement was last renegotiated in the early 1990s, it cannot be said there is an established past practice for its renegotiation. The renegotiation of the Basic Agreement will, therefore, be a standalone process based on a protocol to be agreed between the parties and subject to the parties' common law duties.

In the circumstances, and to avoid any doubt about the University's right to table its own proposals for the renegotiation of the Basic Agreement, the University is now giving APSA notice under Article 13 that it also wishes to negotiate the Basic Agreement.

Both APSA and the University face imminent bargaining pressure in connection with the pending negotiation, under Article 8.1, of APSA's monetary settlement for the years from 2023 to 2025, and the University has other rounds of bargaining to complete. Given these pressures, a realistic time for renegotiating the Basic Agreement is the Fall, 2023. The Basic Agreement is of fundamental importance to both parties. It defines their relationship. A renegotiation should take place at a time and in an environment which reflects that fundamental importance. It would not be useful or feasible for the parties to attempt to renegotiate the Basic Agreement before the Fall, 2023.

[17] Do these notices have the effect of no automatic renewal of the Basic Agreement at the end of this year? Unless APSA and SFU agrees otherwise, will the agreement expire on December 31, 2023?

13. Duration of Agreement

This Agreement shall commence on the date of signing and shall extend to December 31, 1992. It shall be automatically renewed annually unless six months in advance of the expiry date either party has given the other written notice of its intention to renegotiate.

[18] Perhaps, the answer depends on the outcome of the final provision in a 1993 agreement settling negotiations on compensation matters. It was agreed to delete the last sentence of the pre-1993 Article 13, reproduced later, and to add the following:

Should the parties determine that they cannot reach agreement without assistance, at the written request of either party, the parties together shall select a mediation officer. The mediator shall be selected by the parties within ten (10) working days of the date of the notice initiating the mediation. Should the parties fail to agree on a mediator, the Associate Chair (Mediation Division) Labour Relations Board of British Columbia shall be asked to name one. At such time as the mediation officer is named:

- (a) all unresolved items save those deleted by mutual agreement shall be submitted to the mediation officer;
- (b) the mediation officer shall:
 - (i) where further direct negotiation would be meaningful, direct the parties to resume negotiation, without third-party assistance, for such period of time as the officer deems appropriate;
 - (ii) where third-party assistance is necessary to resolve a bargaining impasse, attempt to mediate a resolution; and
 - (iii) only after (i) and (ii) above have been exhausted without resolution, make recommendations for settlement which recommendations shall not be binding upon the parties and shall be submitted to the Association Group for ratification and the Board of Governors for approval.
- (c) each party shall pay one-half (1/2) of the fees and expenses of any mediation officer called upon to act under this Agreement.

[19] Amendments to the Basic Agreement require ratification in the same manner as ratification of the original agreement.

11.2 Amendments to the Agreement

Amendments to this Agreement may be made at any time by agreement of the parties. They shall be subject to the same ratification procedure as the Agreement.

12. Ratification and Entry into Force of Basic Agreement

Upon ratification by the Association Group and approval by the Board of Governors the Agreement shall be signed by the President of the University and by the President of the Association and shall thereupon enter into force.

[20] The text of this provision does not appear in Article 13 of the appended Basic Agreement published on either APSA or SFU's website or in any document purporting to contain the entire text of the Basic Agreement. Was this amendment to Article 13 ratified and approved? No document confirming ratification by members of the Association Group and approval by the Board of Governors was included in the materials in this mediation.

[21] Because of this, the risk in giving notice of renegotiation is unclear.

3. SFU Governance and Employment Policies

[22] Simon Fraser University is an autonomous, non-profit university under the *Universities Act*.⁸ Under its bicameral governance structure, the Board of Governors, responsible for internal administrative matters, finances and other university business has a complementary governance role with the Senate responsible for academic governance.

[23] The President as Chief Executive Officer leads a hierarchy of management positions: vice-presidents, directors, managers and others. The approximately 100 senior executive group is called the APEX group.

[24] SFU has eight series of policies published in its Policy Gazette: Academic; Administrative; Board of Governors; General; Information; Research; Academic History and Student Conduct; and Teaching and Instruction. Some of these policies are part of the terms and conditions of employment for some groups of employees.

[25] The Administrative (AD) Policy series has six sets of policies. The AD 9 series is for Administrative Professional Excluded Staff. Some of the policy origins are from 1970. The most recent revision date of any of the AD 9 policies is January 1, 2007.

[26] The AD10 series, which have some similarities to the AD 9 policies, is exclusively for Administrative and Professional Staff represented by APSA. Many have a published origin date of April 1, 1999, explained later. It is noteworthy the most recent revision date of any of these policies is five years ago – March 28, 2018.

AD 10	Policies for Administrative and Professional Staff represented by APSA	
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⁸ RSBC 1996, c. 468

Office Responsible: Human Resources		Effective Date
AD 10-1	Employment policies	26-Mar-18
AD 10-2	Establishment of positions	12-Sep-00
AD 10-3	Posting and filling of positions	01-Apr-99
AD 10-4	Modification of appointments from full-time to part-time	19-Oct-04
AD 10-5	Position share	01-Apr-99
AD 10-6	Position evaluation and salary administration	01-Jan-07
AD 10-7	Group benefit plans	01-Apr-99
AD 10-8	Leaves with and without pay	26-Mar-18
AD 10-9	Professional development leave	01-Apr-99
AD 10-10	Professional development	28-May-04
AD 10-11	Reimbursement of professional development expenses	28-Mar-18
AD 10-12	Tuition waiver	22-Mar-18
AD 10-13	Work schedules	01-Jan-07
AD 10-14	No discrimination	01-Apr-99
AD 10-15	Strike policy	01-Apr-99
AD 10-16	Performance Development	28-Jun-18
AD 10-17	Problem Resolution	01-Apr-99
AD 10-18	Elimination of positions and employment continuity	29-May-14
AD 10-19	Discipline and termination of employment	01-Apr-99
AD 10-20	Resignation	01-Apr-99
AD 10-21	Retirement	01-Apr-99
AD 10-22	Probationary Period	29-May-14

4. Basic Agreement Strategic Partnership Relationship (1982)

[27] In 1980, managers below the APEX group and others not represented by the SFU Faculty Association or a trade union incorporated the Simon Fraser University Administrative and Professional Staff Association under the *Societies Act*.⁹ Its current constitutional purposes are “to promote and advance the interests of the administrative and professional employees of Simon Fraser University” by:

- a. representing them in negotiations with regard to the terms and conditions of their employment, and supporting them with regard to grievances, arbitrations, and mediations,
- b. advising them on matters of concern,
- c. promoting professionalism, excellence, and collegiality,
- d. encouraging their professional and career development,
- e. representing them to the public, governments, news media, and other educational institutions, and

⁹ SBC 2015, c. 18

- f. doing all such things as may be necessary or conducive to the attainment of these purposes.

[28] In 1982, SFU and APSA agreed to enter into a long term, strategic partnership relationship. This partnership was not an adversarial relationship based on economic struggles intrinsic in a trade union and employer relationship under collective bargaining legislation. It was not a contractual relationship with an outside supplier of services or products. It was an in-house relationship between SFU and its administrative and professional employees.

[29] SFU and APSA agreed to formalize the relationship in a foundational agreement called: "The Basic Agreement for Collective Bargaining and Consultation." The purpose of the Basic Agreement is to establish formal procedures for the administrative and professional employees "for the determination of compensation matters and administrative/professional personnel policies."

[30] Toward the aspirational intention of the relationship "to improve and maintain the efficiency and effectiveness of the University" both parties agreed they "shall cooperate within the spirit and scope" of the agreement "to promote harmonious relations and settled conditions of employment."

[31] Although APSA was not a trade union and there was not to be any collective agreement, the 12-article agreement used some terms in collective bargaining legislation. SFU recognizes APSA as the sole representative for all Association Group Members, but expressly does not acknowledge the Association Group is "an appropriate bargaining unit suitable for certification" by a trade union. "Recognition of the Association and maintenance of this Collective Agreement shall cease if the Association applies for certification."

[32] "Association Group Member" is a person in a position agreed to be represented by APSA "with respect to all matters relating to conditions of employment including salaries and benefits." These persons are

... all administrative/professional employees and shall include all those employed in a managerial, supervisory, professional or confidential capacity except those listed below and shall exclude employees who are represented in other groups formally recognized by the University, and those employees who have separate contracts of employment. (Article 3)

[33] There were to be discussions about inclusion or exclusion from the Group when new positions were created or an existing position changed. Consistent with the final resolution of other differences, “Failing agreement the University’s position will prevail.”

[34] Membership in APSA was not a condition of employment, but Association Group Members were to pay dues or the equivalent to APSA and SFU was to honor a member’s revocable assignment of salary of a sum equal to APSA dues.

[35] The express provisions of the agreement prevailed if a conflict arises between an express provision and SFU policies. “Nevertheless, nothing in this Agreement shall be taken to limit the powers of the Senate, the Board of Governors, the President or other administrative officers as those powers are established in statute, except to the extent essential to implement the impasse resolution provision.” (Article 4.2)

[36] SFU agreed to provide APSA with office space and services at standard rental and other rates.

[37] Article 7 – “Negotiation on Compensation Matters” identified the items for negotiation and the negotiating process each year in April and May. There was provision for a longer negotiation period if either party wanted to negotiate major items “such as discontinuance or major revisions to the salary scale or substantial restructuring of one or more economic benefits.”

[38] The impasse resolution process was mediation which could not happen until after the provincial government made known SFU’s operating grant. The mediator could make non-binding recommendations, which were to:

... be limited to a review of the compensation issues and evidence presented by the parties. The prime consideration of the mediator in recommending a compensation package is the principle of comparability with employees performing similar work. The mediator must also consider the financial position of the University. (Article 7.6(b)(iv))

[39] If a mediator’s recommendation was not ratified by the Association Group or approved by the Board of Governors, there was to be further negotiations for two weeks. “Failing agreement the Board of Governors will make a final and binding decision on total compensation for the Association Group.”

[40] What items were for negotiation on compensation matters?

7.1 Items for Negotiation

Annual general salary increases 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 following provisions 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 and economic benefits; and
- (b) seek a negotiated settlement consistent with the need to maintain the quality of the administrative and professional staff in order for the University to maintain and to develop the quality of its teaching, research and public programs.

[41] There was no definition of “other generally available economic benefits” and no mention of paid or unpaid leave of absence being a negotiable economic benefit.

[42] Separate from annual, time-limited negotiations on compensation matters, it was agreed there would be another process and forum for “Negotiation on Other Matters.”

8.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 8.2 and 8.3 below.

8.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing policies (Section AD 9) except by mutual consent of the parties. The University reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

8.3 Consultation on New Policy Development

Development of new Personnel Policies affecting members of the Association Group and the development of other University Policies on matters materially affecting members of the Association Group which do not fall under 8.2 above, shall be subject to consultation between the parties. If agreement is not reached on a matter not previously determined by mutual agreement of the parties, it shall remain the right of the University to determine policy.

[43] Article 9 – “Grievances” contained a process for resolving disputes concerning the interpretation, application or alleged violation of the Basic Agreement by arbitration. The arbitrator “shall not be empowered to add to, subtract from, alter or amend the Agreement in any way.” Grievances of individual Association Members were to be dealt with under the AD 9-7 Problem Solving policy.

[44] The presidents of APSA and SFU could make mutual statements of interpretation of the Basic Agreement which could not alter, amend or add to the

agreement. Amendments to the Basic Agreement were subject to the same ratification procedure as the original agreement.

[45] The term of the Basic Agreement was to December 31, 1985 and then year-to-year unless APSA or SFU gave 6-months' notice to renegotiate.

[46] Except for agreeing not to make unilateral changes on existing administrative and professional policies, SFU's recognition of APSA did not relinquish the Board of Governor's final decision-making authority on compensation and other matters except by agreement between SFU and APSA.

[47] APSA wanted binding arbitration to resolve any impasse in negotiations on compensation matters. SFU did not. APSA proposed non-binding arbitration. SFU did not agree. APSA wanted a commitment it would be entitled in the future to the same rights and privileges to arbitration SFU obtained by the Faculty Association.

[48] The Board of Governors approved the agreement October 26, 1982 with a condition that: "Should the Faculty Association retain binding arbitration as an impasse resolution in negotiations, that provision will be accorded APSA."¹⁰ The Faculty Association did not retain binding arbitration and did not achieve it again until 1993.

[49] The Association Group voted 94.22% to ratify the agreement,¹¹ which was signed December 13, 1982 by SFU President K. George Pedersen, Bursar D.H.M. Ross, Director, Personnel W.A. Yule, APSA President Ida Curtis, APSA Vice-President David Smithers and ASPA Negotiating Committee Member Doreen Boal.

A. Basic Agreement Amendments (1991)

[50] SFU and APSA maintained their voluntary relationship through the 1980s. In 1991, during Spring negotiations on compensation matters they agreed to amendments to the Basic Agreement.

[51] They agreed to add a no discrimination provision as Article 4 and changed the numbering of the original articles. There are some vestiges of the original numbers in

¹⁰ Memorandum, October 28, 1982 from SFU President K. George Pedersen to APSA President Harvey Nagel

¹¹ APSA President Update Report, September 23, 1982

the current text. There were some changes in administrative aspects of the relationship.

[52] The definition of the Association Group in Article 3.1 was changed:

... all administrative/professional employees ~~and shall include all those employed in a managerial, supervisory, professional or confidential capacity~~ except those employees represented by other employee groups formally recognized by the University, those employees who have contracts of employment with the University, and those employees who hold the positions listed in Appendix A and who shall be available to represent the University in consultations and negotiations with APSA. ~~listed below and shall exclude employees who are represented in other groups formally recognized by the University, and those employees who have separate contracts of employment.~~

[53] SFU's prevailing position on inclusion or exclusion of newly created positions was changed to an agreed limit on excluded positions.

3.2 Excluded Positions

The University may add to or delete from the excluded positions listed in Appendix A, after consultation with A.P.S.A., but in no case will the number of positions listed in Appendix A exceed 10% of the total number of employees in the Association Group.

One effect was that, if there was an increase or scope creep in the total number of employees in the Association Group, SFU could increase the excluded positions. There was no express provision addressing the consequences of any decrease in the number of employees in the Association Group.

[54] While the article on negotiation on other matters became Article 9, instead of 8, there were no text changes and no housekeeping amendments to the internal references in Articles 9.1 and 9.3, which continue to refer to Article 8.

[55] On grievances, there were housekeeping changes from Director of Personnel to Director of Human Resources and minor language changes in Article 10.4(d). The scope of a grievance was clarified to include issues directly affecting the University. (Article 10.2(a)(ii)) Grievance-arbitration was not extended to disputes between individual Association Group members and the University.

[56] The term of the amended Basic Agreement dated July 16, 1991 was to December 31, 1992, renewing annually unless there was notice of intention to renegotiate. A provision requiring APSA to continue to represent a majority "of those eligible to be members" was deleted.

[57] On January 13, 1993, SFU and the Faculty Association signed an Agreement on the Framework for Collective Bargaining and Consultation with similarities to the Basic Agreement between SFU and APSA. It contained impasse resolution in negotiations on salaries and economic benefits by binding final offer selection (FOS) arbitration similar to a process at the University of Alberta.

[58] The 1993 SFU and Faculty Association framework agreement lapsed if the Faculty Association obtained certification as a trade union, which it did in 2014.¹² With collective bargaining the scope of negotiations expanded. Under a collective agreement, the Faculty Association has access to legislatively mandated grievance arbitration over differences on its interpretation, application, operation or alleged violation.

B. Compensation Negotiation Impasse Resolution by FOS Arbitration (1993)

[59] Impasse resolution in negotiations on compensation matters by FOS arbitration was incorporated into the Basic Agreement as part of the May 14, 1993 agreement settling negotiations on compensation matters for the 1992-93 salary year.¹³ At the same time, Article 8.1 was amended as follows:

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 ~~following 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 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, ~~in order for the University and the need to maintain and to develop the quality of education its teaching, research and public programs.~~

[60] The number of negotiators for each party in negotiations on compensation matters was change from no more than 3 to not less than 3 and no more than 5 and the

¹² Labour Relations Board, CBR ID 40969, May 16, 2014

¹³ While this form of interest arbitration is not a commercial dispute resolution process determining rights under a transactional or continuing contract, it is not necessary to decide whether it is an arbitration agreement under the *Arbitration Act*.

timing of was moved to the Fall. There were other changes to the language of what became Article 8.2.

8.2 Negotiators

~~Not later than April 1st of each year in which an agreement on total compensation~~
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 ~~more~~ less than three (3) and not more than five (5) negotiators to bargain a new agreement on ~~total compensation~~ 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.

[61] There were amendments to the language of the article on agenda items. One included reference to “salary scales, pension plans, leave provisions and other economic benefits.” This is the first and only mention of “leave provisions” as an item for negotiations on compensation matters.

~~7.3 Items for Negotiation~~ 8.4 Exchange of Agendas

If either party wishes to negotiate major items such as discontinuation or major revision of a salary scale or substantial restructuring of one or more economic benefits ~~it will so inform the other party by January 1st~~ provide the other party with details by October 1 so that the implications can be more fully studied before negotiations commence.

~~In any event not later than April 1st each party shall deliver to the other~~ Within twenty-one working days of the receipt of the provincial government allocation letter, the Association and the University shall deliver to each other notice of the items their positions on the items on which agreement is sought. Additional items may be introduced subsequently by mutual agreement. The provisions of existing ~~total compensation plans~~ salary scales, pension plans, leave provisions and other economic benefits which have not been specifically referred to in the notice from either party or introduced subsequently by mutual agreement shall remain in force for the ensuing salary year commencing July 1 or for the term of the negotiated agreement on ~~total compensation~~ salaries and economic benefits should that be longer than one (1) year.

[62] In 1993, SFU and the Faculty Association negotiated benefit changes the Faculty Association characterized as “non-cost items.”

The change in retirement date for laboratory instructors achieves equity with faculty.

The additional study leave option provides the possibility of an earlier leave than is currently available.

The final change allows a deceased member’s beneficiaries/trustees to request fast pre-payment of \$5000 of the group life insurance benefits due.¹⁴

¹⁴ SFUFA, “Notes on the Agreement”, May 1993

[63] Although the scope of bargaining in Article 8 - Collective Bargaining on Salaries and Economic Benefits of the SFU and Faculty Association agreement is similar to Article 8 of the Basic Agreement, it cannot be concluded, as APSA submits, that the events of 1993 were intended to create equity or mirrored scopes of negotiations in the two agreements so that what was negotiated by SFU and the Faculty Association, including “non-cost items,” are intended to be within the scope of items in Article 8.1 of the Basic Agreement. This is not what was included in the above contemporaneous amendments to Articles 8.1 and 8.4 of the Basic Agreement.

[64] SFU and the Faculty Association had agreed to determine by negotiations “any additional matter relating to the conditions of employment of members of the bargaining unit.”¹⁵ This is expressly broader than the items for negotiations on compensation matters in Article 8.1 of the Basic Agreement. What was negotiated by the Faculty Association cannot be relied on to interpret the scope of Article 8.1.

[65] Adding FOS arbitration for impasses on negotiations of compensation matters in 1993 was not accompanied with any change to the division of matters for negotiations on compensation and other matters at JUAC.

[66] APSA sought to enlarge the scope of the items for negotiations on compensation matters in the next round of negotiations which proceeded to impasse resolution by FOS arbitration. Broadening the items for inclusion in FOS arbitration would broaden the scope of items for negotiations on compensation matters.

[67] Recently, APSA advocates to have item by item arbitration with arbitrator discretion to fashion a binding settlement.

C. Grievance Arbitration and First FOS Arbitration (1994)

[68] In 1994, APSA wanted a grievance arbitration procedure for individual grievances as expansive as the Faculty Association and made this a priority for negotiations on compensation matters and FOS arbitration.

[69] In August 1992, a grievance board of arbitration had unanimously decided that, as agreed in Article 10.2(b), the limited scope of grievance arbitration under the Basic

¹⁵ Agreement on the Framework for Collective Bargaining and Consultation Between Simon Fraser University and The Simon Fraser University Faculty Association, January 13, 1993, s. 9.2

Agreement did not apply to a dispute or issue which may be dealt with under the Problem-Solving administrative policy (currently Problem Resolution AD 10-17).¹⁶ The July 1991 grievance was that there had been an "incorrect, unfair and discriminatory application of SFU Policy and Procedure AD 9-18" to four, and maybe more, individuals by denying them all of the occupational continuity benefits. AD 9-18 is now AD 10-18 Elimination of positions and employment continuity.

[70] At negotiations on compensation matters, APSA proposed a comprehensive grievance procedure. SFU said the proposal was not within the scope of negotiations on compensation matters under Article 8.1.

[71] The negotiators resorted to the new FOS arbitration process and APSA included its comprehensive grievance procedure proposal in its final Position of Record.

[72] SFU objected that the proposal was not within "Annual general salary increases, pensions and other generally available economic benefits". It argued any "changes to the problem-solving or grievance procedure can only come about as a result of JUAC discussions pursuant to Article 9 – Negotiations on Other Matters."¹⁷

[73] APSA argued the proposal was within the scope of Article 8.1 because of Article 8.1(a) and (b).

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.

It argued a "harmonious working relationship can hardly be achieved in the absence of an effective dispute resolution mechanism. There cannot be said to be a 'settlement' of terms and conditions of employment in the absence of a means of enforcing the contract."¹⁸

¹⁶ *Simon Fraser University*, [1992] B.C.C.A.A.A. No. 262 (Munroe, Cochran, Pallister)

¹⁷ *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 8

¹⁸ *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 10

[74] As APSA referred to in its April 7, 2023 email quoted above, SFU agreed Arbitrator Kelleher could consider APSA's Position of Record without the grievance proposal if he concluded, as he did in his November 3, 1994 decision, that SFU's objection had merit.¹⁹

I have concluded that I lack jurisdiction to consider the Association's proposal. The mutual intention of the parties clearly emerges from the Basic Agreement. My mandate is limited to "annual general salary increases, pensions and other generally available economic benefits" While I understand the point made by the Association that a settlement, to be effective, must include a method for resolving disputes, that is not what these parties have agreed to.

Section 9 of the Basic Agreement addresses discussions on the subject of policies included in Section AD 9. That is where the grievance procedure is found.²⁰

[75] In the decades since, the vigour of APSA's argument that the mutual commitment language in Article 8.1(a) and (b) intends that a broad scope of matters will be included in negotiations on compensation matters and FOS arbitration has not receded. This argument was a basis for several of its proposals in April 2021. It is a basis for its position on the criteria or indicia identifying items for negotiations on compensation matters and inclusion in a Position of Record for FOS arbitration.

D. Other Matters Included in Past Compensation and JUAC Negotiations

[76] Over the years, memoranda of settlement of negotiations on compensation matters have included the establishment of joint committees like the following in December 1993.

3. Joint Job Evaluation and Salary Review Procedure

The parties agree to establish a Joint Job Evaluation and Salary Review Committee composed of three representatives from the University and three representatives from APSA. The committee shall review alternative job evaluation plans on the basis of gender neutrality, effectiveness, and their ability to uniformly evaluate and appraise job categories and positions according to the skill, effort, responsibility and other mutually agreed upon factors required by and contained in each position. The committee shall recommend a new job evaluation plan which will establish an objective and uniform method to determine salary levels which will result in a salary grid which is equitable and proper in terms of the relationship between all positions and job categories and will also recommend a method of resolving disputes arising during the evaluation process and after implementation.

The joint committee shall make the recommendations to their principals no later than March 31st, 1994. The recommendations shall include a detailed project schedule and an estimated project budget.

¹⁹ *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 3

²⁰ *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 12-13

The implementation of the plan shall be subject to a commitment of adequate funding from the Government of British Columbia.

[77] It was recorded in the December 2, 1993, session #6 negotiations minutes that “The University would not accept a third party imposing a job evaluation process.”

[78] SFU also said some APSA proposed items should be addressed by JUAC not compensation negotiators. The following is from minutes of session #4 on November 18, 1993:

AD 9-13 – Vacation – Work Load Build Up

AD 9-17 – Discipline

The University considers these items should be dealt with by JUAC.

[79] SFU relented on some aspects of the AD 9-13 proposal. The memorandum of settlement for the 1993-94 negotiations contained the following:

5. Working Conditions

Amend Policy AD 9-13 as follows:

4. ENTITLEMENT / RESPONSIBILITY

- 4.01 For recording purposes, the standard work day is seven hours, exclusive of the meal period. The standard work week is thirty-five hours in any five days.
- 4.02 The University offices will be open at least during the hours 8:30 a.m. to 4:30 p.m., Monday through Friday. Exceptions must be approved by the appropriate Vice-President.
- 4.03 Administrative and professional staff at the University are primarily self-directing and self-disciplinary with regard to their job function. They will exercise discretion with regard to the time and location of work performed in support of the established job objectives. From time to time an individual may find that for a variety of reasons it is necessary to work considerably more than a standard work week in order to carry out his/her responsibilities satisfactorily. While there is no monetary compensation for these extra hours, an individual is entitled to reasonable compensating time away from the workplace at a time mutually agreeable to the individual and the supervisor. The individual's right in this respect should be accommodated.

[80] SFU did not relent on AD 9-17 and had not made any counterproposal to APSA's proposal on AD 9-17. The December 1993 memorandum of settlement includes the following:

7. AD 9-17. Problem Solving

The APSA proposal of November 16, 1993 on discipline is referred to JUAC with the undertaking that the University will attempt to resolve the matter.

In the end, APSA agreed to this referral to JUAC despite the November 18 negotiating minutes reporting a statement by the APSA spokesperson that “JUAC has not met for several years.”

[81] APSA wanted AD 9-17.4.03 to be written so “an employee would have a clear cut grievable right.” The issue was not resolved at JUAC and returned the next year to negotiations on compensation matters. In the 1994-95 negotiations it was agreed to add 4.04.

When an Employee initiates a complaint with a supervisor that his/her workload is unreasonable, and the Employee and supervisor cannot agree on a resolution, or where an Employee has requested compensating time off and the supervisor has denied the request, the employee is entitled to lodge a grievance as set out in AD 10.17 (Problem Resolution).²¹

[82] A revitalization of JUAC in the late 1990s and adoption of the AD 10 policies for the Association Group effective April 1, 1999 is described in an APSA document prepared for member ratification of the AD 10 policies. APSA’s continued pursuit of a comprehensive grievance procedure was an impetus for this initiative. The APSA document reports the role of the APSA Executive and SFU Vice-Presidents and Deans, not just the negotiators. It identified the most important change as a new mediation and arbitration process in AD 10-17.

Short history of the AD 10’s

Jan 28/99

The exercise began some 3 years ago when JUAC (Joint University APSA Committee) composed of 3 APSA representatives and 3 University representatives) was mandated to improve and clarify policy AD 9.17 regarding Grievances. In the process, JUAC realized that the most effective way to address the shortcomings of one Policy was to address the shortcomings of all the Policies. JUAC also determined that it would be more useful to have a set of Policies that govern the Administrative and Professional Staff alone. Hence, the original AD 9 Policies have been completely rewritten and are presented for ratification as the AD 10 Policies.

The AD 10 policies have been thoroughly reviewed three times each by the APSA Executive and the University. In addition, Deborah Lovett, of Lovett Westmacott, Barristers & Solicitors in Victoria, reviewed the AD 10’s twice, once on behalf of both the University and APSA, for clarification of content and compliance with labour law and regulations, and again on behalf of APSA to provide an opinion on whether the proposed policies would be better for APSA members than the existing AD 9 Policies. In her written opinion (also available in the APSA office) they are

²¹ This policy is now AD 10-13, sections 3.01 to 3.04 with slightly revised language. The AD 10-13 policy was last revised January 1, 2007.

better. Some outstanding issues identified by Lovett were addressed in a subsequent JUAC meeting.

The AD 10's were unanimously recommended by JUAC for acceptance. The APSA Executive has recommended acceptance, while on the University side, the Deans and VPs have accepted the AD 10's which are being sent to the BOG for final acceptance.

Summary of the major changes

- The AD 10's apply explicitly and only to the Association Group (APSA + grandfathered employees + conscientious objectors).
- The Association Group's definition is consistent with the Basic Agreement.
- Language and style have been clarified throughout.
- All terms are defined once in AD 10-1 and used consistently throughout the other policies. (By contrast, the AD 9 definitions are spread all over the policies, and some definitions are made repeatedly).
- The role of JUAC has been clarified.
- A new mediation and arbitration procedure that aims to be more fair and useable has been worked out, in AD 10-17. This is the most important change.

Policies AD 10-1, AD 10-2, AD 10-3, AD 10-17 and AD 10-19 have changed substantially. The other AD 10 Policies have clarified policy statements and procedures, consistency and clarification of language, a more logical organization, and in general, should be easier to understand.

[83] Forming joint committees on complex issues, agreeing to amendments to AD 10 policies and referring matters to JUAC continued in subsequent settlement agreements achieved in negotiations on compensation matters.

[84] One notable change was movement to multi-year settlements with fewer rounds of negotiations. For example, the memorandum on May 1, 2001 was for a three-year agreement – July 1, 2001 to June 30, 2004. The Basic Agreement anticipated that a multi-year agreement could be negotiated in Article 8.4, which concludes “or the term of the negotiated agreement on salaries and economic benefits should that be longer than one year.”

[85] A pattern of multi-year settlements (2001-04; 2004-06; 2006-08; 2008-10; 2010-12; 2012-14; 2014-19; 2019-22) with less frequent and perhaps higher stake negotiations on compensation matters has been accompanied by no voluntary compensation settlement agreements since 2012; resort to FOS arbitration in the last two negotiations; and a greater need to rely on JUAC to resolve issues.

[86] At the same time, the last amendments to AD 10 policies were in 2018. The last time JUAC met was April 3, 2018. Whatever policy review and revisions were in progress at the time have languished.

[87] In November 2018, Kris Nordgren resigned as Chair of APSA's standing University Affairs Committee responsible to advise the Executive Board on AD 10 policies and to support and provide oversight for APSA's participation in JUAC. That participation was not revived under his successor. A new APSA Executive Director began in December 2018.

[88] The scope of items resolved in negotiations on compensation matters through FOS arbitration for the 9 salary years from 2014 to 2022 was narrower than the scope of items in settlement agreements achieved in prior negotiations.

[89] Resort to impasse resolution by FOS arbitration has not promoted greater self-determination, a more harmonious working relationship or mutually acceptable negotiated settlements. The current character of the relationship is less harmonious and more adversarial, which APSA previously opted for in 2003.

5. Group Growth and APSA's Failed Certification Application (2003-21)

[90] By 2003, the Association Group had grown to one of the largest SFU employee groups. Since then, it has grown more and its composition has evolved so that the majority of members are "employees" eligible for representation by a trade union. There are likely many reasons for this evolution. One is a porous boundary between the Association Group and the bargaining unit represented by CUPE, Local 3338.

[91] In the 1980s, CUPE had been concerned about the migration of positions out of its bargaining unit of "office, clerical and technical staff, including laboratory employees" to the Association Group.²² In 1998, the SFU and CUPE collective agreement included a review of 22 positions held by employees in the Association Group to determine whether they should be in the CUPE bargaining unit. The incumbents had the option of remaining outside or joining the bargaining unit within ten working days of written notification. Where there was no incumbent, the position was to be posted and filled in accordance with the collective agreement.

²² Simon Fraser University, [1999] B.C.C.A.A.A. No. 483 (Kinzie), ¶ 23

[92] APSA grieved that the agreement was a violation of the Basic Agreement. CUPE complained to the Labour Relations Board that SFU was not fulfilling the agreement. APSA sought intervenor status in the Board proceeding. SFU supported APSA. CUPE opposed. The Board denied APSA intervenor status.²³

[93] Although it was found no incumbent wanted to leave the Association Group to be represented by CUPE under its collective agreement, the grievance was denied. SFU's agreement with CUPE did not contravene the Basic Agreement. The arbitration board wrote, in part:

While APSA objected to being described as a "default group," the scheme of the Basic Agreement is such that when a competent authority determines that a person is a member of CUPE or another group of employees formally recognized by the University, then, by definition, that person is not within APSA. That is the plain meaning of the language the parties have chosen to reflect their agreement.

The collective bargaining relationship with CUPE and its predecessor, AUCE, had its origins several years before the first Basic Agreement. Clearly, the language of the Basic Agreement is crafted so as not to overlap the representational rights of CUPE.

The CUPE collective agreement contains a grievance procedure which provides, to CUPE, a process to determine if an employee in APSA should be in CUPE. That scheme was in place before the first Basic Agreement. It follows that CUPE has the right to ask a competent authority to decide if someone in APSA properly belongs in CUPE. ...

CUPE does not need an agreement with the University or the consent of APSA to invoke its grievance procedure and obtain a determination of the scope of its representational rights with respect to the 22 positions on which it has set its sights.²⁴

[94] CUPE and SFU reached agreement on 11 of the 22 positions. CUPE referred the other 11 to arbitration. APSA was denied standing to participate in the arbitration.²⁵ In June 2002, it was determined 6 of the 11 positions were within the CUPE bargaining unit.²⁶

[95] After 20 years of the relationship under the Basic Agreement, APSA made the strategic decision it wanted a relationship with SFU in which it could engage in collective bargaining under the threat of a work stoppage. The scope of bargaining would be broad and grievance arbitration would be available under a collective agreement. There

²³ *Simon Fraser University*, [1998] B.C.L.R.B.D. No. 239

²⁴ *Simon Fraser University*, [1998] B.C.C.A.A.A. No. 460 (Taylor, Gall, Russell)

²⁵ *Simon Fraser University*, [1999] B.C.C.A.A.A. No. 483 (Kinzie)

²⁶ *Simon Fraser University*, [2002] B.C.C.A.A.A. No. 288 (Kinzie)

would be mandatory ongoing consultation under the Joint Consultation and Adjustment Plan provisions of the *Labour Relations Code*.

[96] In 2003, APSA applied to be certified as the exclusive bargaining agent for some, but not all, of the members of the Association Group, which had 530 members.²⁷ If successful, the Basic Agreement would cease.

[97] SFU did not oppose APSA's application or the appropriateness of the proposed bargaining unit and, presumably, was prepared to negotiate a collective agreement. In effect, this was an expression of labour relations voluntary recognition if the bargaining unit was agreed.

[98] The proposed unit of "administrative and professional employees of the employer, except those employees represented by other bargaining agents; and those represented by Faculty Association" included employees working at all three campuses.

They are present throughout virtually all of the University's operations, and generally work in the middle reaches of the administration. Some supervise employees in other bargaining units in addition to performing other administrative tasks. The typical member of the APSA group is highly educated (the proposed unit includes a technical group), works independently and exercises decision-making authority. For these reasons APSA has identified itself as a group of "professionals" in counter-distinction to persons in other bargaining units. Gary Hall is the President of APSA. Hall characterized the APSA group as consisting of all the "white-collar" workers not included in other certified bargaining units or the Faculty Association. Hall testified that members of APSA would likely find working under the terms of the CUPE collective agreement to be too restrictive and would reject the external control exerted by CUPE.

The CUPE bargaining unit includes about 850 employees. CUPE has not attempted to organize the APSA group albeit it claims that up to 200 members of the APSA group are in its unit. CUPE would not refuse to organize the APSA group provided it was approached to do so. Members of the CUPE bargaining unit successfully apply for jobs in the APSA group on a frequent basis. There is a group of technical employees in the CUPE unit and some are highly educated. CUPE participates in a pension plan with APSA and other bargaining units at SFU.²⁸

[99] There is no report of how APSA intended to exercise less "external control" than CUPE or negotiate a collective agreement the employees would find less restrictive.

[100] SFU said the proposed unit included approximately 660 persons of whom 314 should be excluded because they were managers, persons employed in a confidential capacity with respect to labour relations or did not share a community of interest with

²⁷ *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 274, ¶ 10

²⁸ *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 274, ¶ 11-12

members of the proposed bargaining unit. The 314 included 168 persons in the Association Group – over 30% of the 530.²⁹

[101] CUPE said APSA was a prohibited employee association not eligible for certification because its formation, administration, management or policy was dominated or influenced by SFU or a person acting on SFU's behalf. "This contention rests on the assertions that a substantial number of APSA's membership and APSA executive members are managers."³⁰ Alternatively, CUPE argued it was not appropriate to certify another bargaining unit for collective bargaining at SFU.

[102] The Board decided APSA's proposed bargaining unit was not an appropriate addition to SFU's multi-unit and multi-union collective bargaining landscape.³¹

[103] After APSA's failed application, the scope of negotiations on compensation matters remained unchanged. Without a collective agreement, there has been no arbitration or other process for binding resolution of impasses between APSA and SFU representatives on JUAC. APSA says this means JUAC is not equipped to address significant issues.

[104] Between 2003 and 2007, the Association Group and APSA's membership increased to approximately 700.³² Since 2007, the number has increased substantially. The job position, not person, count in 2021 was 1,564. Today, APSA has over 1,500 members. The growth is attributable, in part, to the static scope of CUPE's bargaining unit.

[105] In 2012, the Board granted APSA interested party standing in an application by CUPE concerning the scope of its bargaining unit.³³ The dispute, initially over approximately 522 positions, was reduced by agreement to over 200 positions. The Board referred to a 1986 arbitration award on a dispute over the boundary between CUPE's bargaining unit and the Association Group.

²⁹ *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 253, ¶ 2; 10

³⁰ *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 253, ¶ 3

³¹ *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 274 reconsideration denied *Simon Fraser University*, [2003] B.C.L.R.B.D. No. 418

³² *Simon Fraser University (CUPE Exclusions Grievance)*, [2007] B.C.C.A.A.A. No. 241 (Burke), ¶ 6

³³ *Simon Fraser University*, [2012] B.C.L.R.B.D. No. 79 reconsideration denied *Simon Fraser University*, [2012] B.C.L.R.B.D. No. 102

In the Agreed Statement of Facts, there is reference to only one grievance relating to inclusion/exclusion matters following the establishment of APSA in 1982 until 2002. The arbitration award in that case was rendered on November 20, 1986 and dealt with allegations "that the University could not take duties from a CUPE bargaining unit position and transfer those duties outside the bargaining unit" (ASF, at para. 30). With respect to the arbitration award rendered in that case, the Agreed Statement of Facts states as follows:

- Arbitrator Clive McKee found in *Simon Fraser University*, Unreported Award, November 20, 1986 (C. McKee) [*McKee Award*] that the University could transfer bargaining unit functions out of the CUPE bargaining unit to a management position because "*there is clearly no work jurisdiction clause*" in the Collective Agreement preventing the University from doing so (at 12).
- Since the *McKee Award*, there have been seven rounds of collective bargaining between the University and CUPE at which CUPE has tabled proposals which include a "work of the bargaining unit" clause. A bargaining unit work clause has never been included in the Collective Agreement. (ASF, at paras. 30-31, emphasis in ASF)³⁴

[106] The Board decided CUPE could not pursue its claim because it had abandoned its claim for a large number of the positions.

[107] There is no information that from 2003 to 2020 APSA and SFU mutually recognized that the "employees" within the Association Group who are entitled to be included in a bargaining unit covered by a collective agreement were also entitled to legislated minimum standards of employment in the *Employment Standards Act*.³⁵ There is no information they attempted to identify and agree who were "employees" and who were managers.

6. Agreed Process for Negotiations on Compensation Matters

[108] The Basic Agreement contains an agreed process and timeline for negotiations on compensation matters by 3 to 5 negotiators for each party selected on or before October 15 in a salary year (July 1 to June 30) in which a current agreement on salaries and economic benefits is to expire. The negotiators do not "suffer loss of salary while in attendance at negotiation sessions." (Article 8.2)

[109] Between October 15 and 31, there is to be agreement on a list of three who, if necessary, may be asked to mediate and a list of three who, if necessary, may be asked to arbitrate. "If no agreement is reached by October 31, the Associate Chair,

³⁴ *Simon Fraser University*, [2013] B.C.L.R.B.D. No. 137, ¶ 8

³⁵ RSBC 1996, c. 113

(Mediation Division) Labour Relations Board of British Columbia shall be asked to name three people to act as mediator and three people to act as arbitrator.” If all three are not available when asked to mediate or arbitrate, there can be agreement to appoint another person. (Article 8.3)

[110] Details of major items either APSA or SFU wishes to negotiate must be given to the other no later than October 1. Notice of position on other items on which agreement is sought must be given within 21 working days of receipt of “the provincial government allocation letter.” Agreement is required to introduce additional items later. (Article 8.3)

[111] The negotiation sessions are to occur within the 30 calendar days after the exchange of items and must be conducted in good faith making every reasonable effort to reach an agreement. “Negotiations on salaries and economic benefits may not commence until agreement on the previous year's salaries and economic benefits has been concluded.” (Article 8.5) There can be mediation during the 30-calendar day period of negotiations. (Article 8.7(a))

[112] Association Group ratification and Board of Governors approval must be conducted within 30 days of achieving an agreement. If ratification or approval is not given and APSA and SFU agree, negotiations may resume for a further 2 weeks. (Article 8.6)

[113] If no agreement is achieved during the 30 calendar days or no “revised settlement” is achieved during the additional 2 weeks, Positions of Record on unresolved items are to be exchanged within 7 calendar days; an arbitrator is appointed by agreement or by lot; and Positions of Record are delivered to the arbitrator within 7 calendar days. The arbitrator must hold a hearing within 21 calendar days and select one of the Positions of Record within 28 days after receiving them. The arbitrator is not required to state reasons for the selection. (Article 8.7)

[114] This process for negotiations on compensation matters is structured to limit negotiating time and required resources because the intended scope of items to be negotiated is restricted. However, over the past 30 years the environment in which the negotiations are conducted has become more complex. In the pandemic delayed 2021 round of negotiations, after a 2014-2019 agreement resolved by mediation/arbitration in

2015, APSA presented proposals on 54 items organized in 9 groupings for the 2019-22 agreement.³⁶

7. Employer Statutory Responsibilities

A. *Employment Standards Act*

[115] In 2020, when processing a grievance about AD 10-13 Work schedules, SFU acknowledged the policy of giving compensatory time off in lieu of overtime was not in compliance with the minimum hours of work and overtime wages provisions for “employees” covered by the *Employment Standards Act*.

[116] On August 20, 2020, Chris Hatty, then Director, Labour & Employee Relations, wrote all Association Group members and their supervisors:

In connection with its management of a grievance filed by APSA, the University recognized that the compensation for APSA employees for hours worked in excess of APSA’s standard work day/week, as set out in Policy AD 10.13, does not comply with the requirements of the *Employment Standards Act* and the *Employment Standards Regulation*, in particular for those APSA employees who are not managers. This means that in law this aspect of AD 10.13 is void.

[117] The communication detailed what was to be done to comply with the *Act* and *Regulation* for “employees.” Managers would continue to receive time off in lieu. SFU issued a question-and-answer document on additional hours of work for employees represented by APSA and in January 2021 a supplemental Q & A document.

[118] SFU identified 676 positions (approx. 43%) in the Association Group as managers excluded from coverage of the *Employment Standards Act*. Almost all of the remaining 888 or more positions were filled by “employees” entitled to the rights, benefits and protections of the *Act*. These “employees” have trade union representation and collective bargaining rights under the *Labour Relations Code*.

[119] APSA’s assessment is that 80% of its members are “employees” under both statutes. It stated its working definition of manager in an April 21, 2021 hours of work proposal.

For the purposes of calculating overtime compensation, a manager is defined as employee whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources; or is a person who is employed in an executive capacity.

³⁶ *Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure Grievance)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 60

For clarity, a Manager has a power of independent action, autonomy and discretion and they have the authority to make final decisions, not simply recommendations, relating to the supervising and directing of employees. A Manager must be the final decision maker with respect to hiring, firing, disciplining, and authorizing Overtime.

Because a Manager is to be denied the statutory benefits of Overtime pay and statutory holiday pay, the University will endeavor to err on the side of caution when classifying a position as a Management position unless it is clear and obvious that the position meets the definition of a Manager.³⁷

[120] At May 21, 2021, there were 1,482.98 FTEs in the Association Group. The person count was 1,524 individuals – 1,437 continuing employees of whom 1,191 were full time plus 87 temporary employees of whom 60 were full-time.³⁸ By APSA's count, the group included 1,220 "employees" under the *Act* and *Code*.

[121] APSA's 2021 hours of work proposal in negotiations on compensation matters was to revise AD 10-13 in order to "create a new framework for the fair compensation of overtime hours."³⁹ The proposals included: defining overtime, which would be voluntary; compensation for overtime and time in lieu for non-managers and managers; compensation for work on a statutory holiday; maximum of 72 work hours in a week; variable scheduled work week and averaging agreements; and standby and call out pay.

[122] SFU said it must comply with the *Employment Standards Act* and *Regulation*, but was not willing to negotiate the terms of its compliance.

[123] APSA's position was that hours of work relate to fair compensation and Article 8.1(b) of the Basic Agreement speaks of the need to provide fair compensation. It was grieving SFU's categorization of some members as managers. Having correct categorization affected fair compensation.

[124] For APSA, negotiating a template for an averaging agreement would facilitate the ability of employees in various work units to obtain a desired work-life balance. Standby and call out pay was proposed for employees in Facilities, Residence and Housing and IT Services.

³⁷ APSA Statement of Proposals, April 12, 2021, p. 5; See *Frontier-Kemper Constructors ULC (Re)*, [2012] B.C.E.S.T.D. No. 78, ¶ 45-46; *J.P. Metal Masters 2000 Inc. (Re)*, [2005] B.C.E.S.T.D. No. 137, ¶ 14

³⁸ *Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure Grievance)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 19-20

³⁹ APSA Statement of Proposals, April 12, 2021, p. 5

[125] APSA's proposals addressed future legislative change and proposed impasse resolution by arbitration.

In the event of changes to any legislation which would affect the basic agreement or the AD 10 policies, the University and APSA will meet and agree on any changes required within 90 days of the Act or Legislation receiving consent from the crown. Should the parties not agree on the changes required to reflect legislative requirements, the matter will be forwarded to arbitration.⁴⁰

[126] In this mediation, APSA seeks affirmation that 8 anticipated proposals are subject to negotiations on compensation matters within Article 8.1. Items 5 and 6 are:

5. Variable scheduled work weeks/averaging agreements

- *This was raised in the previous round and rejected by the Employer on the basis that it was outside the scope of Article 8.1*
- *Administrative cost to scheduling, non-salary benefit to members, saves the University funds as otherwise overtime becomes payable*

6. Compensation and rules for hours of work, overtime and time in lieu for non-manager and manager employees [better overtime pay, manager only getting time in lieu at 1:1]

- *This was raised in the previous round and rejected by the Employer on the basis that it was outside the scope of Article 8.1*
- *Additional overtime compensation and time in lieu [is a] clear economic benefit, monetary effect on the University's budget would be obvious*

[127] SFU must comply with the hours of work and overtime provisions in Part 4 of the *Employment Standards Act*. APSA is not a certified or voluntarily recognized trade union and negotiations on compensation matters under Article 8.1 of the Basic Agreement are not negotiations for a collective agreement which might, under section 3 of the *Act*, replace the requirements of Part 4 of the *Act*.

[128] Section 37 of the *Act* provides for agreements to average hours of work and vary the rules for calculating overtime wage entitlement freely entered into by an employee and employer.

37 (1) Despite sections 35, 36 (1) and 40 but subject to this section, an employer and employee may agree to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) of this section and wages payable under subsection (8) or (9)(b).

(2) An averaging agreement under subsection (1) is not valid unless

- (a) the agreement
 - (i) is in writing,

⁴⁰ APSA Statement of Proposals, April 12, 2021, p. 8

- (ii) is signed by the employer and employee before the start date provided in the agreement,
- (iii) specifies the number of weeks over which the agreement applies,
- (iv) specifies the work schedule for each day covered by the agreement,
- (v) specifies the number of times, if any, that the agreement may be repeated, and
- (vi) provides for a start date and an expiry date for the period specified under subparagraph (iii),
- (b) the schedule in the agreement under paragraph (a)(iv) is in compliance with subsection (3), and
- (c) the employee receives a copy of the agreement before the date on which the period specified in the agreement begins.

[129] Averaging agreements are contemplated under the *Act* and *Regulation* as agreements between an employer and employee which are signed by the employee. They do not have to be filed with the Employment Standards Branch, but they can be found to be invalid with costly consequences for an employer.⁴¹

[130] An hours averaging agreement is a freely agreed departure from the minimum labour standard protection for employees which gives an employer relief from the employees' entitlement to overtime wages. This mechanism to allow employees to agree to work up to 12 hours a day, averaging no more than 40 hours a week without any paid overtime is an economic benefit for an employer. Employer relief from paying overtime wages is not a "generally available economic benefit" for employees.

[131] There is no statutory provision for negotiation of an hours averaging agreement by a sole collective agent of a group of employees. There are sound policy reasons not to mix employees and managers in a group represented by a trade union. There is a real risk an hours averaging agreement negotiated on behalf of a group of employees by an organization which includes or is led by the employees' managers would not be accepted as a freely agreed and enforceable agreement, even if some individual employees signed the agreement.

[132] An arbitrator could not impose an hours averaging agreement for the purposes of the *Employment Standards Act* on an unwilling employer or employee.

[133] While some employees covered by the *Act* might prefer or want flexibility associated with working longer hours per day and fewer days in a week, variable

⁴¹ *Domcor Health Safety & Security Inc. (Re)*, [2022] B.C.E.S.T.D. No. 49

scheduled work weeks under an hours averaging agreement for the purpose of relieving the employer from paying the minimum required overtime under the *Act* is not an economic benefit contemplated to be a negotiable item under Article 8.1 of the Basic Agreement for “employee” members of the Association Group. Item 5 in APSA’s anticipated proposals is not an item for negotiations on compensation under Article 8.1.

[134] For managers in the Association Group not covered by the *Employment Standards Act*, there is no legislated entitlement to overtime wages and no entitlement under AD 10-13.3.03, which states, in part:

From time to time the Employee may find that for a variety of reasons it is necessary to work considerably more than a standard work week to carry out his/her responsibilities satisfactorily. While there is no monetary compensation for these extra hours, the Employee is entitled to reasonable compensating time away from the workplace at a time mutually acceptable to the Employee and the supervisor. The Employee’s right in this respect should be accommodated.

This aspect of the policy is not void in its application to managers.

[135] While payment of overtime wages instead of time off work in lieu might be uncommon in employment relationships between employers and their self-scheduling managers, it is a potential increase in total compensation for these managers and a generally available economic benefit from employment.

[136] AD 10-13 contains the standard work day and week for the managers. A proposal that SFU pay managers overtime pay instead of compensating time away from the work place (or paying employees covered by the *Employment Standards Act* overtime wages at a higher rate than in the *Act*) would be an item for negotiations on compensation matters. Increased overtime pay is a generally available economic benefit from employment which could be costed for a salary year and included in a Position of Record for FOS arbitration. To the extent any proposal or agreement required amendments to AD 10-13 to reflect a change for managers, it could be referred to JUAC.

[137] To this extent, item 6 in APSA’s anticipated proposals is an item for negotiations on compensation under Article 8.1. There will be detail in the language of APSA’s final proposal covering both “managers” and “non-managers” which will have to be scrutinized to determine whether it strays beyond what is intended to be included in Article 8.1.

B. Maternity and Parental Leaves and Employment Insurance

[138] The 1993 settlement agreement for negotiations on compensation matters included an amendment to AD 9-8.

6. Parental Leave

Policy AD 9-8 will be amended to conform to the provisions of the Employment Standards Act as amended by the Employment Standards Amendment Act, 1991. (Note: the provisions for reimbursement for the birth mother which are outlined under the current section 7.05 of Policy AD 9-8 will not be changed.)

The following provisions will also be added to Policy AD 9-8:

- a) Upon presentation of a medical certificate, a continuing employee on maternity or parental leave shall be entitled to paid sick leave (as outlined in section 11.01 of Policy AD 9-8) for illnesses related to pregnancy or birth which occur during the leave.
- b) In the event that the birth mother dies or is totally disabled during the maternity leave period specified in the Act, the birth father shall be entitled to both maternity and parental leave without pay under the terms and conditions which would otherwise apply to the birth mother under the Act.
- c) A birth father or adoptive parent who has returned to work for at least two (2) months following a parental leave and who has received the Unemployment Insurance (UI) parental benefit shall be entitled to reimbursement of the difference between the UI parental benefit and her/his normal salary for the duration of the UI parental benefit period. Claims for reimbursement must be submitted to Human Resources.

[139] The current AD 10-8 – Leaves With and Without Pay was last updated March 26, 2018. Sections 9.01 to 9.03 address maternity and parental leaves. Section 9.01.e states:

- e. Reimbursement – A Continuing Employee who has returned to work following her leave will be eligible for the following reimbursement:
 - i. A Continuing Employee who is the birth mother and received the EI (Employment Insurance) maternity and/or EI parental benefits may submit a claim to Human Resources for reimbursement of the difference between the EI maternity and/or EI parental benefits and her Normal Salary for the duration of the EI maternity and/or EI parental benefit period to a maximum of thirty-five (35) weeks. EI stubs must accompany the claim.
 - ii. A Continuing Employee who is the birth mother and was ineligible for EI maternity and/or EI parental benefits may submit a request to Human Resources for reimbursement of a lump sum of forty (40) percent of her Normal Salary for the duration of the normal EI maternity and/or EI parental benefit period to a maximum of thirty-five (35) weeks.
 - iii. A Continuing Employee who resigns within one year of returning to work following the leave shall be required to repay to the University a prorated amount of the difference between the EI benefit and her Normal Salary for the duration of the benefit period.

[140] In 2021, APSA proposed that SFU pay the Employment Insurance Supplemental benefit bi-weekly during leave or enter into an agreement with the Employment Insurance Commission that SFU continue to pay the employee's salary during leave and the Commission pay the employee's benefits to SFU.

[141] APSA says employees under the Faculty Association collective agreement are paid supplemental benefits bi-weekly and are paid full salary for the Employment Insurance 1-week waiting period. Doing the same for the Association Group would be a benefit for the employees at little cost to SFU. It also proposed housekeeping changes to reflect changes in the Employment Insurance legislation and practices.

[142] APSAs' position is that all matters related to an effective leave management policy balancing employee and SFU's needs are components of a comprehensive leave management policy; compensatory in nature; and negotiable items under Article 8.1(b).

[143] In this mediation, APSA seeks affirmation that Item 1 of its anticipated proposals for upcoming negotiations on compensation matters is within Article 8.1.

1. Changes to maternity and parental leave and benefits, specifically including changes to top up payment schedule, amount of payments, changes to the first week waiting period and changes needed as a result of new federal laws and current practice.

- *This was raised in the previous round and rejected by the Employer on the basis that it was outside the scope of Article 8.1*
- *This proposal would increase the maternity/parental benefit, and was a clear economic perk*

[144] In 2021 negotiations, SFU acknowledged the proposal to pay full salary during the first week of leave was a monetary proposal. Its position was the other proposals are not items for negotiations under Article 8.1. They might be important to employees and part of the work of managers and Human Resource personnel in managing leaves, but the proposals are policies and processes to meet legislated requirements and within the authority of the Board of Governors.

[145] Under the Employment Insurance program an employer may pay top-up amounts to employees on leave from work for specific life events, including maternity and parental leave. The top-up is not considered employee earnings if the amount combined with EI benefits does not exceed 100% of pre-leave, normal weekly earnings.

The employer's plan may include a requirement that an employee return to work for the employer for a minimum period after the top-up was paid.

[146] AD 10-8 contains provisions for after-the-fact "reimbursement" or payment of a maximum top-up of normal salary with forgiveness if there is subsequent employment for a year. The employee cannot receive reimbursement and resign within a year without obligations to repay. The 1993 settlement agreement on parental leave expressly did not change the reimbursement process at the time.

[147] Perhaps, there are other monetary proposals congruent with the current Employment Insurance program that are not addressed in AD 10-8. If there are, these monetary proposals, like paying full salary during the first week of leave waiting period, would be a generally available economic benefit for negotiation.

[148] SFU could voluntarily adopt a supplemental benefit plan for the Association Group continuing or temporary employees. It could consult with APSA about the monetary terms of the plan. APSA could propose the monetary terms of such a plan. The plan would likely require JUAC consideration of changes to AD 10-8.

[149] What could a FOS arbitrator order if there was a negotiation impasse and APSA included its proposal in its Position of Record? The arbitrator could not select and award a Position of Record rewriting AD 10-8. Without agreement, which SFU did not give in the 1994 arbitration, the arbitrator could not order an outcome that assumed jurisdiction for what has been assigned by the Basic Agreement to JUAC. Simply, as Arbitrator Kelleher said, "that is not what these parties have agreed to."⁴²

[150] In 2021, I wrote about an aspect of the Position of Record process and the FOS arbitrator's role as follows:

The role of the arbitrator is to select and leave without explanation or any retention of jurisdiction. For this reason, all elements of each opposing proposal, no matter how minor, should be complete, precise and able to be implemented without further negotiation or direction. All necessary amendments to any existing language and all new language have to be stated and included in the proposal presented for selection.⁴³

⁴² *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 12

⁴³ *Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure Grievance)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 30

[151] An FOS arbitrator's role is finished after making a selection. Stating all necessary amendments to existing language and all new language informs the other party and the arbitrator of the expected consequences of selection, which might be addressed in oral or written submissions and a consideration in selection. If selection requires consequential future action by JUAC, that will be known and it will be incumbent on JUAC and the Board of Governors to align its policies with the binding award.⁴⁴

[152] The scheme of the Basic Agreement is that, without mutual agreement, periodic negotiations on compensation matters cannot replace the ongoing JUAC consultation and agreement process and vice versa.

[153] SFU must comply with all recent changes to the Employment Insurance program. Amending policies to reflect program changes is the purview of JUAC. Those amendments are not items for negotiations on compensation matters. For most employers there will be a lag time between legislative and program changes and administrative and policy changes. It often takes nimble management to keep abreast of the changing environment.

[154] Tri-annual or less frequent negotiations on compensation matters is not the forum for these changes. The agreed forum is JUAC, which has been defunct since 2018, because neither APSA nor SFU has exercised its right under Article 9.1 of the Basic Agreement.

9.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 8.2 and 8.3 below. (Emphasis added)

[155] Unless SFU and APSA agree otherwise, neither can simply bypass JUAC and ignore their agreement.

⁴⁴ There will be an exception if an AD policy amendment is included in both APSA and SFU's Positions of Record. In 1994, there were five common items in the Positions of Record for FOS arbitration. One in SFU's Position of Record, selected by Arbitrator Kelleher, was an amendment to Policy AD 9-18 to provide: "If a position has been discontinued and the same position has been re-established within one year, the displaced incumbent will be offered the position prior to posting." *Simon Fraser University*, [1994] B.C.C.A.A. No. 437 (Kelleher), ¶ 20-21

[156] The monetary aspects of APSA's proposals which have a broad scope encompassing administrative and policy dimensions of new or changed benefit payments are items for negotiations on compensation matters under Article 8.1. Unless SFU agrees, the administrative and policy aspects of the proposals are not. These include the "changes needed as a result of new federal laws and current practice" portion of Item 1. These are not items for negotiations on compensation matters under Article 8.1.

C. Bullying and Harassment Investigations

[157] Under British Columbia's workers' compensation system workers can be compensated for mental disorders which are:

- (i) a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
- (ii) predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment⁴⁵

[158] To prevent work-related injury and illness from bullying or harassment and to ensure the health and safety of workers, employers must take steps which include informing, instructing, training and supervising their workers.

[159] SFU seeks to create and maintain a safe, healthy and respectful environment for learning, teaching, research and work. Bullying and harassment cannot be tolerated. Supportive resources are available to students, faculty and staff.

[160] Bullies and harassers do not respect any distinct grouping of members of the university community represented by their constituency organizations. On May 20, 2021 SFU adopted general application policy GP 47 – Bullying and Harassment after consultation across the university community. This policy has a mandated review date of May 20, 2026. Its executive summary states:

This policy defines bullying and harassment and proscribes this behavior in accordance with the Occupational Health and Safety ("OHS") provisions under the Workers Compensation Act and, in a consistent manner, more broadly to members of the University Community including students. The policy provides for education and prevention and informs university members of the supports and resources available to them if they experience bullying and harassment. The policy also establishes mechanisms for reporting and responding to bullying and harassment. To file a complaint, the policy establishes a central intake process based on a

⁴⁵ *Workers Compensation Act*, RSBC 2019, c.1, s.135(1)(a)

Report Form to Safety and Risk Services, who will direct it to the Responsible Office for the Respondent for action. This process for responding to the Report is not intended to replace informal discussions between the parties, their constituency organizations, and university administrators however it establishes a clear process for making a Report for action. The Responsible Office will review the Report Form and is responsible for responding to the Report in a timely manner including, as appropriate:

1. Informal Resolution where the Responsible Office will work collaboratively with the Complainant and Respondent, their constituency organizations and supervisors, as appropriate, to determine an informal resolution to the Report.
2. Investigations which will form the basis for a decision by the Office of Student Support, Rights and Responsibilities (for student Respondents) or by the Respondent's Supervisor (for employee Respondents) and the imposition of any corrective measures, including disciplinary sanctions.

The Chief Safety Officer is responsible for aggregating data from various units, providing an annual report to the Board of Governors, and reporting on compliance to WorkSafeBC.

[161] It is likely there are collective agreement provisions specific to bargaining unit groups of employees which pre-date this policy. The extent to which any collective agreement provision might be in conflict with any provision of GP 47 is not an issue for this mediation.

[162] There is no AD-10 bullying and harassment policy specific to the Association Group. APSA says there can be an interaction between GP 47 and AD 10-14 – Discrimination; AD 10-17 – Problem Resolution; and AD 10-19 – Discipline and termination of employment. None of these three policies has been revised since April 1, 1999.

[163] There is no identified conflict between GP 47 and a provision of the Basic Agreement so that Article 5.1 applies.

5.1 Governance

The parties believe that University policies and this Agreement are essentially compatible. However, should conflicts arise between University policies and the express provisions of the Agreement, the latter shall prevail. Nevertheless, nothing in this Agreement shall be taken to limit the powers of Senate, the Board of Governors, the President or other administrative officers as those powers are established in statute, except to the extent required to implement the impasse resolution provision.

[164] Article 9.3 of the Basic Agreement addresses the development of new policies, like GP 47, affecting members of the Association Group.

9.3 Consultation on New Policy Development

Development of new personnel policies affecting members of the Association Group and the development of other University policies on matters materially

affecting members of the Association Group which do not fall under 8.2 above, shall be subject to consultation between the parties. If agreement is not reached, it shall remain the right of the University to determine policy.

[165] APSA had no bullying and harassment related proposal in 2021. In this mediation, APSA seeks affirmation that the following Item 7 in its anticipated proposals for upcoming negotiations on compensation matters is within the scope of Article 8.1.

7. Bullying and harassment investigation protocols, to include the hiring of a third-party investigator by the University for all bullying and harassment investigations
 - *Not raised in recent bargaining, but APSA would like to bring it forward in the next round*
 - *Monetary impact given the change to investigation protocols, including the cost of third-party investigators*

[166] SFU's Bullying and Harassment Procedures under GP 47 were last revised November 1, 2022. Section 16.1 of the Procedures states:

The Responsible Office will determine whether and how to investigate the Report, including whether to investigate it internally or whether the investigation will be undertaken by an external investigator. The Responsible Office will communicate its decision to both the Complainant and the Respondent in writing, with reasons.

[167] The "Responsible Office" is defined in Appendix A to GP 47.

Responsible Office means the University administrative office designated in section 6.6 of the Bullying and Harassment Policy, responsible for overseeing and managing the University's response to Reports and for providing advice and support to Supervisors. The Responsible Office is determined by the Respondent's affiliation to the University within the context of the incident(s) described in the Report. The Responsible Office is:

- 2.9.1 Faculty Relations, for Reports about members of the SFUFA bargaining unit;
- 2.9.2 Human Resources, for Reports about employees who are members of the APSA, CUPE, Poly Party, and TSSU employee groups;
- 2.9.3 Human Resources, for Reports about excluded employees and members of the University's Executive or senior administration, including Deans and Associate Deans;
- 2.9.4 Office of Student Support, Rights, and Responsibilities for Reports about Students;
- 2.9.5 Office of General Counsel, for Reports about members of the University Community whose affiliation with the University does not fall within sections 2.9.1 to 2.9.4.

[168] Section 16.7 of the Procedures states: "Where an external investigator conducts the investigation, the Guidelines in Appendix B will apply." Section 2.1 of Appendix B Guidelines for Investigation by External Investigators states: "The external investigator must be impartial and appropriately qualified." Section 3.1 of Appendix B states:

As outlined in section 15.3 of the Bullying and Harassment Procedures, all investigations must:

- 3.1.1 be undertaken promptly and diligently, and be as thorough as necessary, given the circumstances;
- 3.1.2 be objective, and be fair and impartial to both the Complainant and the Respondent when evaluating the allegations;
- 3.1.3 comply with all relevant provisions in any applicable collective agreement or policy, including notice, timelines, and other process requirements;
- 3.1.4 be sensitive to the interests of all parties involved and maintain confidentiality to the extent possible under the circumstances; and
- 3.1.5 be focused on finding facts and evidence, which includes interviewing the Complainant, the Respondent, witnesses, and such other persons as the investigator determines might have relevant information, as well as obtaining and reviewing any documents that the investigator considers may contain relevant information.

[169] Item 7 in APSA's anticipated proposals seeks to eliminate Human Resources' discretion on how (and perhaps whether) to investigate a Report by or complaint against a member of the Association Group or both and to eliminate Human Resources' discretion to determine whether an investigation will be undertaken "internally or whether the investigation will be undertaken by an external investigator."

[170] When any Responsible Office determines there should be an investigation internally or by an external investigator, there is an accompanying operating cost for SFU – use of internal resources for an internal investigation and the fees and costs of an external investigator and internal resources to support the external investigator. These operating costs are similar to SFU's costs to provide tools, information technology hardware and software, furnishings, infrastructure, etc. for its employees.

[171] Not all of SFU's operating costs related to members of the Association Group are part of the members' compensation and subject to negotiations on compensation matters under Article 8.1. There is not always an equivalency between SFU's operating costs and generally available economic benefits for Association Group members.

[172] APSA's anticipated proposal to change the administration of GP 47 to remove Human Resources' discretion to investigate Reports involving members of the Association Group internally or by the use of an external investigator will likely increase operating costs. However, the proposed additional cost to SFU does not provide a generally available economic benefit to some or all Association Group members.

[173] Item 7 in APSA's anticipated proposals, in effect to amend section 16.1 of the Bullying and Harassment Procedures under GP 47, is not an item intended to be included in negotiations on compensation matters under Article 8.1.

D. Total Compensation and PSEC Mandates

[174] Under Article 8.4 of the Basic Agreement negotiations on compensation matters begin with an exchange of agendas "Within twenty-one working days of the receipt of the provincial government allocation letter." SFU's funding is recognized to be part of the context for negotiations on compensation matters.

[175] Government funding provided or available to SFU and its internal allocation will be central to fulfilling the mutual commitments and achieving the balance in Article 8.1:

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.

[176] Over the years, negotiations on compensation matters have sought to address issues of recruitment and retention. Perhaps, the increase in Association Group membership reflects some success. Negotiators addressed fair compensation in settlements on job evaluation in the 1993 agreement on a Joint Job Evaluation and Salary Review Committee and an agreement on July 12, 2004:

10. To establish a Joint Compensation Review Committee (JCRC) to make recommendations towards the development and implementation of a Total Compensation package that maximizes total compensation received by employees in the most efficient and effective manner, when possible individualizing compensation to each employee's particular needs, while ensuring that any recommended changes, as part of a Total Compensation package, are approved by BOG and within PSEC guidelines. The parties recognize that total compensation for a particular position is subject to specific job requirements, internal and external equity factors including organizational priorities, and the University's ability to pay. The Joint Committee's mandate does not include a review of the job evaluation system or pension plan but does include the following:

- Salary Administration Plan including the Salary Scales;
- Pay-for-Performance, merit-based or variable pay schemes; and
- Insured and Negotiated Benefits, Health Spending Accounts, flexible benefits and Vacation including AD10.8-5.06;

The JCRC will make its recommendations to Senior Administration and the APSA Executive, by no later than the expiry of the Memorandum of Agreement, unless otherwise mutually agreed. Any improvements or changes in compensation (salary, benefits etc.) must have a net zero cost effect to the University. If the JCRC determines that the use of a consultant would be beneficial to assist them, then the parties agree to each pay 50% of the cost. The JCRC may be required to create subcommittees that would conduct research on specific topics and submit findings and recommendations to the JCRC for review.

[177] Although APSA agreed in 2004 to have the JCRC limit recommendations within Public Sector Employers' Council⁴⁶ (PSEC) guidelines, APSA has regarded PSEC's mandates on negotiated compensation limits as influential, but unenforceable, constraints inconsistent with the Basic Agreement and not binding on FOS arbitrators. It views PSEC's role and guidelines as one of other external influences in the negotiating environment in which Association Group members negotiate without the right to strike and must resort to FOS arbitration to resolve an impasse.

[178] PSEC does strategic coordination of labour relations and total compensation planning for the provincial public sector. It directs employers to create compensation plans including salary, benefits, perquisites, pensions, bonuses or performance pay, holdbacks or deferred pay, allowances and reimbursable expenses.⁴⁷

[179] Over time, PSEC's scope of total compensation has expanded to encompass retirement allowances, paid administrative leaves, vacation payout, vehicle allowance, paid parking, salary continuance or severance, professional dues and fees and any perquisite not directly and integrally related to job performance.

[180] As in collective bargaining with trade unions, PSEC guidelines impose real constraints on SFU in its negotiations with APSA on compensation matters. PSEC's cost reporting requirements is a lens through which SFU determines whether a proposal or an aspect of a proposal is monetary or non-monetary and an item for negotiations on compensation matters.

⁴⁶ See *Public Sector Employers Act*, RSBC 1996, c. 384

⁴⁷ See the information on PSEC's website -

<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/public-sector-employers-council-secretariat>

[181] APSA says that even if an item must be costed and reported to be paid within funding covered by a PSEC guideline, SFU always has the internal ability to pay from other funding sources.

[182] It is not disputed that any monetary item which must be included in a statement of remuneration as earnings for income tax purposes is a generally available economic benefit under Article 8.1. Similarly, an item which must be costed for inclusion within a PSEC mandate is a generally available economic benefit under Article 8.1.

[183] Theoretically, exclusion of an item from either PSEC costing or income tax reporting or both does not mean the item is necessarily not a generally available economic benefit under Article 8.1. While it is difficult to identify perquisites, benefits, allowances or reimbursements not required to be reported for income tax or not included in PSEC costing, there might be some.

[184] Item 2 of APSA's anticipated proposals for upcoming negotiations on compensation matters was a proposal in the 2021 negotiations.

2. Changes to the scope of gym membership, including expanding such membership to temporary employees
 - *While this proposal was considered monetary by the University, they refused to provide any information on costing (TAB 24)*⁴⁸
 - *This is very clearly a benefit that falls under non-wage compensation, open membership in private facilities vary from \$16 to \$94, it will have a monetary effect on university budget*

[185] Item 2 is a generally available economic benefit and subject to negotiations on compensation matters under Article 8.1.

8. Items for Negotiations on Compensation Matters

A. Mutually Agreed Items

[186] Despite some of its language, the relationship under the Basic Agreement is not subject to the mandates or limitations of a trade union and employer relationship or the public policy dictates of the *Labour Relations Code*. For example, APSA and SFU have agreed to what they call a “bargaining unit” in Articles 4, 8.1 and 8.2. The Association

⁴⁸ For clarifying context on APSA's statement about SFU's refusal to provide costing information 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), ¶ 86. SFU recognized the proposal as monetary, but said it was not within PSEC's service allocation fund mandate.

Group could not be a bargaining unit under the *Code* because it includes both “employees” and persons who perform the functions of a manager or superintendent and, perhaps, persons employed in a confidential capacity in matters relating to labour relations or personnel.

[187] The inclusion of persons excluded from bargaining units represented by a trade union because of a conflict of interest with “employees” whom they manage disqualifies the Association Group from being a bargaining unit for whom there could be collective bargaining under the *Code*. The “collective bargaining” referred to in the full name of the Basic Agreement is not collective bargaining for a collective agreement. It is for a negotiated settlement.

[188] Outside the constraints of a voluntary recognition relationship under the *Code*, APSA and SFU are free to determine the parameters of their relationship and whether they strictly adhere to or depart from the terms of the Basic Agreement. For example, in negotiations on compensation matters, they may come to a settlement for a period less than the salary year contemplated in the Basic Agreement. For public policy reasons, a collective agreement cannot be for a term less than one year.⁴⁹ They may and have agreed not to adhere to the period of negotiations in Article 8.5.

[189] Because of the unique and distinct overall context of the Basic Agreement, the approach to interpreting its terms must accord with interpretive principles for a common law contract, not those for interpreting a collective agreement. This context includes the mixed “employee” and manager composition of the Association Group; the relationship between APSA and those it represents as compensation negotiator, ongoing advisor and sometime workplace advocate; the differences between negotiations on compensation matters and collective bargaining for a collective agreement; and the deliberate structure separating episodic negotiations on compensation matters through named negotiators and the ongoing and, if necessary monthly, negotiations on other matters through authorized representative members of JUAC.

[190] APSA has internalized its distinct roles with three standing committees overseeing negotiations on compensation matters (Salary and Benefits Committee),

⁴⁹ *Labour Relations Code*, RSBC 1996, c. 244, s.50

participation in JUAC (University Affairs Committee) and representation of individual members (Advocacy Committee).⁵⁰

[191] SFU and APSA have a self-governing relationship within the confines of the Basic Agreement and AD 10 policies. As the parties to this relationship, they may agree to ignore boundaries between negotiations on compensation matters and negotiations on other matters.

[192] In the dynamism of negotiations on compensation matters, perhaps to further harmonious relationships or simply to make trade-offs between monetary and non-monetary matters, they may agree on matters outside the scope of Article 8.1 and within the purview of JUAC, which they have done on a variety of matters over the years. They could agree to amend the Basic Agreement as they did in 1993 or to restructure benefits to move cost savings from one to another. In addition, Article 8.4 speaks of “substantial restructuring of one or more economic benefits.”

[193] APSA relies on instances of agreement on non-monetary matters in negotiations on compensation matters for two propositions. First, there is no mutually agreed or intended bright line between what is and is not an item for negotiations on compensation matters under Article 8.1. A wide range of matters have been proposed, agreed and referred for wordsmithing to JUAC, where the boundary for permissible items has been equally opaque.

[194] Second, prior agreements resolving negotiations on compensation matters and discussions at JUAC, which became an inept forum, evidence an intention that issues of significance or with a monetary component are items for Article 8.1 negotiations for which there is impasse resolution by FOS arbitration. APSA submits the inclusion of non-compensation items in Article 8.1 negotiations fulfils the purpose and intent of the relationship as agreed in Articles 2.1 and 2.2 and 8.1(a) and (b).

[195] The reasons and circumstances for the items included in past settlement agreements in negotiations on compensation matters referred to by APSA are not fully known. The fact SFU and APSA made such agreements, does not mean they were required to or that they must do so again.

⁵⁰ See APSA Bylaw 13.3 Standing Committees approved November 20, 2019 (<https://www.apsacentral.ca/bylaw/bylaws>)

[196] By making those settlement agreements resolving negotiations on compensation matters, neither SFU nor APSA relinquished its right to rely on the express terms of the Basic Agreement in the next or future negotiations on compensation matters.

[197] The paramountcy of the text of the Basic Agreement is clear from the requirement for ratification and approval of any amendment; the express agreement a joint president statement of interpretation cannot “amend, add to, or subtract from the terms of the original agreement” (Article 11.1); and that an arbitrator cannot “add to, subtract from, or alter or Amend the Agreement in any way.” (Article 10.4(c))

[198] Principles of common law contract,⁵¹ not collective agreement,⁵² interpretation govern the interpretation of the Basic Agreement. While collective bargaining legislation terms, like bargaining unit, are used in the Basic Agreement and the provisions and processes of the agreement determine terms and conditions of employment for members of the Association Group, the core purpose of the agreement is to establish and foster an always tenuous relationship terminable by either SFU or APSA with six months’ notice. There is no parallel relationship under collective bargaining legislation.

[199] The fact the nature of the relationship and agreement ceases if APSA takes the steps necessary to create a relationship in which principles of collective agreement interpretation apply indicates they are not intended to apply in the interpretation of the Basic Agreement.

2.6 Recognition Cease

Recognition of the Association and maintenance of this Basic Agreement shall cease if the Association obtains certification under the provisions of the Labour Code of British Columbia.

[200] Paradoxically, consistent with this separation from the legal regime for collective agreements and employment contracts, APSA relies on the organizing principle of common law contract interpretation to support its grievance claim for damages.⁵³

[201] What clearly emerge from past settlement agreements is that one identifier of an item for negotiations of compensation matters is agreement that an item may initially or subsequently be included in the negotiators’ positions as is recognized in Article 8.4.

⁵¹ See *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 S.C.R. 633;

⁵² E.g., *Pacific Press*, [1995] B.C.C.A.A. No. 673 (Bird); *Trail (City)*, [2013 B.C.C.A.A. No. 110 (Kinzie)

⁵³ See *Bhasin v. Hrynew*, [2014] 3 S.C.R. 494

Within twenty-one working days of the receipt of the provincial government allocation letter, the Association and the University shall deliver to each other notice of their positions on the items on which agreement is sought. Additional items may be introduced subsequently by mutual agreement.

[202] The latitude to include non-compensatory items and changes to AD 10 Policies, which the negotiators decreasingly countenanced over 40 years in annual, biannual and then less frequent negotiations, is a reflection of the circumstances of the day and the extent to which the working relationship was or was not harmonious rather than mutual agreement on the intention of Article 8.1.

[203] Despite APSA's failed attempt in 2003 to change the nature of the relationship and to end the Basic Agreement by obtaining certification as an exclusive bargaining agent, the negotiators successfully achieved settlement agreements each two years until 2014 when negotiations reached impasse on December 1.

[204] SFU was negotiating under PSEC's 2014 Economic Stability Mandate for a 5-year term agreement from July 1, 2014 to June 30, 2019. The negotiating impasse was referred to mediation/arbitration by Colin Taylor, K.C. On February 5, 2015, he wrote:

Following my appointment as mediator/arbitrator, I reviewed and evaluated the positions of the parties and undertook exploratory talks. Following a meeting with the full bargaining committees on January 29, 2015 and consideration of the comprehensive submissions, I award as follows with respect to the outstanding issues:⁵⁴

[205] He awarded the establishment of a new JCRC to "consider and make recommendation(s) towards the development and implementation of a total compensation package." He wrote:

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 integral system of total compensation.

Unlike the cost sharing for the 1993 JCRC, SFU was to allocate funds to the work of the JCRC and to implement recommendations. If the JCRC reached impasse, the parties would return to him as mediator/arbitrator. If resolution was not achieved, he would make a final and binding decision.⁵⁵

⁵⁴ *Simon Fraser University*, unreported, February 5, 2015 (Taylor), ¶ 5

⁵⁵ In May 2019, an impasse was referred to Mr. Taylor, which he was not available to accept. In January 2021, the impasse was referred to Robert Pekeles, who mediated an agreement dated February 5, 2021.

[206] This was impasse resolution, but not obviously FOS arbitration. There is no information that what Mr. Taylor awarded was either's Position of Record. It was a fluid and flexible impasse resolution process with no record of what Mr. Taylor was told in his exploratory talks or meetings with the bargaining committees. It is not known who suggested or if either opposed the JCRC process to get through the impasse. Perhaps, the award was the product of a mediated agreement in principle.

[207] Or, perhaps "development and implementation of a total compensation package" was regarded as a "major" item under Article 8.4 "such as discontinuation or major revision of a salary scale or substantial restricting of one or more economic benefits." The final outcome does not offer any assistance in interpreting the mutual intention of Article 8.1 of the Basic Agreement.

[208] In the next round of negotiations on compensation matters, an agreement for the term July 1, 2019 to June 30, 2022 was resolved by FOS arbitration.⁵⁶ Negotiations on compensation matters under PSEC's 3-year term 2022 Shared Recovery Mandate have not begun.

[209] It is difficult to say the relationship since 2015, or perhaps the last JUAC meeting in 2018, has been a harmonious working relationship with the ability to achieve agreed settlement in negotiations on compensation matters, which was last achieved in 2012.

[210] With an interlude of over a decade since the last negotiated settlement agreement and two very different impasse resolution processes since then, it is not possible to conclude there has been any consistent conduct revealing a common understanding on the scope of items for negotiations under Article 8.1. Failure to sustain harmonious relations and the recent bilateral notices to renegotiate the terms of the Basic Agreement or to allow it to expire January 1, 2024 is not evidence of an

(See *Summary of JCRC Mediation Agreement*, <https://www.sfu.ca/human-resources/labour-relations/bulletins/JCRC-summary.html>). On July 30, 2020, APSA gave notice of intent to begin compensation negotiations on September 4 for an agreement commencing retroactively on July 1, 2019. On August 24, 2020, APSA grieved SFU had failed to begin negotiations. In January 2021, the JCRC impasse was referred to Robert Pেকেles, who mediated an agreement dated February 5, 2021. APSA's grievance was withdrawn. The JCRC has not completed its work. Engagement with Mr. Pেকেles continues.

⁵⁶ *Simon Fraser University (Final Offer Interest Arbitration of Economic Benefits Grievance)*, [2021] B.C.C.A.A.A. No. 196 (Dorsey)

ongoing mutual commitment to cooperate to promote harmonious relations and settled conditions of employment.

[211] In the upcoming round of negotiations on compensation matters, if either SFU or APSA does not agree to negotiate an item the other proposes in the agenda exchange, then mutual agreement for coverage by Article 8.1 will not apply and other criteria will have to determine whether, despite the absence of agreement, the item must be negotiated and can be included in a Position of Record for FOS arbitration.

B. Specific and General: “other generally available economic benefits”

[212] Other than by agreement, what items are for negotiations under Article 8.1 as “other generally available economic benefits?”

[213] APSA invokes principles in the use of extrinsic evidence as an aid to interpreting a collective agreement to determine the scope of items because APSA is a “union-like entity.”⁵⁷ This is what the British Columbia Court of Appeal did in 2014 with a similar “union-like entity.”⁵⁸

[214] This is an unhelpful overextension. Unlike in the University of British Columbia and Association of Administrative and Professional Staff (AAPS) relationship and their framework agreement, APSA is not the “exclusive” representative of members of the Association Group. It is the “sole” representative and does not have exclusive authority to decide whether to arbitrate a dismissal grievance.

[215] As reviewed above, grievance and arbitration under the Basic Agreement does not extend to individual grievances. Article 10.2(b) states

The grievance procedure described herein shall not be used to resolve any dispute between individual Association Group members and the University, whether raised by the members of the Association or by the Association on their behalf. Such matters will be resolved pursuant to the procedure contained in Administration Policy AD 9-17 (Problem Solving). Where any dispute or issue may be dealt with in accordance with that Policy (AD 9-17) the dispute or issue must be resolved pursuant thereto and the grievance procedure described herein shall not apply.

[216] Neither the Basic Agreement nor AD 10.17.5 provides, as the agreement between UBC and AAPS did, that “While individuals may initiate grievances, AAPS will

⁵⁷ APSA’s Final Submissions, February 28, 2023, ¶ 39

⁵⁸ *Ferrari v. University of British Columbia*, [2014] B.C.J. No. 78

decide whether to advance, settle or arbitrate them.”⁵⁹ APSA might be a “union-like entity,” but on the spectrum it is not as close to being a union as AAPS was.

[217] Regarding APSA as a “union-like entity” based on its role as sole representative of members of the Association Group is not helpful to determine the approach to be taken to interpreting the scope of Article 8.1 or the jurisdiction of a FOS arbitrator under the Basic Agreement. There is no basis to disagree with Arbitrator Kelleher’s analysis in 1994 or to undertake reverse engineering using current judicial deference to the exclusive jurisdiction of grievance or commercial arbitrators to determine the mutually intended scope of Article 8.1.

[218] Similarly, extrinsic evidence of past proposals and settlement agreements without all of the surrounding circumstances and negotiated trade-offs is not useful evidence of subsequent conduct to resolve interpretive differences over what items must be included in negotiations on compensation matters under the Basic Agreement.⁶⁰ This extrinsic evidence does not meet the test that:

Contractual interpretation requires courts to give the words of a contract their ordinary and grammatical meaning, in a way that is consistent with the surrounding circumstances known to the parties at the time of contract formation: *Sattva*, at paras. 47-48. Sometimes the ordinary meaning of the words and the surrounding circumstances come into tension, and courts must decide whether to rely on the surrounding circumstances to refine the meaning of the words, or whether doing so would impermissibly overwhelm the words of the agreements, in which case the words must override: para. 57.⁶¹

[219] The language of the Basic Agreement informed by its very specific and unique factual matrix and context is what determines interpretation of the agreement. No principle or approach accepted in the interpretation of statutes or collective agreements based in legislation or public policy is to be added to the mix in the interpretation of this agreement. To import such an added principle, would not illuminate but overwhelm the words of the agreement.

[220] The Basic Agreement’s approach to addressing terms and conditions of employment since 1982 with the addition of FOS arbitration to resolve impasses in negotiations on compensation matters is not an exclusive and all-inclusive bargaining

⁵⁹ *Ferrari v. University of British Columbia*, [2014] B.C.J. No. 78, ¶ 36

⁶⁰ On the limitations and risks using subsequent conduct to interpret mutual intention of contractual language in the context of a loan agreement see *Wade Estate v. Duck*, [2018] B.C.J. No. 837, ¶ 26-31

⁶¹ *Corner Brook (City) v. Bailey*, [2021] S.C.J. No. 29, ¶ 35

scheme. There is no basis to start with a premise The Basic Agreement is intended to be an all-inclusive scheme and then employ a broad, liberal and expansive interpretive approach to create such a scheme by expanding negotiations on compensation matters as APSA argues:

In general, the parties have mutually intended and long operated so as to require all compensatory matters, including AD 10 Policies that touch on or affect compensatory matters, to be addressed at Article 8.1 bargaining and subject to Article 8.7 final offer selection arbitration. However, the parties never intended negotiations to be air-tight and have long agreed to address other matters during negotiations that could not or are not appropriate to address in JUAC. This approach is supported by relevant interpretive principles, legislation and extrinsic evidence.⁶²

[221] An all-inclusive bargaining scheme with everything and anything employment related to be negotiated and, if necessary, resolved by FOS arbitration is not the intended nature of negotiations or the relationship under the Basic Agreement. There are agreed and intended gaps for which the Board of Governors retains authority. This limitation on an all-inclusive scheme is expressly agreed in Article 5, which states, in part: “Nevertheless, nothing in this Agreement shall be taken to limit the powers of Senate, the Board of Governors, the President or other administrative officers as those powers are established in statute, except to the extent required to implement the impasse resolution provision.”

[222] It is equally intentional that the Board of Governors retains the unilateral right to determine policy under Article 9.3 and the right to make policy changes in Article 9.2. After a decade, the Board of Governors gave up its right to decide on impasses in negotiations on compensation matters to FOS arbitration. After 40 years, it has not given up its rights to change existing policy or its rights on new policy development. There is no agreement, as APSA argues, that anything not agreed at JUAC is to be included in negotiations on compensation matters.

[223] The fact APSA cannot address or pursue its aims on some issues in either negotiations on compensation matters or negotiations on other matters at JUAC does not mean the relationship is obsolete or valueless or must be construed as close to a trade union and employer relationship as APSA prefers.

⁶² APSA Final Submission, February 28, 2023, p. 1

[224] It simply means there are limitations and boundaries on the contractual relationship which are not present in the trade union and employer relationship for other groups of employees. The fact, as APSA says, that some members of the Association Group regard these limitations as making APSA ineffective as a bargaining agent is not a consideration in the interpretation of the Basic Agreement.

[225] Some items require little scrutiny to determine they are generally available economic benefits. One is Item 3 in APSA's anticipated proposals for upcoming negotiations on compensation matters. The proposal is to extend vacation benefits to temporary employees.

3. Vacation benefits for temporary employees

- *This was raised in the previous round and rejected by the Employer on the basis that it was outside the scope of Article 8.1*
- *Recognized as falling under 8.1 for continuing staff members, clear employer financial costs*

[226] Some or many temporary employees will be covered by the *Employment Standards Act* and *Regulation* and have annual vacation and vacation pay entitlements. The *Act* is explicit about when payments must be made. There will be no collective agreement covering these employees and therefore no agreement under section 3 of the *Employment Standards Act* which can replace the annual vacation and vacation pay statutory requirements in Part 7 of the *Act*. APSA and SFU cannot negotiate out of these requirements even if there are different arrangements for management members of the Association Group.

[227] If APSA's proposal is that SFU not do as it is required under the *Act*, then the proposal will be outside the scope of Article 8.1 even if it aligns with AD 10-8.4, which has not been revised since the 2020 acknowledgement that some members of the Association Group are employees under the *Employment Standards Act* and *Regulation*.

[228] If the proposal is to provide more annual vacation or more vacation pay to employees or managers or both, then it will be a negotiable item.

[229] Item 8 in APSA's anticipated proposals is:

8. Reimbursement for medical certificates/notes.

- *Not raised in recent bargaining, but APSA would like to bring it forward in the next round*

- *Clear monetary benefit*

[230] AD 10-8.7.04 states: “At the discretion of the supervisor, a physician's certificate satisfactory to the University may be required to support any absence due to illness or injury.” AD 10-8.7.06 speaks to an employee producing a confirming medical note. Having the cost reimbursed for some or all certificates and notes is a generally available economic benefit even if an agreement on reimbursement might require an amendment to AD 10-8. This is another example of a situation when SFU and APSA might agree to amend the policy or a Position of Record might include reimbursement with identification of the required amendments to AD 10-8. If selected, JUAC and the Board of Governors would have to act so published policy aligns with the award binding on the Board.

[231] SFU and APSA could agree in negotiations on compensation matters to any policy amendment. That would be a harmonious working relationship.

[232] What happens if they disagree on whether to amend AD 10-8 or on the specific language of an amendment? The last sentence of Article 9.2 of the Basic Agreement anticipates this.

9.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing policies (Section AD 9) except by mutual consent of the parties. The University reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

[233] While SFU can waive this right and agree to an amendment, a FOS arbitrator cannot take this right away from SFU by selecting a Position of Record containing a proposal contrary to the terms of the Basic Agreement.⁶³ The proposal in the Position of Record would be for reimbursement in certain circumstances identifying the need for a future amendment to AD 10-8. If selected, there would be a disconnect for a time between SFU's obligation and the currency of its AD 10-8 policy. Echoing Arbitrator Kelleher, while this might result in a situation that is incomplete or incongruous, this is what these parties agreed.

[234] It is an economic benefit for a temporary employee to become a continuing employee with entitlement and access to more employment benefits. Item 3 of APSA's

⁶³ See excerpt from APSA Executive Director Andrew Boden's, April 7, 2022 email quoted above

anticipated proposals on conversion of temporary employees to continuing employment status presents a good vehicle to examine the scope of items which are generally available economic benefits.

3. Automatic conversion of temporary employees to continuing status

- *This was raised in the previous round and rejected by the Employer on the basis that it was outside the scope of Article 8.1*
- *Has a significant monetary effect, university saves 18.2 % in ER contributions to pension for each temp staff, clear economic benefit*

[235] This is a long-standing issue. The action items in the minutes of the January 22, 2016 JUAC meeting include: “APSA asked HR to provide data on how many temporary positions are posted and filled in each calendar year, over a five-year period (excluding back filling). Then will ask about temporary promotions.”

[236] APSA raised the issue at a JUAC meeting on July 21, 2016. The minutes on policy review record:

(d). AD 10.03 Posting and Filling of Temporary Positions

- APSA had issue with extended temporary positions and was looking for maximum position lengths, similar to UVIC / UBC.
- HR noted continuing members fill some temporary positions.
- HR noted this policy may run into a financial component, which would need to be brought to for the negotiating table. However, they suggested reviewing the cases that APSA finds, to determine what is happening.
- APSA acknowledged that they hear from the loudest members at times. They will conduct a survey to evaluate the issue, as their data was three years old.

[237] The action items for that meeting were:

Action items

Human Resources

Draft language changes for AD 10.16 and send to APSA.

Send AD 10.01, AD 10.10, AD 10.11, AD10.12 to the BOG.

Raise the approval process in AD 10.02, at the next Vice-President's meeting.

APSA

Send cases of extended temporary positions to HR for review.

[238] In 2022, APSA’s proposals on temporary employees included:

3.h Path to Continuing

When a temporary position has been established on a single or recurring basis for a period of two (2) years, the position will convert to a continuing position. Job Descriptions cannot be changed within 6 months of conversion.

[239] Is employee or position transition from temporary to continuing employment, including the maximum length of time an employee can be a temporary employee, a generally available economic benefit?

[240] It is not an annual general salary increase, salary scale, pension, pension plan or leave provision even though conversion to continuing employment will give access to these. Automatic conversion could be characterized as a personnel policy. It is not captured by “pension plan” or “leave provision”, which suggest they are broader than the monetary aspects of pension or leave.

[241] Because of cost consequences, automatic conversion could be characterized as a monetary benefit excluded from JUAC under AD 10-1.4.01.c and d and making a policy might not be a mutual concern.

4.01 The Joint University/Association Committee (JUAC) is established for the purposes of:

- a. promoting harmonious, collegial relationships with and within the University,
- b. discussing matters of mutual concern to the University and APSA,
- c. providing a forum for University consultation with APSA in respect of both proposed amendments to existing AD 10 Policies that do not include a monetary benefit and the creation of new AD 10 Policies that do not include a monetary benefit,
- d. recommending either amendments to the AD 10 Policies that do not include a monetary benefit or the inclusion of new AD 10 Policies that do not include a monetary benefit, ... (emphasis added)

[242] AD 10-1.1.02 provides: “If there is a conflict between the terms of the AD 10 Policies and the terms of the APSA Basic Agreement, the APSA Basic Agreement will prevail.”

[243] JUAC cannot propose amendments to existing AD 10 policies or create new AD 10 policies which include a monetary benefit for members of the Association Group. It can recommend amendments or creation of new policies related to a monetary benefit for members of the Association Group if the monetary benefit arises from a decision of the Board of Governors, legislation or a settlement agreement in negotiations on compensation matters.

[244] It is clear from reading the terms of the Basic Agreement together with AD 10-1 that the forum for APSA and SFU to negotiate any “monetary benefit” for members of the Association Group is in negotiations on compensation matters under Article 8.1 as

an “other generally available economic benefit.” The monetary benefit is agreed in those negotiations or included in a Position of Record and selected by a FOS arbitrator. The related policy amendment or creation is for JUAC, unless otherwise agreed. It is not to be awarded by FOS arbitration.⁶⁴

[245] The monetary benefit must be a component of the total compensation of Association Group members. It is overreaching to say everything and anything affecting or having an impact on a member’s compensation, living costs or household budget, such as entitlement or access to overtime pay ahead of another member, is a monetary benefit.

[246] A useful guideline is the expansive scope of what employers must include in PSEC compensation plans, such as salary, benefits, perquisites, pensions, bonuses or performance pay, holdbacks or deferred pay, allowances and reimbursable expenses. A component of total compensation plans is whether and when employees are eligible to receive salary and benefit increases. An expansive approach is consistent with the definition of “wages” in the *Employment Standards Act*.

[247] An “other generally available economic benefit” has a direct monetary impact on total compensation or access to entitlement to benefits dependent on employment. It is not dependent on need or managerial discretion. Like “wages” in the *Employment Standards Act*, it does not include “money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency.”⁶⁵ In contracts, some benefits, like “leave provisions” expressly within the scope of Article 8.1, require conditions be met to access the benefit and will have administrative conditions subject to managerial discretion for operational or other reasons.

[248] For members of the Association Group who have temporary status and seek the security of continuing status gaining that status is a real gain and an economic benefit. Access is at its core an economic benefit. In May 2021, there were 87 temporary

⁶⁴ There will be an exception if it is included in both Positions of Record. In 1994, there were five common items in the Positions of Record for FOS arbitration. One in SFU’s Position of Record, selected by Arbitrator Kelleher, was an amendment to Policy AD 9-18 to provide: “If a position has been discontinued and the same position has been re-established within one year, the displaced incumbent will be offered the position prior to posting.” *Simon Fraser University*, [1994] B.C.C.A.A.A. No. 437 (Kelleher), ¶ 20-21

⁶⁵ RSBC 1996, c. 113, s. 1(1) “wages” (g)

members of the Group of whom 60 were full-time.⁶⁶ An entitlement to conversion to continuing employment status would be generally available to a definable subset of members of the Association Group, such as temporary employees with a defined period of employment within a set period of time. Item 3 as it applies to Association Group members is an item for negotiations on compensation matters.

[249] Automatic conversion of positions, not employees, from temporary to continuing is something very different. The nature of a position and how long it remains temporary either vacant or filled for periods of time by one or more temporary employees is not a generally available economic benefit for negotiations on compensation matters under Article 8.1.

C. Summary

[250] An item for inclusion in negotiations on compensation matters is an item on which there is mutual agreement on the negotiable scope of the item.

[251] If there is no agreement, an item is to be included in negotiations on compensation matters if the item is part of a pension plan or leave provision for any member of the Association Group.

[252] Any item which must be included in a statement of remuneration as earnings for income tax purposes is a generally available economic benefit.

[253] Any item which must be costed for inclusion within a PSEC mandate is a generally available economic benefit.

[254] The monetary component of any other item is to be included in negotiations on compensation matters if the monetary component is part of the total compensation of Association Group members in addition to their salary and pension and is both generally available to a definable subset of members in the Association Group and capable of being expressed in monetary terms which are both a cost to SFU and an employment related benefit for the subset of members of the Association Group.

⁶⁶ *Simon Fraser University (Final Offer Arbitration: Prehearing Disclosure Grievance)*, [2021] B.C.C.A.A.A. No. 179 (Dorsey), ¶ 20

9. Reactivating and Seeking to Make JUAC Effective

[255] Unless there is agreement between SFU and APSA, JUAC has no role in monetary matters or the negotiation of compensation matters.

[256] APSA says:

... the lack of proper functioning in JUAC is not a matter to recently arise. At least as far back as 2009, structural deficiencies with JUAC have resulted in: no meetings in JUAC from 2009 until May 2012; no meetings from 2018 to the present time; and it taking years to make minor and substantive changes to the AD 10 Policies even when meeting more regularly.⁶⁷

[257] Accepting JUAC did not meet for several years in the late 1980's and early 1990's or from 2009 to 2012, periods when there were voluntary settlement agreements in negotiations on compensation matters, or from 2018 to date, the pattern over 40 years appears to be that the relationship at JUAC experiences respites or trial separations which either party could, but did not, end with a simple request to meet. (Article 9.1)

[258] At other times, JUAC has been productive. There was the adoption of the AD 10 policies in 1999 and policy amendments in 2000, 2004, 2007, 2014 and 2018.

[259] The minutes of the January 22, 2016 JUAC meeting, attended by some new representatives, record:

1. Introductions & Update

- The purpose of the Committee was reiterated; to resolve policy and application of policy issues, and create policies when necessary (ex. probation), according to AD10.10, 5. The Committee does not negotiate changes that have a financial impact. Those are sent to salary and benefits negotiations. The final approval process includes the SFU Board of Governors.
- The Committee normally meets monthly, although, it was explained, since June, meetings have been cancelled or postponed due to a variety of issues. It was recommended to meet bimonthly.
- At a previous JUAC meeting, the group decided to review each policy, starting from the beginning, to determine if changes were needed based on current practice or arising issues.
- HR noted they are tentative to make any final decisions at this meeting, as they haven't had time to discuss all the agenda items.
- It was explained that the agenda is typically sent out two weeks before the meeting. All agreed, both parties will submit agenda items.

⁶⁷ APSA's Final Reply, March 10, 2023, ¶ 34

[260] When actively meeting, the research, discussion and approval process for policy amendment can be slow. Several weeks' advance notice is required to place an item on the Board of Governors' agenda.

[261] APSA says:

The core problem with JUAC is that the parties can discuss matters but there is nothing to incentivize the parties to finally resolve such issues. Matters sit on the agenda and get pushed from meeting to meeting, and it takes years to get anything done. In that context, it is of little surprise that the parties have just decided not to meet at all.⁶⁸

[262] APSA's solution to overcome stalemates is to expand the role of JUAC, when agreed, to include monetary benefits; have any matter raised that is not of mutual concern go to negotiations on compensation matters; have issue timelines at the end of which there is agreement or a deemed impasse; and have impasses on single or bundled issues resolved by FOS arbitration. The effect is to bypass and negate the role of the Board of Governors on issues on which there is no agreement.

[263] SFU says the current decline in the effectiveness of JUAC, regardless of who is responsible, is a failure of the relationship to fulfill the intended purpose of the Basic Agreement and to maintain the intended relationship under the agreement. The solution is not to ignore the agreed separation of processes for negotiations on compensation and other matters.

[264] SFU's solution is to restore JUAC's effectiveness beginning with a renewed commitment to its purpose and a proportionate share of the work.

Each of SFU and APSA will appoint three persons to be members of the JUAC, each of whom must first confirm to the appointing party both a commitment to the effective functioning of the JUAC within the established terms and conditions which govern the mandate and operation of the JUAC and a willingness to take on a proportionate share of the JUAC's work to give effect to that commitment.⁶⁹

[265] While both agree the relationship is not the intended harmonious working relationship, APSA says, as it did by applying for certification in 2003, the relationship can only function productively if there is an adversarial resolution process into which differences can be channeled for binding decision by an outsider. SFU suggests temporary assistance from an outside facilitator might be beneficial.

⁶⁸ APSA's Final Reply, March 10, 2023, ¶ 36

⁶⁹ SFU Submission, February 28, 2023, ¶ 57

[266] There are constraints on what can be binding recommendations in this mediation resolution of APSA's grievance that will not exist for APSA and SFU in renegotiation of the terms of the Basic Agreement for which each might constitute a Basic Agreement Review Committee (BARC), as APSA did in 1994.

[267] The inviolable constraint in this process is that no third-party has the authority to ignore or amend the terms of the Basic Agreement or any AD 10 policy.

[268] Within that constraint, I direct that the attached protocol shall govern the operation of JUAC for a limited reactivation period. The implementation delay in the protocol is to allow time for SFU and APSA to undertake renegotiation of the terms of the Basic Agreement, proceed through the upcoming period of negotiations on compensation matters and to appoint a protocol Facilitator.

[269] I reserve and retain jurisdiction to resolve any differences over the protocol which arise before a Facilitator is appointed.

MARCH 22, 2023, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey

Appendix 1: Basic Agreement

THE BASIC AGREEMENT FOR COLLECTIVE BARGAINING AND CONSULTATION BETWEEN SIMON FRASER UNIVERSITY AND THE SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

Amended by replacing Section 8 Negotiations on compensation matters with Appendix C signed on 14 May, 1993

1. DEFINITIONS

For the purposes of the Basic Agreement:

- * "Agreement" means the Basic Agreement;
- * "A.P.S.A." means the Simon Fraser University Administrative and Professional Staff Association;
- * "Association Group" means all administrative and professional staff employed by the University except those excluded by Article 3.
- * "Association Group Member" means those persons in positions, which, by agreement between the Association and Simon Fraser University are represented by the Association with respect to all matters relating to conditions of employment including salaries and benefits;
- * "J.U.A.C." means Joint University Association Committee;
- * "Parties" means Simon Fraser University and the Simon Fraser University Administrative and Professional Staff Association; and
- * "University" means Simon Fraser University Board of Governors and its authorized officers.

Wherever the singular or masculine is used throughout this Agreement, it shall be deemed to include the plural or feminine or body politic or corporate wherever the context and the parties so require.

2. RECOGNITION OF THE SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

2.1 Purpose

The purpose of the Basic Agreement is to establish, for the administrative and professional staff employed by Simon Fraser University, formal procedures for the determination of compensation matters and administrative/professional personnel policies.

2.2 Intent

Both parties recognize that this relationship is intended to improve and maintain the efficiency and effectiveness of the University. In recognition of the need for the effective operation of the University, both parties to the Basic Agreement shall cooperate within the spirit and scope of the said Agreement to promote harmonious relations and settled conditions of employment.

2.3 A.P.S.A. as a Society

The University hereby recognizes the Simon Fraser University Administrative and Professional Staff Association as a Society incorporated under the Society Act of British Columbia.

2.4 Sole Representative

The University hereby enters into agreement with and recognizes the Association as the sole representative for all members of the Association Group.

2.5 No Other Agreement

The University shall not, after the date of accepting the Basic Agreement, enter into agreement with any individual member or group of members of the Association Group which supersedes, amends, or contravenes the terms of the Basic Agreement.

2.6 Recognition Cease

Recognition of the Association and maintenance of this Basic Agreement shall cease if the Association obtains certification under the provisions of the Labour Code of British Columbia.

3. ASSOCIATION GROUP

3.1 Definition

The Association Group shall consist of all administrative/professional employees except those employees represented by other employee groups formally recognized by the University, those employees who have contracts of employment with the University, and those employees who hold the positions listed in Appendix A and who shall be available to represent the University in consultations and negotiations with A.P.S.A.

3.2 Excluded Positions

The University may add to or delete from the excluded positions listed in Appendix A, after consultation with A.P.S.A., but in no case will the number of positions listed in Appendix A exceed 10% of the total number of employees in the Association Group.

3.3 Association Membership and Payment of Dues or Equivalent

All employees who are now, or hereafter become members of the Association Group have the option of becoming members of the Association. Membership in the Association is not a condition of employment.

No member of the Association Group as of December 9, 1982, shall be required to pay dues or the equivalent as a condition of employment. However, it shall be a condition of employment that each member of the Association Group appointed subsequently shall pay dues or the equivalent sum to the Association. An exception shall be made to this latter provision for a person who affirms a conscientious objection to representation by the Association in which case that employee shall pay to a charitable recipient mutually agreed upon by the University, the Association and the employee involved, an amount equivalent to membership dues.

The University shall honour an Association Group member's written assignment of salary to this effect:

"To Simon Fraser University: Until this assignment is revoked by me in writing, I hereby authorize you to deduct from my salary a sum equal to the membership dues in the Administrative and Professional Staff Association, and pay that sum to the Association or to a charitable recipient as provided."

3.4 Income Tax Slips

The University shall include on the T4 Income Tax slips the amount of dues paid by each member of the Association Group in the previous calendar year.

3.5 Association Group List

The University will provide the Association with a list when requested, showing positions in the Association Group. These lists shall indicate the name of the incumbent, the incumbent's position title and the department in which the incumbent is employed.

3.6 List of Association Members

The Association will provide the University with a list of Association members, when requested.

4. NO DISCRIMINATION

The University and the Association agree that decisions concerning the terms and conditions of employment of a bargaining unit member shall be made on the basis of performance and/or performance-related criteria. The University shall not discriminate against any member of the Association because of race, colour, sex, sexual orientation, national origin, creed, marital status and/or family relationship (except to avoid supervision of one family member by another), political or religious affiliation or belief, age (except where mandatory retirement is permitted by law) or membership or non-membership in, or activities on behalf of, the Association or other factors unrelated to the performance of duties.

5. LIMITATION OF THE AGREEMENT

5.1 Governance

The parties believe that University policies and this Agreement are essentially compatible. However, should conflicts arise between University policies and the express provisions of the Agreement, the latter shall prevail. Nevertheless, nothing in this Agreement shall be taken to limit the powers of Senate, the Board of Governors, the President or other administrative officers as those powers are established in statute, except to the extent required to implement the impasse resolution provision.

6. CORRESPONDENCE

All correspondence passing between the University and the Association out of the Basic Agreement, or incidental thereto, shall be addressed to the Director of Human Resources and the President of the Association, except for matters for which the Director of Human Resources or the President of the Association have made written delegation.

7. ASSOCIATION RELATIONS

The University in recognizing A.P.S.A. will provide A.P.S.A. with office space and other generally available services at cost.

8. NEGOTIATIONS ON COMPENSATION MATTERS

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.

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.

8.3 Mediators/Arbitrators

Between October 15 and October 31 the parties shall endeavour to agree on a list of three people who may be asked to act as a mediator and a list of three people who may be asked to act as an arbitrator in the event of an impasse in negotiations. If no agreement is reached by October 31, the Associate Chair, (Mediation Division) Labour Relations Board of British Columbia shall be asked to name three people to act as mediator and three people to act as arbitrator. Only if all of the mediators on these lists are unavailable, shall the parties mutually agree to appoint another individual as mediator. Only if all of the arbitrators on these lists are unavailable, shall the parties mutually agree to appoint another individual as arbitrator.

8.4 Exchange of Agendas

If either party wishes to negotiate major items such as discontinuation or major revision of a salary scale or substantial restructuring of one or more economic benefits it will provide the other party with details by October 1 so that the implications can be more fully studied before negotiations commence.

Within twenty-one working days of the receipt of the provincial government allocation letter, the Association and the University shall deliver to each other notice of their positions on the items on which agreement is sought. Additional items may be introduced subsequently by mutual agreement. The provisions of existing salary scales, pension plans, leave provisions and other economic benefits which have not been specifically referred to in the notice from either party or introduced subsequently by mutual agreement shall remain in force for the ensuing salary year commencing July 1

or for the term of the negotiated agreement on salaries and economic benefits should that be longer than one year.

8.5 Period of Negotiation

During the thirty calendar days following the exchange of items on which agreement is sought, the parties shall bargain in good faith and make every reasonable effort to reach an agreement. Negotiations on salaries and economic benefits may not commence until agreement on the previous year's salaries and economic benefits has been concluded.

8.6 Ratification and Approval

When an agreement has been reached the agreement shall be referred to the Association Group for ratification and to the Board of Governors for approval. The approval procedures for both parties shall be concluded within thirty (30) days of the day of completion of negotiations. In the event that the Association Group fails to ratify the agreement or the Board fails to approve it, the negotiations may, by agreement of the parties, be resumed for a further two-week period.

8.7 Impasse Resolution

The parties desire to reach a negotiated settlement and will make every effort to do so.

(a) During the period of negotiation, should the parties determine that they cannot reach agreement without assistance, they may agree to call on a mediator from the list mentioned in 8.3. In the event that the parties cannot agree on a specific mediator, the mediator shall be selected by lot.

(b) In the event that the negotiators do not reach a settlement on all of the items for negotiation during thirty calendar days, or if the negotiators fail to reach a revised settlement after reconvening under 8.6, the following procedure shall apply:

i) within seven calendar days the parties shall meet and each shall deliver to the other a written statement of its Position of Record with respect to all unresolved items in negotiations. The statement shall also list any of the items for negotiation which the negotiators had resolved prior to the cessation of negotiations and these items shall form part of the Position of Record of each party. Thereafter, neither party may alter its Position of Record except by mutual agreement;

ii) the negotiators shall move immediately to appoint an arbitrator by mutual agreement from the list of arbitrators or mediators mentioned in 8.3 and in the event that the parties cannot agree on a specific arbitrator, the arbitrator shall be selected by lot from the list of arbitrators mentioned in 8.3;

iii) within seven calendar days of the date on which an arbitrator has been determined, each party shall deliver to the arbitrator the written statement of its Position of Record referred to in 8.7(b) i);

iv) within twenty-one calendar days of the submission of the Positions of Record to the arbitrator, he/she shall hold one or more hearings with the negotiators, giving each party opportunity to make presentations using a format determined by the arbitrator in consultation with the parties;

v) within twenty-eight calendar days of the submission of the Positions of Record to the arbitrator he/she shall select either the position of APSA or the University;

vi) the award of the arbitrator shall be binding on the Board of Governors and the Association;

vii) the arbitrator is not required to state reasons for the award.

c) Each party shall pay one half of the fees and expenses of any mediator or arbitrator called upon to act under this agreement.

d) In the event that any of the dates and timelines specified above cannot be met due to circumstances beyond the control of the parties, the dates and timelines may be adjusted by mutual consent.

9. NEGOTIATION ON OTHER MATTERS

9.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 8.2 and 8.3 below.

9.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing policies (Section AD 9) except by mutual consent of the parties. The University reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

9.3 Consultation on New Policy Development

Development of new personnel policies affecting members of the Association Group and the development of other University policies on matters materially affecting members of the Association Group which do not fall under 8.2 above, shall be subject to consultation between the parties. If agreement is not reached, it shall remain the right of the University to determine policy.

10. GRIEVANCES

10.1 Definition

A grievance is a dispute concerning the interpretation, application, or alleged violation of this Agreement.

10.2 Scope

(a) Grievances under this Agreement may be presented only by the Association or the University, subject to (b), and only where:

i) provisions of this Agreement directly affecting the Association or the University are at issue; or

ii) the issue directly affects the rights of the Association Group or the University.

(b) The grievance procedure described herein shall not be used to resolve any dispute between individual Association Group members and the University, whether raised by the members of the Association or by the Association on their behalf. Such matters will be resolved pursuant to the procedure contained in Administration Policy AD 9-17 (Problem Solving). Where any dispute or issue may be dealt with in accordance with that Policy (AD 9-17) the dispute or issue must be resolved pursuant thereto and the grievance procedure described herein shall not apply.

10.3 Grievance Processing

(a) A grievance must be submitted in writing within twenty (20) working days after grounds for a grievance are known or ought reasonably to have been known by the Association. The grievance shall be submitted to the Director of Human Resources.

(b) If not resolved within five (5) working days, the grievance shall be submitted, in writing, to the President with a copy to the Director of Human Resources. The President shall respond to the Association, in writing, within fifteen (15) working days.

(c) Grievances may be presented by the University, in writing, to the Association. The Association shall respond to the University, in writing, within fifteen (15) working days.

10.4 Grievance Arbitration

(a) Failing a satisfactory resolution of the grievance in the grievance procedure, either party may, within fifteen (15) working days of receipt of the other party's written decision submit the grievance to binding arbitration. The notice to proceed must contain a description of the grievance, the remedy sought, and the name of the party's nominee for arbitration. The other party shall within five (5) working days of the receipt of such notice similarly provide a summary of its position in the grievance and the name of its nominee.

(b) The arbitrator shall be selected by agreement of the nominees. If the nominees are unable to jointly select an arbitrator, selection shall be made by the Chief Justice of the Supreme Court of B.C. The arbitrator shall be governed by the Arbitration Act of B.C.

(c) The arbitrator shall not be empowered to add to, subtract from, alter or amend the Agreement in any way.

(d) The arbitrator may hear a grievance with a minor technical deficiency (technical deficiency does not include whether or not an issue is arbitrable) if in his/her opinion the objection has been made solely to avoid dealing with a substantive issue. Technical deficiencies which relate to time may be waived by the arbitrator if such deficiencies occur as a result of actions or omissions arising in good faith and no prejudice has been suffered by the other side.

(e) The parties shall be responsible for their respective fees and expenses in the arbitration process and shall share equally the fees and expenses of the arbitrator.

11. STATEMENT OF INTERPRETATION AND AMENDMENTS

11.1 Statement of Interpretation

During the life of this Agreement, statements signed jointly by the President of the University or by his/her designate and the President of the Association or by his/her

designate may be issued for the purpose of clarifying or implementing the terms of this Agreement. Such statements shall have the same force as the Agreement.

Such statements may not amend, add to, or subtract from the terms of the original Agreement.

11.2 Amendments to the Agreement

Amendments to this Agreement may be made at any time by agreement of the parties. They shall be subject to the same ratification procedure as the Agreement.

12. RATIFICATION AND ENTRY INTO FORCE OF BASIC AGREEMENT

Upon ratification by the Association Group and approval by the Board of Governors the Agreement shall be signed by the President of the University and by the President of the Association and shall thereupon enter into force.

13. DURATION OF AGREEMENT

This Agreement shall commence on the date of signing and shall extend to December 31, 1992. It shall be automatically renewed annually unless six months in advance of the expiry date either party has given the other written notice of its intention to renegotiate.

By the signatures given below the parties agree to enter into force the foregoing.

Dated this 16th day of July, 1991

For the University For APSA

(signed) W.A. Yule (signed) C.A. Conlin

(signed) W. DeVries (signed) John S. Reed

APPENDIX A

Assistant to the President/Director, International Cooperation

Executive Director, SFU at Harbour Centre

Director, Human Resources

Director, Financial Services

Director, Analytical Studies

Director, Academic Computing Services

Director, Academic Relations

Director, Facilities Management

Director, Student Services

University Librarian

Registrar

Assistant Director, Human Resources

Manager, Compensation

Manager, Pensions and Benefits

Contract Administrator,

Confidential Secretary/Supervisor, Personnel (2 positions - job split)

Secretary to the Board/Administrative Assistant to the President, Director of Ceremonies

May 1, 1991

APPENDIX C

Please refer to Basic Agreement Amendment regarding negotiation on Compensation Matters, the text of which is included above at Section 8

Appendix 2: Protocol for Reactivated JUAC

The composition and operation of the Joint University/Association Committee (JUAC) is governed by Article 9 of the Basic Agreement and AD 10-1.4.

AD 10-1.4.02.c provides “Both APSA and the University may bring in resource people as deemed necessary.”

AD 10-1.4.03 sets the following procedures for JUAC:

4.03 Procedures

- a. JUAC meetings are scheduled monthly. JUAC will establish other meeting times to meet the requirements of Policies AD 10.5 [Position Share] and AD 10.17 [Problem Resolution] as is deemed necessary.
- b. Two APSA members of JUAC and two University members of JUAC will constitute a quorum. If a JUAC member is absent, neither APSA nor the University will provide a replacement.
- c. JUAC recommendations will be reached by majority agreement. If there is a "tie," both sides will provide written recommendations to the respective principals.
- d. Where appropriate, JUAC recommendations for a change to an AD 10 Policy will be forwarded to the respective principals. If the recommendations are approved by the Board of Governors of the University, the APSA Executive and, as deemed appropriate, by the APSA membership, they will be implemented within the timelines established. Extensions to timelines are subject to mutual consent that will not be unreasonable.

The following additional rules and procedures will apply to the operation of JUAC beginning February 1, 2024 for 12 months or a longer period if agreed by APSA and the University.

1. JUAC meetings may be held in-person or virtually.
2. At six-month intervals and on a rotating basis, beginning with APSA, the University and APSA will appoint and pay any fees and expenses of a qualified person who is not a member of JUAC to take minutes at each meeting in conformity with the then current edition of Robert’s Rules of Order.
3. No later than September 15, 2023, APSA and the University shall appoint a Facilitator to work with the members of JUAC for the 13 months beginning January 1, 2024. If no agreement on a Facilitator is reached by September 15, 2023, the Associate Chair of Adjudication and Mediation, Labour Relations Board shall be asked to appoint a Facilitator.
4. APSA and the University will each pay one-half of the fees and expenses of the Facilitator.
5. The Facilitator shall act as the non-voting Chair of JUAC with authority to prepare and distribute an agenda for each meeting of JUAC.
6. In addition to preparing meeting agendas and chairing JUAC meetings, the Facilitator will meet with the members of JUAC at intervals to be determined by the Facilitator for the purpose of working with them to enhance their contribution to the effective operation of JUAC.

7. APSA and the University may agree to extend the term of the Facilitator under the terms of this protocol for no more than additional 12 months.
8. Within one month after the end of the Facilitator's initial or extended appointment, as the case may be, the Facilitator will provide to APSA's President and the University's Vice-President, People, Equity, and Inclusion a written report containing the Facilitator's observations and comments on the effectiveness of JUAC's operations and recommendations on:
 - a. procedural or other changes to enhance the effectiveness of JUAC;
 - b. improving communication and a harmonious working relationship among JUAC members;
 - c. enhancing informed, meaningful and accountable consultation; and
 - d. improving the timeliness of JUAC's management of issues and decision making.
9. APSA and the University will consider the Facilitator's report in good faith and may agree to appoint the Facilitator to mediator any differences over the acceptance and implementation of the recommendations.

TAB 5

July 17, 2026

Dr. Yabome Gilpin-Jackson
Vice President, People, Equity & Inclusion
Simon Fraser University (SFU)
8888 University Drive
Burnaby, B.C. V5A 1S6

Christopher Piché
President
Administrative and Professional Staff Association (APSA)
AQ 5133 - 8888 University Drive
Burnaby, B.C. V5A 1S6

Sent via Email

Re: JUAC Post Appointment Report

Dear Dr. Gilpin-Jackson and Mr. Piché,

I am writing to you pursuant to paragraph 8 of **Appendix 2: Protocol for Reactivated JUAC** and the accepted terms of my November 8, 2024, facilitation appointment, to provide you with a post-appointment report stipulated as follows:

8. Within one month after the end of the Facilitator's initial or extended appointment, as applicable, the Facilitator will provide APSA's President and the University's Vice-President, People, Equity, and Inclusion with a written report setting out the Facilitator's observations and comments on the effectiveness of JUAC's operations, along with recommendations on:

- a. procedural or other changes to enhance the effectiveness of JUAC;
- b. improving communication and a harmonious working relationship among JUAC members;
- c. enhancing informed, meaningful and accountable consultation; and
- d. improving the timeliness of JUAC's management of issues and decision-making.

The mandate of the Joint University/Association Committee ("the Committee") is stipulated in paragraph 9 of the 2023 Basic Agreement between the University ("SFU") and the Association ("APSA") as follows:

9.1 Joint University/Association Committee

A Joint University/Association Committee (J.U.A.C.) composed of persons authorized to represent the University and persons authorized to represent the Association shall meet at the request of either party to discuss and attempt to resolve such matters of mutual concern as may arise. These matters will include any changes to the policies listed in 9.2 and 9.3 below.

9.2 No Unilateral Change on Existing Administrative and Professional Policies

The University agrees that, during the term of this Agreement, it will not change the benefits contained in existing AD10 policies except by mutual consent of the parties. The University

reserves the right to change the language and/or the administrative procedures relative to those policies so long as the monetary and non-monetary benefits conferred remain unaltered.

9.3 Consultation on New Policy Development

The development of new personnel policies affecting members of the Association Group and the development of other University policies on matters materially affecting members of the Association Group which do not fall under 9.2 above, shall be subject to consultation between the parties. If agreement is not reached, it shall remain the right of the University to determine policy.

My initial appointment was for 13 months, commencing with a kick-off facilitation meeting on November 28, 2024, to continue through December 2025. Despite my encouraging the Committee at the end of 2025 that I believed they were ready to continue meeting on their own without an external facilitator, the Parties mutually agreed to extend my appointment by an additional 6 months, through June 2026. My last facilitation with the Committee was on June 22, 2026. During my 20-month extended appointment, the Committee met a total of 17 times.

In the interest of building rapport and positive working relationships amongst the Committee overall, I recommended that the monthly meetings be held in person whenever possible. This recommendation was largely accepted by the Committee, resulting in only 2 meetings being held virtually. I strongly encourage the Committee to continue holding in-person meetings whenever possible to maintain a good working relationship and healthy rapport.

Committee Membership:

During my appointed term, the Committee was made up of the following members:

For APSA: David Harvey (External Consultant and Spokesperson*), Lakshmi Gosyne, and Nicole Manson. Ms. Manson stepped down from the Committee in December 2025, which led to Ellen Yap joining the Committee effective January 2026.

For SFU: Heidi Vukic (Spokesperson*), Polaris Yu, and Elsa Plican. Ms. Plican's departure from SFU led to Jackie Davie joining the Committee effective February 2025.

**Note: The term Spokesperson is my word based on my experience and observations.*

I note that Ms. Manson's participation on the Committee brought an Indigenous lens that sparked some discussions that likely would not have been considered without her.

Meaningful Consultation:

In its second meeting on December 16, 2024, the Committee agreed to establish terms of reference to

serve as a framework for meaningful consultation. The following language, adopted from Indigenization work done by the Government of Canada, was agreed to on a pilot basis by JUAC on January 14, 2025.

Meaningful Consultation (From: December 17, 2024 Draft)

The JUAC Committee has agreed to adopt the principles for Meaningful Consultation and to adopt the practice examples on a pilot basis. The following definitions are what we mean by meaningful consultation, and the examples in practice will be our guide.

Meaningful Consultation is:

- founded on the principles of good faith, trust, accountability, respect and reciprocal responsibility;
- respectful of the uniqueness of the relationship between APSA membership and SFU
- carried out in a timely, efficient and responsive manner;
- collaborative, transparent and predictable;
- accessible, reasonable, flexible and fair; and
- accommodating, where appropriate.

What meaningful consultation looks like in practice will depend on the specific circumstances of each case, but may include, as a minimum:

- early notification about the matter and process, and any deviation(s) from agreed upon collaborative work;
- sufficient time to meaningfully participate in consultation, including in the review of technical information, with opportunity for voicing concerns and contributing to revising work as needed;
- the ability for the input provided to lead to changes, or to influence decisions;
- timely responses to questions and concerns raised by either party with openness to meet and discuss respectfully;
- the ability to participate, where appropriate;
- two-way dialogue with representatives of both parties with adequate authority to respond to concerns raised; and
- provision of reasons or rationale for decisions, demonstrating that concerns were considered and how they factored into the decision.

I observed that some of the meetings early on after the Committee reconvened got a bit bogged down when some members seemed to be of the view that meaningful consultation meant having to reach agreement. I intervened, reminding the group that while meaningful consultation may sometimes result in agreement, this may not always be the case, and this is to be expected and is okay. Once this was understood and accepted, the meetings flowed more easily.

Committee Interpersonal Dynamics

Prior to my appointment, I understand that the Committee had not met for an extended period (years) due to conflicts and difficult dynamics. I am pleased to report that during my 20-month appointed term, I did not witness any conflicts or difficult dynamics amongst the Committee. While there were certainly disagreements at times, they were voiced and responded to respectfully and did not prevent the Committee from moving forward with its mandate.

I found the Committee in its entirety to be very professional, committed to engaging in respectful dialogue, and dedicated to building understanding of one another's perspectives. The conduct I experienced and witnessed by the Committee has been consistent with the principles agreed to for meaningful consultation.

Committee Discussion Items & Status:

Over the course of my 20-month appointed term through June 22, 2026, the Committee tabled a total of 33 items for discussion. Of those 33 items, 9 (27%) remain open as follows:

Item Number	Item Description	Status
9	AD 10.07 (4.02) Group Benefit Plans	Pending the outcome of arbitration
10	On Call language	Pending the outcome of bargaining
12	Sick leave benefit application during university closures/holidays	Pending APSA's discussion with its legal team
16	AD 10.3 Posting & Filling of positions	Discuss is under consideration by APSA
18	AI Technology & Employee Surveillance	Parties agreed to put this item on hold for now
21	Criteria for exempting APSA members when moving into an excluded group	Being held in abeyance pending the outcome of grievance filed
25	APSA request for a joint committee to be formed to discuss accommodations and policies regarding reproductive & trans health. SFU advised the Equity Office is looking to establish an Equity Advisory Committee which would be a suitable forum to discuss topics of the above nature	With APSA for consideration
26	Cultural substitution for holidays	Under discussion with Equity Office
31	Sunset policy language request by APSA for an agreed upon time limit for discipline & poor performance documentation	SFU to respond to APSA's proposed language at the September 2026 meeting

Practical Recommendations for JUAC's ongoing operation:

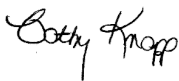
Now that the Committee is continuing on their own without an external facilitator, I recommend that SFU and APSA, at 6-month intervals, take turns facilitating the meetings on the same cycle as the minute taker. I believe this will serve the Committee well, providing continuity and organization through equitable, shared responsibility.

In the interest of organization and effectively managing the Committee's discussion items, I created a log that I titled "JUAC Agenda & Status Log". The log assigns a number to each proposed agenda item, the date of the meeting it was scheduled for discussion, a brief description of the topic which includes agreed-to action items and timelines, and the status of each item. I updated the log after each meeting and circulated it to the Committee members, so they have a living document that reflects both a historical and a current view of the items for easy reference. This document is distinct from the meeting minutes and is intended as a one-stop summary. I recommend that the committee continue the practice of using this log and that the internal facilitators be responsible for it during their 6-month rotation.

I am of the view that meeting once a month works well and allows for timely action and follow-up. I recommend that the monthly meeting schedule continue.

It was a pleasure to work with the Committee, and I am convinced that they will be successful in their meetings going forward, as long as they continue to adhere to the agreed-upon principles for meaningful consultation.

Thank you for this opportunity to work with JUAC. Please feel free to contact me if you have any questions.



Cathy Knapp
Facilitator