

May 13, 2011

Mr. David Clark
D.W. Clark Services P.C. Incorporated
839 Aberdeen Street
Fredericton, NB E3B 1S9

Ms. Jula Hughes
UNB Fredericton Campus
41 Dineen Drive
Fredericton, NB E3B 5A3

Dear Sir and Madam:

**Re: *University of New Brunswick (UNB)/Association of University of New Brunswick
Teachers/Interest Arbitration***

Enclosed is the Award in this matter. Please acknowledge receipt by return.

Yours very truly,



ANDREW C.L. SIMS, Q.C.

/dc
enclosure

cc: Mr. Morgan Cooper
Mr. Douglas Lorimer

tel: 780-423-6807
fax: 780-423-6813

Suite 149,
10403 – 122 Street
Edmonton, Alberta
Canada T5N 4C1
andysims@simgroup.com

Assistant: Debbie Cairns
debbiecairns@simgroup.com

ARBITRATION

BETWEEN:

ASSOCIATION OF UNIVERSITY OF NEW BRUNSWICK TEACHERS

- and -

THE UNIVERSITY OF NEW BRUNSWICK

WITH RESPECT TO A GRIEVANCE CONCERNING the terms and conditions of their
collective agreement for the Part-time Faculty Bargaining Unit

A W A R D

BEFORE:

Andrew C.L. Sims, Q.C..... Chair
Douglas Lorimer Nominee of AUNBT
Morgan Cooper..... Nominee of UNB

***REPRESENTATIVES OF ASSOCIATION OF UNIVERSITY OF NEW BRUNSWICK
TEACHERS***

Jula Hughes..... Chief Spokesperson,
AUNBT Bargaining Team
Weiqiu Yu AUNBT Bargaining Team
Shirley Cleave..... AUNBT Bargaining Team
Ruth Shaw AUNBT Bargaining Team
David Coleman AUNBT Bargaining Team
Ryan Johnston..... AUNBT Bargaining Team

REPRESENTATIVES OF THE UNIVERSITY OF NEW BRUNSWICK

David Clark Counsel and Co-Chief
Negotiator
Barbara Richards..... Co-Chief Negotiator, UNB
Part-time Faculty
Bargaining Team
Ryan Johnston..... Counsel, Part-time Faculty
UNB Bargaining Team

HEARD on October 2, 2010

AWARD ISSUED on May 12, 2011

AWARD

This award relates to a first contract between the University of New Brunswick and the Association of University of New Brunswick Teachers (AUNBT) over the Contract Academic Employee bargaining unit.

AUNBT was certified by the New Brunswick Labour and Employment Board on February 20, 2008 for a unit described as follows:

All persons employed by the University of New Brunswick in contractual part-time teaching a for-credit course or employed as part-time librarians at, or out of, all campuses of the University of New Brunswick, save and except Deans, Associate or Assistant Deans, those above the rank of Dean, the University Librarian, faculty members who are members of the Board of Governors, persons for whom a trade union holds bargaining rights under the *Industrial Relations Act*, and those excluded by the *Industrial Relations Act*.

AUNBT has, for many years, represented the full-time faculty. The contract academic employees were unrepresented, but received stipends based on the pay for "overload courses" provided for in the full-time academic agreement.

The parties met together on over 50 occasions, both before and after the appointment of a conciliation officer. On February 22, 2010 the parties agreed to submit their unresolved issues to binding arbitration. This panel was already separately constituted as a conciliation board in respect of the full-time faculty negotiations. They agreed to use the same panel as the arbitration board for this dispute, recognizing the advantages of having persons already familiar with the positions and submissions in that dispute which cover some of the same information necessary here. Given this Board's background, the parties agreed to proceed through the exchange of written submissions followed by a hearing conducted by teleconference.

The parties were able to agree on a draft collective agreement including the results of their negotiations both before and after the Board's constitution. Issues remaining in dispute are:

1. Term
2. APT Teaching Part-time Courses
3. Cancellation Fees
4. Health Spending Account
5. Professional Development Allowance
6. Maternity and Paternity Leave
7. Compensation
 - Fixed or Minimum rates and Market Adjustments

- Premium
- Linkage Mechanism
- Quantum

The make-up of the bargaining unit

Despite restrictions in the full-time agreement on their use, Contract Academic Instructors in fact teach a significant number of courses. The University acknowledges they form an important part of the overall University community. Its data indicates that they teach or provide instruction for 29% of all three-hour credit courses, including those offered through UNB on-line. In 2009/2010 it employed about 600 contract academics. AUNBT calculates the courses taught at about 1,416 with 1,213 face-to-face and 233 on-line.

A section is equivalent to teaching a course that offers a student three credits. It may be taught in different ways, but the three credit unit is what the parties use as their basic yardstick. The number of sections taught by Contract Academics varies. The majority of Instructors (52% in 2009-10) taught only one course. About 25% taught two courses; about 10% teach 3 sections, and the remaining 15% or so taught 4, 5, 6 or more. The Employer asserts that the vast majority (95%) of Contract Academics are employed full-time in other work and only teach one or two courses. The large majority (95%) live in New Brunswick.

The University maintains that it has no difficulty recruiting and retaining employees in these positions except in the Faculties of Law, Engineering and Nursing. The Association provided nothing to contradict that assertion. The parties have agreed to provisions for Nursing so we do not need to consider their position further.

The AUNBT-UNB full-time faculty agreement, Article 10.01, restricts the use of part-time contract academic employees. Before the University can hire part-time (except in urgent circumstances) it must first post the position and give full-time faculty an opportunity to ask to be assigned to the position; in short, full-time staff get a first option on available courses. Article 10.02 thus provides:

10.02 Appointments to work on a part-time basis may be made by the University of New Brunswick only for one (1) of the following purposes:

- a) to teach a course usually taught by a faculty member or instructor who is on leave where that faculty member or instructor has not been replaced, or on a reduced teaching load;
- b) to teach a course requiring specialized skills, particular expertise and/or experience;
- c) to respond to specific short-term teaching needs such as, enrolment changes or experimental courses;

- d) to meet staffing needs resulting from unexpected resignations, unexpected early retirements, illness, unanticipated recruiting difficulties, or similar unforeseen circumstances;
- e) to teach a degree credit course for the College of Extended Learning;
- f) for such other reasons as may, from time to time, be agreed upon by the Parties.

Insofar as teaching courses is concerned, the contract academic's do much of the same work as their full-time colleagues.

The Duties of Contract Academic Employees

The parties have negotiated over the responsibilities of contract academic instructors, to be described in Article 16A of the pending collective agreement as follows:

Article 16A PROFESSIONAL RESPONSIBILITIES OF CONTRACT ACADEMIC INSTRUCTORS

16A.01 Contract Academic Instructors have certain rights, duties and responsibilities which derive from their positions as teachers.

16A.02 The principal responsibility of Contract Academic Instructors is to support the work of the Academic Department or Faculty through laboratory, clinical, or other teaching assignments. In addition, the Contract Academic Instructors have the right and responsibility to be involved in academic service, if they choose, to the extent defined in Articles 18A.02, 19A.03 and 20A.02.

16A.03 It is recognized that in exercising Academic Freedom, all members of the academic community have the responsibility to respect the rights and freedoms of others. Contract Academic Instructors thus have the responsibility to deal fairly and ethically with students and other members of the academic community, to avoid discrimination, to foster a free exchange of ideas and to refuse to practice or permit censorship, to respect the principles of confidentiality in a manner consistent with their academic role, to acknowledge their indebtedness to students and/or colleagues in relation to their own scholarly teaching, to uphold and to protect the principles of academic freedom, and to seek the highest possible standards of scholarship.

16A.04 Teaching

a) Contract Academic Instructors have an obligation to develop and maintain their scholarly competence and effectiveness as teachers within their area of expertise, to conscientiously prepare and organize their subject matter and to revise that subject matter on a regular basis as appropriate for that subject. They shall provide a draft course outline to the Dean, one week in advance of the course and a final course outline giving due regard to Senate regulations and the University calendar with respect to course syllabi within two weeks of the first day of classes.

b) Once courses have been assigned by the Dean in accordance with 20A (Rights of First Refusal) it is the responsibility of Contract Academic Instructors to teach the assigned undergraduate and graduate courses to students registered in them, at a time and place designated or approved by appropriate University authorities and in a manner which reflects the description in the Calendar, or as approved at the appropriate level. Contract Academic Instructors shall be available regularly for individual consultation with their students beyond class or laboratory hours and shall inform their students, and upon written request, their Dean, of such arrangements.

c) Contract Academic Instructors shall comply with formally approved and published procedures and deadlines concerning the reporting and reviewing of the grades of their students, and such other formally approved and published procedures and deadlines as may be reasonable and necessary for the well-ordered operation of the teaching programs of the University.

For the purposes of this Article only, publication means that the procedures and deadlines have been printed in a current University Calendar, or circulated to each Contract Academic Instructor.

Contract Academic Instructors shall accept reasonable responsibility for academic counseling, supervision of examinations and other related activities as may be necessary for the course and reasonable and which are not in conflict with this Collective Agreement.

d) Contract Academic Instructors have the responsibility to schedule and organize their instruction within relevant academic regulations, and the right and responsibility to maintain an orderly and productive academic environment.

e) Contract Academic Instructors may cancel or terminate scheduled instruction only for good cause and they shall so notify the Chair or Dean. If possible, they shall give their students and the Chair or Dean advance notice of such cancellation and they shall make every reasonable effort to re-schedule instruction. Students and the Chair or Dean shall be informed of such re-scheduled instruction. If instructional time cannot be rescheduled within the term, alternate arrangements must be approved in advance by the Chair or Dean.

The same agreement alludes further to contract academic staff participating in the collegial and service aspects of academic life at UNB:

Article 5 COLLEGIAL RIGHTS

5.01 The University of New Brunswick recognizes the right, privilege, responsibility and desirability of Contract Academic Employees to participate in the collegial processes of the University, as set out in Senate regulations, guidelines, policies, and decisions, as approved by the Board of Governors and as set out in the University of New Brunswick Act except as specifically abridged or modified by this Collective Agreement. The Parties recognize the importance of these academic, personnel, and governance processes and will work together to promote collegiality. The Parties agree that openness and transparency are important for collegiality and accountability.

How these contract arrangements translate into life in the classroom of necessity must vary with the individual involved, the nature of the course, the size of the class, the level of students taught, and the discipline. The parties each provided us with their views on what this customarily involves, and how it compares to the working lives of full-time academics, both in the professorial ranks and in the separate Instructor category. Some courses are also taught by graduate students, who recently formed their own teaching union.

About half the contract academics have taught their courses for more than one year. Of that half, 85% of them taught the same course for at least 2 years. Neither party provided detailed information on the qualifications of the Contract Academics. We assume, from the volume and classes they teach and the fact their classes represent 29% of those offered University wide, that their qualifications are suitable but varied. Virtually all will have undergraduate degrees, a significant majority will have post-graduate training or professional qualifications and some will

have doctorates. A few will be full-time faculty in other Universities, particularly for the spring and summer sessions.

Academic life is customarily divided and evaluated on the basis of teaching, research and service. While contract academic staff do not have the obligation to engage in original research leading to publication they still have to keep up in their field. Their teaching duties may include the supervision of student research, or instruction regarding the value, nature, and procedures involved in the production and dissemination of knowledge. Consequently, as university teachers, they have an obligation to be engaged scholars, reading, reviewing, and revising to maintain their academic and professional expertise.

The Association maintains, on the teaching side, that contract academics have the same number of contact hours, preparation, teaching and marking obligations as full time teachers. They must also guide and advise students during office hours and beyond. Some contract academics supervise graduate and undergraduate thesis.

On the service side, the Association notes that some contract academics participate in the University community, serving on the Senate, Faculty Councils, departmental committees and so on. They concede nonetheless that full-time staff carry a greater service load. The University recognizes that such contributions are made, but on a voluntary basis and nowhere near the level of full-time staff.

Pre-Unionization Compensation for Contract Instructors

In the past, contract academic compensation has been tied to the floor amount paid to Assistant Professors. The stipend amount was directly, although not contractually, linked to Article 36B.01 in the full-time academic agreement which reads:

36B.01 The stipend for teaching by Employees in Extension, Summer Session, Spring Session (UNBSJ) or Intersession, where such teaching is not part of their individual teaching load in accordance with Article 19, shall be at the rate of 16 percent of the salary floor of the rank of Assistant Professor (as of May 1 of each year) for a three (3) hour per week full year degree credit course, or its equivalent.

This 16% provision is for a full-year 3 hour per week course. The basic unit used for part-time contract academics is for a half year which yields 8% of the Assistant Professor Floor.

The parties agree that historically this was done in order to ensure that contract employees did not receive higher rates than full-time faculty teaching on overload, and that full-time faculty overload rates remained uniform. This linkage was established about 30 years ago, at a time when the use of Instructors was limited, so most overload work was undertaken by professors.

The past practice, while it links stipend amounts to the full-time scale, does so on a delayed basis, only coming into effect four or ten months after the split or annual increases in the full time agreement. The rate was set on May 1st, based on the previous economic increase in either July 1st or of the previous year, or January 1st of that same year.

In some areas, contract academic stipends have been raised, on a discretionary basis, particularly in the professional Faculties of Law and Engineering. Mostly, this has involved paying 1.5 times the base rate, although there are a few situations where higher amounts have been paid.

The basic stipend, based as it has been on the overload provision in the full-time agreement, has increased with the full-time faculty base rates, increasing from \$3,560 per section in 2001-2002 to \$4,876 per section in 2009-10. The rate was still increased in the two years following the Association's certification for the Contract Academic Unit, although they were without a collective agreement. That is, the link to overload rates continued as before.

First Collective Agreements

This same panel, in the full-time faculty Conciliation Board Report, canvassed the parties' arguments on the principles important to interest arbitration. The factors are essentially the same, except that this a first contract situation. We do not propose to repeat that analysis here.

The parties differ significantly on what is appropriate for a first contract. The AUNBT asserts that the Contract Academic employees sought certification for a reason. It was not to achieve a continuation of the status quo, but rather to increase what they felt was their inadequate level of compensation. The University's proposals, they assert, simply continue the same linkage and the same rates as have prevailed in the past, leaving employees, after Association dues, economically worse off.

The University argues that arbitrated first contracts should not involve breakthrough provisions. It refers us to the decision of the B.C. Labour Relations Board in *Yarrow Lodge*.

Yarrow Lodge Ltd. v. H.E.U. and C.E.P. Local 448 [1993] BCLRBD 463 21 CLRBR (2d) 1 (Lanyon, Chair)

That decision provides a very thorough review of the factors that are involved when legislation allows Labour Relations Boards to order first contract arbitration, and how and when such arbitration should be conducted. The B.C. Labour Relations Board provided a list of factors arbitrators appointed to such a task should consider.

Our objective is to provide arbitrators with both guidance and flexibility in determining the actual terms and conditions of employment. These factors are as follows:

1. A first collective agreement should not contain breakthrough or innovative clauses; nor as a general rule shall such agreements be either status quo or an industry standard agreement.
2. Arbitrators should employ objective criteria, such as the comparable terms and conditions paid to similar employees performing similar work.
3. There must be internal consistency and equity amongst employees.
4. The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor;
5. The economic and market conditions of the sector or industry in which the employer competes must be considered.

The first factor is based on the fact that new or innovative clauses ought to be left to subsequent collective agreements when they can be bargained by the parties themselves. Similarly, first collective agreements should neither be status quo or industry standard agreements except in rare circumstances.

The second factor, the use of comparables, is something which has been part of the history of interest arbitration since its inception, and is perceived by both parties to be an objective criteria and in line with their expectation as to what the result at the bargaining table ought to be.

The third factor, internal equity refers to several things: first, ensuring that appropriate relationships are maintained between different employees in regard to the qualifications and the nature of their work and the responsibilities which they assume. However, it also refers to issues of employment equity and pay equity and to whatever legislative schemes may be in existence now or in the future.

With respect to the fourth factor, it goes without saying that the financial state of the employer is crucial to any imposed settlement. However, it is clear that no judgement concerning the financial viability of the employer can be made or considered unless such evidence is placed before the arbitrator.

As noted by the Sub-committee of Special Advisors, and as stated earlier in this decision, no imposed first agreement should in any way place an employer in jeopardy of its business surviving.

The decision in *Yarrow Lodge* relates to a particular form of statutorily imposed first agreement under B.C.'s legislation. It recognizes particularly that the imposition of an agreement on a previously uncertified business, by a third party, must be sensitive to that business' viability.

The University also refers to:

Calm International Ltd. v. Canadian Airline Pilots Assn. [1997] CLAD 778 (Burkett)

in support of the same approach to “breakthrough” first agreements. There, Arbitrator Burkett said:

14 I adopt the statement of purpose with respect to first collective agreement arbitration, contained in *re Brick Warehouse*. The statement reads:

... the objective, as we see it, is to fashion an award that reflects what the parties could reasonably have anticipated in bargaining for a first collective agreement, taking into account the particular requirements of the business. Although first collective agreements ought not to be “breakthrough” agreements, they also ought not to be substandard relative to the industry in which the business finds itself. By fashioning an agreement that reflects both the embryonic stage of the collective bargaining relationship and the reality of collective bargaining within the industry, an arbitration board places the relationship on a footing from which it can develop into a viable partnership.

My task, therefore, is to fashion, as best I can, a collective agreement that at one and the same time reflects the fact that this is a first collective agreement, with the potential for growth and improvement in subsequent rounds of bargaining, and industry norms.

That award, however, does not support the view that a first agreement should look just like the status quo. The parties in that case had already negotiated (through the mediation phase of the process) a very significant change to the way pilots were remunerated, moving to a flight credit system that gave employees shorter, more stable hours. This itself was described as a significant and costly breakthrough. Arbitrator Burkett's comments were directed at the argument that, on top of this change, he should also award a wage increase of 21%, something he declined to do in a first agreement, leaving that for future bargaining.

We have also considered, on this point:

Compass Group Canada (Health Services Ltd.) v. Hospital Employees' Union [2007] B.C.C.A.A. 61 (Lanyon)

That case involves a significantly different situation than the one at hand, given the other arbitrations that took place with similar employers in the same competitive industry.

Arbitrators have recognized certain unique factors for first agreements. However, this is not quite the same situation as a first contract with a newly certified private sector employer. The link to the full-time faculty agreement rates has meant that Contract Academic staff, even without direct collective bargaining, have had the benefit of regular economic increases as a result of the Association's collective bargaining, albeit bargaining for a different group of people.

What is also significant, in this first contract situation, is that the parties have already bargained many significant changes to the non-monetary, or only indirectly monetary, terms and conditions of employment for Contract Academic employees. This includes important job protection provisions. This award deals with the items that remain in dispute, but what we award supplements the significant changes already agreed upon. These changes are reflected in the consolidated draft collective agreement appended to the University's brief as Tab 4 and the Union's brief at Tab 5. It also includes the definitions and the provisions for payment for on-line instruction, both agreed to in September, 2010.

Term of the Agreement

The parties agree that the term of the full-time agreement is significant to their views on the appropriate term for the Contract Academics agreement. The University's position is that the term should run from May 1, 2010 to June 30, 2013; to expire at the same time as, in its submission, the full-time academic agreement should expire.

The AUNBT too links its views on term to the full-time agreement, putting forward positions that align with its full-time proposal for a three year term and an alternative position if the conciliation board adopts a four year term.

As a result of the full-time Conciliation Board report, which adopted a four year term, the full-time agreement now expires on June 30, 2013. The parties are agreed that the start date should be May 1, 2010. Contract Academic staff customarily contract for a term. In order to avoid changing the remuneration for a contract halfway through its term, it makes sense to have the expiry of this agreement coincide with the end of one of the customary terms. We considered adopting the June 30 date, but decided against that given the term contract nature of the part-time contracts. We have decided on a term running from May 1, 2010 to April 30, 2013.

APT Employees

The University advises that, over the years, certain APT (Administrative, Professional and Technical) employees have been hired or assigned to perform an APT function and to teach a small number of courses. It says that payment for these courses has been included as part of their overall salary under individual contracts of employment and is treated as pensionable earnings under their APT pension plan, which is different from the full-time faculty members' plan. The parties have discussed, but have been unable to resolve, how to treat these persons with the

advent of a first agreement for Academic Contract Employees. The AUNBT argues that we have no jurisdiction over this issue, for four reasons it expresses as follows:

1. The issue arose after the decision to refer outstanding matters to arbitration. For this reason, the AUNBT contract academic membership was not advised of and did not vote in favour of referring this issue to arbitration as required by the AUNBT constitution.
2. The issue involves the respective scopes of the full-time and contract academic agreements and cannot be bargained to impasse. For this reason, it is also not susceptible to interest arbitration.
3. The issue involves the desire on the part of the employer to exclude certain incumbents from the full-time and/or contract academic bargaining units. Exclusion of employees from the bargaining unit is within the exclusive jurisdiction of the New Brunswick Labour and Employment Board.
4. The issue implicates both full-time and contract academic bargaining unit work, while the arbitration board (sitting as such) has jurisdiction limited to those contract academic issues as enumerated before the board in these submissions and in the August 24, 2010 meeting.

The University's position is that we are bound, by the agreement of the parties, to resolve all outstanding issues of which this is one. The parties' letter submitting this dispute to us read:

"... to settle all outstanding issues in dispute for the Contract Academic negotiations"

This letter must be read in the context of the Act which provides:

79(1) Where an employer or employers' organization and a bargaining agent have bargained collectively with a view to the making of a collective agreement, or the renewal or revision of an agreement or the making of a new agreement, but have failed to reach agreement, the parties may, by agreement in writing to be bound by an award, submit their differences to arbitration before an arbitrator or arbitration board.

The whole point of a submission to interest arbitration, voluntary or statutory is, in the University's view, to get to a final and binding collective agreement covering all issues in dispute. It argues that the Act also supports this principle, saying:

79(5) Where the arbitrator or arbitration board is unsuccessful in formulating an agreement satisfactory to both parties, and after considering the matters of difference together with any other matter considered necessarily incidental to a resolution of the matters of difference, the arbitrator or arbitration board shall render an award in respect thereto.

The problem this issue deals with is that, if APT employees teach a course as a part of their APT duties, and receive pay for so doing under this agreement, then that money is arguably not part of their regular APT pay for pension purposes which will reduce the pension entitlement to which they would otherwise be entitled.

This assumes, however, that their pay for teaching the class would be set by this agreement, not by their regular APT salary. In turn, this assumes that the APT employees, by being assigned to teach a part-time class, would as a result become part of the AUNBT bargaining unit for part-time instructors. That conclusion does not necessarily follow. Certification customarily certifies employees, not the work they do. Whether a person falls within a particular bargaining unit is customarily assessed based on a prime function test. Whether that is so in this case is primarily a matter for the New Brunswick Labour Relations Board not this interest arbitration board. It is by no means clear to us that a person who teaches a part-time course as part of their APT duties (rather than over and above their APT duties) as a result falls under and must be paid under, the agreement for which we are constituted. We therefore decline to make any specific award in relation to questions that may arise if and when APT employees are assigned part-time teaching as part of their duties. Nothing before us suggests APT employees have been assigned part-time teaching duties to the extent that such functions have eclipsed their APT duties to the extent that part-time academic instruction has become their prime function.

Cancellation Fees

An academic who agrees to teach a course must do preparatory work before the course begins. At times, courses must be cancelled due to lack of enrollment. The parties agree generally that there should be some compensation when this happens, but differ on the amount and the circumstances. The AUNBT's position is that the clause should provide:

Cancellation Fee

If a stipendiary course is cancelled after an offer of employment has been made by the University, and accepted by the applicant, the applicant shall be paid a cancellation fee of \$200 or \$500 if cancellation occurs within 2 weeks prior to the start of classes.

The University would set these fees at \$100 and \$200 respectively, but would not apply them to courses scheduled during the spring and summer terms; that is those courses taught between May and August, including what is called inter-session and summer session.

The University argues that cancellation fees are not paid to full-time academics when courses they planned to teach on overload are cancelled. Nor are they the norm in the Atlantic region. It recognizes that cancellation fees are paid in a majority of other Universities.

It justifies its proposed restriction to fall and winter courses by arguing that the timelines for enrollment, and for offers of summer and inter-session courses, are substantially shorter than for the fall and winter courses.

The AUNBT counters this argument with the point that it is the spring and summer courses that are the most vulnerable to cancellation, since the enrollments are harder to predict than those during the regular academic year. In addition, because of the compressed nature of the course offerings, more of the preparation, indeed most of it, has to be done before the class starts. The Association's position assumes, both for its own proposal and for the University's, that once a class actually begins, full payment will be provided.

The Association provided a list of cancellation fees paid in a variety of other Canadian Universities, both in advance of and close to the course start date. Only at St. Thomas are the fees restricted to the fall and winter terms.

We conclude that it is appropriate to provide cancellation fees for the spring and summer programs as well as those the fall and winter terms. We accept particularly the validity of the Union's argument that the compressed nature of the courses requires a significant level of preparatory work and planning. The impact of a cancellation on a full-time academic may well be less than on a part-time person who may have other non-academic employment responsibilities. We award the following clause:

Cancellation Fee

If a stipendiary course is cancelled after an offer of employment has been made by the University, and accepted by the applicant, the applicant shall be paid a cancellation fee of \$150, or \$300 if cancellation occurs within 2 weeks prior to the start of classes.

Health benefits

The Association seeks a health care benefit for eligible contract employees of \$60.00 per course or library assignment, to be contributed annually by the Employer. Only contract academic employees who are not otherwise members of a group plan would be eligible to receive this fund. It would be provided through a Health Spending Account administered by a third party provider such as Blue Cross. There are significant administration costs to establish such an arrangement.

The Association provided collective agreement extracts that show that a significant number of Canadian Universities do provide either health benefits or payments in lieu of health benefits to contract academic employees. Acadia's recent contract has such a benefit.

The University characterizes any proposal for a healthcare benefit as a form of "breakthrough benefit", inappropriate for a first contract, particularly where such a benefit is imposed by arbitration. Its other bargaining units do not provide health care benefits for contract or part-time employees.

The Board is not persuaded that establishing a health spending account for only some part-time employees, and for such a limited sum, is justified in the circumstances.

Maternity and Parental Leave Top-ups

The Association seeks a maternity or paternity leave benefit for contract academic staff. It urges that all other UNB employees, whether full-time, part-time or on a reduced workload, are eligible for maternity and parental leave top-ups so long as they are continuing employees and have been employed for the legislative minimum periods of time. They say multi-year contract academic appointees are the only exception to this otherwise general entitlement.

Employment Insurance provides 55% of this benefit to eligible employees. The University is asked to top this up by a further 40% to yield 95% of the pay that would otherwise be received. In the Association's submission the cost to the University would be minimal. This is because multi-year appointments are discretionary, and because it is reasonable to expect only a few births among eligible employees.

The University believes this proposal is unjustified. It provides no similar benefit to irregular part-time or contract employees. It also raises concerns about the Association's proposed language, particularly as it might see benefits extending beyond the period covered by the term based academic contract.

In Atlantic Canada, only the University of Prince Edward Island provides a maternity and paternity top up benefit. It is not a benefit the University believes is appropriate for a first contract award.

The panel is not persuaded that this provision is justified in these circumstances.

Professional Development Allowance

The parties agree that there should be a pooled professional development allowance, available for contract academic employees. They differ only on the amount and some of the mechanisms for its administration. As to amounts, the parties' positions are as follows. UNB proposes:

50.01 The Employer agrees to establish a professional development fund for Contract Academic Employees which shall be funded at the following rates:

2010-2011	\$25,000
2011-2012	\$27,500
2012-2013	\$30,000

AUNBT proposes the same language but with the rates set at \$40,000, \$50,000 and \$60,000 for each of the three years.

The AUNBT wishes to clarify that the annual eligibility is for the academic not the calendar year. We find the academic year appropriately defined as May 1 – April 30.

The University proposes the following income tax clause:

50.05 The provisions of this Article are subject to the relevant provisions of the *Income Tax Act* and any interpretations made by Canada Revenue Agency (CRA). The Employee accepts responsibility for any subsequent adverse judgment by CRA.

AUNBT would adopt the same language but without the last sentence. In our view that provision is appropriate, as is some increase to the fund.

We award Article 50 to read:

Article 50	PROFESSIONAL DEVELOPMENT ALLOWANCE
50.01	The Employer agrees to establish a professional development fund for Contract Academic Employees which shall be funded at the following rates:
	2010 – 2011 \$30,000
	2011 – 2012 \$33,000
	2012 – 2013 \$36,000
50.02	Contract Academic Instructors who hold a Right of First Refusal (RFR) for a course or courses within a Unit and Contract Academic Librarians who hold a Multi-Year Appointment are eligible to submit an application to the Vice-President Fredericton (Academic) or Vice-President Saint John for funding from the Professional Development Allowance. A Contract Academic Employee eligible to apply for a Professional Development Allowance under Article 50.01 is eligible to receive a maximum \$500 in any one academic year (May 1 – April 30).

Reimbursable Expenses must be for actual expenses incurred and must be supported by original receipts consistent with established University reimbursement policies. Eligible expenses, including registration fees and travel related expenses to attend conferences and the purchase of resources related to pedagogy and/or their disciplines are the types of expenses that may be reimbursed. All expenditures from this fund must be related to pedagogy and/or the Contract Academic Employee's discipline.

50.03 Members not receiving Professional Development Allowance in one academic year due to fund limitations will be given priority in the next academic year. The decision of the Vice-President Fredericton (Academic) or the Vice-President Saint John to award Professional Development funds is non-grievable.

The AUNBT will have access, upon request to the office of the Vice-President Fredericton (Academic) or Vice-President Saint John, to the names of all applicants and amounts requested as well as the names of all successful candidates and the funds granted.

50.04 If there are funds remaining in the Professional Development Fund, the remaining amount will be carried forward to the subsequent academic year.

50.05 The provisions of this Article are subject to the relevant provisions of the *Income Tax Act* and any interpretations made by Canada Revenue Agency (CRA).

Compensation

The parties' position on compensation differs in several respects.

- The Association wants to create fixed rates, ending the use of minimum rates that are subject to discretionary upward adjustment for market conditions.
- The parties agree there should be a premium for longer serving contract instructors, who teach more classes but disagree on how that should be accomplished.
- AUNBT wants to maintain a link to the full-time agreement rates but change the mechanism by moving from the Assistant Professor floor level to the Instructor floor. The University seeks a numerical award without an express formula or link to a position, although its dollar value position is derived from numbers in the full-time agreement..
- The AUNBT believes the rate should ultimately reach 14% of the Instructor floor, but introduced in steps. The University believes any such increase is unjustified and that the economic adjustments provided for in the full-time agreement are themselves adequate.

The parties were able to agree on the compensation payable to two groups within the bargaining unit; contract academic librarians and contract academic instructors in nursing. In each case, the existing compensation practices are to continue.

Minimum or Fixed Rates and Market Differentials

As the language above discloses, the University wishes to retain some flexibility to pay more than the contractual minimum where it feels it necessary to do so. It seeks a clause reading:

Market Differentials

Contract Academic Instructors will be paid no less than the minimum stipend and market differentials may be applied if market factors relative to discipline warrant.

The Association opposes minimum rates and discretionary market differentials. It gives five reasons for this opposition. First, since the Employer says its budget is limited, higher rates for some come at the expense of others. Second, differentials tend to favour persons teaching in the professional disciplines who are the least likely to be reliant on the stipend for their income. Third, discretionary market differentials can lead to discriminatory practices. Fourth, other Universities are able to attract instructors in their professional programs with no market differentials or, as is the case at the Dalhousie Law Faculty, where contract academics are routinely invited to donate stipends back to the faculty. Fifth, the Association maintains that there is no evidence to suggest that market differentials are needed for recruitment or retention. Such instructors can be attracted, it argues, just by virtue of reputational gains, the opportunity to stay current and to meet and recruit students, and a desire to give back to the community.

The University argues that market differentials in the full-time area are paid in Law, Engineering and Business. It asserts that, for Contract Academics, a similar ability to pay market differentials is necessary, particularly in Law and Engineering, where this has been the practice for a long time. In Law, Contract Academics teach about a quarter of all credit hours. They are used because of their expertise developed in practice or because of their field and specialization. Three of the Contract Academics employed in Law were recently retired members of the full-time faculty and are therefore exceptional cases. The Law Faculty's long-standing practice has been to pay local practitioners 1.5 times the usual stipend rate.

The University produced some supporting correspondence with Contract Academics in Law. A significant factor argued for in that correspondence is that, unlike some other Contract Academics, law practitioners customarily maintain professional offices, with related overhead costs, in order to support their professional activities. Devoting a percentage of the practitioner's professional time to teaching also involves devoting, notionally at least, some of those overhead expenses to that teaching. Similar considerations apply in Engineering. These arguments no doubt have some validity, but contract academics in any field must also equip themselves with the books, computers and other facilities necessary for them to carry out their work. The

University says 17.2% of the sections taught in the Engineering Faculty are taught by Contract Academics. While there are some higher exceptions, Engineers too have been paid 1.5 times the normal rate.

Among Atlantic Universities, six of the collective agreements covering part-time academics provide some flexibility for market differentials. Some of those, however, also require notice to, or the consent of, the Union.

The Board is not persuaded to eliminate the payment of higher than negotiated stipends in appropriate cases. The reasons for employing Contract Academics are quite varied. The listed reasons for their use in Article 10.02 of the full-time agreement attest to this variety. While the negotiated base stipends should be the norm, we accept that higher rates are sometimes both necessary and justified if persons with highly specialized skills are to be attracted to these tasks. To change to fixed rates now would alter the existing arrangements adversely for a significant number of persons.

We do find that the Association is entitled to know of these arrangements where they are out of the ordinary. We recognize also that, for some persons teaching in Law and Engineering, the remuneration is only a secondary consideration. The situation at Dalhousie, where some are paid but asked to voluntarily donate monies back to the Faculty, commends itself as an appropriate way of balancing the differing motives and circumstances among professionals who teach part-time.

We accept the University's approach, providing for base stipends. However, we also award the following clause:

Market Differentials

Contract Academic Instructors will be paid no less than the base stipend and market differentials may be applied if market factors relative to discipline warrant.

The University will provide the Association with the amounts of stipends paid to Contract Academics that exceed the base rate provided for. In addition, the University will provide the Association with its reasons for offering stipends in excess of the base stipend, or in the Faculties of Law and Engineering, in excess of 1.5 times the base stipend.

Nothing in this agreement prevents Contract Academic employees donating all or part of their stipend to the University, provided such donations are voluntary, not a condition of employment.

Long Service Premiums

The parties each propose some recognition for Contract Employees who teach a significant number of courses over time. However, they differ significantly on what this premium might look like. The University's proposal reads:

Premium

In the first three years of this collective agreement, a Contract Academic Instructor who has taught courses totaling 30 or more credit hours in the previous three years shall receive a premium of \$100 for each course taught per term. After the third year of this agreement, in order to be eligible for this premium, a Contract Academic Instructor must hold a Multi-Year Appointment or have been granted a Right of First Refusal.

In the first three years of this collective agreement a Contract Academic Instructor who has taught courses totaling 60 or more credit hours in the previous five years shall receive an additional premium of \$100 for each course taught per term. After the third year of this agreement, in order to be eligible for this premium, a Contract Academic Instructor must be in a receipt of a Multi-Year Appointment or have been granted a Right of First Refusal.

The AUNBT proposal reflects its "percentage of the Instructors grid" approach and reads:

Increments

In the first three years of this collective agreement, a Contract Academic Instructor who has taught courses totaling 30 or more credit hours at UNB shall receive an increment of one quarter of one percent over the base stipend for each course taught per term. After the third year of this agreement, in order to be eligible for this increment, a Contract Academic Instructor must hold a Multi-Year Appointment or have been granted a Right of First Refusal.

In the first three years of this collective agreement a Contract Academic Instructor who has taught courses totaling 60 or more credit hours at UNB shall receive an additional increment of one quarter of one percent for each course taught per term. After the third year of this agreement, in order to be eligible for this increment, a Contract Academic Instructor must hold a Multi-Year Appointment or have been granted a Right of First Refusal.

Both proposals provide a financial reward to recognize increased engagement in the University community and for maintaining the high teaching standards implicit in the volume of classes assigned to the individual.

The AUNBT objects to the use of the "credit hours" formula, since in its view there is no such thing as a "credit hour." The University's concept is that the premium is to go to those who teach multiple courses per year on a consistent basis; first 2 or more courses per year and then 4 or more courses per year. It objects that, without a timeframe, people teaching just one course a year would eventually, over a few years, qualify for the premiums, which would then continue to apply without limit.

Both parties have used the phrase "a three (3) hour per week one-term degree credit course or its equivalent" in their wage proposals. We find that to be a clearer and more consistent term than "credit hours." We find merit in the University's point that the AUNBT proposal, over the longer term, may create an entitlement to the premium based on service acquired years before but where the current contribution is only a single course. We therefore find it appropriate to include a period over which the qualifying service is to be calculated.

There is a difference in the amounts proposed. The 0.25% and 0.50% figures proposed by the AUNBT are modestly higher than the University's fixed proposal, but would rise over time at the same rate as the base.

We award the following clause; to be effective as of May 1, 2011:

Premium

A Contract Academic Instructor who has taught 9 or more courses in the previous three years shall receive a premium of \$140 for each course taught per term. As of April 30, 2013, in order to be eligible for this premium, a Contract Academic Instructor must hold a Multi-Year Appointment or have been granted a Right of First Refusal.

A Contract Academic Instructor who has taught 18 or more courses in the previous five years shall receive an additional premium of \$140 for each course taught per term. As of April 30th, 2013, in order to be eligible for this premium, a Contract Academic Instructor must be in a receipt of a Multi-Year Appointment or have been granted a Right of First Refusal.

A course for the purposes of these premiums means a three (3) hour per week one-term degree credit course or its equivalent.

Percentage or Dollar Figures

Leaving aside the quantum, the University words its stipend proposal as follows:

Stipend

The minimum stipend for teaching by Contract Academic Instructors shall be

[\$ values per course are then listed]

for a three (3) hour per week one-term degree credit course, or its equivalent.

The AUNBT proposes wording that links the amount to the Instructor grid.

Stipend

The base stipend for teaching by Contract Academic Instructors shall be based on the floor of the full-time instructor grid and shall be:

[percentage values to be applied to the instructor rate are then listed]

for a three (3) hour per week one-term degree credit course, or its equivalent.

The AUNBT proposal implies that there is an appropriate linkage, sustainable over time, between the Instructor's pay level and the amount it is appropriate to pay to Contract Academic Instructors.

Legitimate and important comparisons can be made between the role of Contract Academic Instructors and full-time academic staff at UNB. However, the issue here is whether it is appropriate to express the stipends in \$ values, or to express them as a formula, tied to a rate negotiated under the full-time agreement.

Among Atlantic Canadian Universities, only Mount Allison and implicitly Acadia link the part-time stipend to an academic rank; in Acadia to the Lecturer classification, in Mount Allison to the Assistant Professor's floor.

We do not see the virtue or necessity of implying that a particular position, or level of pay for that position, (whether base or otherwise) is the appropriate starting point for future contracts, or that a particular percentage of that rate is the proper ratio. Such arguments and calculations can easily be made and applied to dollar value figures, as may be appropriate in the future, and as conditions of employment change over time. This is not to deny the utility of the comparisons, only to forego a formulaic link in favour of stand-alone stipend figures. These are separate bargaining units, each with distinct interests, that will each chart their own directions for the future.

Rates of Remuneration

As a Conciliation Board making recommendations (accepted as binding) for the full-time faculty we considered the economic climate, the financial position of the University, changes in the cost of living and so on. As invited to by the parties, we have considered these same issues, evidence and arguments for this award. None of these issues are materially different for the part-time faculty bargaining unit. The University's position is, essentially, that the stipend for part-time contract employees both pre and post certification, has always risen at the same rate as the full-time faculty rates. Its proposal, in these negotiations, is that its position advanced for the full-time faculty should be applied to the contract academic stipend as well and that such an increase is sufficient for the prevailing economic circumstances and is all that should be awarded, given the University's challenged financial circumstances.

For this bargaining unit, the University maintains it has no difficulty with either recruitment or retention, except in the Faculties where it has used market differentials, notably Law, Engineering, and Nursing. In fact it argues that the information it submitted in favour of market differentials for those Faculties support the assertion that it is not having recruitment and retention issues elsewhere. In the absence of any significant contrary indication, we accept that recruitment and retention is not currently a problem.

The AUNBT's position is that the basis on which Contract Academics stipends have been set is inappropriate and too low. Therefore, simply increasing it at the same rate as the full-time salaries perpetuates this inadequacy. This position depends not on general economic factors or the University's current financial circumstances, but on internal and external comparables. It is to these comparables that we will turn shortly.

First, however, it is helpful to reduce the parties' respective positions to numbers. While the University's submissions were largely based on dollar figures, the AUNBT's positions were based on percentages of base rates for Instructors (for the future) and Assistant Professors (for the past and present).

The University proposes beginning with a base of \$4,876 which is the figure it implemented as of May 1, 2009, and proposes to keep, unaltered, for the year commencing May 1, 2010, consistent with its proposal that the full-time award should not offer increases for that year. Its further proposals then reflect its position before the full-time board.

The base rate for the Assistant Professor's salary was, in 2009, \$60,948.00 whereas the Instructor's base rate was \$47,020. The \$4,876 stipend is 8% of the former and 10.37% of the latter.

The University's figures, based on its proposals rather than the full-time decision, would see the stipend increase as follows:

May 1, 2010	\$4,876
May 1, 2011	\$4,925
May 1, 2012	\$5,049
May 1, 2013	\$5,201

The full-time award was higher than the University's proposal. Under that award, the changes to the two relevant base figures are as follows:

		Instructor	Assistant Prof.
July 1, 2009	0%	47,020.00	60,948.00
Jan 1, 2010	0%	47,020.00	60,948.00
July 1, 2010	1.75%	47,843.00	62,015.00
Jan 1, 2011	0.75%	48,202.00	62,480.00
July 1, 2011	1.75%	49,045.00	63,573.00
Jan 1, 2012	1.75%	49,903.00	64,686.00
July 1, 2012	1.75%	50,777.00	65,818.00
Jan 1, 2013	1.75%	51,666.00	66,936.00

The AUNBT's view is that the stipend rate is appropriately set based on 14% of the Instructor's base rate. However, its final position before this Board involved a 3 year term and an initial rate of 11.5% of the Instructor's rate, moving up to 12.5% as of May 1, 2011 and 13.5% as of May 1, 2012, with some recognition of the need to set the stipend at a full 14% soon into the next agreement.

In chart form, the \$ value stipends under each of these situations would be as follows:

	University Proposal	Full-time increases	AUNBT Proposal
May 1, 2010	4876	4876	5172 (11.5%)
May 1, 2011	4925	4998	6025 (12.5%)
May 1, 2012	5049	5175	6737 (13.5%)
May 1, 2013	5201	5355	7233 (14.0%)

While staggered increases every six months were found to be appropriate in the full-time setting, it is less appropriate for part-time stipends paid for courses customarily lasting one term. In the Board's view it is more appropriate to provide for annual increases, to be effective at the start of term, which suggests either May 1st or September 1st. We have decided to continue with the May 1st dates as this is what has been used in the past. There is no compelling reason to make a change.

Internal Comparables - Rates within the University of New Brunswick

AUNBT's position is that the work performed by full-time instructors at UNB provides the most appropriate comparable, since the duties are essentially the same. The duties of instructors

under the full-time agreement are set out in Article 16B of that agreement. Unlike the professorial ranks, the Instructor's focus is teaching as can be seen from 16B.02 which provides, in part:

16B.02 The principal responsibility of instructors is to support the work of the Academic Department through laboratory, clinical, or other teaching assignments. In addition, instructors have the right and responsibility to be involved in academic service and may be involved in research and other related activities to the extent that such involvement does not prevent the instructors from fulfilling their principal responsibility.

The full-time Instructor course load varies, according to the Association, from typically no less than five and no more than seven courses per year. The Association justifies its 14% target on the basis of this comparison. The Association's position is that the work involved in teaching one three weight course is equivalent to one seventh of a full-time instructor's teaching load. Thus, it should, in AUNBT's view, attract about 14% of a full-time Instructor's base salary. Currently, the 8% of the Assistant Professor's floor translates to 10.37% of the Instructor floor. The Association's stepped increases, over three years, are designed to make a gradual transition to what it views as this appropriate 14% rate.

The Association points out that, even then, this does not give true comparability because it would still be tied to the Instructor's floor rate. Contract academics would still not receive the benefits of promotion (to senior instructor or senior teaching associate ranks), fringe benefits or membership in the full-time academic pension plan. Clause 10.02 in the full-time agreement, which allows hiring such part-time employees, neither states that it is, nor was it intended to be, a cost saving measure.

The University is not attracted to the idea of switching the salary link to the Instructor's floor level from the Assistant Professor's level. It notes that the Association, in bargaining the full-time agreement, did not propose a similar shift for overload stipends (i.e. the clause that currently underlies the link between the full-time agreement and part-time stipends).

The University maintains its position that full-time faculty, teaching on overload, should not be paid less than contract academics. While many contract academics are highly qualified, generally full-time academic staff are more so. It does not want contract academics to be more expensive than full-time faculty on overload. This is a new collective agreement. Its terms need to be set based on the situation of this unit and not predetermined or restrained by reference solely to the full-time agreement. Whatever contractual link (if any) article 10.3 of the full-time agreement creates to what contract academic instructors are paid under the full-time agreement is not a matter within our mandate. We do not view the demands upon or the amount paid to a full-time academic working on overload as being inextricably tied to the appropriate amount for a

part-time academic. It is simply one point of reference. The provisions of the agreement give full-time staff the first option for these courses. Thus, in most cases, overload pay has not been sufficient to attract a full-time academic to the task.

It is not possible to quantify in any precise way the degree to which an academic's pay is broken down between the teaching, services and research functions. Indeed it is quite different for each academic, depending on the focus of their activities. The difference in pay levels between instructors and those in the professorial ranks provides some indication of the value attached to the broader range of expected activities.

The Instructor's position, like that of the Contract Academic, has a much reduced emphasis on service and research. It therefore provides one more point of reference. We are not persuaded, however that they are identical roles; the one just a part-time version of the other. Just as the parties here both see fit to reward part-time employees who carry a heavier load over time, with a premium, there is also some premium for working full-time. This is because of the added benefit, although difficult to quantify, provided by the Instructor's full-time presence on campus. It appears to us that the Instructors are somewhat more integrated in the service and research components of University life than most contract academic staff. We recognize they have additional chances for promotion, may earn above the base rate and receive certain other benefits for full-time status. The point however, is that the comparison is not so lock step that one can simply divide the Instructor's rate, based solely on the number of classes taught, and thus justify, as the AUNBT would have us do, an appropriate 14% "per-class" figure.

In opposing anything but one fixed rate, the AUNBT argued that Contract Academics are willing to work for a variety of reasons like reputational gain, access to students and so on. Such motivating factors, while more obvious in the professional faculties, are not confined to them. The University denies any recruitment and retention problems even at existing rates. The decision to organize suggests a desire for improved conditions of employment, but not necessarily focused solely on wages.

One difficulty in assessing an appropriate rate on a per course basis is the diversity of person's attracted to the task, given (for the large majority) their outside employment, experience levels, qualifications, and motivating factors. It is easy to summon sympathy for the academically qualified persons for whom Contract Academic employment is a significant source of income, but the existence of such persons does not deny the fact that others, less motivated by the economic benefits, are still willing and available to teach.

In short, despite negotiating collectively, Contract Academics are a diverse group, and the supply of qualified instructors has not been a problem. The AUNBT's concern that the rates be competitive with full-time employees also reflects the view that this should not simply provide a cheap way of the University getting its courses taught; thereby undercutting the security of full-time positions at the expense of part-time academics. That argument is met in part by the full-time employees having a first option. These considerations remind us that replication is still the touchstone of interest arbitration and that collective bargaining is still to some extent a market driven process.

External Comparables - Contract Academics Elsewhere

Most Universities use Contract Academic Employees, often called Sessional Instructors, in delivering their programs. Some are covered by collective bargaining agreements, others not. The parties take different approaches to which Universities or regions provide relevant comparisons to UNB.

The AUNBT urges us to look primarily within the University of New Brunswick for appropriate comparators in that contract employees do comparable work to full-time academic staff. Nonetheless AUNBT also provided National and New Brunswick data. It provided data on the part-time stipends at most of the group of 14 comparable comprehensive Universities. While we have considered the ranges thus reported over time, and the associated collective agreement provisions, which are quite varied, it is sufficient here to show the 2009/2010 minimum, maximum and average figures. Many of these institutions also have Law and Engineering faculties.

	Minimum	Maximum	Average
Carleton	6145	6145	6145
Concordia	7581	7581	7581
Manitoba	4679	4679	4679
McMaster	6325	6700	6512
Memorial	4396	4396	4396
Queens	6987	9095	8041
Regina	5691	6451	6071
Saskatchewan	5733	5905	5819
Simon Fraser	4381	5841	5111
Windsor	5750	5750	5750

The Association disputes that other Maritime universities provide appropriate comparisons for part-time instructors at UNB. The Maritimes, it argues, covers a lot of geography, with Queen's, in Ontario, closer than Memorial, in Newfoundland. The list of current part-time employees show 52 from Ontario and none from Newfoundland or Cape Breton. Clearly the vast majority come

from New Brunswick, as is to be expected for part-time academic instructors. While special situations, distance education courses, and summer courses may justify using or bringing in people from further afield, almost all those engaged in classroom instruction over a normal term would logically need to be from the local area.

The University takes the position that for part-time academics, national comparisons should be given no weight and that regional comparisons are clearly the most appropriate. The award at neighbouring St. Thomas University, insofar as it involves part-time stipends, used regional comparators, although we note that the parties in that case agreed that it was appropriate to do so.

FAUST v. St. Thomas University (Outhouse, July 4, 2008) at p. 31-34

The part-time settlements within the Atlantic Universities show the following changes.

- Dalhousie part-time unit settled for 2.9%, 1% and 1%
- Acadia's part-time stipend was increased \$50 in each of the first three years of a 4 year contract with a wage reopener for the 4th year
- University de Moncton settled with 4% and a healthcare pay in lieu benefit followed by 3 years at 0%
- St. Mary's part-time unit received 2.9%, 2% and 2%

In absolute dollar amounts, the University maintains that UNB's base stipend, both currently, and projected, ranks fourth, behind Acadia, Mount Allison and St. Thomas, but ahead of Dalhousie as well as a number of the smaller institutions.

A closer look at the Contract Academic's rate at the other Maritime universities show that they all have quite distinctive compensation packages, some with job rates higher than first level or probationary rates, or else have stipend rates based on prior experience.

Dalhousie rates as of September 1, 2008 start at \$4,262.50, but move up to \$4,912.50 after 8 half credit courses and \$5,212.50 after 20 half credit courses. The start rate for the 2011-2012 year is \$4,474.00, but with a \$1,300 premium after teaching 24 credit hours. Next door to UNB, St. Thomas provides three steps, starting at \$5,032 and moving up to \$5,304 and \$5,569.

Mount Allison paid 8.5% of the Assistant Professor's salary scale floor with a 2.5% seniority increment, going to 5% after 30 and 60 credit hours of teaching. For 2009-2010 that base is \$61,414 which would yield \$5,220 as a start rate. .

The rates at Moncton from December 16, 2009 begin at \$4,750 and move up to \$5,250 with a doctorate degree. There are higher scales of \$4,900 and \$5,050 for those with 30 and 60 hours teaching.

Considering all the factors discussed in these reasons and in the full-time recommendation, the Board awards the following:

Stipend

The base stipend for teaching by Contract Academic Instructors shall be:

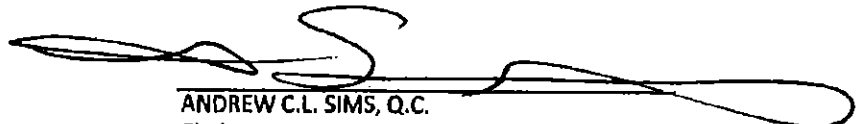
As of May 1, 2010	\$4,900
As of May 1, 2011	\$5,070
As of May 1, 2012	\$5,240

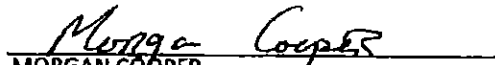
for a three (3) hour per week one term degree credit course, or its equivalent.

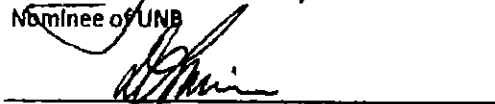
The Board reserves jurisdiction and remains seized of all these issues pending the finalization of a collective agreement.

In closing the Board wishes to thank the parties and their advisors for their thorough and helpful submissions.

DATED at Edmonton, Alberta this 12th day of May, 2011.


ANDREW C.L. SIMS, Q.C.
Chair


MORGAN COOPER
Nominee of UNB


DOUGLAS LORIMER
Nominee of AUNBT