

**Submission of the  
Contract Academic Employee Bargaining Unit (CAE)  
of the Association of University of New Brunswick  
Teachers (AUNBT)  
to the UNB/AUNBT Arbitration Board  
September 21, 2010**

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## Bargaining History

The Contract Academic Employee (CAE) unit was certified by the New Brunswick Labour and Employment Board on February 20, 2008. The AUNBT gave notice to bargain a first contract on March 16, 2008. Bargaining commenced on May 15, 2008.

Between May 15, 2008 and February 4, 2010, the parties met 49 times.

Having failed to reach a collective agreement after nearly two years of bargaining, the AUNBT applied for conciliation on February 5, 2010. (The Application is attached as Appendix 1). The Minister of Post-Secondary Education, Training and Labour appointed a conciliation officer on February 10, 2010.

The parties met four times with the conciliation officer (with additional dates at a joint full-time and part-time table) and were able to settle five of twelve outstanding issues in the course of conciliation. The parties agreed that conciliation had no prospect of settling any of the remaining issues. On February 22, 2010 the employer and the AUNBT tentatively agreed to binding arbitration on the outstanding issues. The parties further tentatively agreed to implement the collective agreement except for those articles to be ruled on by the arbitration board. Both implementation of the tentative agreement and referral of outstanding issues to arbitration were approved by the CAE unit by vote on March 31, 2010 and April 1, 2010, as required by Art. 9 of the AUNBT constitution.

The parties agreed with the conciliator to hold the conciliation report in abeyance until dates for the interest arbitration had been set and agreed to ask the members of the ministerially-appointed conciliation board to sit as the arbitration board

following the hearing of the full-time conciliation between the same parties for the full-time bargaining unit. Representatives of the CAE bargaining team met with the Board on August 11, 2010 and, faced with considerable difficulty finding dates where the employer and the Board would be available for an oral hearing in Fredericton, the employer and the AUNBT agreed to proceed by way of written submissions and a conference call should that prove necessary.

In preparation for the interest arbitration, the parties met on September 1, 2010 and settled the issue of payment for UNB Online courses. The parties met again on September 10, 2010 and settled the issue of definitions. The partial Collective Agreement is attached in Appendix 5.

## **Outstanding Issues**

Of the twelve issues outstanding at the time of the conciliation application, four now remain.

These are:

1. Compensation for Contract Academic Instructors (CAIs);
2. Health Benefits;
3. Maternity and Parental Leave Top-ups; and
4. Professional Development Allowance.

## **Position of the Parties**

### **Compensation**

Compensation for two groups of members of the bargaining unit is agreed between the parties: contract academic librarians and contract academic instructors in Nursing. In both cases, the existing pay practice will continue. Compensation for contract academic instructors outside Nursing is in dispute.

### **Background**

By agreement, these submissions rely on the AUNBT submissions of the full-time unit before the conciliation board as a common factual and legal matrix. As set out in

the legal submissions, the task of an arbitration board is to replicate what the parties would have agreed to in free bargaining (replication). The best gauge of what parties would have agreed to and therefore the best measure of appropriate compensation is based on what comparable employees are paid for comparable work (comparability). For this reason, it is important to identify the nature of the duties performed by the members of the bargaining unit and comparator groups of employees with comparable duties. These submissions set out the duties of CAIs and identify that the best comparator for contract academic instructors are individuals employed by the same employer, performing similar duties, in the same workplaces. For the reasons that follow, AUNBT urges the Board to adopt this internal comparator group, but in the appendices provides information on two other groups to be of assistance to the Board. These groups are the agreed comparator group of 14 under the full-time agreement (limited only by the fact that some of the group of 14 universities' contract academic instructors are not unionized and therefore do not have publicly known compensation levels); and New Brunswick universities. All three comparator groups suggest similar, though unsurprisingly not identical, levels of compensation as appropriate.

### **Nature of Duties Performed**

CAIs perform the same teaching duties at UNB as their full-time instructor colleagues. The teaching load varies, but the nature of duties does not. On a per-course basis, CAIs spend the same number of contact hours, have the same

obligations to prepare classes, teach and evaluate, as well as guide and advise students during office hours and beyond. CAIs also supervise graduate and undergraduate theses. In addition, like their full-time instructor colleagues, CAIs have to maintain currency in their field, largely by participating in the academic life of their discipline. All of this is recognized by the parties in Art. 16A of the CAE agreement as implemented beginning May 1, 2010.

Contract Academic Librarians (CALs) perform the same duties as their full-time colleagues of the same rank.

In addition, the parties agreed that CAEs have the right and obligation to participate in the collegial processes of the University (Art. 5). This component of the work, typically referred to in the academic workplace as “academic service” or simply “service”, is further elaborated in the collective agreement as CAIs participate in the appointment and assessment process for CAIs as members of the Contract Academic Instructor Assessment Committee. Also, CAEs perform academic service as members of Senate, Faculty Councils and departmental meetings. CAEs have also served on other faculty and departmental committees over time and continue to do so. Full-time instructors may take on a greater service load than CAEs, but this is consistent with their full-time status and does not take away from the comparability of duties.

In the triad of academic work (teaching, research and service), CAIs, like their full-time instructor counterparts, are not evaluated based on their research. The employer takes the position that CAEs do not engage in research or if they do, this is unrelated to their duties. At the same time, the employer agreed in Clause 16A.04

that CAIs have the obligation to “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.” This is a demand that, with the greatest respect for the contrary view advanced by the employer in bargaining, simply cannot be achieved without research, even though this research does not have to be disseminated through publication. Again, this is analogous to full-time instructors at UNB.

### **The Ghost of the Pro-Rata Model**

One of the reasons animating the employer’s desire not to recognize the full scope of work performed by CAEs, including research, is the perception that the Association is seeking to introduce a pro-rata model of CAE compensation. This model has been advocated by the Canadian Association of University Teachers (CAUT) and implemented in a few places including Queen's, UBC and the University of Victoria. It contemplates the prorated treatment of part-time professors at professorial rates for all compensation and benefits purposes as well as evaluation and job security. There are many good policy reasons behind the pro-rata model. However, its introduction in a first collective agreement is neither practical nor desirable from a union perspective. A member who has worked as a contingent contract academic for many years without access to research support, or even an office to hang a coat while teaching, will often not meet the criteria typically applied to faculty in assessments for tenure and promotion, particularly as they relate to disseminated

research. Depending on applicable policies, they may also have had limited opportunity to participate in collegial processes. Applying these criteria retrospectively therefore creates considerable hardship. Also, not all individuals who teach university courses wish to make this the focus of their career. For these reasons, the Association has not advocated the adoption of a pro-rata model based on the professorial stream. The Association's submissions on compensation are therefore not based on an endgame plan to introduce into this agreement, against the heart-felt opposition of the employer, an emerging pro-rata model. Instead, they are based on established labour law principles of comparability.

The best comparator is what the same employer pays employees performing comparable duties. However, in most cases, this information is not available to interest arbitration boards as the compensation of those very same employees tends to be in issue. Here, this is not the case. Compensation for full-time instructors is well established, although the latest increases are before the Board sitting as a conciliation board. Potential external comparators are referenced for the Board in Appendix 2. Reliance on these comparators yields similar results, but from the perspective of the Association, maintaining integration of CAEs in the academic pay grid is important, albeit at levels that are adjusted to reflect their actual duties, i.e. not as overload professors but as contract academic instructors.

#### **Allocation of Teaching to CAIs Under the Full-time Collective Agreement**

Article 10 of the full-time collective agreement sets out the work of the full-time bargaining unit. In Clause 10.01, the agreement sets out a number of exceptions to

the general rule that academic work be performed by members of the full-time unit.

These exceptions include one for part-time work in paragraph (d).<sup>1</sup> The relevant part reads:

d) Persons working on a part-time basis (...).

Clause 10.02 enumerates a number of purposes for which the employer may engage contract academics teaching on a part-time basis. The clause reads:

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;

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<sup>1</sup> The paragraph reads in full as follows:

d) Persons working on a part-time basis, provided that notices of the positions have first been circulated to the members of the Academic Department or Faculty and have been posted in the Academic Department or Faculty concerned, with a copy to the Association, and at least five (5) days after the posting have been allowed for Employees to request assignment of these duties. Such requests shall be considered by the University of New Brunswick on the basis of the qualifications and experience required, and the availability of the Employee to perform the duties at the scheduled times. A qualified Employee with appropriate experience shall be assigned such duties upon his/her request provided he/she is available to perform the duties at the scheduled times, and provided such duties will not, as determined by the Dean pursuant to Article 19A, 19B and 19C, prevent fulfillment of the Employee's professional responsibilities as set out in Articles 16A, 16B and 16C. Subject to Articles 19A, 19B and 19C, the University may assign such requested duties as part of individual teaching load. The rate of payment and eligibility for stipends for such duties are as set out in Article 36B.01. Where such part-time appointments must be made urgently for sound academic reasons, exceptions to the advertising requirement may be authorized by the Dean, who shall inform the Association immediately, giving reasons.

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.

As is readily apparent, the purposes relate to filling gaps in the full-time teaching complement on a temporary basis or because of a gap in skill / experience / expertise that does not warrant the appointment of a full-time faculty member as a matter of academic planning. Despite the restriction to these enumerated purposes, contract academic instructors have been engaged to teach an ever-growing number of courses and taught 1154 courses in the 2008/09 academic year face-to-face and an additional 236 courses online through the College of Extended Learning and thus made a large contribution to the overall teaching endeavour at UNB.<sup>2</sup> It is noteworthy that cost savings are not one of the enumerated purposes, nor is it a purpose to which the parties have agreed under paragraph f). The best gauge for appropriate pay for a group of employees is what employees with essentially similar or identical job duties are paid by the same employer, though outside comparators may be considered where this information is not available. Here, the information is

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<sup>2</sup> In its disclosure package provided on September 17, 2010, the employer provided updated statistics for 2009/10, indicating that the number of courses had risen slightly to 1213 face to face and 233 online courses. This rise occurred despite the fact that the employer had indicated an intention in bargaining to cut courses severely due to budgetary restraints. As is so often the case, the employer's behaviour contradicts its bargaining rhetoric.

readily available as a group of full-time employees is fulfilling essentially similar job duties.

### **Pay Practice Before Unionization**

The pay practice of the employer for CALs has been to place CALs on the Librarian pay grid taking into account the criteria in Articles 16C and 19C, and pro-rating pay according to hours worked.

In Nursing, pay for CALs has been based on the top of the instructor grid and pro-rated to account for contact hours and other internally agreed-upon criteria.

By comparison, compensation for CALs (outside of Nursing and some other market differential areas) has been tied to the Assistant Professor floor, with a 6-credit (full-year) course being set at 16%.<sup>3</sup> For the more common 3-credit course, this amounted to a stipend of 8% of the Assistant Professor floor. This pay practice was established to address two concerns by full-time faculty: 1) that there be a uniform pay practice for full-time faculty teaching overload courses<sup>4</sup> and 2) that contract academic instructors not be paid more than full-time faculty teaching overload courses.<sup>5</sup> At the time of the introduction of this pay practice, instructor

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<sup>3</sup> Art. 36B.01 provides: 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.

<sup>4</sup> Paragraph 10.01 d) provides in its relevant part: The rate of payment and eligibility for stipends for such duties are as set out in Article 36B.01.

<sup>5</sup> Clause 10.03 provides: No Employee shall receive a lesser teaching stipend for a particular course than that received by persons employed in accordance with this

appointments at UNB were rare. The vast majority of overload stipends would have been allocated to appointees in professorial ranks. It is for these reasons and not for reasons of comparability of duties that the stipend was tied to the Assistant Professor floor. Since AUNBT did not hold bargaining rights for contract academic instructors prior to 2008, three years after the coming into force of the last full-time collective agreement, these clauses were not negotiated for the benefit of contract academic instructors. Despite this fact, the tie-in with professorial salaries ensured that stipends did not fall further behind, a moderate benefit to contract academic instructors. On the other hand, it also ensured that the very large pay gap between full-time and contract academic instructors was never narrowed.

Stipend adjustments are delayed by four months (for full-time collective agreements with July/January split increases) or ten months (for annual increases) in that the base is set as of May 1, preceding the annual July 1 increase by two months.

The exceptional pay practice in Nursing is not specifically authorized in the full-time collective agreement, but deviations from the standard stipend are contemplated for market differential areas, which are set out in that collective agreement and which, for the 2005-2009 full-time agreement include some or all programs in the faculties of: (Nursing), Law, Business Administration, Computer Science, and Engineering. In these areas, stipends are discretionary. While Nursing has an agreed-upon, rational pay structure, some other market differential areas make no use of their contractual

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Article except in the case of stipends paid to those persons employed in accordance with this Article who are:

- a) retired former Employees; or
  - b) in a market differential area determined in accordance with Article 36A.
- This Article does not preclude the use of fluctuations in individual teaching loads of Employees as provided for in Article 19.

right to pay differential stipends (e.g. Business Administration), while others still allocate stipends on an individual, discretionary basis (e.g. Law).

### **The Appropriate Comparator – Full-time Instructors at UNB**

As discussed, full-time instructors perform analogous duties and their work is assessed in the same areas as contract academic instructors. Students pay the same tuition whether their course is taught by a professor, a full-time instructor or a contract academic instructor. One of the chief purposes agreed to in the full-time collective agreement for the appointment of contract academics is to replace full-time faculty on a temporary basis. Historically, overload stipends for full-time faculty and contract academic instructors were identical.

The teaching load of full-time instructors varies but is typically no less than 5 and no more than 7 courses per year. Throughout bargaining, it was the position of the Association that the proper basis for calculating a stipend should take into account that each course represents 1/7<sup>th</sup> of a full-time instructor teaching load. This would represent approximately 14% (rounded down) of the full-time instructor salary. If we convert the current stipend (8% of the Assistant Professor floor) to the equivalent on the instructor grid, it represents 10.3% of the instructor floor. Our initial pay proposal had suggested adjustments to 12%, 13% and 14% of the instructor floor over a three-year contract respectively. At that point, pay equality with full-time instructors in their first year at UNB would have been reached. This proposal fell far short of true pay equality, of course, because it does not

contemplate progression through the ranks, promotion to the senior instructor and senior teaching associate ranks, the comprehensive benefits package available to full-time instructors or membership in the full-time academic pension plan.

On March 12, 2010, in an effort to reach a negotiated agreement and in response to what turned out to be false signals from the employer team, we made a very significant concession, allowing for much more time to reach even this watered-down version of pay equality, by proposing 11%, 11.5% and 12%, while indicating that we would seek to reach 14% early in the next agreement. We also responded to the employer's proposal which, on March 11, 2010, had for the first time introduced increments for experience, with a proposal that would have resulted in 11.25%, 11.75% and 12.25% for instructors with 30 credit hours of experience and 11.5%, 12% and 12.5% for instructors with 60 credit hours experience. At that time, the term of the agreement was contemplated to be three years, but no decision had been reached regarding back pay. The current reality is much different. As the Board noted in *Northern Alberta Institute of Technology and A.U.P.E. (Re)* 97 C.L.A.S. 129 2009 CLB 1756:

Offers are sometimes made to avoid arbitration; if rejected, any "sweetening" or "discounting" of positions put forward to achieve a settlement is spent once that offer is rejected and arbitration proves inevitable.

After over two years of bargaining, the membership has had to accept binding arbitration as the most reasonable way to move to a complete collective agreement. The term of the full-time collective agreement continues to be unknown, but AUNBT made submissions to limit the term of an imposed agreement to three years commencing July 1, 2009. Back pay reaching back to the beginning of bargaining

two years ago did not seem practical because of fluctuations in the bargaining unit. Instead, the membership was prepared to take two further years of not narrowing the pay gap in exchange for significant increases commencing May 1, 2010. These concessions have profited the employer and created room for future increases.

### **Why the Employer's Comparator Is Not Appropriate**

The employer submits, for the first time, that Atlantic universities are the appropriate comparator. Throughout the first two years of bargaining, its position was either that the salary should continue to be tied to the Assistant Professor floor or that the employer was open to considering a move to a tie with the Instructor floor. This new position is ostensibly based on the idea that the market for CAEs is local. However, this is clearly not the true reason. Atlantic universities cover a geographical range that can hardly be described as local. The drive/ferry ride from Fredericton to St. John's, Nfld. , home of Memorial University stretches over 1300 km and is therefore about 200 km longer than the drive to Kingston, Ontario, home of Queen's University. For 2005/06,<sup>6</sup> none of the instructors identified in the lengthy document provided by the employer on geographical origin of instructors hail from Cape Breton or Newfoundland. By contrast, 52 stipend contracts list Ontario postal codes, 26 list Nova Scotia (with the preponderance of CAI's coming from Halifax and area), 12 list Alberta, 10 PEI, 3 Quebec, 2 BC and even 17 abroad including the US and Europe. The vast majority of CAIs reside in New Brunswick. This is not surprising given that the vast majority of courses are taught face-to-face, though it

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<sup>6</sup> Due to time constraints, we only counted the first year, but a cursory review of the remainder suggests that the year is typical.

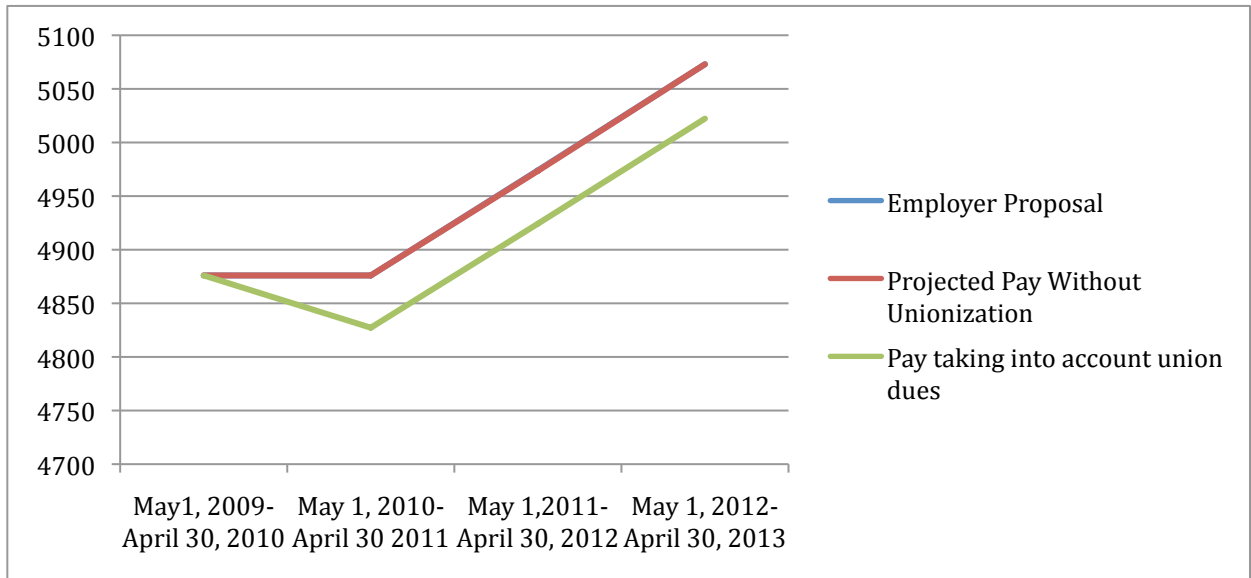
should be noted that the statistics do not tell you what percentage of these individuals are, to use a maritime expression, CFAs (come from aways). It might be argued that Atlantic universities are comparable institutions; however, the parties have agreed on comparable institutions in the full-time agreement and there is no reason to suggest that the nature of the institution is different when considered as employer of full-time faculty than as employer of contract academics. If a local comparator were chosen, New Brunswick universities might be considered. However, these universities are substantially different in character, as recognized by the fact that not a single one of them is part of the agreed comparator group. In any event, the mode of calculating averages makes the employer's summary of pay rates at its proposed comparator universities useless. By calculating averages based on year of contract or last year of contract, the employer data combines and averages different academic years. It also includes data for full-time overload stipends. These may or may not reflect what is applicable to contract academics. The employer's nominee will be well familiar with at least one example where the overload rate is lower than the contract academic rate (Memorial). The employer report of data also contains errors. For example, the report for Mount Allison is incorrect by suggesting a tie to the Lecturer rank; the tie is to the "scale floor" which is defined in the agreement as the Assistant Professor floor. If the board were to accept the comparator suggested by the employer, it should treat the summary tables with considerable caution.<sup>7</sup>

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<sup>7</sup> Similarly, the employer's submission on the settlement with graduate students, achieved last week and not yet ratified, has to be read with caution. While the percentages are accurate, the first year of the contract predates certification and the

## Effect of Implementing Employer Compensation Proposal

The following chart shows the effect of implementing the employer's proposal.



While the chart shows three different lines, only two are visible because the employer's proposal exactly replicates what would have happened in the absence of unionization. The sole saving grace of the proposal is that it demonstrates the intention of the employer to maintain the very tie to full-time grids it now strenuously opposes. Taking into account union dues, implementing the employer's proposal would mean that CAEs are worse off than before they decided to unionize. Given that poor pay was a significant factor in the decision to unionize for many CAEs, this result is simply unacceptable.

## Final Position On Compensation

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second year saw an unreported adjustment of the base before applying the zero increase. This is fanciful accounting at best.

For all of these reasons, our final proposal for a base stipend to the Board is as follows:

11.5% of the instructor floor for May 1, 2010 to April 30, 2011; and

12.5% of the instructor floor for May 1, 2011 to April 30, 2012.

If the Board determines that the full-time collective agreement should be a four-year agreement, the Association submits, in the alternative, that the base stipend for a third year of the CAE agreement should be:

13.5% of the instructor floor for May 1, 2012 to April 30, 2013.

We maintain our submission on increments:

After teaching 30 credit hours, the instructor should receive an additional quarter percentage point, i.e.:

11.75% of the instructor floor for May 1, 2010 to April 30, 2011; and

12.75% of the instructor floor for May 1, 2011 to April 30, 2012.

(In the alternative of a three-year agreement: 13.75% of the instructor floor for May 1, 2012 to April 30, 2013).

After teaching 60 credit hours, the instructor should receive a further quarter percentage point, i.e.

12% of the instructor floor for May 1, 2010 to April 30, 2011;

13% of the instructor floor for May 1, 2011 to April 30, 2012.

(In the alternative of a three-year agreement: 14% of the instructor floor for May 1, 2012 to April 30, 2013).

Based on the Association and Employer proposals in full-time conciliation and expressed in \$\$ amounts, the resulting range would be as follows:

<b>Years/Stipends</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b> (alternative submission)
<b>Base Stipend</b>	\$ 5407-5623	\$ 5907-6357	\$ 6491-7277
<b>30+ credit hours</b>	\$ 5524-5745	\$ 6025-6484	\$ 6611-7412
<b>60+ credit hours</b>	\$ 5642-5868	\$ 6143-6611	\$6731-7547

These ranges are based on the following salary levels at the instructor floor as of May 1, i.e. taking into account January 1, but not July 1 increases in any given year, if any.

	<b>May 1, 2010</b>	<b>May 1, 2011</b>	<b>May 1, 2012</b>
<b>Association</b>	\$48898	\$50854	\$53905
<b>Employer</b>	\$47017	\$47252	\$48079

The fiscal impact of these stipend increases is wholly within the control of the Employer. Contract Academic Instructors, even those with rights of first refusal, have no rights to ongoing employment if the course(s) they have been teaching are not being offered. In bargaining, the Employer indicated that in 2008/09, there were approximately 1400 courses taught on stipend, though it was not disclosed how many of these were taught by full-time faculty on overload. Further, it was indicated that the Employer was intending to make cuts to the number of courses, cuts that would impact CAIs primarily. For this reason, it is not possible for the Association to provide an accurate costing of the proposal. Any calculation based on 2008/09 numbers is, if the Employer is serious about cutting courses, likely to exaggerate the

overall fiscal impact. We would note that the employer's costing is based on assumptions wholly within its control.

In sum, Contract Academic Instructors should be paid what other employees at UNB are paid for comparable work. Currently, the stipend results in a pay gap of approximately 37% as against the instructor floor, a number that still greatly understates the size of the gap because it fails to take into account progression through the ranks, promotion to higher ranks and benefits. The Association's proposals are modest steps towards achieving pay equality in an incremental and fiscally responsible manner.

#### **Discretionary Market Differentials Are Inappropriate For CAIs**

The last employer proposal described all stipends as minima, with the intent that the employer could pay off-grid for any course where it perceived the market warranting such pay. This proposal is unacceptable for a number of reasons:

1. Discretionary market differentials take funds away from what the employer describes as a fixed and limited budget amount for stipends. A select few CAIs make \$25,000 per three-credit course, while the vast majority is currently stuck with stipends less than one-fifth of that amount.

Redistributed, each of these off-grid payments could contribute to more appropriate stipends for everyone.

2. Discretionary market differentials are fundamentally unfair because they operate to favour those CAIs from professional disciplines who typically teach only a single course over those members who make a living from

teaching. These professionals are the least likely to be reliant on the income from teaching and the most likely to have well-paid primary employment. Professionals typically receive other benefits from teaching, such as reputational gain, recognition by professional bodies for giving back to the community, and continuing education credits. At the same time, they are less likely to have completed the terminal degree in their discipline than other CAIs. Of course, CAIs in professional disciplines should be paid fairly, but not at the expense of those who rely on their teaching income.

3. Discretionary market differentials invite discriminatory practices and abuse. We are aware of at least one situation where a male, end-career professional in a discipline was paid a very large market differential while a comparable female, end-career professional was not.

4. Other institutions function well without paying discretionary market differentials. Anecdotally, we are aware of the following: there is no market differential paid at the Faculty of Law at the University of Ottawa, a school with one of the largest contingents of contract academic instructors in that discipline in the country. In fact, the law stipend is less than the stipend provided in the collective agreement, since they are excluded from the bargaining unit as a matter of Ontario law. Further, contract academic instructors at the Dalhousie law school are routinely invited to donate their stipends back to the law school, further demonstrating that higher stipends for this group are not necessary. Many universities with significant

professional programs have no special compensation schemes apparent in their collective agreements for these groups.

5. There is no evidence to suggest that the appointment and retention of professional CAIs require market differentials. The employer's disclosure is consistent with this submission. All indicators that market differentials were necessary stem from over 20 years ago and relate solely to law. The summary table provided for Engineering does not disclose need. A cursory review of contract academic instructors in law for 2010/11 reveals the following: four instructors are retired full-time faculty members (three from UNB), one is a full-time research librarian at the Faculty of Law, four are full-time public servants, three are in private practice in Toronto and another four are in private practice in New Brunswick. None of these individuals is likely to be in a position where a few thousand dollars of additional income would have anything other than tax implications. In our membership consultations, professionals routinely identify non-financial reasons for their connections with UNB such as reputational gains, keeping themselves up to date, being in a good position to recruit students and a desire to give back to the community.

From the time the Association provided its first pay proposal in April of 2009 (a proposal not responded to until February 4, 2010), the Association has indicated to

the employer a willingness to red-circle<sup>8</sup> the pay practice in Nursing. This is because the practice was arrived at collegially through consultation, because it is not discretionary and because its underlying principle, tying the stipend to a place on the instructor grid, is consistent with the position taken by the Association for all CAIs.

### **Cancellation Fees**

Much of the work of teaching a course has to occur before the beginning of term. For CAIs, this means that much of the work is often done before there is a contract and invariably before there is any remuneration. Even where the contract is signed (as it now will be in most cases under the collective agreement timelines), the employer reserves the right to cancel a course for low enrolment for which the CAI has prepared. Intercession (Fredericton), spring (Saint John) and summer terms are particularly vulnerable to cancellation as enrolment is more contingent and therefore less predictable outside of the regular academic year. But because the courses are compressed into a single month, there is an even greater onus on CAIs to prepare the course fully before the beginning of the term. There simply is no time to prepare classes as the term goes along. The employer wants to impose an additional requirement on CAIs to “provide a draft course outline to the Dean, one week in advance of the course”. This is a greater demand than is imposed on full-time faculty in either the professorial or the instructor stream who will now have to

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<sup>8</sup> It may be that modified green-circling would be a better descriptor, in that the agreement does not foresee freezing stipends in nursing; rather, it aims to continue the existing pay practice.

provide course outlines within two weeks of the beginning of term. The language in the 2005-2009 full-time agreement contemplated outlines being provided after the end of term. This demand is subject to acceptable course cancellation fees. As part of the March 12, 2010 compensation proposal, the Association indicated a willingness to settle for cancellation fees of \$200 for courses cancelled after offer and acceptance (regardless of whether a contract had been signed) and \$500 if the cancellation occurs within two weeks of the beginning of term. For greater clarity, a cancellation after the beginning of classes requires payment of the stipend in full. Again, the Association's proposal is modest. For comparison, a review of contract academic and combined full-time/CAE agreements across Canada reveals the following:

	Cancellation after offer/acceptance or after signed contract	Temporal proximity to term*
Acadia	n/a	200
Alberta	100	200
Bishops	637	637
Brandon	n/a	765
Calgary	n/a	500
Carleton	n/a	400
Laurentian	n/a	250
Manitoba	n/a	275
Memorial	200	200
Mount Allison	522	1305
Nova Scotia Arts & Design	450	900
PEI	n/a	500
Queen's	n/a	1000
St. Thomas	1258	1258
St. Thomas More	n/a	1034
Victoria	n/a	250
Western	400	1000

W. Laurier	n/a	1000
Windsor	n/a	900
Winnipeg	125	250
<b>Average</b>	<b>\$461.50</b>	<b>\$641.2</b>

\*The exact time frames vary.

In each case, the table represents either the calculated value for 2010/11 or earlier (where the agreement sets out a percentage of stipend) or the absolute value set out in the respective agreement. Where a range was identified, the table shows the lowest amount. Most agreements do not exclude certain terms from the cancellation fee. An exception to this is St. Thomas, which limits cancellation fees to the Teaching Year, albeit with a notably improved benefit level for the regular academic year.

### Health Benefits

CAEs currently have no health benefits. They are not members of the employer’s group plan, nor are they eligible. For some CAEs, particularly those for whom teaching is their primary employment, this constitutes considerable hardship. At the same time, the Association recognized that there are a number of obstacles in the way of group plan membership, having to do with third-party eligibility criteria and cost. For this reason, the Association proposed the establishment of a fund from contributions of \$60/course or library assignment to be administered by a third-party provider as health spending accounts for those CAEs who are not otherwise members of a group plan, either arising from their primary employment or as spouses or dependents. The Association was prepared to administer the eligibility list for the fund. This proposal was rejected by the employer as was any discussion whether there were more acceptable mechanisms for securing health benefits to

CAEs. The latter position appeared to change in March of 2010. In another example of false signals, the employer indicated a willingness to consider benefits for those CAEs with significant institutional connection. However, an Association proposal based on this signal was rejected outright, as was any further discussion of how the supposed willingness of the employer might be translated into an actual health benefit. No rationale was provided for the rejection of the health benefit other than that the answer was “no” and that “this was not the time to extend the benefit”. No other timeframe for the benefit was proposed.

It should be noted that a very great number of other institutions provide health coverage for CAEs, frequently at a much higher funding level than proposed by the Association here. Others offer payments in lieu. (Appendix 3) These include:

<b>Health Benefits</b>	<b>Payment in lieu</b>
Alberta (some CAEs)	Alberta (some CAEs)
Athabasca	Calgary
Bishops	Lakehead
Dalhousie	Laurentian
Guelph	Queen’s (some CAEs)
Manitoba	Ryerson
Northern BC	UPEI
Queen’s (some CAEs)	Western
Regina	Wilfred Laurier
Saskatchewan	

St. Thomas	
St. Thomas More	
Toronto	
Trent	
UBC	
Victoria	
Windsor	
York	

For all of these reasons, the Association reiterates its original proposal of a health benefit at the rate of \$60/course or library assignment to be contributed annually by the employer. CAEs who are not otherwise members of a group plan will be eligible to receive a health spending account. Eligibility will be administered by the Association; the health spending account will be administered by a third-party provider such as Blue Cross.

### **Maternity and Parental Leave Top-ups**

All employees at UNB, whether full-time, part-time or on reduced workload, are eligible for maternity and parental leave top-ups as long as they are continuing employees and have been employed for a minimum period of time in accordance with provincial employment standards and federal employment insurance

legislation.<sup>9</sup> The sole known exception to this are CAEs with multi-year appointments. Despite this, and without justification, the employer rejects maternity and parental leave top-ups for this group. The cost of the benefit is both very small and wholly within the control of the employer since multi-year appointments are discretionary. Multi-year appointments are issued on a per-course basis. The maximum cost of the benefit would be 40% of a stipend per course as EI covers 55% and the requested top-up is an S.U.B. to bring the employee to 95% of earnings. Assuming that of the 1400 courses taught by CAEs in 2008/09, 10% would be converted to multi-year appointments and assuming further that in any given year, 4-5 children would be born to members of the bargaining unit (there are about 9.5 live births per 1000 New Brunswickers each year), the cost of the benefit is unlikely to exceed the cost of a single stipend. (See the provisions for APT and academic employees in Appendix 4). Providing the benefit might enable a few employees to stay home with their infants for their maternity and parental leave - a benefit greatly appreciated by new parents which costs the employer a trivial sum.

### **Professional Development Allowance**

The employer and the Association agree that CAEs should have access to a professional development allowance. The parties further agree on the eligibility

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<sup>9</sup> In its disclosure, the employer suggests that it is withholding top-ups from part-time APT employees. This may be the case, as these employees are not unionized and therefore exposed to arbitrary employer treatment. However, the employer's own Policy Statement on APT employees (attached in Appendix 4) is inconsistent with this claim.

criteria (holders of rights of first refusal and multi-year appointees), application process and maximum eligible amount (\$500).

The sole outstanding issue is the funding of the benefit. Both parties agree that more funds will be required as the agreement matures as more CAEs will meet the eligibility criteria. It is estimated that over one third of CAEs (approximately 200) will be eligible for the benefit in the first year of the contract, either because they were granted a right of first refusal on an interim basis or because they will have successfully completed an assessment. By the second year, the number of eligible CAEs will likely be in the order of 1/2 to 2/3 of the bargaining unit or about 225-300 CAEs. In subsequent years, this might rise to 350 CAEs.<sup>10</sup> The Association submits that most, if not all, CAEs should be able to receive the benefit annually. \$500 is too small a sum to fund attendance at a national conference, but would likely cover attendance at a regional conference, webinar or workshop, all of which contribute to staying abreast in one's field as required by Art. 16 A&B. For this reason, the Association submits that the following funding levels are appropriate:

Year 1: \$40,000 (covering 200 individuals)

Year 2: \$50,000 (covering 250 individuals)

Year 3: (alternative submission): \$60,000 (covering 300 individuals).

By comparison, the employer is offering \$25,000, \$27,500 and \$30,000 which would meet only approximately half of the expected need in each year. This would mean

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<sup>10</sup> Based on the employer's updated statistical information provided as part of its disclosure, these estimates may understate the rate of eligibility. However, the data format makes it uncertain whether "non-serial instructors" include those who taught in 2009/10 for the first time but are expected or known to be returning in 2010/11.

that CAEs who become eligible at the end of the first year of the contract are unlikely to actually receive the benefit before the contract expired. Given the professional obligation of CAEs to stay current in their field and the limited availability of other funding for most CAEs, the professional development allowance is an important means for ensuring that CAEs are able to meet their contractual obligations. We are not offering comparisons with other collective agreements on this point because the size of the fund has to be related to the size of the bargaining unit and no public information is available on this issue. For the same reasons, the employer's submission on comparators should be rejected.

### **The Arbitration Board Does Not Have Jurisdiction Over the Issue of APT Employees**

The employer advises that it will raise the issue of APT employees with the arbitration board. However, the board does not have jurisdiction to deal with this issue for the following reasons:

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.

## Table of Appendices

Tab1:	Appendix 1	Application for Conciliation
Tab 2:	Appendix 2	External Comparators (Summary tables and excerpts from collective agreements)
Tab 3:	Appendix 3	Health Benefit Provisions in Other Contract Academic Staff Agreements
Tab 4	Appendix 4	APT and Full-time Maternity and Parental Leave Top-Up Provisions
Tab 5	Appendix 5	Partial Collective Agreement