IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN

THE SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY (SIAST)

AND

THE SIAST PROFESSIONAL SERVICES BARGAINING UNIT (SGEU-PSBU)

REPRESENTED BY

THE SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION

A DISPUTE REGARDING UNRESOLVED ISSUES

FROM THE MEDIATION REPORT OF SEPTEMBER 16, 2011

ARBITRATOR:	Tom Hodges
FOR THE EMPLOYER:	Gary Earles, Assistant Vice President, Human Resources Don Soanes, Director, Employee Relations Dan MacKay, Dean of Business Jennifer Burgess, Senior Compensation and Rewards Specialist Sean Engemoen, Director, Financial Planning Arnold Boldt, Associate Vice President, Academic and Research Greg Deren, Personnel Policy Secretariat Terence Carswell, Director, Human Resources Advisory Heather West, Director, Library Services Garth McCormick, Assistant Vice President, Information Technology
FOR THE UNION:	Tracey Kurtenbach, Chair Shawna North, Vice Chair Jason Rattray, Agreement Administration Advisor Twila Johnson, Campus Chair, Woodland Campus Ken Weisgarber, Campus Chair, Wascana Campus Gwen Bourque, Campus Chair, Kelsey Campus Garry Ramage, Financial Advisor Jim Steele, Chair, Academic Bargaining Unit (ABU) Kathy Mahussier, Agreement Administration Advisor, ABU
HEARING:	February 29, 2012
AWARD:	March 28th, 2012

JURISDICTION

The parties agree that I have jurisdiction to hear argument and render a decision as arbitrator, regarding all matters currently in dispute as a result of my Mediation Report dated September 16, 2011. As well, during the most recent hearings, the parties confirmed my jurisdiction to resolve all outstanding issues, pursuant to Item 4 of the conclusion of my recommendations from September 16, 2011. Specifically:

> I will remain seized with the authority to resolve any dispute relating to the implementation of the recommendations, or where mutual agreement necessary for implementation is not achieved.

BACKGROUND

The collective agreement between the parties expired on June 30, 2009. Over the next 12 months, the employer and the union met in bargaining for 23 days. The PSBU at that point refused to further meet until SIAST tabled a monetary position, and on August 27, 2010, the employer tabled an initial offer of 1% for 2009, 1.5% for 2010, and 1.5% for 2011. Negotiations continued into the fall, culminating with the assistance of a conciliator on November 4, 5, 8 and 9, 2010. On that last day, SIAST rejected the union's final demands, and the PSBU advised that conciliation talks were concluded. The union issued strike notice the following day. Two days later, SIAST announced that contingency plans were in place to address potential job action, and provided notice to the PSBU of its intent to potentially lock out the employees. The employer did agree, however, on November 18th to the union's suggestion of voluntary mediation, and I was appointed in December of 2010 to address the areas in dispute.

The parties had by this time engaged in 42 days of direct negotiations, and I facilitated an additional 10 days of mediation over the course of 2011. Efforts did not bring immediate success, and strike action commenced on September 6, 2011. My recommendations for settlement were issued and signed into agreement by the parties on September 16th, and the PSBU membership returned to work. The parties

remained at odds, however, with respect to how to move forward with the provisions of the report. For example, the union wanted to develop the full breadth of the Flex Benefit Plan and the 1% payroll allocation prior to taking the recommendations to the membership for ratification. A Memorandum of Agreement was nevertheless concluded by the parties, on December 21, 2011, despite various items remaining in dispute. The settlement did indeed ratify on January 13, 2012, but under a cloak of continuing frustration and mistrust.

This ratified agreement is not yet implemented, and its expiry date is barely three months away. In fact, the parties have not fully resolved a single matter that remained in dispute following the issuance of my recommendations, some six months ago. I did not submit my Mediation Report and its recommendations with a view to having to issue an award such as this, at this late date, and my personal disappointment expressed last September, regrettably, continues to linger.

THE INTEREST ARBITRATION PROCESS

The parties now find themselves, after literally years of bargaining, conciliation and mediation, within the confines of the interest arbitration process. This means of dispute resolution flows in the wake of recommendations for settlement proposed to the parties in September of 2011. The recommendations were presented and reviewed with the Professional Services Bargaining Unit and the employer, prior to the parties agreeing to their acceptance. Also appropriate to note is that the recommendations for settlement in this dispute followed closely on the heels of a contract dispute between the Saskatchewan Teachers' Federation and the Saskatchewan School Boards Association. Finally, in light of the protracted delay, the parties have asked the arbitrator to expedite the final decision making process in order to facilitate the impending round of collective bargaining. It is this unwieldy and complex backdrop that will be taken into consideration, in addition to the guiding principles for interest arbitration.

In the matter of a dispute between NAV CANADA and the CANADIAN AUTO WORKERS, LOCAL 1016 [February 2010], Arbitrator Hornung as Chair captured the spirit and intent of the process as follows:

> Prior to embarking on our conclusions with respect to the outstanding issues, a brief description of the basic principles on which interest arbitrations are based, is warranted here. It is well established arbitral jurisprudence that the role of an interest arbitration board is to attempt to replicate as far as possible – through an analysis of objective data - what the parties might have arrived at had they engaged in wholly free collective bargaining. In embarking on that task the process employed is largely comparative. In that, it is reasonable to assume that parties, left to their own devices, would replicate a collective agreement with terms and conditions of employment comparable to those prevailing in the relevant labour market. As discussed in *CUPE Local 1975-01 v. University of Regina, December 22, 2008 (Sims)*:
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> > *"... The basic principles (albeit in a statutory regime) were reviewed in: Durham Regional Police Assn. v. Durham Regional Police Services Board (Collective Agreement Grievance), [2007] O.L.A.A. No. 52 (Knopf):*
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> > > *The ideal of interest arbitration is to come as close as possible to what the parties would have achieved by way of free collective bargaining ... While wages are "discussed" at the bargaining table in terms of cost of living trends, productivity, justifications for the catch-up and overall compensation, such arguments are ultimately subject to the inherent bargaining power of parties to impose their wills on each other. It is this aspect of free collective bargaining that interest arbitration cannot reproduce. But, because there is no exact litmus test for bargaining power, the boards of arbitration try to set out in detail a rational justification for their economic awards. Beacon Hill Lodges and SEIU, George Adams at pp. 4-5 (June 25, 1982)*
> >
> > > *The replication principle requires the [arbitration] panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to adjudicatively replicate a likely "bargained" result, the panel must have regard to the market forces and economic realities that would have ultimately driven the*

parties to a bargain. University of Toronto (Governing Council) and University of Toronto Faculty Association (2006) 148L.A.C. (4th) 193 (Winker R.S.J.)

> *Comparability is not just an item by item look at who else has what benefit. An arbitrator cannot treat bargaining demands like a holiday buffet, where everyone can pick whatever they want from the vast range of possible benefits. Rather, comparability has to recognize that employees and unions make choices in their bargaining, and ultimately, comparability must recognize the value of the overall package, and the limiting effect the overall cost brings to particular bargaining demands.*

Generally, when the principles relating to interest arbitration are reviewed, they reflect - in one way or another - the comments made by Arbitrator Paul Weiler back in 1981:

> *I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, cumulatively, these changes can mount up substantially. Thus sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements that year are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year. In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacations, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the scope and number of these contract revisions, and the Union must establish its own priorities among these various fringe items.*
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> *These facts of free collective bargaining must be kept in mind if arbitration is, indeed, to try to replicate the results in which would be achieved in the former setting. The reasons is that the arbitration model does not inherently require the parties to make these tough choices in their negotiating positions. Inside the bargaining unit, for example, one group of employees may want higher pensions, another segment seeks longer vacations, a third is interested in a new dental plan, while others simply want as much higher take-home pay as possible (depending on their respective positions, ages, family situations and so on). In the arbitration context, the Union does not have to worry that if it asks for too many things at once, the result will be a painful work stoppage, indeed, the Union may be tempted – as also the employer which has its own diverse constituencies which it does*

> *not want to alienate – to carry all of these initial demands forward to the arbitration hearing, in the theory that it has nothing to lose by asking. And, indeed, a party may even hope that the more improvements it does ask for, the more will be given. Certainly it is essential to the integrity of arbitration that these latter assumptions not be reinforced.*
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> *Re: Hospital Labour Disputes Arbitration Act, 65 Participating Hospitals and CUPE, unrepresented award, June 1, 1981 (P. Weiler)*

The foregoing forms the fundamental reasoning applied by the arbitrator when considering the submissions and arguments of the parties in this dispute. However, as previously noted the issues at hand have not simply been referred to a arbitrator for resolution. In this case, the arbitrator, while working with the parties as a mediator, made recommendations for settlement of the outstanding matters, in a effort to avert the renewed threat of a work stoppage, and end a extremely lengthy dispute. The arbitrator has fully considered the comprehensive submissions and arguments of the parties on the various outstanding issues. In order to facilitate the request for an expedited award, they will not be restated herein except where necessary to provide the required clarity. With that in mind, the arbitrator now turns to the specific matters at hand.

RETROACTIVITY OF WAGE INCREASES

While serving as mediator, my recommendation to the parties on this particular issue from September 16, 2011 read as follows:

> General economic increases across the public sector have been consistent at 1.5%, 2.0% and 2.0% over three year agreements. Where market adjustments have been made they have been established on a fact based review which I will address later in this report. Most agreements in the public sector have provided for full retroactivity. With these key factors in mind and recognizing the need for appropriate market adjustment, which I will address later in this report, I recommend the following increases:
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> 1.5% effective July 1, 2009
>
> 2.0% effective July 1, 2010

2.0% effective July 1, 2011

All increases are to be fully retroactive.

The union has firmly contended that all employees employed during the period of retroactivity are entitled to retroactive payment. Generally speaking, this involves current employees, end-dated contractors, retirees, and those employees who have either resigned, been terminated, laid off or who have passed away. The PSBU did allow, however, that it would be reasonable to place the responsibility on these individuals (or their survivors) to write to SIAST requesting the payment. The employer maintained that retroactivity, in previous contracts, did not apply to former employees who had either resigned or been terminated prior to the completion of collective bargaining. SIAST proposed the following language for the arbitrator's consideration:

> Employees on staff effective February 1, 2012 and those employees who have left the employment of SIAST due to completion of an end-dated assignment, mandatory retirement or accepting the Succession Planning Incentive Plan are eligible for retroactive pay to July 1, 2009. Such former employees must apply in writing to SIAST payroll for the retroactive pay indicating their current address.

Similar language was included in the August 15, 2007 Memorandum of Agreement between the parties, covering the contract years 2006-2009.

It is the considered opinion of this arbitrator that the parties, if left to their own devices, would have eventually come to an understanding similar to what they agreed to in the past, despite the extraordinary length of the current open period.

The language proposed by the employer is awarded, with one exception: the word "mandatory" must be removed from the third line.

PENSION CONTRIBUTION INCREASES

As mediator, my recommendation on this matter from September 16, 2011 was as follows:

> SIAST has opposed any increase to pension contributions but is willing to address the PSBU proposal for a Flex Spending Account in exchange for the PSBU dropping this proposal. The PSBU argues that public sector settlements have all contained pension adjustments. I recommend that the 0.25% pension contribution increase, matched by employees, be included in the terms of settlement effective July 1, 2011.

The union argued that the 0.25% increase in employee and employer contribution should have been applied in concert with the recent implementation of the new wage rates. The employer countered that it was not reasonably practicable to effect the change in two steps - one for February 25, 2012 and forward, and then another for the period from July 1, 2009 to February 25, 2012. The PSBU verbally agreed with the employer on January 18, 2012 that the increased employee contributions back to July 1, 2011 would be deducted from retroactive pay owing.

SIAST has reported that employer contribution retroactive to July 1, 2011 will be calculated and submitted as soon as reasonable practicable following the signing of the collective agreement, and that employee contributions back to July 1, 2011 will be calculated, deducted from employees' retroactive pay, and submitted as soon as reasonably practicable following the signing of the collective agreement.

The employer is directed to implement the contribution increases effective April 5, 2012 for full- time employees and effective April 20, 2012, for part-time employees.

PARKING

On September 16, 2011, while mediator in this dispute, I recommended that this issue be resolved as follows:

> The Union's position is that parking must return to the process that existed prior to January 1, 2011. All parking fees that have been charged to employees up to the date of ratification of this settlement are to be refunded. Management is willing to provide a one-time lump sum payment of $420 per employee (prorated for other than full-time employees) in return for the Union's agreement to withdraw all policy grievances and Unfair Labour Practice complaints regarding the parking issue. I recommend that the SIAST proposal become part of the settlement.

The union argued that all employees employed between January 1, 2011 and December 31, 2011 should receive payment. Employees who have left SIAST for any reason should be provided a prorated amount. The employer maintained that only those on staff as of December 31, 2011 were entitled to receive the one-time lump sum payment of $420 (prorated for other than full time employees).

Having reviewed the positions of the parties, the arbitrator views this issue as similar in nature to that of retroactive wage increases to former employees. Once again, in all likelihood, the parties would have eventually come to an understanding similar to what they agreed to in the past.

The outstanding issue relating to pro-ration of the parking payment is resolved on the basis that:

> **Employees on staff effective December 31, 2011 and those employees who have left the employment of SIAST due to completion of an end-dated assignment, retirement or accepting the Succession Planning Incentive Plan between January 1, 2011 and December 31, 2011 are eligible for a pro- rated portion of the $420.00 payment. Such former employees must apply in writing to SIAST payroll for the pro-rated payment indicating their current address.**

UNION RELEASE TIME

My recommendation as mediator on this issue from September 16, 2012 read as follows:

> I recommend that the PSBU be provided with release time proportionately equal to that of the ABU.

The Union argued that the mediator's recommendation must be adopted, and made retroactive to the signing of the Memorandum of Agreement on December 21, 2011. The PSBU position was that proportionately equal release time to the Academic Bargaining Unit (ABU) would consist of .5 FTE release as well as the ability to take this time as required "to allow the elected employee representative an opportunity to resolve SIAST employee relations problems..."

SIAST elected to interpret "proportionately equal" as an exact numerical match of the time an ABU representative is allowed for release time in a given school year. That approach, however, did not take into account the difference in the average number of days worked per year between the two bargaining units (199 for the ABU and 260 for the PSBU). SIAST submits that for PSBU union release time to be proportionately equal to ABU union release time, PSBU campus chairperson and bargaining unit chairperson should each receive 3 scheduled hours per day for union release time instead of 2 scheduled hours per day. The additional 5 hours per week would more than provide the PSBU with union release time proportionately equal to ABU .

The ABU is currently provided with union release time base on .5 FTE. The mediator recommended that the PSBU be provided with release time proportionately equal to that of the ABU. The PSBU proposal on this matter is consistent with their position in bargaining and the resolution proposed by the mediator. Effective with the date of this decision, the employer is directed to provide PSBU officers with release time in accordance with the following:

16.8.2 <u>Union Release Time</u>

16.8.2.1 The employer recognizes the additional responsibilities in carrying out an elected campus chairperson role. The campus chairpersons shall be reduced by .50 FTE or 130 days per year to allow the elected employee representative an opportunity to resolve SIAST employee issues in a proactive manner. The bargaining unit chairperson shall receive .50 FTE or 130 days per year for union business. This application shall not result in any loss of earnings, seniority or benefits, or result in any overtime being incurred. A Campus Chairperson or appropriate designate must be available to meet during this allocated time with management representatives as required.

WESTERN CANADA AVERAGE – 1% OF PAYROLL ALLOCATION

As mediator I recommended the following on September 16, 2011:

1. An amount equal to one percent of 2010/2011 total compensation be allocated for wage adjustments above the general wage increases. These adjustments are to be allocated on agreed levels necessary to address the WCA. These adjustments are to be effective on the date of signing of the agreement.
2. A market study is to be conducted within 90 days of ratification of this agreement. The study benchmarks and principles are to be established through meaningful consultation between the parties, and will serve as the foundation for the next round of bargaining.

The PSBU argued that the additional 1% of 2010/2011 total compensation ($322,767.00) should be applied across all wage bands/positions within the bargaining unit. The union had provided data during the earlier mediation process and during the arbitration that, it suggested, proved an overall inequity in all pay bands and therefore justified an even distribution across all pay grids. The union also argued that applying the funds to specific positions or pay bands would unduly disrupt the grid structure and jeopardize the current classification rating system – one which is based on equal pay for work of equal value and internal relativity. The PBSU also asserted that Saskatchewan comparators should not be used in the analysis. Most significantly, the union maintained that, because of the delay in resolution, the original WCA market adjustment of 1% now sat at 2.25%, and should be distributed equally across all pay bands prior to the June 30, 2012 expiry of the collective agreement. Further, the PBSU advised that, should this increase not applied by June 30, 2012, the applicable percentage amount would only continue to grow beyond 2.25%.

SIAST argued that a proper distribution of the 1% allocation for market adjustment could not be reasonably undertaken without a more "robust body of evidence", and that distribution should be postponed pending acquisition of the knowledge expected to surface from the benchmark study

commissioned by the mediator's second recommendation under this section.

The employer also argued that February 15, 2012, representing in their view the hypothetical date upon which the parties should have achieved full agreement on all issues, should be deployed as the effective date for the allocation of the 1% fund. As the impending collective agreement is set to expire on June 30, 2012, they believe that only a portion of the annual amount that 1% of total compensation represents, covering that period between February 15th and June 30th, should be rolled into the applicable wage rates, an eventuality that would result in an overall adjustment to the grid of well under 1%. Conversely, the Union contended that the full annual amount must be compressed into whatever period of time materializes between the eventual date of the arbitrator's award and June 30th, and that it is that supplemental percentage amount, ever increasing under this formula as June 30th draws closer, that must be rolled into the current wage rates.

Had the parties completely implemented the mediator's recommendations immediately following their issuance, it may have been possible to give consideration to the opposing interpretations put forward. However, the extensive delay since that point serves to demonstrate the self serving interests of their positions in contrast to the clear intent of the provision. The explanation provided to the parties by the mediator at the time the recommendations were presented, as well as the similar market adjustment furnished to the Saskatchewan Teachers which is of key consideration in this determination, are worthy of revisiting.

It is important to note that the sentence in the mediator's recommendation stating that "These adjustments are to be effected on the date of the signing of the agreement" was intended to refer to that point in time post September 16, 2011 when the employer and union themselves came to a joint understanding with respect to the proper allocation of the 1% amount "on agreed levels necessary to

address the WCA". Unlike the previously agreed general wage increases totaling 5.5 % over three years, the 1% market adjustment was to be allocated after discussion and agreement, or binding resolution. The allocation of the 1% was "yet to be negotiated". Therefore it could not be implemented upon ratification like the general wage increases. There is no question however that the market adjustment was to be calculated based on the 2010/2011 payroll and applied retroactively to the 2011/2012 wage grids.

The employer's position that there is insufficient information upon which to allocate the 1% market adjustment, and that it only be allocated after completion of the market study, is inconsistent with the recommendations that the employer accepted and signed off on. The recommendations clearly provide that the market study "will serve as the foundation for the next round of bargaining". The proposed market study was clearly not a precursor to the allocation of the 1%. Sufficient justification was provided in the mediation process to allocate 1% across the grid, as proposed by the union.

The employer is directed to distribute to 1% of total compensation for 2010-2011 across all of the wage grids within the PSBU, immediately following the issuance of this award. The union position will thus be adopted in principle, but the amount will be allocated over the entirety of the 2011-2012 school year, that is, from July 1, 2011 through June 30, 2012.

WESTERN CANADA AVERAGE – BENCHMARKS AND PRINCIPLES

I recommended as follows on September 16, 2011:

1. An amount equal to one percent of 2010/2011 total compensation be allocated for wage adjustments above the general wage increases. These adjustments are to be allocated on agreed levels necessary to address the WCA. These adjustments are to be effective on the date of signing of the agreement.
2. A market study is to be conducted within 90 days of ratification of this agreement. The study benchmarks and principles are to be established

through meaningful consultation between the parties, and will serve as the foundation for the next round of bargaining.

The employer met with Hay and Associates regarding item 2 above. While much groundwork was laid with the consultant, it was most certainly not under the auspice of meaningful consultation with the PSBU. While there is significant disagreement between the parties regarding responsibility for that shortcoming on this matter, the effort to date is inconsistent with the mediator recommendations that were accepted by both SIAST and the PSBU.

The union argued that there should be no data from Saskatchewan included in the study. They also took the position the employer's stance would create an unacceptable delay in distributing these additional funds to employees. The market study as delineated in the recommendations was intended to serve as the foundation for further discussion during the next round of bargaining. It is unfortunate that the parties have to date been unable to agree upon benchmarks and principles in this regard.

While I remain seized to resolve any disputes that arise, it is clear that facilitation of the consultation process may be helpful at this point. In order to avoid the unnecessary arbitration of this very significant matter, I put forward that the parties should consider meeting with Lori Henderson, Assistant Director of Labour Relations and Mediation Services Division of the Ministry of Labour Relations and Workplace Safety, who may serve to enable any necessary consultation on this matter.

FLEX PLAN BENEFIT

My recommendation on this issue was as follows:

> I recommend the establishment of a Personal Flex Spending Account that includes professional development and is based on a net zero cost to the Employer. Costs are to be established through mutual agreement and based on current actual spending on professional development. Contributions will be

subject to percentage increases to the collective agreement. Terms of the plan are to be consistent with those terms applicable to other public service employees. The plan is to be available within 90 days of the signing of this agreement.

While this issue may, at first blush, seem minor in comparison to other issues, it has been the focus of significant study, examination and submission to the arbitrator. A review is therefore in order.

The union argued that the money in the current Professional Development (PD) fund belonged to the bargaining unit. They advised that during the 1989 strike an amount equal to 1% of payroll was awarded to the PSBU by mediator Vince Ready, and entrusted to SIAST management by the union to create and maintain the PD fund. Until 2002 the amount was increased by negotiated economic increases. It has remained a static amount since that time despite repeated attempts by the negotiating committee to the contrary.

The PBSU also noted that in the December 21, 2011 Memorandum of Agreement Letter of Understanding #2, points one and two established the monetary amounts to be allocated to a Personal Flexible Spending Account and were based on a net zero cost to SIAST.

1. SIAST agrees to establish a Personal Flexible Spending Account that includes the opportunity for spending on professional development based on a net zero cost to the employer.

2. SIAST and SGEU agree that costs are to be established through mutual agreement and based on current actual spending on professional development. Contributions will be subject to percentage increases applied to the collective agreement.

The union asserted that the calculation of net zero funding must include not only the existing PD amount of $130, 290.00, which increased to $138, 963.00 when the 5.5% wage increase and 1% of WCA are applied, but also any operational cost savings and increased efficiencies, producing a total amount of the fund to $494, 107.00 for the first year of the plan.

They further argued that the PBSU calculation of net zero funding for the plan will not result in an increase in SIAST's current actual spending on professional development. The calculations were based on actual and measurable costs for individual professional development activities administered through the local campus PD representative, the work of the PD committees in meeting to review and decide on future use of the PD funds, PD Day committee planning meetings and the time away from job duties for Professional Services members to attend the annual PD Day. The union contended that such consideration produce a net zero calculation as follows:

- 2011 PD allocation surplus: $134, 889.24
- 2012/2013 PD allocation: $138,963.00
- Out of Scope employee cost for all PD activities: $46, 812.00
- In Scope employee costs:
    - PD Committee $10, 294.00
    - PD Day Preparation and Expenses..... $30, 127.00
    - PD Day Professional Services Employees Attendance $91, 938.00

The union argued that, in accordance with point three of the LOU (#2) on Professional Development/Flex Spending, the terms of the plan are to be consistent with other public service plans. It was suggested by the union that research shows that within the public sector in Saskatchewan each year the following terms of payment for individual allocations were agreed:

- $785.00 per employee Public Service Commission (out of scope employees)
- $1425.00 per employee Saskatchewan Government Insurance (SGI)
- $1800 per employee SaskEnergy
- $2836.00 per employee SaskPower
- $1200 to $3000 per employee SIAST (out of scope employees)

The union also advised that SIAST out of scope employees currently enjoy annual flex spending benefits. As an equity issue and to maintain terms consistent with that of other public sector plans, the union

contended that SIAST should move to fund flex spending for all in scope employees, to at least the same amount as the out of scope SIAST employees. They argued as well that current individual PD allotments total $103,781.00. These amounts should remain available, in their view, to these individuals to be allocated within the first year of the new plan. The surplus to the plan from the claw back of the third year funds was $14, 241.00. This amount must be included, the union believed, in the fund on a one time basis as there will be no claw backs in the newly formulated plan.

The Professional Services Bargaining Unit reduced the net zero amount by $30, 127.00 as this was the actual cost of PD Day preparation as verified in the June 30, 2011 PD Fund Financial Report. As this amount was drawn from the existing PD yearly allocation and will now be available to the Flex Spending Plan, the union further reduced its calculation by the cost of the out of scope participation as acknowledgement that these costs are outside the purview of the bargaining unit.

The employer provided the PSBU with a copy of the Out of Scope Flexible Benefit Account (FBA) plan on only March 1, 2012. The union did express significant concerns regarding the provisions of the employers out of scope plan. The union noted that the out of scope FBA does not include a wellness option, access to a tax free savings account, nor currently have a cash payout option. The Union leadership did not feel that a vacation purchase option was necessary in that annual vacation in their view is an item more appropriately addressed during collective bargaining, but were very much in favour of the inclusion of a health care spending account. Finally, they suggested that the plan contain a carry forward option in all categories, where permitted by Canada Revenue Agency guidelines.

SIAST proposed to develop a flexible spending plan and administration tool within ninety (90) days of ratification of the collective agreement, as recommended in the mediator's report. SIAST further proposes elements of the Flexible Spending Account that it feels are consistent with the recommendation made by the mediator as follows:

1. The annual allocation for the Professional Services bargaining unit for professional development as per Article 19.1.1 is $137,587, which has been adjusted for the 5.5% economic increases for 2009 – 2011.

2. Consistent with the terms of the mediators report that the establishment of a Flexible Spending Account will have a net zero cost to the employer, SIAST has deducted $13,500 from the total funding for the purposes of administering the flexible spending plan. Net funding for the Flexible Spending Account is $124,254.

   The rationale for this administrative cost is based on the current transactional activity for the processing of professional development claims compared to an estimate of the transactions required on an annual basis for the flexible spending account. The average amount of time required to process professional development claims for the past two years has been approximately 158 hours per year (based on 475 transactions per year @ 20 minutes per transaction). With the new Flex Spending Account each eligible employee would require a minimum of one transaction per year to allocate funds into the system plus additional transactions for PD, Wellness, etc. Based on these numbers SIAST estimates approximately 750 – 800 hours of transactional effort excluding system maintenance, employee communication, etc. This estimate could be low if employees allocate more of their funding to transactional based options and may require adjustment after gaining some experience with the plan.

3. There are no cost savings for SIAST in moving to the Flexible Spending Account over the existing Professional Development model. Employees on the existing committees will continue to be employed by SIAST. PD committee expenses were less than $2,000 per year spent on travel and meal costs for members traveling to committee meetings and were paid from the 19.1.1 PD allocation.

4. Professional Development days traditionally held at the campus will, in the future, be scheduled by management as required. The expenditures made on such days will be paid for by management. Therefore no amounts related to these activities will be added to the flexible spending funds.

5. In year one of the plan, all accumulated individual allotments from prior years would be available to employees on a one-time basis.

6. The Flexible Spending Account details and administration tool will be available for employees within ninety (90) days of ratification. Funds must be allocated prior to the beginning of the plan year and allocations cannot be changed during the course of the year per CRA guidelines as are outlined in Interpretation Bulletin IT-529 Flexible Employee Benefit Programs.

7. Once the terms of the Flexible Spending Account have been agreed to SIAST requires a minimum of ten (10) weeks for the communication and allocation process by employees plus an additional four (4) weeks after allocation for the internal administration required to distribute funds. Flexible spending funds would become available to employees to spend beginning no sooner than July 1, 2012.

The arbitrator views the FBA plan currently provided by SIAST for out of scope employees is a sensible starting point for a bargaining unit plan. As stated within the applicable section of the mediator's recommendation from September 16, 2011, "terms of the plan are to be consistent with the terms applicable to other public service employees". This directive cannot be better answered than to order for the PSBU the adoption of a plan similar to one that already exists within SIAST. Funding of the plan will be provided from agreed fund allocations set out below. I find no justification for allocation of funds beyond the agreed amounts. Additionally, plans such as this tend to evolve through bargaining. Negotiation of a new collective agreement will begin shortly, and the parties will have the opportunity to apply some experience and priorities to any further discussion.

The current out of scope FBA will serve as the framework for a PSBU bargaining unit plan. The employer is directed to absorb any administrative fees associated with any employee election to deploy the health care spending option of an FBA. The 1% market adjustment is to be applied to the contribution rate, as was the general wage increase. This overall finding regarding a Flex Plan Benefit is admittedly fundamental in nature at this stage. The parties are hereby directed to attend to the requisite details within 30 days following the date of this award. The plan will contain provision for health care spending, tax free savings, RRSP contribution, professional development, and cash payout. Employees will be entitled to carry over allocation from year to year to the extent allowed by the CRA. The plan will be funded on an ongoing basis through the transfer of the 2012/2013 PD allocation. The 2011 PD allocation surplus will also be placed into the fund for one time use. The plan will be effective June 30, 2012 unless otherwise mutually agreed.

MARKET STIPEND REVIEW

My recommendation from September 16, 2011 read as follows:

> I am not convinced that removal of Market Stipends is appropriate at this time. Adjustments to compensation related provisions should be consistent in moving towards a market based system coordinated with the Western Canada Average. Negotiations for the next collective agreement will begin shortly after the implementation of this settlement and consideration of desired language changes can be made at that time. I do recommend that:
>
> 1. All current stipends are to be reviewed through meaningful consultation with the PSBU within the next 90 days.
> 2. No new stipends are to be implemented during the time period between the acceptance of this report and the completion of the next round of negotiations without mutual agreement between the parties.

It is painfully apparent that meaningful consultation in this instance has not taken place, and there has obviously been no agreement achieved. Current market stipends have not been reviewed within the mandated 90 day period. The PSBU contended that, until the market stipend review is completed, it simply cannot be determined whether or not meaningful consultation has taken place.

SIAST proposed that current market stipends would be most meaningfully assessed after the final determination of the allocation of the 1% of compensation to achieve parity with the Western Canada Average. From the employer's standpoint, appropriate adjustments to stipends, if any, can only be accomplished after the final wage grid is in place.

With the foregoing decision regarding the application of the 1% market adjustment to the current grids, there is little to prevent a expedited review of current market stipends. During the arbitration process, the parties were provided with a recommendation flowing from long standing jurisprudence for basic ground rules aimed at ensuring meaningful consultation: Those recommendations generally suggest that, before contemplating any action, management should undertake the following steps:

1. Provide a clear and detailed outline of the proposed action.
2. Ensure that the proposal is reasonable, and encourage dialogue.
3. Invite a reply from the union, and a counterproposal.
4. Demonstrate bona fide consideration for any union proposal, and exercise reason on any rejection.
5. Make every effort possible to secure agreement between the parties.
6. Ensure that the action, and its proposals, do not violate any other provision of the collective agreement.

The 90 day period as outlined in the mediator's recommendations of September 16, 2011 will commence upon the issuance of this arbitration award.

NEW MARKET STIPENDS

My recommendation from September reads as follows:

> I am not convinced that removal of Market Stipends is appropriate at this time. Adjustments to compensation related provisions should be consistent in moving towards a market based system coordinated with the Western Canada Average. Negotiations for the next collective agreement will begin shortly after the implementation of this settlement and consideration of desired language changes can be made at that time. I do recommend that:
>
> 3. All current stipends are to be reviewed through meaningful consultation with the PSBU within the next 90 days.
> 4. No new stipends are to be implemented during the time period between the acceptance of this report and the completion of the next round of negotiations without mutual agreement between the parties.

The PSBU asserted that SIAST must always advise the union whenever a new employee is added into a position that has a stipend attached to it, or whenever a stipend is added to a position that previously did not have one.

The employer accepted the mediator's recommendation requiring mutual agreement for introduction of any new stipends between September 16, 2001 and the completion of the next round of negotiations. SIAST submitted that new stipends refers to market stipends other than the following

current market stipends:

Information Technology Band 8, Band 9, and Band 10
Lab Technologists
Budget Analyst
Accounts Payable Supervisor
Campus Health Nurse
Project Manager (Facilities)

SIAST proposed that any employees in these groups will continue to receive the stipend until such time as it is adjusted or terminated, in accordance with the provision of the agreement that the "stipend will apply to all employees of that particular job classification/position."

The employer will provide the PSBU with the appropriate advice regarding any new additions to market stipend, as well as a current list of those bargaining unit employees currently receiving one, and the employer is directed to so provide on an ongoing basis. On a quarterly basis, SIAST will provide a list of employees and details relating to the current market stipends provided to:

Information Technology Band 8, Band 9, and Band 10
Lab Technologists
Budget Analyst
Accounts Payable Supervisor
Campus Health Nurse
Project Manager (Facilities)

Employees in these groups will continue to receive the stipend until such time as it is adjusted or terminated, in accordance with the provision of the agreement that the "stipend will apply to all employees of that particular job classification/position."

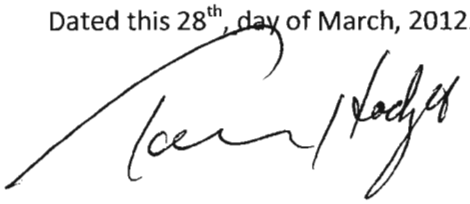
CONCLUSION

All that has been expressed above is final and binding, and all directed amendments to the collective agreement are to take effect as of the date of this award, unless otherwise specified. I retain overall

jurisdiction in the event of any further dispute between the parties on the issues that have been addressed in this decision, or in any instance of failure to achieve mutual agreement as directed, including the completion of requisite collective agreement language.

Finally, this award is intended to resolve the issues in dispute between the parties and set the groundwork for the next round of negotiations. As noted earlier in this award it is clear that facilitation of the necessary consultation process may be helpful at this point. In order to avoid the unnecessary arbitration of ongoing issues related to this award, I again put forward that the parties should consider meeting with Lori Henderson, Assistant Director of Labour Relations and Mediation Services Division of the Ministry of Labour Relations and Workplace Safety, who may serve to enable any necessary consultation and set the groundwork for the next round of negotiations.

Dated this 28th, day of March, 2012.



Tom Hodges

Arbitrator