



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2479-14-M

The Building Union of Canada, Applicant v McMaster University, Responding Party

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - January 7, 2015

DATED: January 7, 2015

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335
Fax: 416-326-7531



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2479-14-M**

The Building Union of Canada, Applicant v **McMaster University**,
Responding Party

BEFORE: Ian Anderson, Vice-Chair

APPEARANCES: Mark J. Lewis, Craig Bromell, Peter Foulds, Stephen Bromell, Gloria Richard and Gunmar Christiansen appearing for the applicant; George Avraam, Jeremy Hann, Geoff Tierney, Andrianna Timperio and Dejana Corovic appearing for the responding party

DECISION OF THE BOARD: January 7, 2015

1. This is an interest arbitration to settle the terms of a first collective agreement between the Building Union of Canada and McMaster University. The interest arbitration is undertaken pursuant to a Memorandum of Agreement between the parties. The Memorandum of Agreement resolved two matters before the Board: an application by the BUC pursuant to section 43 of the *Labour Relations Act, 1995* for a direction that the first collective agreement between the parties be resolved by means of interest arbitration (Board File No. 1237-14-FA) and a related unfair labour practise application by the BUC (Board File No. 1249-14-U). There is no dispute as to my jurisdiction to hear this matter.

2. While this will be a first collective agreement between these parties, it will not be the first collective agreement applicable to the affected employees. On October 18, 2013, the BUC displaced the Service Employees International Union, Local 2 ("the SEIU"), which had held bargaining rights relating to most of the positions in the bargaining unit for decades. The SEIU and McMaster had negotiated eleven collective agreements since 1980. During McMaster's final set of negotiations with the SEIU, McMaster advised the SEIU that it could achieve significant cost savings if McMaster chose to outsource its

cleaning services. The SEIU agreed to concessions, in particular in relation to "Custodians". The resulting agreement was for a five year term and was scheduled to expire on September 30, 2015. That agreement was brought to an end by the BUC's successful displacement application.

3. As stated in the brief filed by McMaster, there are essentially four categories of employees in the bargaining unit now represented by the BUC. They are as follows:

- a. The Skilled Trades - these are employees who possess a certificate or ticket in the skilled trades and perform skilled trade work. For example, they are Electricians, Plumbers, Carpenters, and Locksmiths. They are compensated at a higher rate than employees performing cleaning and janitorial work. Upon the BUC's certification in October 2013, the Skilled Trades were earning between \$21.16 and \$32.80 per hour, depending on the classification. Currently, the Skilled Trades are earning between \$21.69 and \$33.62 per hour. These increases were negotiated with the SEIU to take effect February 16, 2014, and were implemented by McMaster with the consent of the BUC. The Skilled Trades are also eligible for participation in McMaster's pension and benefits plans.
- b. The Cleaners - These employees are full-time unskilled labourers who perform cleaning and janitorial work at McMaster. This classification was newly created as a result of collective bargaining between the SEIU and McMaster in 2005. Consequently, every Cleaner has been hired between 2005 and now. Upon the BUC's certification in October 2013, the Cleaners were earning \$15.50 per hour. Currently, Cleaners are earning \$15.75 per hour. The increase from \$15.50 to \$15.75 was negotiated with the SEIU to take effect February 16, 2014, and was implemented by McMaster with the consent of the BUC. The Cleaners are currently not entitled to participate in McMaster's pension plans or benefits plans, however, the \$15.75 wage rate notionally includes \$2 per hour in lieu of benefits. The total compensation cost to employ a Cleaner is approximately \$18.71 per hour (calculated as at

October 2013, when Cleaners were earning \$15.50 per hour).

- c. The Custodians - These employees are full-time unskilled labourers who perform the very same cleaning and janitorial work for McMaster as do the Cleaners. The Custodian position has existed for many years. Every Custodian has been hired prior to 2005, when the Cleaners classification was first created. The position of Custodian is closed to new hires; new employees performing cleaning and janitorial work are hired into the Cleaners classification. This means that, over time through attrition (e.g. by retirements and resignations), the Custodian position will no longer exist. In the last round of negotiations, the SEIU agreed to freeze the Custodians' wage rates at their existing levels and on a go-forward basis. The Custodians are also referred to as the "Grand-parented Employees" as a result of these dynamics.

The Custodians are currently earning \$17.77 per hour (with the exception of two employees who earn \$18.73). The Custodians are also entitled to participate in both McMaster's defined benefit pension plan and benefits plans. In the last round of negotiations between McMaster and the SEIU, the SEIU agreed that McMaster would no longer pay 100% of the cost of the benefits plans for Custodians, rather the plan would be financed on a co-pay basis, with participating Custodians paying 25% of the costs, and McMaster paying 75% of the costs. In the current round of negotiations, the BUC seeks to have McMaster once again pay 100% of the cost of the benefits plans for the Custodians, while McMaster seeks to preserve the concession it obtained in the last round of negotiations with the SEIU. This is the "co-pay issue", one of two matters which have been referred to me for determination in this interest arbitration.

The total compensation cost to employ a Custodian is approximately \$27.08 per hour.

- d. The Casual Cleaners - These employees are part-time unskilled labourers who perform the very same cleaning and janitorial work at the University as do the Cleaners and Custodians. The Casual

Cleaners comprised a separate bargaining unit prior to the BUC's certification in October 2013. Upon the BUC's certification in October 2013, the Casual Cleaners were earning \$13.50 per hour. Currently, Casual Cleaners are earning \$13.75 per hour (with the exception of six employees hired prior to 2001 who have been 'grand-parented' at the rate of \$17.25). The increase from \$13.50 to \$13.75 was negotiated with the SEIU to take effect February 16, 2014, and was implemented by the University with the consent of the BUC. The Casual Cleaners are not entitled to participate in the University's pension plans or benefits plans. The total compensation cost to employ a Casual Cleaner is approximately \$16.65 per hour (calculated as at October 2013, when Cleaners were earning \$13.50 per hour).

4. The parties have agreed to most of the provisions of the collective agreement which will bind them. That agreement is reflected in the Memorandum of Agreement. It is not necessary to set out those agreements here. It is sufficient to note that the matters agreed upon shall be included in the collective agreement along with my determination as to the outstanding issues. The outstanding issues are the wage rates and, as noted above, the "Co-Pay Issue".

5. The parties agree on the principles applicable to interest arbitration. As noted by McMaster, they are summarized in *Terrazzo, Tile & Marble Guild of Ontario, Inc*, 2013 CanLII 57029 (ON LA) as follows:

- (a) **Replication:** An arbitration award should endeavour to award the terms that would likely have been the achieved had bargaining proceeded to resolution without recourse to arbitration.
- (b) **Comparability:** The most relevant guide to what the parties would likely have negotiated had they bargained to resolution is the terms negotiated by other parties in the same industry and facing a broadly similar economic and labour market environment and historic bargaining relationships.
- (c) **Economic Conditions:** Arbitration awards should endeavour to reflect economic conditions,

especially labour market conditions and changes in the cost-of-living. However, in most instances, these conditions are implicitly reflected in comparable settlements where the parties are deemed to have taken account of relevant economic conditions in their bargaining. In most instances, therefore, consideration of economic conditions is subsumed by the comparability principle.

- (d) **Demonstrated Need:** Significant changes should only be made when there is a demonstrated need.
- (e) **No Breakthroughs:** As a general principle, arbitrators decline to award breakthroughs in respect of either language or monetary terms when it is unlikely that such breakthroughs would have been achieved through normal bargaining in the absence of arbitration.

These principles cannot be mechanically applied. Rather, they are factors to be considered in attempting to arrive at what some cases provided by the BUC refer to as a “fair and reasonable” collective agreement. What is fair and reasonable must of course be assessed from the perspective of both parties. What this will mean will vary depending on the context.

6. The BUC asserts that the case law establishes that a breakthrough is “something novel, that nobody else has”. At the same time, the BUC relies heavily on the concept of comparability in support of its positions with respect to wage increases and on the co-pay issue. That is, the BUC seeks to achieve outcomes on those issues similar to those achieved under what it identified as comparable collective agreements.

7. The BUC provided the following cases: *Egan Visual Inc.*, [1986] OLRB Rep. December 1687; *Canada Building Materials Company*, [1990] OLRB Rep. October 1012; *The Brick Warehouse Corp.*, (1994) 43 L.A.C. (4th) 443; *Dynasty Furniture Manufacturing Ltd.*, 2004 CanLII 2355 (ON LRB); and *Kleenway Building Maintenance Services Inc.*, 2012 CanLII 41366 (ON LRB). I have carefully reviewed all of these cases. None of them give breakthrough the meaning attributed to it by the BUC. Most provide little guidance as to the

meaning of the term. The one which I find most useful in the present context is *The Brick Warehouse Corp.* In a passage reproduced (only in part) in the BUC's brief, the board in that case stated:

We have read the authorities cited to us with respect to the criteria to be applied in first contract arbitration. Suffice it to say that the objective, as we see it, is to fashion an award that reflects what the parties could reasonably have anticipated in bargaining for a first collective agreement, taking into account the particular requirements of the business. Although first collective agreements ought not to be "breakthrough" agreements, they also ought not to be substandard relative to the industry in which the business finds itself. By fashioning an agreement that reflects both the embryonic stage of the collective bargaining relationship and the reality of collective bargaining within the industry, an arbitration board places the relationship on a footing from which it can develop into a viable partnership. That is our intention here.

8. As is implicit in the above passage from *The Brick Warehouse Corp.*, and contrary to the assertion by the BUC, whether something constitutes a breakthrough is to be assessed not so much by reference to comparable agreements (whether it is something that no one else has), but rather by reference to the current terms and conditions of employment of the affected employees. The relevance of comparable agreements is, at least in part, that the parties would presumably have had reference to them and taken some guidance in negotiating their own collective agreement, not that they would necessarily have achieved the terms and conditions set out in those collective agreements. The reference to the embryonic stage of the collective bargaining relationship is perhaps of less relevance to this case, given the prior bargaining relationship between McMaster and the SEIU, but it again amounts to recognition that it is unlikely that full parity would be achieved to comparable collective agreements if the parties had negotiated their own collective agreement.

9. A final preliminary comment. While I will address each of the issues separately, I have been mindful of all of them collectively in reaching my conclusions. Collective bargaining often, although not always, involves one party making a concession on one issue in exchange for a concession by the other party on another. I have approached this interest arbitration award in the same manner.

The Co-Pay Issue

10. As noted, McMaster seeks to preserve the concession it obtained in the last round of negotiations with the SEIU by which the Custodians co-pay 25% of the cost of these benefits, while the BUC seeks to eliminate this co-pay obligation.

11. The BUC notes that the Skilled Trades in the bargaining unit are in a financially better position than the Custodians. They receive higher wage rates and received increases under the SEIU collective agreement. Yet McMaster has not sought to obtain a co-pay of the cost of benefits for the Skilled Trades. Maintaining this distinction, the BUC asserts, is contrary to the principle of putting in place a fair and reasonable collective agreement. The BUC also notes that the two most recent collective agreements entered into by McMaster (governing the operating engineers and parking lot attendants) do not include a co-pay obligation. Finally, the BUC argues that only three other Ontario universities have co-pay obligations in relation to Custodians. Thus, the BUC argues, the principle of comparability also leads to the conclusion that the co-pay obligation of the Custodians should be eliminated.

12. McMaster notes that the co-pay obligation of the Custodians was a concession obtained in the last round of negotiations with respect to this group of employees, albeit with the SEIU. It also notes that it subsequently obtained the same concession with respect to the collective agreement it entered into in 2010 with respect to the Hospitality Services bargaining unit. It emphasizes two indisputable market realities: first, it has had no difficulty hiring individuals as Cleaners to do exactly the same work as Custodians at a substantially lower cost per hour; second, it has ascertained that it could save millions of dollars per year by outsourcing the cleaning function. Eliminating the co-pay obligation on the part of the Custodians would increase the cost per hour of cleaning services provided by Custodians, and is therefore inconsistent with both of these market realities.

13. In my view, it is clear that McMaster is keenly aware that it could obtain cleaning services at a lesser cost by contracting them out. The red circling of those in the Custodian classification and the creation of the Cleaner classification reflects this reality. The elimination of the co-pay obligation for Custodians is inconsistent with McMaster's concerted attempts to reduce the cost of cleaning services rather than contract it out. Given that McMaster has agreed not to

contract out services during the life of the collective agreement which is the subject of this interest arbitration, elimination of the co-pay obligation for the Custodians would represent a significant breakthrough from their present terms and conditions of employment, and one which is unlikely to replicate what the parties would have achieved through free collective bargaining. Having said that, the co-pay issue is also presumably one of great significance to the Custodians. As they constitute approximately one-quarter of the bargaining unit, it seems reasonable to assume that free collective bargaining would also have required some sort of concession on the part of McMaster to the BUC in exchange for maintain the status quo with respect to the co-pay. I shall return to this below. Accordingly, the existing co-pay obligation is maintained.

The Wages Issue

14. As noted above, the parties agreed to implement wage increases on February 16, 2014 for the affected employees. The issue before me are the wage rates for the balance of the term of the collective agreement, which expires on September 30, 2018, and whether to award any lump sum payments.

15. McMaster's proposal is the same as it had set out in its response to the BUC's application for first contract arbitration, which in turn is essentially the position it had last taken during collective bargaining with the BUC. McMaster proposes a lump sum payment of \$750 to each employee who was employed on the 4th regular pay date following October 1, 2014 and wage increases as set out below. The BUC proposes higher wage than McMaster increases (the BUC's "current proposal"). Its current proposal is also higher, sometimes significantly higher, than it had set out in its application for first contract arbitration (the BUC's "FCA proposal"). The BUC asserts that its change in position reflects the fact that it made concessions on other issues in arriving at the agreement to refer this dispute to interest arbitration. No particulars were provided in support of this general assertion. Neither the BUC's current proposal nor its FCA proposal includes a lump sum payment.

16. While I have set out below and discussed both the BUC's current proposals and its FCA proposals, in my view, the wage increases proposed by the BUC in its application for first contract arbitration are a better reference point for the purposes of this decision for two reasons. First, that position was in large part, if not

completely, the position which the BUC had last taken during collective bargaining with McMaster. It is not apparent to me how the concessions the BUC made on other issues in arriving on the agreement to refer this matter to interest arbitration would justify the change in its position with respect to proposed wage increases. Thus, in my view, the position taken by the BUC in its application for first contract arbitration more closely replicates what the parties would have arrived as a result of good faith collective bargaining. Second, as noted, the wage increases which the BUC now seeks are in some instances significantly higher than what it had previously sought. In the case of the Cleaners, the BUC now seeks increases of approximately 40% over the balance of the 5 year agreement (compared to 6.6% for Cleaners and 13.5% for Casual Cleaners in its application for first contract arbitration). Within the present economic context, by any standard this constitutes a breakthrough without justification.

17. The parties addressed the wages of the Skilled Trades (classifications 4 to 10) separately from that of the Cleaners and Custodians. I adopt the same approach. McMaster expressed its position in dollar amounts while the BUC expressed its position as percentages. In order to enable a comparison, I have adopted percentages (to this end, I have used the percentages set out by McMaster at page 37 of Schedule "I" of its response to the first contract application).

18. The positions of the parties on the Skilled Trades may be summarized as follows:

McMaster's Position on Wage Increases for Skilled Trades

	Date of Award	October 11, 2015	October 9, 2016	October 8, 2017	July 15, 2018
Classification 10	3.06%	0.50%	1.50%	0.90%	0.60%
Classification 9	3.06%	0.50%	1.50%	0.90%	0.60%
Classification 8	3.07%	0.50%	1.50%	0.90%	0.60%
Classification 7	3.07%	0.50%	1.50%	0.90%	0.60%

McMaster's Position on Wage Increases for Skilled Trades

	Date of Award	October 11, 2015	October 9, 2016	October 8, 2017	July 15, 2018
Classification 6	3.08%	0.50%	1.50%	0.90%	0.60%
Classification 5	6.84%	0.50%	1.50%	0.90%	0.60%
Classification 4	3.09%	0.50%	1.50%	0.90%	0.60%

BUC's Positions on Wage Increases for Skilled Trades

	Date of Award	January 1, 2016	January 1, 2017	January 1, 2018
BUC's FCA Position	3%	1.6%	1.6%	1.6%
BUC's Current Position	2.5%	4%	4%	4.5%

In addition, the BUC seeks effective July 18, 2018 (or date of any pension contribution increase) a 0.9% wage increase to offset for the increase to pension contributions for employees participating in the hourly pension plan.

19. With respect to the rates of increase as of the date of the award, it will be immediately apparent that those proposed by the BUC in its current position are *less* than those proposed by the BUC in its FCA position and the rates in its FCA position are in turn *less* than those proposed by McMaster. However, the BUC expressed its FCA position as both rates of increase and dollar amounts. The dollar amounts in relation to Classifications 4, and 6-10 are the same as those proposed by McMaster. Those dollar amounts give rise to the rates of increase for those classifications proposed by McMaster. The rate of increase proposed by McMaster in relation to Classification 5 (Gardener Equipment Operator) differs from the rate it proposes for the other trades classifications and is significantly higher than that proposed by the BUC. McMaster explains this higher rate of increase as partially

offsetting the elimination of a premium which had been payable to the Gardeners who directed students' work during the summers. The balance of the loss has been offset by the creation of a Group Leader premium. As I understand it, these changes to the premiums for the Gardeners are among the agreed upon terms of the collective agreement. I retain jurisdiction with respect to the rate of increase for Classification 5 as of the date of the award in the event that I am mistaken. With that qualification, McMaster's proposed rates of increase for the trades as of the date of the award are the ones which I award.

20. With respect to the rates of increase in subsequent years, there are three major differences between McMaster's position and BUC's FCA position. First, for the most part, McMaster's increases take place approximately 1.5 months *earlier* than BUC's increases (in October of one year instead of January 1 of the next year). To this extent, McMaster's position is *more* advantageous to employees. Second, McMaster proposes an increase of .5% as of October 11, 2015; the corresponding increase proposed by the BUC is 1.6% effective January 1, 2016. Third, for the final year of the agreement, McMaster proposes 0.9% effective October 18, 2017 and 0.6% effective July 14, 2018 to offset increases in pension contributions. The July 14, 2018 increase is to provide a 1:1 offset for employees who will experience an increase in their pension contributions. The BUC proposes 1.6% effective January 1, 2018 and 0.9% effective or or about July 18, 2018 to offset increases in pension contributions.

21. With respect to the Skilled Trades, the BUC concedes that the hourly rates be paid fall within the range paid to comparable trades at other universities. It argues, however, that the rates of increase proposed by McMaster are not comparable to those to which McMaster agreed in collective agreements negotiated in 2014 with Unifor Local 5555 - Unit 3 (covering parking and transit services) and with the IUOE Local 772 (covering stationary engineers).

22. The BUC's current proposed increases for the Skilled Trades largely mirrors the increases McMaster agreed to with the IUOE, on the assumption that lump sum payments made to IUOE bargaining unit members for 2014 and 2015 can be treated as a percentage increase. This is, of course, fallacious. While those lump sums were in excess of 2% per year, they do not give rise to a change in the base rate for the affected employees. By contrast, the Skilled Trades covered by this collective agreement received a 2.5% increase to their base rates in

2014 and will receive a further increase of approximately 3% in 2015. Because of compounding, by the end of 2016, the trades would have received an increase from 2014 of approximately 6% to their rate under McMaster's proposal, although only .5 points of that increase would have occurred in 2016, while the IUOE bargaining unit would have received an increase to their rate of only 4%, all of it in 2016.

23. Having said that, McMaster's brief indicates that the reason that no rate increases were granted in the first two years of the collective agreements governing the IUOE and Unifor Unit 3 bargaining units was that those were the only two bargaining units which had not bargained since a 2010 government directive that there there should be no increases in compensation for at least the first two years of newly negotiated collective agreements. Further, some employees in the IUOE bargaining unit will receive a further 4% increases in 2017 and another 4.5% increase in 2018. (The IUOE bargaining unit members also get an additional "pension offset increase" of 0.9% effective July 15, 2018, which mirrors the increase proposed by McMaster for employees in this bargaining unit who participate in the pension plan.) In addition the selection of 2014, or any year, as the base year is somewhat arbitrary. It is arguable that the rates of increase in any given year should be comparable in and of themselves, as the parties estimate as to future rates of inflation. In this respect, I note that the employees in the Unifor bargaining unit are to get a "general increase" (as distinct from a "market adjustment" increase) of 1% in 2016 and 1.25% in 2017, the two remaining years of that agreement. Some employees in the IUOE bargaining unit are to get "general increases" (again, as distinct from "market adjustment" increases) of 2%, 2% and 2.5% in 2016, 2017 and 2018 respectively, while others are to get a "general increases" in those years of 1.5%, 1.5% and 2%. Further, McMaster's proposed increase of .5% in 2016 in relation to the BUC bargaining unit appears below current trends in the rate of inflation. In addition, while the lump sum payments given to the IUOE and Unifor bargaining units for 2014 and 2015 do not go to base, they are clearly of some value. In summary, McMaster's proposed increases for October 2015 and October 2017 appear to be less than what it has agreed to pay comparable bargaining units and less than anticipated rates of inflation.

24. With respect to the amount of the increase required to offset the anticipated increase in pension contributions, I assume that McMaster has fulfilled its duty to bargain in good faith and fully and fairly disclosed the anticipated amount of offsetting pension increase

required in 2018. Accordingly, I prefer its number for the July, 2018 offsetting increase over the number proposed by the BUC.

25. Taking all of these factors into consideration, I award the increases proposed by McMaster for the Skilled Trades with the following modifications. The increase on October 11, 2015 will be 1%, not 0.5% as proposed. Further, the increase on October 18, 2017 will be 1% not 0.9% as proposed.

26. The positions of the parties with respect to wages for the Custodians and Cleaners are as follows:

McMaster's Position on Custodians and Cleaners (Increases and Rates/hour)

	Date of Award	October 11, 2015	October 9, 2016	October 8, 2017	July 15, 2018
Custodian 4	0% 18.73	0% 18.73	0% 18.73	0% 18.73	0.5% 18.82
Custodian 3	0% 17.77	0% 17.77	0% 17.77	0% 17.77	0.5% 17.86
Cleaner (inclusive of \$2/hour in lieu of benefits)	1.8% 16.03	0.5% 16.11	1.5% 16.35	0.9% 16.50	0% 16.50
Grand-parented Casual Cleaner	0% 17.25	0% 17.25	0% 17.25	0% 17.25	0% 17.25
Casual Cleaner	9.1% 15.00	0.7% 15.11	0.8% 15.23	0.9% 15.37	0% 15.37

BUC's FCA Position on Custodians and Cleaners (Increases and Rates/hour)

	Date of Award	January 1, 2016	January 1, 2017	January 1, 2018
Custodian 4	0% 18.73	0% 18.73	0% 18.73	1.6% 19.03
Custodian 3	0% 17.77	0% 17.77	0% 17.77	1.6% 18.05

BUC's FCA Position on Custodians and Cleaners (Increases and Rates/hour)

	Date of Award	January 1, 2016	January 1, 2017	January 1, 2018
Cleaner (inclusive of \$2/hour in lieu of benefits)	1.6% 16.00	1.6% 16.26	1.6% 16.52	1.6% 16.78
Grand-parented Casual Cleaner	0% 17.25	0% 17.25	0% 17.25	1.6% 17.53
Casual Cleaner	9.1% 15.00	1.5% 15.23	0.9% 15.37	1.6% 15.62

BUC's Current Position on Custodians and Cleaners (Increases and Rates/hour)

	Date of Award	January 1, 2016	January 1, 2017	January 1, 2018
Custodian 4	0% 18.73	2.7% 19.24	2.7% 19.76	2.6% 20.28
Custodian 3	0% 17.77	4.5% 18.57	4.5% 19.41	4.5% 20.28
Cleaner (inclusive of \$2/hour in lieu of benefits)	9.6% 17.00	11.7% 18.76	10.5% 20.52	9.5% 22.28
Grand-parented Casual Cleaner	0% 17.25	0% 17.25	5.2% 18.14	8.6% 19.70
Casual Cleaner	9.1% 15.00	10.5% 16.57	9.5% 18.14	8.6% 19.70

In addition, the BUC seeks effective July 18, 2018 (or date of any pension contribution increase) a 0.9% wage increase to offset for the increase to pension contributions for employees participating in the hourly pension plan.

27. It is useful to repeat a few points stated earlier in this decision. Custodians participate in the defined benefit pension plan and

the benefits plan; Cleaners and Casuals do not. The total compensation cost per hour for Cleaners as of October 2013 was \$18.71 per hour. The total compensation cost per hour for Custodian 3s was approximately \$27.08. (Comparable information was not provided with respect to Custodian 4s: there are apparently two such individuals. Presumably the total hourly compensation cost for those individuals is approximately \$28.) Accordingly, Custodians receive significantly more compensation per hour than Cleaners than is suggested by the above charts.

28. McMaster's position and the BUC's FCA position with respect to Custodians and Cleaners are somewhat similar. Both propose to maintain the freeze with respect to Custodians and Grand-parented Casual Cleaners for the next three years. McMaster would maintain this freeze into the final year while the BUC seeks to increase the wage rates of these classifications by 1.6% in that year. Both agree that there should be a 9.1% increase in the wage rate of Casual Cleaners as of the date of the award. (The reason for this significant increase is to bring their wages up to the Hamilton "living wage", as defined by the Hamilton Roundtable for Poverty Reduction. For 2014, the "living wage" was \$14.95/hour.) Thereafter, the BUC seeks higher rates of annual increases for Casual Cleaners than those proposed by McMaster. The BUC seeks a 1.6% increase each year for the Cleaners; McMaster proposes different, generally lower rates (although its proposed increase as of the date of the award of 1.8% is actually higher than that proposed by the BUC, and as noted in relation to the Skilled Trades, McMaster's subsequent increases come into effect approximately 1.5 months earlier than those of the BUC).

29. The BUC's current proposal differs from its FCA proposal (and McMaster's proposal) in two significant respects. First, the BUC seeks substantial increases on behalf of the Custodians and much more substantial increases for Cleaners, arguing that such increases are justified in order to give them rates comparable to those paid for cleaning at other universities. The BUC argues that such increases do not constitute a breakthrough because the resulting rates are comparable to what cleaners at other universities have. For the reasons stated above, I reject this argument. The BUC's current proposal for wage increases with respect to the Cleaners and Custodians constitutes a significant breakthrough over their existing terms and conditions of employment and does not replicate what these

parties would have likely achieved as a result of free collective bargaining.

30. Second, the BUC seeks to “close the gaps” in what McMaster pays to the various classifications of employees to perform the cleaning function. The BUC argues: “it is a labour relations anathema for the wage rates for employees who perform the same work to vary so widely and arbitrarily and that, accordingly, the gap between the various groups of employees within these classifications should be eliminated, and/or significantly narrowed, by the conclusion of this five-year, first collective agreement.” The cogency of this argument is significantly undermined by the fact that the BUC’s FCA proposals did not seek to eliminate these gaps. Further, the existing gap between the Custodians and the Cleaners reflects the fact that existing Custodians were in essence grand-parented and the lower paid classification of Cleaner created for all new hires in order to reduce the likelihood of contracting out of the cleaning function by McMaster.

31. It is useful to contrast the increases proposed by McMaster across classifications. Custodians are frozen over the term of the agreement to reflect their grand-parented status, except in the final year of the agreement when there is a small increase to compensate for anticipated increased pension contributions. As of the date of the award, Skilled Trades would get a 3% increase (the apparent anomaly in relation to classification 5 has been discussed above); Casual Cleaners would get a 9.1% increase; and Cleaners would get a 1.6% increase. The reason for the differential treatment of the Casual Cleaners is to bring them up to the Hamilton living wage, as described. McMaster justifies the 3% increase for the Skilled Trades (in contrast to the 1.6% increase for Cleaners) as reflecting the labour market issues arising from the decreasing supply of skilled trades. Over the balance of the collective agreement, McMaster’s proposal makes no distinction between the rate of increases given to Skilled Trades and Cleaners (Cleaners do not participate in the pension plan and accordingly do not get the increase in July 2018 to offset the rise in pension contributions): they receive increases of 0.5% in October 2015; 1.5% in October 2016; and 0.9% in October 2017. By contrast, the corresponding increases for Casual Cleaners are 0.7%, 0.8% and 0.9%. The reason for the different treatment of Casual Cleaners compared to Cleaners and Skilled Trades in these latter years of the contract is not apparent.

32. The reasons given above with respect to the rates of increases given to the Skilled Trades for the subsequent years of the collective agreement are generally applicable here. McMaster's proposed increases for October 2015 and October 2017 appear to be less than what it has agreed to pay comparable bargaining units and less than anticipated rates of inflation. Further, I see no basis to give a lower rate of increase to the Casual Cleaners than is being given to the Skilled Trades or Cleaners. Accordingly, the rates of increases for Cleaners and Casual Cleaners in the years subsequent to the date of the award will be 1.0%, 1.5% and 1.0%. The effective dates of those increases shall be as proposed by McMaster.

33. I estimate the additional cost to McMaster over the course of the collective agreement of these changes in the rates of increase over those which McMaster had proposed as approximately equal to the amount which McMaster was prepared to pay as a lump sum. An increase of the base rate is of greater longer term value to the employees. In these circumstances, I do not consider it appropriate to award lump sum payments to all employees in addition to the increase to the base I have awarded.

34. There is one exception to this. As noted above, the Custodians constitute approximately one quarter of the bargaining unit. While collective bargaining requires making choices between different groups of employees, free collective bargaining is unlikely to have resulted in a collective agreement which maintained both the existing co-pay obligation and a wage freeze for the balance of the collective agreement (notwithstanding the sound economic basis for both these outcomes) without some offsetting concession. Accordingly, I award a lump sum payment of \$200 to each Custodian employed as of the date of this award; an additional lump sum payment of \$200 to each Custodian employed as of October 11, 2015; an additional lump sum payment of \$200 to each Custodian employed as of October 9, 2016; and an additional lump sum payment of \$200 to each Custodian employed as of October 8, 2017.

35. In summary, I make the following order. The first collective agreement shall consist of the following:

- a. The provisions previously agreed upon by the parties.
- b. Custodians wishing to participate in McMaster's benefit plans will be required to co-pay 25% of the cost of those plans.
- c. Existing wage rates will be subject to the following increases.

	Date of Award	October 11, 2015	October 9, 2016	October 8, 2017	July 15, 2018
Classification 10	3.06%	1.0%	1.50%	1.0%	0.60%
Classification 9	3.06%	1.0%	1.50%	1.0%	0.60%
Classification 8	3.07%	1.0%	1.50%	1.0%	0.60%
Classification 7	3.07%	1.0%	1.50%	1.0%	0.60%
Classification 6	3.08%	1.0%	1.50%	1.0%	0.60%
Classification 5	6.84%	1.0%	1.50%	1.0%	0.60%
Classification 4	3.09%	1.0%	1.50%	1.0%	0.60%
Custodian 4	0%	0%	0%	0%	0.50%
Custodian 3	0%	0%	0%	0%	0.50%
Cleaner	1.8%	1.0%	1.5%	1.0%	0%
Grand-parented Casual Cleaner	0%	0%	0%	0%	0%
Casual Cleaner	9.1%	1.0%	1.5%	1.0%	0%

- d. Lump sum payments shall be made to Custodians as follows: a lump sum payment of \$200 to each Custodian employed as of the date of this award; an additional lump sum payment of \$200 to each Custodian employed as of October 11, 2015; an additional lump sum payment of \$200 to each Custodian employed as of October 9, 2016; and an additional lump sum payment of \$200 to each Custodian employed as of October 8, 2017.

36. I remain seized with respect to any issues arising from the implementation of this award.

"Ilan Anderson"
for the Board

APPENDIX A

The Carpenters' District Council of Ontario, United Brotherhood of Carpenters
and Joiners of America
222 Rowntree Dairy Road
Woodbridge ON L4L 9T2
Attention: Mr. Mark J. Lewis
Counsel
Tel: 905-652-4140
Fax: 905-652-5930
Email: mlewis@thecarpentersunion.ca; cberg@thecarpentersunion.ca

The Building Union of Canada
7300 Keele Street
Suite 100
Concord ON L4K 1Z8
Attention: Mr. Craig Bromell
President
Tel: 905-597-1009
Fax: 905-597-7006
Email: cbrome4026@rogers.com

The Building Union Of Canada (Buc)
7300 Keele Street
Suite 100
Concord ON L4K 1Z8
Attention: Gloria Richard
Tel: 905-597-1009
Fax: 905-597-7006

The Building Union Of Canada (Buc)
7300 Keele Street
Suite 100
Concord ON L4K 1Z8
Attention: Gunmar Christiansen
Tel: 905-597-1009
Fax: 905-597-7006

The Building Union Of Canada (Buc)
7300 Keele Street
Suite 100
Concord ON L4K 1Z8
Attention: Peter Foulds
BUC Director of Operations
Tel: 905-597-1009
Fax: 905-597-7006
Email: PFoulds@thebuc.ca

The Building Union Of Canada (Buc)

7300 Keele Street
Suite 100
Concord ON L4K 1Z8
Attention: Mr. Stephen Bromell
Treasurer
Tel: 905-597-1009
Fax: 905-597-7006
Email: sbromell@thebuc.ca

Baker & Mckenzie LLP
181 Bay Street
Suite 2100
Toronto ON M5J 2T3
Attention: Mr. George Avraam
Counsel
Tel: 416-863-1221
Fax: 416-863-6275
Email: george.avraam@bakermckenzie.com;
debbie.oliveira@bakermckenzie.com

Baker & Mckenzie LLP
181 Bay Street
Suite 2100
Toronto ON M5J 2T3
Attention: Mr. Jeremy Hann
Tel: 416-863-1221
Fax: 416-863-6275
Email: jeremy.hann@bakermckenzie.com;
bonita.berlingieri@bakermckenzie.com

Mcmaster University
1280 Main Street W
Gilmour Hall
Hamilton ON L8S 4L8
Attention: Adrianna Timperio
Tel: 905-525-9140
Fax: 905-540-9085

Mcmaster University
1280 Main Street W
Gilmour Hall
Hamilton ON L8S 4L8
Attention: Dejana Corovic
Tel: 905-525-9140
Fax: 905-540-9085

McMaster University
1280 Main Street W
Gilmour Hall

Hamilton ON L8S 4L8
Attention: Mr. Geoff Tierney
University Counsel & Director, Employee/Labour Relations
Tel: 905-525-9140
Fax: 905-540-9085
Email: tierney@mcmaster.ca