October 2018

CAUT Bargaining Advisory

# Market Differentials & Supplements

## Introduction

The terms 'market supplement' and 'market differential' refer to the practice of permitting the employer to add payments to some members' salaries based on market factors. The usual rationale for these payments is that staff for some some positions are difficult to recruit and retain because the negotiated salary structure is lower than salaries in other universities or in competing professions. This bargaining advisory uses the term 'market differential' to refer to all payments of this type.

The payment of market differentials is a significant factor in the persistence of discriminatory pay differentials in the academy. Market differentials are often paid entirely at the discretion of the administration and set through negotiation with individual members. This can lead to inequitable compensation for women, Indigenous scholars, and members of equity-seeking groups. In some cases, market differentials may reflect an under-valuing of work traditionally done by women and members of marginalized groups, with payments distributed primarily to staff in male-dominated disciplines. Compensation practices that allow administrative discretion also undermine the association's role as the exclusive bargaining agent and restrict its ability to ensure fairness.

In accordance with its commitment to equitable compensation as a human right, the Canadian Association of University Teachers (CAUT) strongly encourages associations to eliminate market differentials and negotiate salary scales based on objective and non-discriminatory criteria. The existence of market differentials at any institution represents an obstacle to equitable compensation in the entire profession. Each administration justifies its purported need to use market differentials by pointing to their use by others.

While elimination should be the objective, some associations may not currently be in a position to negotiate an end to market differentials. Where it is not possible to eliminate market differentials, it is important to ensure that their payment is governed by the collective agreement and by terms that protect the association's bargaining rights and minimize inequity. Any agreements on market differentials should be for a set period of time, with no implication of renewal.

The harmful effects of market differentials cannot be eliminated, but may be reduced by ensuring the following:

- The distribution, individual and total amounts, and duration of market differentials are negotiated with the association, with as little discretion as possible left to the administration.
- The onus must be on the administration to justify the need for a market differential and the amount paid.
- Differential payments are temporary and cease when the market conditions justifying them no longer exist.

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- The overall compensation structure is equitable, and the salary structure and individual compensation are subject to periodic reviews to identify and remedy discriminatory pay gaps Adjustments are awarded to all members of a program, discipline, or department, rather than negotiated by individuals.
- The association is provided with complete data on differentials requested and awarded so that it and can be easily determined whether negotiated terms are respected.
- Money allocated to market differential funds is tied explicitly to overall monies reserved for compensation, which in turn allows the association to argue for a fairer and more equitable distribution.

Because some individual academic staff may benefit from market differentials, it is important for the association to engage with members and provide a rationale for restricting or eliminating their use. It is also important to conduct research to demonstrate how the cumulative effect on the lifetime earnings of a few members who receive market adjustment contrasts with a more equitable distribution across the entire salary scale of the same money.

## Key principles

### Bargain for total compensation

If they cannot be eliminated, market differentials must be negotiated as part of the entire salaries and benefits package. This is the only way for the association to assess their impact and strive for fair application.

For example, a proposal to pay market differentials demonstrates that the administration has money available for salary increases. The association can respond by proposing a more competitive salary structure for all its members and insisting that such funds be applied to eliminating discriminatory compensation inequities. Funds for an improved structure can be generated by limiting the administration's allocation for market differentials.

## Restrict the administration's discretion

The collective agreement should set out clear requirements that ensure fairness and prevent arbitrary and discriminatory decisions. These provisions should eliminate the administration's reliance on discretionary salary adjustments. Language on market differentials should be consistent with existing clauses of the agreement on provision of information by the administration, due process and use of other resources such as anomaly funds.

## Provide fair process & criteria

The agreement should describe the requirements the administration must satisfy to determine whether market differentials are justified, and set to determine the amount of the differentials.

## Requirements for good contract provisions

### Ensure that differentials are paid only in accordance with negotiated terms

The Association of University of New Brunswick Teachers (AUNBT) has negotiated clear requirements for when market differentials and other payments may be used to set starting salaries:

*36A.07 An Employee's initial salary may only exceed the salary established according to Article 36A.06 by any amounts designated as a Market Differential Component and/or as a President's Discretionary Component when such an amount or amounts have been determined in accordance with the terms of this Collective Agreement.*[1]

The AUNBT has also ensured that each market differential adjustment is determined by a joint Adjustment Committee, which may recommend an adjustment "only when one is necessary to maintain staffing in a market differential occupation." The same committee is responsible for monitoring and recommending changes to all market differential adjustments (36A.11-36A.16).

1. Agreement between the Association of University of New Brunswick Teachers – RAS and the University of New Brunswick, 2016–2020, Article 36A07.

## Identify the market group

The Concordia University Faculty Association (CUFA) collective agreement lists the programs where market differentials are paid and specifies the amount of the supplement for each program.[2] This approach makes the list of affected disciplines and the amount of the supplement subject to negotiation as part of the collective bargaining process.

At some other institutions, specific market differentials may be proposed during the term of the agreement. In this case, the agreement should clearly describe the evidence the administration must produce to establish the requirement for a market differential and identify the eligible group. This provision places a real and actionable burden on the administration. The University of Regina Faculty Association (URFA) has such requirements in its "Memorandum of Agreement on Market Supplements."

*Appendix B*
*5. A department head, a group of academic staff members, or the Dean may submit a written proposal to the Vice-President (Academic) with a copy to Human Resources and the Faculty Association. The proposal shall at a minimum:*

- *identify the proposed discipline or sub-discipline and, where relevant, the particular rank or ranks, a range for the supplements, and the period during which the supplements are to be granted;*
- *identify the rank, salary, and number of years since appointment to current rank for each member for whom market supplements are being proposed;*
- *provide independently verifiable data indicating that salaries in the discipline or sub-discipline are significantly lower at this university than salaries (including market supplements) at other comparable Canadian universities for scholars of the same category and rank of scholarly*
- *achievement; include a recommendation from the Dean where the proposal is made by a department head or group of academic staff members.*[3]

## Limit the term & renewability

Market differentials should not be permanent features of the recruitment and retention landscape. Associations whose agreements already allow for market differentials should negotiate this time sensitivity into their collective agreement to ensure that the payments follow the patterns of the appropriate market.

In the Memorandum of Agreement at the University of Regina, market adjustments must be renewed in each round of collective bargaining. While the amount of an expired market supplement is not deducted from the member's compensation, the compensation is red circled:

*10. Market supplements being paid to academic staff members under the terms of this appendix shall continue unchanged until their expiry. Should these market supplements not be renewed, the academic staff member's total compensation (base salary plus market supplement) shall be red circled. Red circling means that a member's compensation shall not decrease, but shall remain frozen at its current level until the base salary surpasses this level through any combination of scale increases, career growth increments, merit increments, or promotions.*[4]

The "Letter of Understanding - Market Supplements" in the agreement between the Athabasca University Faculty Association (AUFA) and Athabasca University limits the span of the market adjustment to five years:

*2. Market Supplements may be paid to attract and retain individual staff members when competitive pressures in the market require such payments and may be offered in designated disciplines or professions as determined by the University following consultation with AUFA.*

*3. A Market Supplement of up to $ 15,000 (effective July 1, 2006) per annum may be offered for a term not to exceed five years (renewable).*[5]

The collective agreement negotiated by the University of Manitoba Faculty Association (UMFA) requires periodic reviews at least every three years:

2. Collective Agreement between Concordia University and the Concordia University Faculty Association, 2015-2018, Appendix 3.
3. Collective Agreement between the University of Regina and the University of Regina Faculty Association (University of Regina Academic Staff), 2014-2017, Appendix B, Article 5.
4. Collective Agreement between the University of Regina and the University of Regina Faculty Association, 2014-2017, Article 10.
5. Terms and Conditions of Agreement between Athabasca University Governing Council and Athabasca University Faculty Association, 2015-2019, Article 5.

*31.3.1 In exceptional circumstances, the University may provide an annual stipend to Members in market sensitive disciplines ("market stipends"). Such stipends shall be reviewed annually or at specified intervals, but no such interval shall exceed three years. The University shall, within (thirty) 30 days of the end of the fiscal year in which the review occurs, provide a report to the Association regarding the payment of market stipends. This report shall include the results of the review and the reasons for the decision to provide or terminate a market stipend, the discipline involved, the names of Members affected and the amount of each stipend.*[6]

At Athabasca University renewability is permitted without stated restrictions and is at the discretion of the administration. At the University of Manitoba, the administration must provide a reasoned account of the extension or termination of the stipend. Such provisions could be improved by stipulating what reasons for renewal or termination are permissible, such as specific evidence or tests on the existence and continuation of the market forces that presumably led to the awarding of the differentials in the first instance.

## Differentials should be paid to an entire market group

Where they are employed, market adjustments should not be used to benefit select individuals. They should meet a standard of equitable access. This can be done by requiring the administration to award the market differential to all members of the market group. In some cases, the amount of the differential may vary, but differences should be based on factors such as rank, rather than on an individual basis. For example, at the University of Manitoba:

*31.3.4 Subject to s. 31.3.5 hereof, all stipends in a market sensitive discipline shall be of equal value and shall be provided to all Members in the market sensitive discipline within a faculty/school/libraries.*

*31.3.5 Market stipends may vary by rank provided that:*

*31.3.5.1 All ranks receive a market stipend and each Member in a rank, subject to s. 31.3.5.3 hereof, receives a market stipend of equal value; and*

*31.3.5.2 The ratio of the stipends for adjacent ranks shall not be less than 0.5 nor greater than 2.0. For the purposes of determining the value of market stipends, the ranks of Senior Instructor, Instructor II and Instructor I shall be deemed to be equivalent to the ranks of Associate Professor, Assistant Professor and Lecturer, respectively.*[7]

## Set maximum amounts

In cases where market differentials cannot be eliminated, limiting the overall amount dedicated to adjustments and the size of any individual adjustment are key elements of a bargaining strategy.

At the University of New Brunswick, the maximum amount of all market differentials is based on the salary floor for assistant professors. This global cap can be adjusted only by mutual agreement. Linking the cap to the existing salary structure both limits the total amount that can be paid and ensures that any increases to the fund are tied to increases to the salary floor:

*36B.04 In each academic year, there shall be an amount of not more than 250 percent of the current salary floor of the rank of Assistant Professor to be administered as Market Differential Adjustments in accordance with Article 36A.*[8]

The Windsor University Faculty Association (WUFA) has negotiated a limit on the amount payable to an individual member:

*J.4 The terms of the market stipend shall include:*
*(a) the amount, which shall not exceed the greater of ten percent (10%) of her/his normal salary or ten thousand dollars ($10,000).*[9]

6. Collective Agreement between The University of Manitoba and The University of Manitoba Faculty Association, 2017–2021, Article 31.3.1.
7. Collective Agreement between The University of Manitoba and The University of Manitoba Faculty Association, 2017-2021, Article 31.3.5.2.
8. Collective Agreement between the University of New Brunswick and the Association of University of New Brunswick Teachers–RAS, 2016-2020, Article 36B.04.
9. Collective Agreement between The Faculty Association and The Board of Governors of The University of Windsor, 2017-2021, Article J.4.

## The market adjustment should be separate from salary

Market adjustments, where they exist, should be paid as a stipend separate from the member's base salary, otherwise the adjustments can distort the reported salary scales. If the adjustments are treated as a part of regular salary (as career development increments are when added to base salary), then the salary scale will appear richer to all members than it actually is. Additionally, subjecting these payments to annual percentage increases also increases their impact on total lifetime earnings. Market differentials must therefore be separated from base salary and should not be increased by any across-the-board or other adjustments.

The agreement at Athabasca University has a fixed adjustment as follows:

*4. A Market Supplement is a fixed amount and is not subject to economic, merit, or other adjustments.*[10]

Similarly, at Concordia, market supplements paid to members in specified disciplines and discretionary supplements used to attract and retain individual staff are not subject to annual increases.[11]

## The administration should provide regular information

In order to manage the impact of market adjustments, the association must receive detailed lists of all forms of compensation paid to every member of the bargaining unit. These reports must be provided in a timely fashion. The language at the University of Manitoba requires the administration to provide information in a timely way following each decision concerning a market differential:

*31.3.2 Within (thirty) 30 days of deciding to provide or terminate a market stipend, the University shall provide to the Association in writing the name of the Member who shall receive the market stipend, the amount of the market stipend, the reasons for the decision and, in the case of providing a market stipend, the interval.*[12]

Because market differentials may contribute to discriminatory compensation inequities, it is important for the association to have sufficient information to track their equity implications. While the University of Western Ontario Faculty Association (WLUFA) agreement allows the employer to pay market differentials at its discretion, the information clause negotiated by the association requires the employer to break down their distribution by Faculty and gender:

*Market Adjustment*
*s36. Neither this Article nor any other in this Collective Agreement prevents the Employer from using other funds to increase a Member's salary in response to offers received from other employers or to accommodate other market forces.*

*36.1 Members may also receive limited-term stipends or Base Salary increases associated with Senate-approved chairs, Professorships, Fellowships, or other arrangements recognizing exceptional performance in Teaching or Research.*

*36.2 Within three months after the end of each Academic Year the Employer shall provide the Association with the number and total value of adjustments made under each of Clauses 36 and 36.1 of this Article, broken down by Faculty and Gender.*[13]

At the University of New Brunswick, the AUNBT has negotiated a high degree of transparency. Individual appointment letters, which are provided to the association, clearly identify each component of the initial salary. In addition, the association receives the names of market differential recipients, the amount of each adjustment, and on request the reasons for any discretionary adjustments:

*36A.08 The offer of appointment letter shall state the amount of experience credited, the dollar amount specifically given for the experience subject to the provisions of 36A.09, the dollar*

10. Terms and Conditions of Agreement between Athabasca University Governing Council and Athabasca University Faculty Association, 2015-2019, Article 4.
11. Collective Agreement between Concordia University and the Concordia University Faculty Association, 2015-2018, Article 39.05.
12. Collective Agreement between The University of Manitoba and The University of Manitoba Faculty Association, 2017-2021, Article 31.3.2.
13. Collective Agreement between Western University and the University of Western Ontario Faculty Association, 2014-2018, Article 36.2.

*amount specifically designated as a Market Differential Component (if any) and the dollar amount specifically designated as a President's Discretionary Component (if any). The Association shall be sent a copy of that offer of appointment letter within ten (10) days of acceptance of that offer by the candidate.*

*36A.19 The Association shall be notified of the names of the recipients of all Market Differential Components and Adjustments, and President's Discretionary Adjustments and components, and the amount of each. Upon request the Association will be provided within a reasonable time with reasons for any adjustments made from the President's Discretionary Fund. Such notification shall be directed to the President of the Association, and any information contained therein which has the effect of revealing individual salaries shall be held in confidence by him/her.*[14]

## Provide a mechanism to correct for discriminatory inequities

Payment of market differentials can have discriminatory consequences that are harmful to the membership as a whole. Market adjustments create distortions among and within disciplines. Selection of disciplines to receive market adjustments rarely considers the impact on equity. Targeted disciplines may be dominated by men, reflecting and perpetuating the under-valuing of work traditionally or predominantly performed by women and members of racialized groups. Within disciplines, inequities can develop if differentials are negotiated by individuals or if they are determined by criteria that may have a disparate impact on members of equity-seeking groups. For example, awarding market differentials to attract academic staff from other institutions or retain employees with competing offers disadvantages academics who are less geographically mobile, a factor linked to equity considerations.

Regular equity-focused compensation reviews and the full remediation of discriminatory inequities are necessary to tackle these problems. Anomalies funds may be insufficient to remedy inequities, and contradict the principle that the employer must be responsible for remedying discriminatory inequities in full, not up to an arbitrary amount. The cost of remedying past discrimination should not be considered a compensation increase charged against the cost of the collective agreement.

## Conclusion

Membership education is a key factor in negotiating market-driven salary adjustments. Members should know that the money spent on differentials reduces the pool available for everyone else, that they undermine the association's duties and goals to ensure equity, that they perpetuate discriminatory compensation practices, and that the administration's reliance on market adjustments demonstrates that salary scales are inadequate. The membership must be engaged in order to support hard negotiation to implement a competitive and equitable compensation structure.

The issue of market adjustments reveals deeper issues about academic staff salary scales at many institutions. With the large number of steps at each rank, many members work for an entire career before reaching the ceiling. A faster rise to a lower ceiling increases life-time earnings, a factor which may well offset supposed market differences.

Finally, it is important to recognize that market differentials are not the only, or necessarily the most important, factor that candidates consider when assessing competing offers. Associations should insist that employers attract and retain staff through excellent terms and conditions of work, by creating an inclusive and equitable workplace, and providing manageable workload, support for scholarship, meaningful participation in collegial governance, and fair and competitive compensation for all members rather than a select few.

14. Agreement between the Association of University of New Brunswick Teachers – RAS and the University of New Brunswick, 2016–2020, Article 36A07.