

SCHEDULE "A"

1. The responding party, York University (the "Employer" or "York"), agrees with the facts asserted (although not the conclusions or commentary) contained in the Application in Schedule B at paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27 and 30.
2. The responding party, York University (the "Employer" or "York"), disagrees with the facts asserted in the Application in Schedule B at paragraphs 19, 23, 28, 29, 31 and 32.

Preliminary

3. As demonstrated by all of the agreed upon items in the Application, York has bargained in good faith and continues to bargain in good faith to reach renewal collective agreements with these three bargaining units.
4. By the University's count, the parties have met 51 times since the commencement of bargaining on October 30, 2020; 19 times in direct negotiations, 18 times with the assistance of mediator Chris Albertyn and 14 times with the assistance of the provincially appointed conciliators. As reflected on the CUPE 3903 website, the employer has delivered 53 separate proposals to CUPE 3903 (either with respect to individual items or of a comprehensive nature) over the course of bargaining and across all three bargaining units (and more comprehensive proposals dated July 4, 2021 that are not currently captured on CUPE's website). Over the same period, CUPE has delivered 23 separate proposals.
5. The University requests that the application be dismissed on a prima facie basis.

Response on the Merits

6. In paragraph 16 of the Application the Applicant refers to its creation of a "provisional strike timeline" on May 19, 2021. Notwithstanding the ongoing and positive negotiations between the parties and the Employer's stated desire to have stability for its students and community at the commencement of the Fall term, the Union's published timeline (attached as Attachment #1) forecast and entrenched their intention that no collective agreement would be reached until more than three (3) months later in the fall.
7. This "provisional strike timeline" established by the Union was not workable for the Employer and/or the University community and unnecessarily delayed reaching renewal collective agreements. The Employer therefore determined that it would request no board reports and establish an earlier deadline. Its aim has been (and remains) to reach negotiated agreements for one or more of these bargaining units and thus certainty and stability for the University community well in advance of September 2021.

8. As set out in paragraph 18 of the Application, the no board reports were issued setting a deadline of July 5th, 2021. The Conciliators (now appointed as Mediators pursuant to the Act) remained active and the parties also continued to work with Mr. Albertyn. As stated in paragraph 19 of the Application, on June 22, 2021 the University unilaterally extended the mediation period (and therefore the deadline for any work disruption) until July 10, 2021. The Employer expressly stated that this extension of the mediation period (the period following the issuance of a no board report and any established deadline) was to allow the Union to conduct its strike mandate vote and, contrary to paragraph 19 and 23 of the Application, at no point did it agree to meet with Mr. Albertyn or the conciliators on the days scheduled for the strike vote (see Attachment #2).
9. In response to paragraphs 23, 28 and 31 and 32 of the Application, York states the following:
 - (a) The University attended at and engaged in negotiations, through the Conciliator/Mediators, on July 4, 2021. It is expressly denied that the University “refused to even honor its commitment to bargain on July 4, 2021”. As a matter of fact, the University and CUPE negotiated on this day; that this occurred is evidenced by paragraph 30 of the Application, where the Applicant notes that York provided updated proposals for each unit on that day with a cover letter to the proposals (Attachment #3).
 - (b) York never made a commitment to meet and negotiate on the days of the Union’s strike mandate vote (July 6 to 9). CUPE was very public in its belief that having successful strike mandate votes for each of its three bargaining units would increase its bargaining power and obtain the best offer from York. The University therefore offered to meet on those dates if, and only if, the Union confirmed that a deal was within easy reach. If the Union was unable to say that, then the University instead indicated it would be prepared to meet following the strike votes (Attachment #4).
 - (c) York has never refused to bargain further. In fact, it offered to meet the week following the strike mandate votes.
 - (d) The University indicated to CUPE that its offer had some potential for movement and also clearly stated it could not make that movement without a commitment from the union to the July 16 conclusion of a ratification vote and an acknowledgement from the Union that a deal was near, or prior to the conclusion of a strike vote.
 - (e) The University again extended the mediation period deadline unilaterally to July 16, 2021 so as to provide the Union and the Employer an opportunity to reach an agreement without a work disruption (Attachment #5)

10. The University continues to work diligently and in good faith, using every tool available, to reach negotiated agreements without a work disruption well in advance of the Fall term.
11. In considering whether or not there is a prima facie case warranting the Board's intervention, the Board ought also consider the Union's conduct including its requirement for open bargaining, bargaining from below, bargaining of three units jointly, establishing "red lines" and its setting of arbitrary "provisional strike timelines". The Board ought consider not only Attachment #1 but also the Union's own published bargaining parameters (Attachment #6) and the decision of Industrial Inquiry Commissioner William Kaplan (Attachment #7).
12. York requests that this Application be dismissed on a prima facie basis without a hearing. Alternatively, York seeks an expedited hearing such that the Union may not utilize the Board's processes as a means to delay.

TAB 1

PROVISIONAL BARGAINING TIMELINE FOR CUPE 3903

NOTICE OF BARGAINING

Employer filed on August 25, 2020

The Employer served the local notice to bargain on August 25, 2020, and we officially began bargaining the following day.



BARGAINING SURVEYS

September 11, 2020 - October 21, 2020

Bargaining surveys were sent out to the membership and admissions were accepted until the October 21, 2020 SGMM.



SGMMs

Ongoing since August 28, 2020

The union has held SGMMs to discuss priorities and proposals with the membership every month since September.



NEGOTIATING AND EXCHANGING PROPOSALS

Ongoing since first meeting with the Employer: October 30, 2020

Proposals have been exchanged at bargaining meetings, the BT has regularly reported back to the membership, and has contributed to direction to determine future strategy.



MOVE INTO MEDIATION

Mediation began with Chris Albertyn February 14, 2021

This is not a statutorily mandated step, but the University agreed to mediation with Chris Albertyn over several weekends throughout 2021.



FILE FOR CONCILIATION

Employer filed on April 6, 2021

York requested that a conciliation officer be appointed from the Provincial Ministry of Labour.



CONCILIATION STARTS

Began on April 26, 2021 with Hanane Benzidane and Greg Long

Once the request for conciliation is received by Dispute Resolution Services, it is processed, and an Acknowledgement Letter is sent to the parties. An appointment of a Conciliation Officer will be made on the 6th day following the date of the Acknowledgement Letter. Given the processing time, it typically takes 10-14 days for the Conciliation Officer to be appointed. Once appointed, the Conciliation Officer will schedule a conciliation meeting on a date that is mutually acceptable to the parties. The Conciliator must report to the Ministry after 14 days, but conciliation can continue by agreement of the parties.



STRIKE MANDATE VOTE SGMM

July 5, 2021

An SGMM is held to discuss the Strike Mandate Vote and voting will open at this meeting.



STRIKE MANDATE VOTE

July 5-9, 2021

The Strike Mandate Vote must last five days and will have to be conducted virtually via Simply Voting.



“NO BOARD” REPORT REQUESTED

August 3rd, 2021

If conciliation is not successful, upon the request of either party, the officer advises the Minister of Labour, who issues a “No Board” report and sends it to each party. The issuance of the letter can take up to 3 days after the request. ***Either the Employer or the Conciliator can file for a No Board report with the Ministry before this proposed date***



“NO BOARD” REPORT ISSUED

Either the employer or the Conciliator can file for a No Board report with the Ministry before this proposed date

August 6th, 2021

The Ministry of Labour needs three business days to generate the requested No Board report.



LEGAL STRIKE POSITION

August 23rd, 2021

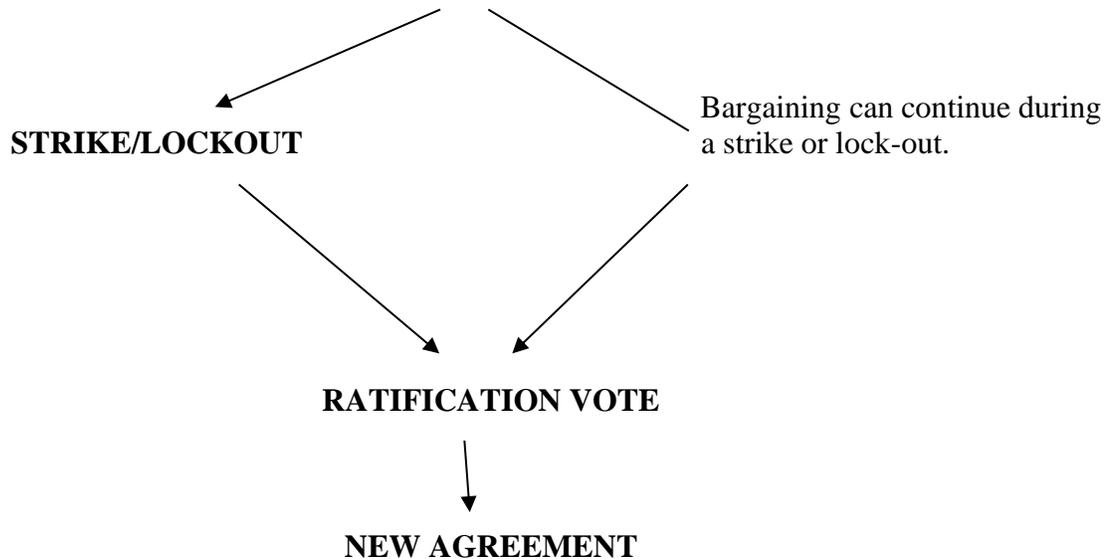
16 days after the date on the Minister’s “No Board” letter, the union is in a legal strike position and the employer can legally lock the employees out.



FINAL OFFER SGMM

September 7, 2021

A secret ballot vote on the offer must take place prior to going on strike.



Important dates:

September 9: Classes start (Fall 2020)

October 10-16: Fall 2020 Reading Week

November 6: Last day to drop a course without receiving a grade (for Fall 2020 courses)

November 7 to December 8: Withdrawal period (Fall 2020)

End of November to December 8: Last week of class in Fall 2020

December 9-23: Exam period for Fall 2020

January 11: Classes start (Winter 2021)

February 5: Last day to drop a course without receiving a grade (full year courses)

February 6 to April 12: Withdrawal period (full year courses)

March 12: Last day to drop a course without receiving a grade (for Winter 2021 courses)

March 13 to April 12: Withdrawal period (Winter 2021)

April 5 to April 12: Last week of classes for Winter 2021

April 14-28: Exam period for Winter 2021

May 10: Summer (S1) courses begin

June 21: Summer (S1) courses end

June 28: Summer (S2) courses begin

August 10: Summer (S2) courses end

TAB 2



June 22, 2021

BY EMAIL: 3903bargaining@gmail.com

**OFFICE OF LABOUR
RELATIONS**

Dan Bradshaw

Assistant Vice-President
Labour Relations

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Dear CUPE 3903 Bargaining Team,

Let me begin by thanking you for a productive meeting on June 19, 2021 as we continue to work towards negotiated renewal collective agreements. The University believes that if both sides continue to work hard with the conciliation officers and mediator Chris Albertyn, that we can achieve negotiated agreements at the table.

Two items have emerged in our recent discussions and various communications.

1. CUPE 3903's desire to see full comprehensive package proposals for all three bargaining units that include our monetary proposals; and
2. The request by CUPE 3903 to have \$80,000 transferred from the Professional Development Fund to the Ways and Means Fund

The University's bargaining team has been discussing these matters internally and see them as potentially helpful to reaching renewal Agreements. The University would therefore like to make certain commitments now – even as we continue to negotiate and address other matters at our upcoming meetings.

The University will commit to:

- Provide the Union, no later than the morning of July 4, 2021 (or earlier depending on the status of our negotiations), with complete renewal Agreements for each of the bargaining units including all compensation and language changes either agreed to or proposed.
- Extending the mediation period deadline from its current end date of July 5, 2021 through to 12:01 AM on July 10, 2021.

The University will, as per CUPE's request, transfer the funds from the Professional Development Fund to the Ways and Means Fund, subject to the caveat that the renewal agreements have been resolved by July 10, 2021.

Finally, at the May 31, 2021 meeting (between CUPE 3903's executive and Provost Philipps and VP Cote-Meek) CUPE 3903 indicated that a proposed Letter of Understanding (LOU) regarding COVID-19 and return to campus in Fall 2021 would be forthcoming for the employer's consideration. The University is agreeable to engaging now in a discussion and work on agreeable terms of a COVID-19 LOU, subject to Bill 124 compliance, with our intention being its inclusion in the complete renewal Agreements as described above.

Sincerely,

A handwritten signature in black ink that reads "Dan Bradshaw".

Dan Bradshaw

cc: Hanane Benzidane
Greg Long
Vanessa Lehan-Streisel



TAB 3

July 4, 2021

BY EMAIL: 3903bargaining@gmail.com

**OFFICE OF LABOUR
RELATIONS**

CUPE 3903 Bargaining Team
cc: Hanane Benzidane
Greg Long

Dan Bradshaw
Assistant Vice-President
Labour Relations

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danbrad@yorku.ca
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Dear CUPE 3903 Bargaining Team,

Let me begin by thanking you for the productive discussions over the last five days of bargaining. The University believes strongly that the attached updated comprehensive proposals form the basis for renewal collective agreements, that, among other important matters, will be effective in increasing equity, diversity and inclusion.

Since the commencement of bargaining last fall, the University has shared its desire to achieve renewal collective agreements as expeditiously as possible to provide certainty and stability to the University community, particularly considering the global pandemic. Although the University's proposed approach to expedite bargaining through extension agreements did not lead to a quick resolution, the parties have continued on to make progress in the negotiation process.

The attached updated packages include all the improvements made to the University's proposals over the last few days, beginning with the comprehensive proposals provided on the evening of June 30, 2021. Further to our ongoing conversations, the attached comprehensive proposals also contain a proposed Letter of Understanding (LOU) that outlines the University's continued commitment to a healthy and safe phased return to campus, consistent with all relevant public health guidelines.

To assist in achieving negotiated renewal collective agreements, over our 51 bargaining meetings we have focused on being responsive to CUPE's proposals while also ensuring that the University's proposals focused on equity and job stability.

Further, the University extended funding to CUPE for a number of important funds into 2020-2021 to avoid any gap in supports for members in need while bargaining was underway, including:

- CUPE 3903 Benefits Fund of \$220,000
- Childcare Fund of \$260,000
- Sexual Violence Survivor Fund, \$50,000

In terms of the monetary proposals in the comprehensive packages attached, we have worked within the framework of the Government's Bill 124, to provide 1% across-the-board increases in compensation and various funds, and included a provision in the proposals to work with CUPE to allocate any remaining funds available within the Bill 124 1% envelope.



Highlights of the comprehensive packages include:

For Unit 1:

- *Proposed:* TA Workload Form to provide for up to 5 hours of mandatory Occupational Health and Safety and AODA training within the 270 hours of a full TA assignment.
- *Agreed by parties:* A new voluntary Professional Development program to provide five hours of paid professional development (outside of the hours of a TA contract) toward the completion of a Certificate through the Teaching Commons for all TAs who have been assigned their first TAship plus up to 500 additional TAs per contract year.
- *Agreed by parties:* Ticketed Course Directorships for Unit 1. This increases tickets from 50 to 55 course directorships with a minimum of 50% of the ticketed course directorships at the Faculty level, in each contract year, prioritized for qualified applicants who self-identify as a member of one or more of the Equity Groups.
- *Agreed by parties:* Revise Unit 1 blanket application to add the opportunity for applicants to indicate a preferred name and pronouns by which to refer to them and to insert the University's current self-identification survey distributed to new and continuing employees on a confidential basis.

For Unit 2:

- *Proposed:* Priority for equity identified hiring. Enhancements to provisions throughout the collective agreement on equity issues so that the administration of the collective agreement will better serve to increase the representation and inclusion of members of equity seeking groups.
- *Proposed:* Improved access to post retirement benefits for retiring Unit 2 members.
- *Proposed:* A Transitional Continuing Appointment Program that supports eligible Unit 2 members in planning their retirement with an employer commitment of work over a two or three-year period, paid reductions in teaching, and a severance payment.
- *Proposed:* A Time-Limited Severance Program that provides a one-time opportunity for eligible Unit 2 members to immediately elect to retire with a severance payment.
- *Proposed:* A joint committee will be established with the purpose of making recommendations for a new job stability program in the York-CUPE 3903 Unit 2 collective agreement that would be in place of the Long Service Teaching Appointment (LSTA) Program.
- *Proposed:* Continuation of LSTAs for the life of this renewal agreement while the joint committee completes its work.
- *Proposed:* Two conversion appointments in each of 2021-2022 and 2022-2023 with one recommendation in each of the two years prioritized for candidates who self-identify as Indigenous or racialized.

For Unit 3:

- *Proposed:* Carry forward into the renewed collective agreement any funds allocated to the Graduate Assistant Training Fund (GAT Fund) from the 2017-20 Collective Agreement that were not spent for the intended purpose of supporting the incentivization of research at the University and the provision of high-quality training opportunities in research for graduate students.
- *Proposed:* Extend via a revised LOU, the GAT Fund for the second and third year of the collective agreement.

- *Proposed:* Increase the annual GAT Fund to \$220,000 with up to 40 individual allocations to support Graduate Assistant positions.
- *Proposed:* Establish in the LOU, the process for allocating GAT Funds.
- *Proposed:* Take proactive steps to advise full-time faculty members of the correct classification of Unit 3 bargaining unit work according to Article 3.01 of the Unit 3 Collective Agreement.

The parties have been meeting formally for nine months, including many meetings with the conciliation officers, and mediator Chris Albertyn. In this time, we have agreed or moved closer to agreement on a wide range of issues, and those issues which require longer term discussions, such as job stability, can be addressed in the proposed joint committee.

While it is the decision of CUPE 3903 and its members to determine the next steps that you take, we hope these comprehensive proposals, as presented, will be taken to your membership for a ratification vote.

As previously noted, the University is willing to meet from July 6 to 9 if we have a clear signal that CUPE 3903 considers that an agreement is near with only minor revisions to the attached proposals, and if the CUPE 3903 bargaining teams commit to holding ratification votes and reporting the results of those votes to the University by no later than July 16. Without this commitment from CUPE, we believe it would better serve our shared bargaining process for the parties to meet as early as possible on the week of July 12, following the completion of CUPE's strike mandate vote.

We look forward to your response.

Sincerely,



Dan Bradshaw

TAB 4

Kaylie Gordon

From: Dan Bradshaw
Sent: June 30, 2021 3:03 PM
To: 3903bargaining
Cc: Benzidane, Hanane (MLTSD); Long, Greg (MLTSD); Christopher Albertyn; Adrienne Lei; Leanne De Filippis; Kaylie Gordon
Subject: Response to your June 29 email - Bargaining next steps: July dates

Hi CUPE 3903 Bargaining Team,

I am writing to confirm the University's bargaining team is available for all of the dates and times CUPE 3903 set out below between July 1-4. I also wish to confirm that July 1, 9am to 12noon; and July 3, 11am to 6pm, are both with the assistance of Chris Albertyn.

Regarding specific topics to be discussed with the assistance of the conciliators at any particular time, we think that is best left to determine with the assistance of the conciliators as things evolve over the coming days.

At your request, by the evening of June 30 we will provide you with complete package proposals for each of CUPE 3903 Units 1, 2, and 3. These are not final proposals as we anticipate that there may be some revisions to be included as a result of our bargaining from July 1-4.

Regarding CUPE 3903's request for potentially continuing bargaining between July 6 and 9, we had communicated to CUPE 3903 through the conciliators that our extension of the mediation period until July 10 was to facilitate and support CUPE 3903 in its voting process commencing on July 5 by removing the need to be concerned about the pending close of the mediation period. We did not do so to extend the negotiating timetable.

We will have complete package proposals, including any necessary revisions resulting from our discussions concluding on July 4, available for CUPE 3903 to put to a vote of its members during the period of July 5-9, should it decide to do so.

We would, however, be willing to meet from July 6 to 9 if we have a clear signal that CUPE 3903 considers that an agreement is near with only minor revisions to the complete package proposals as of July 4, and if the CUPE 3903 bargaining teams commit to holding ratification votes and reporting the results of those votes to the University by no later than July 16.

Thank you,

Dan

From: CUPE 3903 BT <3903bargaining@gmail.com>
Sent: June 29, 2021 2:11 PM
To: Dan Bradshaw <danbrad@yorku.ca>; Leanne De Filippis <defilip@yorku.ca>; Kaylie Gordon <kaylieg@yorku.ca>; Christopher Albertyn <chrisalbertyn@icloud.com>; Benzidane, Hanane (MLTSD) <Hanane.Benzidane@ontario.ca>; Long, Greg (MLTSD) <greg.long@ontario.ca>; Adrienne Lei

[<alei@dglp.ca>](mailto:alei@dglp.ca)

Subject: Bargaining next steps: July dates

Hi Dan,

We are writing to confirm our availability for bargaining for the following dates, with the idea to discuss the following issues on specific dates:

- July 1, 9am-12pm: Unit 2 equity proposals (equity sidebar with Annette Boodram)
- July 1, 12:30-6pm: All units proposals, including monetary proposals
- July 2, 11am-6pm: Unit 1 and 3 proposals
- July 3, 11am-6pm: Unit 2 job security proposals (session with Albertyn)
- July 4, 9am-12pm: Unit 2 Nursing proposals

We also would like to confirm that the Employer will be sending us their final offer by the evening of June 30, as communicated to the Union during the bargaining session on June 25.

We also would like to communicate that the Union is available to continue bargaining on July 6th through July 9th, if need be. Since the Employer moved their deadline to July 10th, we urge your team to also reserve their availability on these dates, if we end up needing to continue our sessions, in an effort to reach a tentative settlement as expeditiously as possible.

Thanks,
CUPE 3903 Bargaining Team

TAB 5

July 6, 2021

BY EMAIL: 3903bargaining@gmail.com

**OFFICE OF LABOUR
RELATIONS**

Dan Bradshaw
Assistant Vice-President
Labour Relations

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Dear CUPE 3903 Bargaining Team,

As you had requested, on June 30 the University provided full renewal agreement packages for your consideration. The University then on July 4 provided CUPE 3903 Units 1, 2 and 3 with updated and improved packages based on our further collective bargaining from July 1 to 4. We believe these July 4 packages form the basis of renewal collective agreements.

As per my June 30 email, the University has been willing to meet from July 6 to 9 if we have a clear signal that CUPE 3903 considers that an agreement is near with only minor revisions to our July 4 proposals, and if the CUPE 3903 bargaining teams commit to holding ratification votes and reporting the results of those votes to the University by no later than July 16. We also indicated that alternatively we would be prepared to meet as early as possible on the week of July 12, following the completion of CUPE's strike mandate vote.

Having not heard from you regarding July 6 to 9, we take it that is not an option. However, as both parties have noted, an agreement is possible; in order to accomplish this, the University is prepared to meet with CUPE 3903 for full days and evenings as may be required, from July 13 to 15, with the assistance of mediator Chris Albertyn on July 13 and the provincially appointed conciliators on July 14 and 15.

In the interest of allowing us all to concentrate on finalizing these agreements, we confirm that we will extend the mediation period deadline until July 16. It is our hope that we will reach recommended agreements by no later than the July 15 and that this deadline will prove immaterial.

Sincerely,



Dan Bradshaw

cc: Hanane Benzidane
Greg Long
Chris Albertyn



TAB 6

Bargaining Parameters (approved by the general membership on October 9, 2020)

Throughout bargaining, CUPE 3903 continues its existing practice of social unionism. In recognition of this, the following bargaining parameters have been set by the general membership:

1. CUPE 3903, as part of its commitment to democratic union structures, affirms its ongoing commitment to bargaining processes that are transparent, accountable, and open.
2. CUPE 3903 engages in open bargaining. CUPE 3903 reserves the right to have members in the bargaining room (including virtual meeting structures such as Zoom etc.) to observe the bargaining process.
3. Decisions that affect the relationship between the membership and the Bargaining Team and the Bargaining Team and Employer are determined by the membership.
4. CUPE 3903 engages in coordinated bargaining. As part of one Bargaining Team, all bargaining units will bargain together to strive for the best agreement for all units and will not privilege one unit at the expense of another unit. In keeping with past practice, no one-on-one or small group/unit-specific bargaining will take place with the Employer.
5. No member of our Executive Committee or Bargaining Team will meet with the administration without approval of the membership. No member of the Executive Committee or Bargaining Team will meet informally with, or socialize with, the administration.
6. Members of the Bargaining Team will not engage in informal bargaining with the Employer without the approval of the general membership.
7. The Bargaining Team will not engage in confidential bargaining (which includes, but is not limited to, confidential “without prejudice” bargaining), except with approval of the membership. “Confidential” means that no information is communicated from the Bargaining Team to the membership.
8. There will be no media and communications blackouts during any phase of bargaining except with approval of the membership. “Media blackout” means that no information can be disseminated to the media. “Communications Blackout” means that no information can be distributed beyond the Bargaining Team.
9. The Bargaining Team will not make agreements with the Employer that will oblige the Bargaining Team members to take a particular view of, or position on, any matters related to bargaining.
10. The Bargaining Team will suspend negotiations with the Employer 24 hours before any previously scheduled (Special) General Membership Meeting to ensure that members have time to prepare a bargaining report for that meeting.
11. The decision to bring forward a tentative agreement for ratification shall be made by a majority vote of the combined Bargaining Team and the Executive Committee.
12. The Bargaining Team and the Executive Committee will not vote to bring a unit specific offer to the General Membership for a ratification vote unless all units recommend their individual agreements.
13. In line with [CUPE National](#) and [CUPE Ontario](#) policy, CUPE 3903 will not engage in bargaining that would result in a concession.
14. In the event of a strike, bargaining shall take place, whenever possible, at the Ministry of Labour or other offices which provide space at no cost, if in-person meetings are happening at the time. This arrangement shall be made with the Employer in writing, and copies shall be sent to the Executive Committee as a whole and kept in the Treasurer’s files.

15. Bargaining between CUPE 3903 and the Employer will take place during regular business hours (9:30 am to 5:30 pm). Regularly scheduled breaks as afforded in most workplaces will also be understood to apply, meaning that, on a full day of negotiations, there will be a minimum of two 30-minute breaks (one in the morning and one in the afternoon), as well as a one-hour break for lunch.
16. Bargaining meetings shall not be recorded by either party without the consent of everyone in the meeting.
17. If in-person meetings are happening at the time, bargaining meetings between CUPE 3903 and the Employer will take place in rooms large enough to accommodate all Union members that wish to attend those meetings. These rooms will be fully accessible, and properly equipped with power outlets for members wishing to take notes on their computers.
18. Privacy concerns specific to online meeting platforms such as Zoom be respected, including but not limited to: the Union and the Employer sharing hosting and any facilitation responsibilities (managing admitting people to the meeting, assigning groups, etc.); disabling the "chat" feature; maintaining the security of the meeting.
19. Bargaining meetings that take place virtually shall have closed captioning available. The costs of closed captioning shall be shared equally between the Employer and the Union.

TAB 7

REPORT

IN THE MATTER OF AN INDUSTRIAL INQUIRY COMMISSION

PURSUANT TO SECTION 37 OF THE *LABOUR RELATIONS ACT, 1995*

and

IN THE MATTER OF THE NEGOTIATION OF NEW COLLECTIVE AGREEMENTS

TO REPLACE THE ONES THAT EXPIRED ON AUGUST 31, 2017

BETWEEN:

CUPE, LOCAL 3903, Units 1, 2 & 3

and

York University

Before: William Kaplan
Industrial Inquiry Commissioner

Appearances

For York University: Simon Mortimer
Hicks Morley
Barristers & Solicitors

For CUPE: Rick Blair
Ryder Wright Blair & Holmes
Barristers & Solicitors

The matters in dispute proceeded to a facilitation on April 15, 17 & 20, 2018 and to the Commission of Inquiry on April 23, 2018.

Introduction

On April 13, 2018, the Hon. Kevin Flynn, Minister of Labour, appointed me as the sole member of an Industrial Inquiry Commission pursuant to section 37 of the *Labour Relations Act, 1995*:

In order to facilitate the making of new collective agreements between York University and each of the three units represented by CUPE 3903, I hereby establish an Industrial Inquiry Commission and I appoint WILLIAM KAPLAN to be the Commission's sole member, pursuant to section 37 of the LRA. The Commission shall inquire into the current dispute involving CUPE Local 3903 Units 1, 2 and 3 and the employer, York University. Following its inquiry, the Commission shall report to the Minister of Labour on any issues in dispute, and what if any, steps could then be taken to address them. The report will be shared with the Minister of Advanced Education and Skills Development or designate. The Commission shall report in 21 days after this order comes into effect. However, if it is deemed necessary, the Commission may request an extension of time to report of up to 7 additional days.

It should be noted that after the order establishing the Commission was announced, I received numerous unsolicited communications from persons affected by and interested in the dispute – CUPE members, York University Faculty Association members, retired professors, undergraduate and graduate students, parents and members of the public. While these communications were, largely, acknowledged, and the volume was considerable, I decided given the short time-frame, and the evident urgency of inquiring into and reporting to the Minister, to focus my attention on the submissions of the parties.

Background to the Dispute

CUPE, Local 3903 (hereafter “the union” or “Local 3903”) represents graduate student teaching assistants (Unit 1), contract faculty (Unit 2) and graduate assistants (Unit 3) employed at York University (hereafter “York”). Notice to bargain was given in June 2017. The parties exchanged proposals in October 2017. The union filed for conciliation on December 4, 2017. Beginning in

January 2018, the parties met in collective bargaining. In February 2018, the union applied for no board reports. They were issued for all three units on February 16, 2018. On March 2, 2018, the union held votes on the outstanding York offers. All three units voted to reject these offers. On March 5, 2018, Local 3903 commenced its legal strike. Later that month, the parties met with a Ministry of Labour mediator. In total, there were 26 negotiation/conciliation meetings before the strike began.

On March 27, 2018, York applied to the Minister of Labour to direct a last offer vote. That vote took place between April 6 & 9, 2018. All three units overwhelmingly rejected the employer's last offer and the strike continued. On April 13, 2018, I was appointed. Collective bargaining facilitation took place on April 15, 17 & 20, 2018. Other than the resolution of two outstanding issues, the parties remained completely deadlocked in their positions. It is fair to say, however, that it is job security for Unit 2 – the contract faculty – that presents the most significant barrier to settlement – if it were resolved it is likely that the other issues could be satisfactorily addressed in one forum or another. In that regard, there is no disagreement about the numerous outstanding issues: it is their resolution that divides the parties. Concluding that no further facilitation would be productive, the Commission part of the proceeding convened and concluded on April 23, 2018 (although intermittent and informal facilitation efforts continued after that date up to the actual submission of this Report). Both parties filed detailed written briefs and made submissions at the hearing held in Toronto.

Local 3903

In brief, it is Local 3903's submission that York signalled at the outset its desire for the current dispute to be resolved through interest arbitration rather than through free collective bargaining. York first made this interest arbitration proposal in August 2017 and has continued to repeat it throughout the fall, winter and, now, the spring of 2018. This desire to arbitrate, rather than bargain, was not new; rather it was part of an existing, and longstanding, pattern of refusing to meaningfully participate in collective bargaining. York was clearly, in the union's view, abdicating its responsibility to bargain in good faith to achieve a collective agreement by first requesting interest arbitration and, when that failed, it was relying on the Ontario Legislature to end the dispute through back-to-work legislation and mandatory interest arbitration.

This was, in Local 3903's view, particularly unfortunate as it was of the opinion that the only way to address the outstanding issues in dispute, in particular the Unit 2 job security concerns, was through actual negotiation between the parties. Indeed, in Local 3903's submission, the complicated Unit 2 job security proposals require detailed and nuanced discussion between the parties – discussions that necessarily engage institutional principles and fundamental academic goals, not to mention the needs of the union members as both educators and, in some cases, students. These matters, along with the other issues in dispute, were reviewed by the union and the point made that the only possible solution, in the union's estimation, was for the parties to return to the table and achieve a bargained outcome. Interest arbitration was a blunt instrument only to be used in the most extreme cases, and it was one, in any event, that was

particularly poorly suited to the resolution of a difficult and challenging problem – one requiring complex and creative solutions. The union requested a Commission recommendation to the Minister of Labour that the parties be directed, forthwith, to resume collective bargaining and that York be specifically directed to bargain with the union in good faith to reach freely negotiated collective agreements.

York

In York's submission, the current dispute was part of a pattern – a pattern of acrimony and labour disruptions that it experienced with none of its other bargaining units – a pattern that was unique to Local 3903, and a pattern that made interest arbitration the only possible method of resolving collective bargaining disputes with these three CUPE units. York reviewed the numerous and lengthy labour disruptions occasioned by Local 3903 strikes – and contrasted them with the peaceful resolution of bargaining disputes with all of its other unionized groups. It pointed to Local 3903's unique bargaining approach – there was no deal with any individual unit unless there was a deal with all three units – and its bargaining behaviour: as set out in its "bargaining parameters" providing for direct bargaining unit member participation under the rubric of "open bargaining" and "bargaining from below." This approach and behaviour, which York elaborated, was, in the university's view unhelpful – replete with its unflinching and unrealistic demands, so-called "red lines," refusal to accept "concessions," (as characterized by the union), and personal attacks through social media and otherwise. It was this approach and behaviour that actually precluded meaningful dialogue that could lead to problem solving and, ultimately, to freely negotiated collective agreements. It was noteworthy to York, and telling,

that the very few management proposals were summarily dismissed without even the pretence of perfunctory discussion.

In all of the circumstances, it was hardly surprising, in York's view, that the parties could not reach a freely bargained collective agreement. In fact, it was hardly surprising that York – to avoid yet another strike – and the inevitable and all too familiar serious disruption to students and the entire academic community – initially offered, and continues to advocate for, interest arbitration as the mechanism to resolve the dispute. The only freely negotiated deal that could be achieved at the bargaining table, in York's submission, was one where all, or almost all, of the union's demands were granted. That was not free collective bargaining and that, in York's submission, considering the content of the outstanding union proposals, would be completely contrary to its academic values and to the mission and objectives of the university. What free collective bargaining should achieve are normative settlements – settlements that bore a relationship to sectoral outcomes that were the result of free collective bargaining. There was nothing about the outstanding union proposals that fit within this matrix. The only possible conclusion, York argued, was that the parties were irretrievably at odds and that resolution can only be achieved through binding interest arbitration. York asked me to recommend this to the Minister.

Discussion

In Ontario, 98 per cent of all collective bargaining negotiations result in freely negotiated collective agreements. By any measure, this reflects an excellent and effective labour relations

system. However, these parties – Local 3903 and York – have a different history. They have an established pattern of labour disputes with lengthy strikes. The current strike is the fourth by Local 3903 in the last seven rounds of negotiations.

Collective bargaining is well entrenched at York. There are collective agreements with:

1. York University Faculty Association
2. Osgoode Hall Faculty Association
3. OPSEU Local 578
4. CUPE, Local 3903, Unit 4 (Librarians)
5. York University Staff Association
6. IUOE
7. CUPE, Local 1356
8. CUPE, Local 1356-1
9. CUPE, Local 1356-2

However, other than the labour disputes with Local 3903, in the last twenty-one years there has only been one other strike, by faculty in 1997. Stated somewhat differently, over the last two decades, i.e., since 1998, York has negotiated 79 collective agreements, and the only labour disputes – meaning strikes – involve Local 3903.

While there are numerous outstanding matters that have led to the standoff, the key issues revolve around Unit 2 and its job security demands. It is most particularly, but not exclusively, in these demands that one sees the clash of values. Indeed, it is fair to say one sees the almost

complete absence of any shared core values, academic or otherwise, for example in qualifications required for contract postings and, especially, in tenure stream recruitment: negotiated minimums of Unit 2 contract faculty conversions (CUPE) versus open search (York), to name just two. It is this clash that makes it impossible for the parties to freely negotiate a collective agreement.

This conclusion is established and reinforced by a review of the bargaining history between this employer and this union. The parties need to meaningfully address issues relating to contract faculty but they cannot do so because they fundamentally disagree on underlying principles. They have completely different world views that are informed by completely different academic and institutional aspirations. This delta precludes meaningful collective bargaining.

The other outstanding union proposals, while complicated and contentious, are ultimately more amenable to settlement in collective bargaining, or before the OLRB, but not in a bargaining regime where the three units – with separate membership and clearly distinct bargaining objectives (with limited pan-unit exceptions of no real factual significance) – have agreed that there is no resolution with one unless there is resolution with them all. No comment need be made about the union's bargaining parameters and culture other than to say that it is not normative. From an experienced perspective it is easy to understand how it might not enhance collective bargaining, however laudable the values – democracy, transparency, social justice, to list three – that are said to inspire and inform it, at least in part. Given its track record in successfully negotiating collective agreements, the union might usefully reconsider its

general approach. “Open bargaining” “bargaining from below,” and no deal with one unit unless there is a deal with them all, appears to be a recipe for one thing: position polarization and a succession of lengthy labour disputes.

Findings and Recommendations

In my view, the parties have reached an impasse and there is no reason to believe that they will be able to resolve their dispute through free collective bargaining. Their history indicates otherwise. The issues in dispute, in particular those relating to Unit 2, are not amenable, absent complete position reversal by one side or the other, to resolution. It is true that York requested arbitration at the outset. The union asserts that doing so evidences York’s initial and continuing refusal to meaningfully engage at the bargaining table. However, this is not a conclusion that I share. I can only conclude that York accurately assessed the likelihood of a negotiated outcome and to avoid another long strike suggested interest arbitration.

Given the events leading up to and following the strike, one has to conclude that York’s assessment was correct. It is most unlikely that this dispute will be resolved through negotiations. More than two dozen meetings between the parties achieved little of significance. Conciliation with the assistance of the most experienced and universally respected mediator from the Ministry did not resolve it. The final offer vote did not resolve it. Interest arbitration, as agreed to by the parties, or imposed by the Legislature, is the only possible outcome for ending this dispute. The unsuccessful facilitation efforts in this Industrial Inquiry Commission process buttress this conclusion.

Post-secondary faculty contract employment is complex, multi-faceted and often precarious. These issues are not unique to these parties. They arise across the province, although their magnitude varies. They would, in my view, benefit from careful, informed and principled study and review. Accordingly, I further recommend to the Minister that the government establish a task force on precarity in post-secondary education employment along the lines of the *Changing Workplaces Review*. Consideration might be given, following extensive and appropriate consultation with stakeholders – and taking into account appropriate public policy norms, including the stated legislative intention that parties resolve their disputes through free collective bargaining – to other means of dispute resolution in this sector such as the Education Relations Commission model given the wider interests that are self-evidently engaged.

Conclusion

As Local 3903 observed – correctly in my view – in social media, “Arbitration should only be considered when attempts at bargaining have failed.” The union has indicated that interest arbitration may be a viable method of resolving collective bargaining impasses, but it is a “last resort.” Free collective bargaining has failed. There is no reason to believe that it will succeed in the future through the prolongation of the labour dispute, and every reason to conclude that it will not. It is, accordingly, my primary and most time sensitive recommendation to the Minister that he call upon the parties to enter into consensual interest arbitration: for their own good, and for the good of thousands of students and the university. York University has indicated its willingness to do so. Failing consensual interest arbitration, and assuming the continuation of

this dispute, legislative intervention imposing interest arbitration will almost certainly be necessary.

All of which is respectfully submitted.

DATED at Toronto this 4th day of May 2018.

“William Kaplan”

Industrial Disputes Inquiry Commissioner