

SCHEDULE "B"

The applicant asserts the following material facts in support of its request for the relief set out in Schedule "A":

1. The applicant, CUPE Local 3903 (the "Union" or "Local 3903"), is a trade union and the exclusive bargaining agent for graduate student teaching assistants, contract faculty, graduate assistants, part-time librarians and archivists employed at the responding party, York University.
2. Local 3903 represents approximately 2,800 employees at York University, including members in four bargaining units: 1, 2, 3, and 4. Unit 4 is not at issue in this application.
3. The responding party, York University (the "Employer" or "York"), is a public research university in Toronto, Ontario that was established in 1959 by the *York University Act*. It is the second largest university in Ontario and the third largest university in Canada.
4. Local 3903 and York are parties to collective agreements for Unit 1, Unit 2, and Unit 3, each with a term of September 1, 2017 to August 31, 2020.

Background

5. On August 25, 2020, York served notices to bargain on Local 3903 for Unit 1, Unit 2, and Unit 3.
6. York assembled a bargaining committee led by its chief negotiator, Dan Bradshaw. Local 3903 assembled a bargaining committee with responsibilities shared between members from Unit 1, Unit 2 and Unit 3.
7. The parties initially scheduled and attended three bargaining sessions on October 30,

November 16 and 25, 2020.

8. At the second bargaining session on November 16, 2020, York presented a framework to extend the collective agreements of Unit 1, Unit 2, and Unit 3. Among other things, York proposed to establish a joint committee outside of the collective bargaining process to make recommendations for a new job stability program in Unit 2 to replace two existing programs, the Long Service Teaching Appointment ("LSTA") program and "Special Renewable Contracts".

9. At the third bargaining session on November 25, 2020, York invited the Union to make counterproposals. The Union expressed concerns about establishing a joint committee to deal with items that ought to be bargained and indicated that it wished to bargain job stability/job security language during the collective bargaining process.

10. In December 2020, the Union tabled 54 proposals in respect of Unit 1, Unit 2, and Unit 3. Among other things, the proposals addressed employment equity, stable and predictable funding for Unit 1, job stability/job security programs, and benefits for contract faculty in Unit 2, dignified retirement for long-serving members, and protecting the integrity of the Unit 3 bargaining unit.

11. From December 2020 to July 2021, the parties engaged in 49 bargaining sessions.

12. As part of the collective bargaining process, the parties also agreed to appoint Christopher Albertyn as a mediator to facilitate bargaining of two issues: (1) the Employment Equity Committee across all units and employment equity hiring in Unit 2, and (2) job stability programs in Unit 2.

13. From February 14, 2021 to July 3, 2021, the parties engaged in 18 bargaining sessions facilitated by Mr. Albertyn. In particular, the parties bargained the following issues in respect of

job stability proposals for Unit 2:

- a. a new Long Service Reward Program ("LSRP") for retirees;
- b. a new Transitional Continuing Appointment ("TCA") program for higher seniority members to provide a stable course load as they prepare for retirement;
- c. a new Continuing Appointment Program ("CAP") for lower seniority members to replace the current Continuing Sessional Standing Program ("CSSP");
- d. amendments to the post-retirement benefits provision;
- e. amendments to the Long Service Teaching Appointments ("LSTA") provision; and
- f. amendments to the Conversions provision.

14. On April 6, 2021, York filed requests for the appointment of a conciliation officer for Unit 1, Unit 2, and Unit 3. The Ministry of Labour then appointed conciliation officers Hanane Benzidane and Greg Long.

15. From April 27, 2021 to July 4, 2021, the parties met with the co-conciliation officers for 14 conciliation bargaining sessions. The parties agreed that the appointment of conciliation officers would not preclude continued mediation with Mr. Albertyn.

16. On May 19, 2021, the Union's members approved a provisional strike timeline, including a holding a five-day strike mandate vote from July 5 to 9, 2021.

17. On June 9, 2021, notwithstanding that the parties continued to make progress in both the conciliation process and mediation bargaining process and were not an impasse, the Employer

applied for no board reports.

18. On June 18, 2021, the Ministry of Labour issued no board reports. As a result, the parties would be in a lockout and strike position on July 5, 2021.

York's violation of its obligation to bargain and interference with the Union

19. On June 22, 2021, Mr. Bradshaw committed to provide Local 3903 with complete proposed renewal agreements for each bargaining unit by July 4, 2021, and to extend the mediation period with Mr. Albertyn from July 5 to 12:01am on July 10, 2021.

20. On June 25, 2021, Mr. Bradshaw advised Local 3903 that York would provide comprehensive proposals by the evening of June 30, 2021.

21. On June 29, 2021, Local 3903 confirmed to York that its bargaining team was available for a series of additional bargaining sessions on July 1, 2, 3, and 4, 2021, some with Mr. Albertyn and some with the co-conciliation officers. Local 3903 offered to schedule further bargaining sessions from July 6 to 10 in the event the parties did not conclude a collective agreement by July 4, 2021. Local 3903 requested that York hold dates from July 6 to 10, 2021.

22. In response to York's commitment to extend the mediation period, Local 3903 also advised that its bargaining team was available to continue bargaining from July 6 to 9, 2021 if necessary. Local 3903 encouraged York to hold these dates.

23. On June 30, 2021, Mr. Bradshaw resiled from his commitment to extend the mediation period with Mr. Albertyn to July 10, 2021. He said that York would not negotiate with Local 3903 from July 6 to 9, 2021 unless it committed to convert the scheduled strike mandate vote from July

5 to 9 to a ratification vote on the "the complete package of proposals as of July 4", *i.e.* wherever York's proposals stood after the next four days of bargaining. Mr. Bradshaw insisted that Local 3903 was required to conclude a ratification vote and report the results by July 16, 2021.

24. On the evening of June 30, 2021, York provided Local 3903 with complete proposals for each of the bargaining units, including its first monetary proposals.

25. On July 1, 2021, York provided Local 3903 with a revised proposal for Unit 2, including revisions to the post-retirement benefits provision.

26. At the July 3, 2021 bargaining session with Mr. Albertyn, the parties had agreed to focus on bargaining the job security provisions for Unit 2, including language regarding the LSRP, post-retirement benefits, and the terms of the TCA. Job security remained a critical unresolved issue for the Union and its members.

27. During this bargaining session, York presented further revisions to its last Unit 2 proposal dated July 1, 2021, namely the LSRP, the post-retirement benefits provision and the terms of the TCA. They narrowed the differences in their positions regarding the job security provisions but did not reach agreement.

28. Mr. Bradshaw advised the Union that he had not conveyed the Employer's "final offer", and that the Employer had not reached the limits of what it was prepared to offer in respect of each job security item. He said that York would only disclose its position if Local 3903 committed to hold a ratification vote on York's undisclosed final offer and report the results by July 16, 2021. Local 3903 rejected this proposal.

29. At the July 4, 2021 conciliation bargaining session, York refused to bargain further unless

Local 3903 committed to hold a ratification vote on its undisclosed "final offer". Although York had previously agreed to bargain on July 1-4, 2021 (but not July 6-9, 2021), it refused to even honour its commitment to bargain on July 4, 2021. Local 3903 rejected this proposal.

30. On July 4, 2021, York provided Local 3903 with updated proposals for each of the bargaining units that did not reflect York's final offer or limits in respect of each job security item for Unit 2. Mr. Bradshaw again stated that York would not meet with Local 3903 from July 6 to 9, 2021 unless it would "commit to holding ratification votes" by July 16, 2021.

31. As a result of the above, York is refusing to bargain further unless Local 3903 commits to holding a ratification vote on proposals that York has refused to disclose to it.

32. York has failed to bargain in good faith and make every reasonable effort to make a collective agreement because it has:

- a. Refused to recognize the Union as the sole and exclusive bargaining agent of its members. The Employer has refused to bargain with the Union unless it commits to present an undisclosed Employer proposal to its membership for a ratification vote, contrary to the Union's right to review the proposal and decide whether to do so.
- b. Adopted an intransigent position that reflects an intention to ensure that no collective agreement will be concluded. The Employer's demand is a "poison pill" that is impossible for the Union to accept. The Union cannot fulfil its duties to its members as bargaining agent, or otherwise commit to present any proposal for a ratification vote, unless the Employer discloses the proposal.
- c. Refused to bargain with the Union. Although the Employer committed to bargain with

the Union on July 1, 2, 3, and 4, 2021, it subsequently refused to do so unless the Union accepted its poison pill proposal.

- d. Made false commitments. Although the Employer unconditionally committed to extend the mediation period with Mr. Albertyn from July 5 to 10, 2021, it subsequently refused to do so unless the Union accepted its poison pill proposal.
- e. Withheld material information from the Union. Although the Employer confirmed that it has further proposals regarding job security, it has refused to disclose them unless the Union accepts its poison pill proposal. This conduct threatens an unnecessary lockout or strike, even though the parties may be able to reach agreement if York's proposals were disclosed.

33. York's deliberate conduct has impeded rational bargaining between the parties. York has frustrated the collective bargaining process and sought to evade its statutory obligation to bargain in good faith. It has not made all reasonable efforts to make a collective agreement. As a result, Local 3903 has lost the opportunity to participate in good faith bargaining with the Employer.

34. York's conduct has also interfered with the representation of employees by Local 3903.

35. York has violated sections 17 and 70 of the Ontario *Labour Relations Act, 1995*.

36. Local 3903 seeks the relief set out in Schedule "A".