Schedule A

The Respondent Union Canadian Union of Public Employees Local 3903 states as follows in response to the Application:

Introduction

1. This Application by the Employer is an attempt to use the Board's processes to force a result that the Employer has been unable to obtain in bargaining. The Employer has refused and continues to refuse to meet the Union to bargain, despite considerable moderations in the Union's proposals. The Employer has continued to set preconditions on bargaining and, when met with Union resistance to those preconditions – which include agreement to interest arbitration as well as proof that the Union is willing to move, essentially, to the Employer's position – the Employer has now turned to the Board rather than meet the Union to discuss and bargain the remaining outstanding issues.

Response to the Procedural Issues Raised by the Applicant

2. Regarding the Applicant's plea pursuant to rules 3.2, 3.3 and 40.7, there is no further need to expedite the application apart from the Board's determination already made on May 17 to abridge the time for filing a response to May 25, 2018.

3. With respect to the request pursuant to rule 40.9, the Respondent agrees that File #3423-17-U should be scheduled with this Application.

4. The Respondent further submits that OLRB File #2917-16-U should be scheduled and heard with this Application. That Application, filed by CUPE Local 3903 on February 15, 2017, challenged the legality of the Employer's elimination of positions in Bargaining Unit 3. The bargaining proposals of the Union related to Bargaining Unit 3, claimed in the instant Application by the Employer to be improper, are in response to the conduct of the Employer which eliminated hundreds of bargaining unit positions effective September 2016, which is the

subject of OLRB File #2917-16-U. The Parties had previously agreed to adjourn File #2917-16-U until the Parties were in a strike or lockout position.

Response to the Substance of the Application

5. The Respondent Union ("the Union") denies that there are any facts pleaded in the Application to sustain allegations of breaches of section 17 or 76 of the *Labour Relations Act* and asks that the Application be dismissed.

6. The Union disagrees with the statements in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19.

7. The Union relies on materials and facts in its application in 3423-17-U.

8. The matters complained of in the instant Application are all matters which have been known to the Employer since prior to the commencement of the strike on March 5, 2018. The Employer has waited twelve (12) weeks to bring the instant Application. In the circumstances, the relief sought by the Employer should not be granted. The Employer has delayed seeking relief from the Board. The Employer seeks to end the strike through the intervention of the Ontario Labour Relations Board without engaging in meaningful bargaining with the Union.

9. With respect to Paragraph 7, the Employer's communications on May 4, 2018 to the Union invited the Union to attend a meeting solely to discuss agreement to voluntary interest arbitration, one of the recommendations of the Industrial Inquiry Commission.

10. The Union was not at that time willing to refer matters to interest arbitration. The Union therefore did not attend the meeting which the Employer had unilaterally arranged. The Employer was aware that the Union was not prepared to voluntarily refer matters to interest arbitration, as the Union had responded

publicly to the Report and rejected interest arbitration, preferring to return to the bargaining table to negotiate a collective agreement.

11. On May 5, 2018 the Employer issued a public letter to all Members of Provincial Parliament pleading with them to support return-to-work legislation.

12. The Union subsequently wrote to the Employer on May 10, 14 and 16 requesting a return to collective bargaining. The Union advised the Employer it had sufficient flexibility to reach a collective agreement. The Employer has refused to accept the assertion of the Union. The Employer has refused to return to the bargaining table, even with the proposed assistance of a mediator, without obtaining a promise that the Union will agree to voluntary interest arbitration to resolve outstanding issues. The Union has not agreed to that precondition.

13. The Employer has shown inflexibility on its demand that the Union agree to interest arbitration since it first proposed this in September 2017. Further the Employer has required the Union to modify its proposals to "*fit within the range of what we [the Employer] have identified above as a basis for settlement*", as the Employer has stated in correspondence to the Union dated May 15 2018.

14. With respect to paragraph 8, the Union does not agree that the "bargaining parameters" have been strictly enforced. Further, the Applicant's spokesperson was presented with the Union's bargaining protocol on August 29, 2017, at the outset of bargaining, and made no objection. No objection to the Union's expressed bargaining parameters has been made prior to this Application. The Applicant has unduly delayed raising the matter of the Union's "bargaining parameters" before the Board.

15. With respect to paragraph 9, the Union does not agree that there is a lack of community of interest between the bargaining units on employment issues. There are obvious common interests, which are reflected in provisions in the collective agreements addressing common issues and recognizing the movement between

bargaining units. Further, the Employer has presented "common" positions on issues identified by the Parties as "common" and "unit specific" issues, also where so identified by the Parties.

16. The three separate bargaining units are not the result of an absence of a community of interest. The bargaining units were organized at different times, under different circumstances, by different bargaining agents, over a period spanning 26 years.

17. The Union disputes the example raised by the Employer of a putative difference in interests. The Union disputes that additional Unit 1 Course Directorship positions "would be very well received by the membership of Unit 1" as claimed in Paragraph 9 of the Application. The Employer's offer of March 27, 2018 containing additional Course Directorships in Unit 1 was the subject of a supervised vote pursuant to section 42 of the *Labour Relations Act* in April, 2018, That offer, including its increased number of these so-called "ticketed" Course Director appointments, was soundly rejected by 86% of Unit 1 members, on a turnout of 74% of eligible voters. That result does not reflect any significant support in Unit 1 for the Employer's increased Unit 1 Course Director appointment proposals.

18. In any event, it is entirely appropriate for a Union to take a broad view of the interests of all of its membership and of all of the interests at play in a University setting, including issues engaged by the question of increasing Course Directorships in Unit 1. The Union and its membership – not the Employer - are the appropriate arbiters of whether the interests of members are best served by supporting the goals of members in all of the Union's bargaining units of the same employer.

19. The Employer did not object to bargaining the three bargaining units jointly prior to this Application filed on May 18, 2018. The Employer was presented with the

"bargaining parameters" on August 29, 2017 and continued to negotiate with the Union and its three bargaining committees. Raising the issue at this juncture is untimely.

20. With respect to paragraph 10, the Employer has not identified a date or occasion on which it is said to have been "forced" to raise the issues complained of, nor provided specifics as to those issues, their frequency, or how they interfered with the Employer's ability to bargain or to have rational and informed discussion with the Union bargaining team. The Employer has not identified whether the conduct complained of was by members of the Union's executive or bargaining team or unidentified members of any particular bargaining unit. Further, since the commencement of the strike, the Employer has met with the Union face to face only once, on March 20, 2018 briefly. The conduct which the Employer complains of and which it alleges is causally linked to the Union's "open bargaining" process occurred, if at all, months ago. Yet the Employer did not file an unfair labour practice at the time. The Union's "bargaining parameters" do not present any continuing obstacle to meeting or to exchanging further proposals or offers. The allegation does not support a finding of a violation of section 17 or 76 of the *Labour Relations Act.*

21. The Respondent denies that the structures under which it ascertains the will of its members are improper as alleged by the Applicant in paragraph 11. The Union is able to consult its membership regularly during bargaining and does so. It is not illegal and in fact is perfectly proper for bargaining parameters to be set by principals, requiring that bargaining teams consult further with principals and obtain instructions prior to entering into discussions or agreements which go beyond existing mandates. The term "red lines" used by the Union is merely a descriptive term describing a parameter beyond which further instructions will be required.

22. The Respondent denies that its proposals in relation to the Conversion program, or its proposal Graduate Assistantships, are in any way improper. Nor is it improper for the Union's three bargaining committees to bargain these issues with the Employer as part of a comprehensive settlement. The Union denies the allegations of impropriety in paragraphs 12 through 19 of the Application.

23. While the Board has held that illegal proposals cannot be bargained to impasse, the Board has interpreted this proposition to include proposals which are "inconsistent with the scheme of the Act". Neither the Union's proposals regarding conversion opportunities for members of the sessional faculty in Unit 2 nor its proposals related to creating employment opportunities for graduate students in Unit 3 are in the least aspect inconsistent with the scheme of the *Labour Relations Act*. The Union's proposals are not illegal proposals.

24. As regards paragraphs 13 and 14 of the Application, the Union denies that bargaining regarding conversions of Unit 2 faculty to probationary tenure-stream faculty is improper at any point. The Applicant has described this as "bargaining conversion positions". The Parties have bargained a sophisticated arrangement which includes reciprocal recognition of the conversion program in the York University Faculty Association collective agreement. It has been in place for 30 years, through many rounds of bargaining including rounds of bargaining which included strikes. The Employer has never filed an application with the Board alleging its voluntary agreement to said arrangements are "illegal". The current opposition of the Employer to said arrangements do not transform them into illegal proposals.

25. This "conversion program", contained in the Collective Agreements as the "affirmative action" program, is a term and condition of employment of a subset of Unit 2 members which is designed to recognize and account for the barriers they face in further academic employment by reason of their lengthy service and teaching density as contract teaching faculty which, among other things, limits

their opportunities for research, writing, and university service. The affirmative action program provides an opportunity for an agreed minimum number of persons to be recommended for appointment to probationary tenure-stream faculty in the full-time academic staff in the bargaining unit represented by the York University Faculty Association (and incentives to the hiring units for such appointments). There, they are governed by the same rules regarding probation, promotion and tenure as any other member of the Faculty Association's bargaining unit. In issue in this current round of bargaining is the number of opportunities for persons in the "affirmative action pool", to leave the bargaining unit under conditions which will place them in these opportunities for probationary continuing tenure-stream appointments. The mere fact of disagreement about the number of opportunities does not render the position of the Union "illegal" or "bargaining to impasse" on a bargaining unit scope issue.

26. It is not contrary to the scheme of the *Act* to bargain conditions for existing members which will improve their opportunities for advancement including advancement to positions outside the bargaining unit. This is not an improper bargaining of the scope of the bargaining unit to impasse.

27. With respect to paragraphs 15 to 19 of the Applicant's Schedule A (which is the same issue as paragraphs 39 through 53 of the Applicant's Response in OLRB File #3423-17-U), the Respondent Union denies any improper bargaining conduct. In paragraphs 15-19 of the Application, the Employer has suggested that the Union's proposal regarding Graduate Assistantships for incoming graduate students relates to "scope" and is therefore illegal and cannot be bargained to impasse "tantamount to a recognition strike". The Union's proposal regarding Graduate Assistantships for incoming students has nothing to do with the recognition clause or bargaining unit scope and is therefore not illegal. The mere fact the Employer disagrees with the Union's proposal does not render it "illegal" or contrary to the Ontario Labour Relations Act to continue to have these issues on the table.

28. The Union's proposal is an attempt to protect the integrity of the bargaining unit. It is not akin to changing the Union's scope clause. The scope clause remains untouched under the Union's proposal. It relates to the subject of the Union's February 15, 2017 unfair labour practice OLRB File #2917-16-U which the Union submits should be scheduled with this instant Application.

29. The Union's proposal is more akin to bargaining about contracting out to protect the integrity of the bargaining unit, which is clearly a permissible bargaining position of a union. It should not be conflated with cases in which the issue is a dispute over expanding work jurisdiction.

30. Paragraph 18 of the Schedule to the Application refers to a Paragraph 10 (a) and 10 (b). There is no paragraph 10(a) or 10(b) in the Schedule.

Conclusion

31. The Union asks that the Application be dismissed and asks that the Board grant none of the requested relief.