

**IN THE MATTER OF AN ARBITRATION PURUSANT TO SECTION 40 OF THE
*LABOUR RELATIONS ACT, 1995***

BETWEEN:

The Governing Council of the University of Toronto

AND

CUPE Local 3902, Unit 1

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: John Brooks
Hicks Morley
Barristers & Solicitors

For CUPE: Richard A. Blair
Ryder Wright Blair & Holmes
Barristers & Solicitors

The matters in dispute proceeded to a hearing held in Toronto on June 29, 2015.

Introduction

On March 26, 2015, following a legal strike of approximately one month, the University of Toronto (hereafter “the University”) and CUPE Local 3902, Unit 1 (hereafter “the union”) agreed to refer the remaining collective bargaining matters in dispute to final and binding arbitration in accordance with section 40 of the *Labour Relations Act, 1995*. The parties agreed that the arbitrator would be chosen by the provincially appointed mediator, Peter Simpson, and, in due course, I was asked to determine all outstanding matters in respect of the renewal collective agreement. With the agreement of the parties, extensive written briefs were exchanged following which the case proceeded to a hearing in Toronto on June 29, 2015.

In brief, it is the University’s position that the terms of the un-ratified March 18, 2015 Memorandum of Agreement for a Renewal Collective Agreement (hereafter “the March 18 Memorandum”) should be awarded. The March 18 Memorandum contained Letters of Intent creating The Tuition Assistance Fund and The Graduate Student Bursary Fund (hereafter “the two funds”). These Letters of Intent imposed an obligation on the University to make specified and capped contributions to the two funds during the term of the collective agreement. For its part, the union took the position that the March 18 Memorandum should be awarded *but* with certain changes (which will be detailed below) to the provisions of the Letters of Intent creating the two funds.

General Background

The union represents approximately 6000 employees – all of whom are students or postdoctoral fellows – employed in various teaching or teaching support roles, including course instructors, teaching assistants, lab demonstrators, tutorial leaders and invigilators. There are fewer members in the bargaining unit during the summer for obvious reasons. Approximately 4500 union members are employed at any one time during the regular academic year. On average, although this can and does vary, members of the bargaining unit work approximately 210 hours per year. This is a mature bargaining relationship: since 1975, the University and the union (or its predecessors) have negotiated numerous collective agreements. The previous collective agreement expired on April 30, 2014.

It should be noted that an issue arose during the course of these proceedings about whether certain bargaining materials and communications were privileged and, therefore, not properly admissible. That dispute proceeded by way of conference call, and was also addressed by both parties in their reply briefs.

The Current Dispute

The union served the University with notice to bargain on March 3, 2014. The union and the University were both represented by experienced bargaining committees. The parties met on a number of occasions in July, August, September, October, November and December 2014. Application for conciliation was made in December 2014.

Conciliation occurred on January 27, 2015. The union requested a “no board” report. It was issued on February 4, 2014 and the union set a February 26, 2015 strike deadline (a strike vote had been conducted the previous November). In the meantime, further mediation efforts ensued. At approximately 3 a.m. on February 27, 2015, with the assistance of Mr Simpson, the parties concluded a Memorandum of Agreement for a Renewal Collective Agreement (hereafter “the February Memorandum”).

Among other things, the February Memorandum contained two new Letters of Intent, one in respect of Tuition Assistance Fund and the other in respect of the Graduate Student Bursary Fund. The University made a financial commitment of capped contributions of \$700,000 annually for the first fund, and \$400,000 annually for the second. Both the union and the University agreed to recommend the February Memorandum to their respective principals for ratification. The union’s by laws provided for a two-step ratification process: Step One: Ascension Meeting. Step Two: Ratification Vote. Simply put, before a negotiated collective agreement is put to a ratification vote, it must first be approved at a unit ascension meeting.

The ascension meeting occurred on February 27, 2014. The majority of the 800 members present voted against the February Memorandum proceeding to a ratification vote. The strike then began with about 1000 members initially continuing to work and others returning to work over the course of the dispute.

In the meantime, bargaining continued. On March 17, 2015, the University made a settlement offer through Mr Simpson (a highly experienced mediator with particular expertise in post-secondary faculty collective bargaining). There were changes made between the February Memorandum and the University's new offer. For example, the Tuition Assistance Fund was revised to make it retroactive to 2014-15, but the annual amount was reduced from \$700,000 a year to \$600,000 per year. The Graduate Student Bursary Fund was also made retroactive and increased from \$400,000 to \$1,045,000 a year (there appears to have been a reallocation within a fiscal envelope when considered in the overall as there were reductions in the ATB and FAF). On March 18, 2015, the union, again through Mr Simpson, communicated a counter-offer that, among one other thing, contained some changes to the Letters of Intent establishing the two funds but, significantly, did not seek any changes to their core nature, namely, the capped contribution amounts. The University accepted the counter-offer and the parties entered into the March 18 Memorandum. The union's co-chief negotiator, Ryan Culpepper, then wrote union members:

Dear Members of Unit 1:

The Unit 1 Bargaining Team is writing to inform you that on the evening of March 17, 2015, the Employer sent a new offer through the conciliator. The Bargaining Team voted to reject that offer because of concerns that the offer did not provide enough financial security regarding tuition assistance and the minimum funding package.

This afternoon, the Bargaining Team presented a counter offer to the Employer through the conciliator in a manner that a majority of the Bargaining Team felt that, if accepted in full, contained enough changes to warrant bring it back to the membership for ratification with a recommendation from the union.

The Employer has accepted our counterproposal, so we now have a tentative agreement (TA)....

The Bargaining Team is not unanimous in its recommendation. Our counterproposal (main points summarized below) brings us financially ahead of the proposal that was endorsed by members at the meeting held last Friday. What it does not do, however, is create the structural changes in as clear a way as we wished. Nevertheless, we are all agreed that this TA brings us much closer to the endorsed objectives of the membership. We also feel that, as we come to the end of the third week of our strike, it is important for members to review this new tentative agreement and again decide whether to accept or reject it.

The ascension meeting took place on March 20, 2015. A majority of the approximately 1500 votes were in favour of sending the March 18 Memorandum to ratification. The ratification vote took place between March 20th and March 22nd. On March 23rd, the union announced that 2093 members voted. Ratification was rejected: 992 in favour, 1101 against, a difference of 109 votes. The strike continued.

On March 25, 2015, the University proposed that the parties refer the outstanding matters in dispute to final and binding arbitration. The union replied with a proposal seeking amendments to the earlier agreed upon Letters of Intent establishing the two funds – the same proposals currently in issue. The University said no. The following day, March 26th, at a general membership meeting, a majority of the membership present voted to end the strike and agreed to the University's request for final and binding arbitration.

The main difference between the parties (although there are others such as whether the two funds remain as letters or become terms of the collective agreement) has to do with administration and liability in the event that the allocated monies to the two funds are

insufficient. Letters of Intent imposing obligations on the University to make capped contributions to the two funds were agreed to first in the February Memorandum, and then after further negotiations, adjustments and reallocations, in the March 18 Memorandum. Summarily described (and this will be discussed further below), the University's position gives effect to the March 18 Memorandum while the union's position seeks further changes to ensure that the University bears the risk of fully financing the two funds. Instead of just agreeing to capped amounts, individual entitlements are to be guaranteed, and the union proposal further requires that the University assume responsibility for fund administration. The union acknowledges that the data provided by the University indicates that the allocated amounts should be sufficient to achieve the parties' shared goals but notes that could change if underlying assumptions are altered, for example, through growth in the population of eligible individuals.

Union Argument

The union carefully and comprehensively reviewed the bargaining history between it and the University and also, in some detail, canvassed the history of the bargaining proposals and objectives at play in the current round. In general, and without canvassing the specifics, the union sought to improve the lot of two particular member subsets: graduate students who continue to work beyond the funded cohort, and graduate students in the funded cohort who receive inadequate guaranteed funding. As the union noted in its brief, "the need for adequate tuition relief for its members is a significant issue for the Union. The Union has consistently pressed for tuition relief for

bargaining unit members and for graduate students generally, and in particular for students beyond the funded cohort. This issue was identified as one of the core issues in the current round of bargaining.” These bargaining objectives were reflected in the initial agreement to create the two funds. The strike, the union emphasized, was never about wages but about decent, predictable financial support for employees and the provision of minimum guaranteed funding and tuition assistance during graduate studies. The evidence, the union noted, was overwhelming that the greatest impediment to successful completion of graduate studies in a timely manner was inadequate financial assistance. Amelioration of this unacceptable situation has been a long-standing union goal.

According to the union, it was lack of progress in achieving this objective that led to the rejection of the February Memorandum and the beginning of the legal strike even though the union bargaining team had unanimously recommended ascension and ratification. Data was then provided and analysed and further negotiations and changes ensued: the March 17-18 exchange then took place, and the March 18 Memorandum reached. In the aftermath of the failed ratification vote, the union then advanced the proposals now in issue. Those proposals were rejected but the parties did agree to refer the outstanding issues to adjudication.

In the union’s view, its proposals should be awarded. The job of an interest arbitrator was to replicate free collective bargaining. A contextual analysis was required, and a review of un-ratified settlements could be considered as part of that analysis. They were

not, however, necessarily governing. Settlements that were not unanimously recommended by a bargaining committee should be given less weight than those with a unanimous recommendation attached. In this case, only four of the six bargaining committee members voted in favour of the settlement, and that settlement was rejected at ratification. It was noteworthy that the University had insisted on an unanimous union bargaining committee ratification recommendation as a term of the February Memorandum, but there was no such requirement in the March 18 Memorandum. The University knew, or should have known, that there was a prospect of rejection and recommencement of negotiations. Where a bargaining committee was split, an unratified settlement had much less persuasive weight at any subsequent arbitration than rejection following a unanimous recommendation. The University had ignored this legal reality at and to its peril.

Expanding on this point, the union emphasized that presence or absence of a unanimous recommendation was a critically important factor for an interest arbitrator to bear in mind. As Arbitrator Burkett noted in *TTC & ATU 180 LAC (4th) 66*, where the bargaining committee had been split 9-7:

The split in the union bargaining committee, especially with all the maintenance department representatives dissenting, must render the Memorandum less persuasive as evidence of a fair and reasonable outcome, especially as applied to the maintenance department employees. Furthermore, in the normal course, an employer makes its final offer conditional upon the unanimous or close to unanimous recommendation of a union's bargaining committee. In this case, the employer was content to take its chances on ratification with almost half of the union bargaining committee recommending rejection. In these circumstances, the employer must have understood that there was a strong likelihood of rejection and that, if rejected, there would have to be some modifications to the Memorandum in order to bring about a settlement (at para. 12).

That is exactly what happened in this case. The University should have known that there was an excellent prospect of rejection and anticipated that there would be a need for further negotiations to conclude an agreement. In advancing the revisions, the union was not coming back to the bargaining table with a new list of demands. It was, rather, continuing the refinement of its bargaining proposals in order to narrow the gap and bring about resolution. Two members of the union's negotiating committee rejected the March 18 Memorandum concerned as they were about the sustainability of the funds (and other issues), a position that was endorsed by a majority of the membership at the ratification vote.

Indeed, Mr Culpepper's views, expressed to the membership prior to rejection, were persuasive. Mr Culpepper believed that the absence of guarantees would ultimately dilute the value of the two funds. Not only did Mr Culpepper speak out against the March 18 Memorandum (after having refused to sign it along with one other executive committee/bargaining committee member) but the membership's rejection of it, the union argued, was highly significant providing as it did compelling evidence of the memberships' refusal to accept the negotiated outcome. The membership made clear that they required specific and enforceable fiscal guarantees. In no case should an unratified settlement be blindly adopted by an interest arbitrator – the jurisprudence was clear on that – and in this case, the same was true as not only was the bargaining committee clearly and publicly split but the membership voted to reject the March 18 Memorandum and to continue their strike. As Arbitrator Weiler pointed out, "...this is the price to be paid for industrial democracy and for ultimate membership control of

the actions of their union leaders” (*65 Participating Hospitals & CUPE*, 1981 CarswellOnt 3551, June 1, 1981 at para. 16).

In the union’s view, any arbitral imposition of un-ratified settlements in these particular circumstances, following membership rejection, threatened to delegitimize interest arbitration. Accordingly, the union submitted, while the terms of an un-ratified settlement may be relevant and persuasive, they could not be decisive and, in appropriate circumstances, interest arbitrators should depart from them. Again referring to Arbitrator Weiler in *65 Participating Hospitals*, the union argued that an interest arbitrator can treat an un-ratified settlement as providing the ballpark figures for the new contract, but should also be prepared to scrutinize the terms of that tentative agreement and perhaps find that certain terms were misguided or overtaken by changing economic conditions and adjusted accordingly. This was entirely consistent with the approach of other interest arbitrators in comparable circumstances (see, for example, *Thames Emergency Medical Services & OPSEU* unreported award of Burkett dated May 5, 2004).

There were other reasons to find in favour of the union. When the University’s most relevant and compelling comparator was examined – York University – it was apparent that the union’s proposal was more than justified. Adopting the union’s proposal would best give effect to the replication principle. It was noteworthy that the issue was not about the provisions themselves – the parties had agreed on the two new funds – but on their details. The union wished to enshrine these provisions in the collective agreement

as individual entitlements with the University providing an overriding guarantee. The union sought this guarantee even though it conceded that the data indicated that the amount of funding provided in the March 18 Memorandum was sufficient given certain assumptions and variables. But if those assumptions and variables changed, the University should bear the costs.

The proposals being advanced were, the union argued, appropriate and justified. It was, after all, the University that directly controlled some of the underlying assumptions and variables in the first place, such as admissions, internal grants, fellowships etc. Changes to any of these could have a direct result on the sufficiency of the allocated but capped funds. What this established was the need for specific as of right entitlements, ones that could not be altered by decisions of the University that could increase the population of eligible persons thereby diluting individual allocations under the capped amount. Unless the union's proposals were adopted, the amount of assistance available to individuals could be eroded. The only way of preventing this was to guarantee individual entitlements rather than capped global amounts. The union had established a demonstrated need to ensure that the objectives of the two funds were properly accomplished and protected. For all of these reasons, and others, the union asked for a finding in its favour.

University Argument

In the University's view, an arbitrator appointed under Section 40 the *Act* must strive to replicate the collective bargaining result that would have occurred had the parties

decided to resolve their dispute through on-going negotiations including the continued use of economic sanctions. The replication principle was paramount, and in applying that principle to cases where the parties' negotiating committees reached a comprehensive memorandum of agreement, which was recommended but not ratified, a majority of arbitrators have concluded for more than forty years that that document constitutes the best evidence of the settlement that the parties would have reached had negotiations continued. As Arbitrator Weiler found in *Mount Sinai Hospital & Building Services Union* (unreported decision dated September 25, 1969) "the fact that negotiators on behalf of the parties have, in good faith, reached agreement, furnishes a strong prima facie basis for the validity of the terms of settlement" (at 1). Other arbitrators, in other cases cited by the University, followed suit. See, for example, Arbitrator Brown in *Sydenham District Hospital & Service Employees Union* (unreported decision dated May 8, 1972).

By their very nature, collective bargaining settlements, voluntarily accepted by skilled and experienced negotiators, were *prima facie* evidence of an economically sound bargain. They were presumptively persuasive of the settlement the parties would have reached through the continuation of collective bargaining. There was no ambiguity in the law: absent exceptional circumstances, un-ratified memorandums of agreement should be given effect. Some three weeks into the strike, the University tabled a proposal. The union tabled a counter-proposal. The University agreed. Both sides agreed to recommend the March 18 Memorandum to their principals for ratification. After passing the ascension meeting, it was turned down at ratification by the narrowest of margins. It could hardly be said that it was, in the circumstances,

repudiated by the membership. Therefore, in the University's view, it represented the best evidence of the settlement that the parties would have reached but for the invocation of the arbitration process.

There were other reasons in favour of the University's position. The governing authorities made it clear that if a memorandum of settlement was not ratified, and one of the parties then sought additional entitlements at arbitration, that party faced a heavy onus of persuasion. It must provide full and objective justifications for each of the changes it sought in light of the fact that those additional entitlements were not included in the settlement that both parties' representatives considered a full, final and fair resolution of the matters in dispute. The jurisprudence indicated that to discharge this evidentiary burden the party seeking changes had to show that impugned memorandum was "misguided" or "overtaken by changing economic conditions." In this case, there was absolutely no evidence that the March 18 Memorandum was the product of an unfair process, diverged from acceptable collective bargaining norms, or had been overtaken by changing economic conditions.

The University referred to Arbitrator O'Shea's admonition in *Wellesley Hospital & IUOE* (unreported award dated December 20, 1985): "The Memorandum of Settlement should not be considered as a plateau from which the arbitration process is to be launched. Otherwise, it would be too easy for the members of the bargaining unit to reject a negotiated Memorandum of Settlement with the view that they have nothing to lose by going to arbitration" (at 6). In this case, the union was seeking a breakthrough, and was

seeking it without any objective evidence of the kind required to sidestep an agreed-upon memorandum. Making matters worse, from the University's perspective, it was attempting to do so contrary to governing principles such as gradualism. In their long bargaining history, provisions of the kind the union now sought had never been agreed upon by the parties for inclusion as articles in the collective agreement. They had not been agreed upon in bargaining and should not be imposed in interest arbitration.

It was also important, the University emphasized, not to intertwine the academic issues of student funding with the collective bargaining process. Stated somewhat differently, the University took the position that it would never have agreed to the union's proposals as doing so would actually uproot its ability to manage issues of graduate student funding by making that a matter of collective bargaining. In addition, the union's one comparator, York University, was distinguishable for a variety of reasons outlined in the University brief, and in no way indicative of the landscape considered more broadly. Accordingly, and for all of these reasons and others, the University sought an order implementing the March 18 Memorandum.

Decision

Having carefully considered the submissions of the parties in their detailed briefs, reply briefs, and at the hearing, I am left to conclude that the March 18 Memorandum should be given effect without the changes being sought by the union.

While not determinative, un-ratified settlements must be given considerable deference. They reflect, after all, the assessment of the representatives of the parties to the dispute of its appropriate outcome. No arbitrator, even one experienced in collective bargaining, can approach that issue with as much insight into the parties collective bargaining relationship, and process, as they themselves possess. As Arbitrator Picher observed:

A review of the Canadian jurisprudence reflects that it is extremely rare for boards of interest arbitration to depart from the terms of a tentative memorandum of agreement which not been ratified been by the rank and file employees. The obvious reasoning of this line of cases is that if a board of arbitration is to engage in the analytic process of replication, to determine what parties would have agreed to if they had reached a collective agreement through collective bargaining, the evidence of a tentative agreement reached between two bargaining committees selected by them to negotiate their terms and conditions of employment is, absent extraordinary evidence, in all likelihood the best indication of what they would have agreed to. While the fact that employees within the bargaining unit may have voiced some discontent with that agreement, to the point of non-ratification, is obviously admissible in evidence, that is not an uncommon phenomena even in the areas of agreements which are not made by interest arbitration. That element alone cannot of itself be seen as sufficient to necessarily displace the presumptive persuasiveness of the terms of settlement reached ...(*Salvation Army Windsor & SEIU Local 2* (2009) 183 LAC (4th) 127 at para. 19.)

The union's bargaining committee was not unanimous. Two members disliked the proposed settlement. But a majority of its members voted in favour of it. They obviously believed it represented an appropriate and fair accommodation of interests. Indeed, as Mr Culpepper observed in his communication to union members, "we are all agreed that this TA brings us much closer to the endorsed objectives of our membership." The March 18 Memorandum was, however, narrowly rejected.

On the facts, this rejection is somewhat surprising. As Mr Culpepper noted in his communications to members quoted above, "our counterproposal ... brings us financially ahead of the proposal that was endorsed by members at the meeting held last Friday." While two of the six members of the bargaining committee had voted

against agreement, and while Mr Culpepper and another executive board /bargaining committee member refused to sign the March 18 Memorandum, it appears from this communication that the March 18 Memorandum actually exceeded the memberships' mandate at least insofar as the allocation of funding was concerned. At the ratification meeting, Mr Culpepper explained why he could not support the March 18 Memorandum. While the allocated amounts appeared "adequate," the structure of the two funds with the capped amounts that would have to be re-negotiated in every round, and which were subject to dilution through collateral changes made by the University, represented a deep structural flaw that could only be cured with a model that "guaranteed per-member amounts." This "aspirational" objective was, he believed, achievable through rejection at ratification and, presumably, continuation of the labour dispute.

Collective bargaining mandates, for either side, are rarely achieved in a single round. The union's counter-proposal brought the union closer to its objectives and, again as noted by Mr Culpepper, "we now have a tentative agreement..." and it was one with "two new benefits in our collective agreement." The union's achievement was singular and substantial by any measure.

An un-ratified settlement, the cases indicate, establishes the economic ballpark. The union has acknowledged that the data indicates that the two funds have been allocated sufficient capital to serve their stated objectives. The union's concerns *may* turn out to be real but, in the circumstances, this is hardly a reason to interfere with the agreed-upon

result. The fact that two members were opposed can hardly be a basis, when this case is considered in context, to reopen what is otherwise a deal.

The union relied in large part on the *TTC* decision of Arbitrator Burkett. It is worth emphasizing: there is nothing comparable about the *TTC* case to this one. That case is completely distinguishable. In *TTC*, the bargaining team was clearly split with maintenance representatives voting soundly against recommending the settlement for ratification. Maintenance employees then voted overwhelmingly against it. In this case, a majority of CUPE members on the bargaining committee voted in favour of recommending ratification, a majority of CUPE members voted at the ascension meeting in favour of sending the March 18 Memorandum to a ratification vote, and when put to a vote, it came very close to being approved.

There are other reasons in favour of this outcome. There is nothing that was improper about the process, and nothing that is not normative about the result. Economic circumstances have not changed making the outcome unfair or inappropriate. The exact opposite is true, in fact. The union had certain specific goals and it achieved them as reflected in the agreement establishing the two funds. The data, accepted by the union, indicates that the two funds will meet their stated objectives. But if they do not, it is open to the parties to change them in the next round. That is the way collective bargaining works. In any event, it would be a most significant departure from the jurisprudence, which clearly puts the onus on the union, for an arbitrator to substantially modify an un-ratified settlement because of hypothetical concerns about

insufficient funding when the accepted evidence indicates otherwise. There is nothing in this award, of course, that precludes the union from seeking the kind of structural change that it has identified as a priority and, equally, nothing that precludes the University from continuing to insist on a separation between employee compensation and graduate funding.

A few other observations are in order. The one comparator advanced by the union, assuming its relevance, is distinguishable and non-representative of the sector considered generally. If the union wished to pursue the York University model – instead of simply one attractive element of it – that was and is, of course, open to it. But that is not what happened here. Moreover, while one can easily understand the significance of a union bargaining committee unanimously agreeing to recommend ratification, the corollary cannot be that a majority recommendation is somehow deficient or necessarily opens up an un-ratified settlement to arbitral intervention absent the criteria normally applied. Put another way, there is no persuasive authority for the proposition that if a negotiating committee has not unanimously endorsed a memorandum of settlement that party can expect at interest arbitration additional gains addressing the basis of the dissent. That happened for very unique reasons in the *TTC* case.

The union's proposals, it must be said, are not a tweak. As Arbitrator Burkett observed in *Thames Emergency Medical Services* "the bargaining that follows a rejection of a memorandum of settlement is in the nature of a problem-solving exercise designed to

‘tweak’ the terms of settlement in a manner that preserves the essential bargain while at the same time facilitating a reconsideration by the principals” (at 11-12).

“Tweaking” was what actually happened between the February Memorandum and the March 18 Memorandum. The proposed changes are not an adjustment that preserves the bargain or “tweaks” it. The specific concerns reflected in the new proposal were known to the union when it made its counter-proposal to the University in March but were not part of it. They do not arise out of some flaw in the bargaining process, or are made necessary by significant changes in economic circumstances. There is, to borrow Arbitrator Weiler’s words in *65 Participating Hospitals* nothing “dubious” about the process or the result (at para. 19). The union proposals would, if accepted, be tantamount to a brand new economic deal. The essential bargain was a capped amount, not individual guarantees. As Arbitrator Brown observed in *Sydenham District Hospital & Service Employees Union*, “in any negotiations, absolute positions are seldom achieved and a spirit of compromise is inherent in any serious attempt to arrive at accommodation which would be acceptable to both parties” (at 4-5). The changes are also not sought following rejection of the recommended settlement by a significant majority of the bargaining unit. In fact, the opposite is true: the March 18 Memorandum came very close to ratification.

The parties agreed upon two new and important provisions that would provide tuition and bursary funding. These provisions were part of a Memorandum that was rejected in February. Data was then exchanged, modifications ensued and the University

accepted the union's counteroffer leading to the March 18 Memorandum. From the point of view of Mr Culpepper and a bare majority of the union's membership, these changes were insufficient. But from the point of view of the majority of the union's experienced bargaining team, having regard to everything that had occurred to that point, including almost a month out on strike, these changes represented a reasonable outcome, all things considered. The bargaining committee compromised (as did the University) and did so on the basis where the union now freely and candidly acknowledges that the data indicates that there will be sufficient monies in the capped funds available to achieve the stated objectives.

The March 18 Memorandum may not represent perfection, but collective bargaining rarely achieves that from any perspective. Moreover, aspirations are not demonstrated need especially where as here it is accepted that sufficient funds have been allocated. The March 18 Memorandum is reflective of a reasonable and rationale compromise and it is certainly not one that should be departed from on the basis of hypothetical concerns that different decisions may over time erode the value of the commitment by increasing the population of eligible individuals. To that extent that occurs, if that occurs, and should this remain a union bargaining priority, these *new* provisions can be appropriately modified in future collective bargaining.

Conclusion

Accordingly, and for the foregoing reasons, I direct implementation of the March 18 Memorandum. At the request of the parties I remain seized.

DATED at Toronto this 6th day of July 2015.

"William Kaplan"

William Kaplan, Sole Arbitrator