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Final Offer Arbitration & Bargaining Status

Dear Smokey:

Thank you for your letter received end of day March 9, 2022. As it was copied to the Premier, Minister Dunlop, and the College Presidents, I will take this opportunity to provide a fulsome response to it and to outline the current status of bargaining with your CAAT-A Academic division. I have also taken this opportunity to include your bargaining team and local presidents to ensure the message is clear and delivered first-hand.

Management Effort to Reach Agreement

First, there is no doubt the past two years have been very difficult for everyone. Every time we thought College life might be returning to normal, the pandemic would worsen and global events would create additional stress and anxiety. Despite these difficulties, the College sector across Ontario has persevered in providing students with the high-quality education they deserve.

The College management team has made numerous efforts to reach a Collective Agreement with the OPSEU bargaining team. We initially proposed in March 2021 to extend the current Agreement for two years to avoid the uncertainty and unpredictability of bargaining during the pandemic and use the extension period to work together to identify areas of concern. That offer was rejected outright.

The Union has said that "it is still possible to reach a deal at the bargaining table." Unfortunately, that is not true. The last offer we received from the Union was on November 18, 2021 and we were told at that time that the Union had gone as far as it could. There has been nothing further. The Union has refused to bargain.

The November 18 Union offer, characterized by the Union as its bottom-line, contains elements that are known to be unacceptable, including:

- binding arbitration as the resolution mechanism for three joint committees on Equity, Diversity and Inclusion, Truth and Reconciliation, and Workload;
- a 33 % increase to the Essay/Project Evaluation Factor;
- changes to the workload formula related to mode of delivery;
- a proposal that the Union called “contracting out” but which would require the stripping of work from other bargaining units; and
- Intellectual Property.

These were the same demands that Mediator Brian Keller described in his October report in the following terms:

At the outset of the mediation, it was apparent to me that the CAAT-A [OPSEU] team’s proposals were highly aspirational but not realistic. They represented what I have to characterize as the hopes and dreams of at least some of the bargaining unit and the CAAT-A team. But they were not, in my opinion, designed to result in successful negotiations. And, I believe, most if not all of the members of the CAAT-A team knew and understood that.

...

Each party has its own hill to die on. Notwithstanding that, at some point, there has to be a realistic assessment of what is achievable and what is not. There must be an acceptance that certain goals are unattainable. In other words, at some point, reality has to trump idealism. It is my considered opinion that the CAAT-A team has yet, for whatever reasons, to reach that point.

...

In my preliminary, and subsequent meeting with the CAAT-A team, I believed I had clearly articulated that almost all that was being sought was unachievable either through direct negotiations with the employer or, if it came to that, in binding arbitration. I am still firmly of that opinion. Many of the CAAT-A team’s remaining demands are highly aspirational and completely unrealistic.

Since November 18th, the Union has repeatedly rejected the CEC’s invitation to moderate its remaining demands and return to the table to conclude a collective agreement. It is false and misleading for the Union to suggest that a deal at the table is possible in the face of the Union’s own intransigence on the remaining demands. These demands are completely unreasonable and the Union knows that the Colleges can never agree to them.

No Concessions

Refusing to accept the Union's demands is not a refusal to bargain. After setting aside all of its initial proposals on a without prejudice basis, the CEC has repeatedly modified its settlement offer to address input from the Union.

Arbitration

CEC has repeatedly offered Final Offer Selection Arbitration. If the Union is satisfied that its November 18th offer is reasonable and represents the best it can do, then it should allow an arbitrator to decide between it and the CEC Offer. The Union has refused to do so. We can only conclude this resistance is rooted in the Union's knowledge that their offer is unrealistic and unacceptable, despite all claims to the contrary.

The Union has repeatedly stated that it is not prepared to compromise and the only resolution it will accept is through Interest Arbitration only on the remaining issues on the table and therefore, only on their outstanding demands. It is not lost on us that by stating it will accept interest arbitration, OPSEU is prepared to accept compromise if it is forced, but is unwilling to propose any on its own initiative.

Using Interest Arbitration as a bargaining tool does not encourage compromise and good-faith dialogue. Where binding interest arbitration is the lone tool used to solve impasse, the union is rewarded for making unreasonable and unacceptable demands without consequences. Rather than negotiate, the Union can rely on an arbitrator to give it something from its unreasonable position. This process rewards making extreme demands and discourages any compromise during bargaining.

By insisting on interest arbitration to conclude this round of bargaining, the Union has refused to recognize that to date the colleges have only made management concessions and changes that the Union has demanded. Simply put, we have repeatedly tried to reach agreement without any positive response from the Union.

We have put aside all of our demands on a without-prejudice basis and have advised we cannot give any more. We have consistently stated since July that the Union demands now remaining could never be accepted. Insisting we take them to interest arbitration is a failure to respect our consistent assertion that these demands fall well outside any acceptable provision. We can never accept them.

Indeed, we ask the Union to reconsider our proposal for an arbitrated solution via Final Offer Selection to ensure there will be no harm or interruption for students.

Strike Action

As of Friday March 11, 2022, it has become obvious that the CAAT-A Academic bargaining team will be leading the faculty to a full walk-out strike. This despite its assurances to faculty— and more importantly, to students—that it would do no harm.

In its communications, the CAAT-A team blames the CEC because we refused to capitulate to demands that have been identified as wholly unreasonable. This is the second time in just over 4 years that the CAAT-A bargaining team has bargained without compromise.

The outstanding demands over which it will be walking out either violate Bill 124, defer decision making of fundamental College operations to arbitration, or undermine the College operations.

In view of how much the Colleges have demonstrated their willingness to concede and compromise under the circumstances, this decision is short-sighted and comes at the expense of students and the College system.

We hope you will exercise your discretion and urge them to return to bargaining with moderated demands or accept Final Offer Selection. Striking will only harm students and undermine the reputation of the system as a whole

Sincerely,



Graham Lloyd on behalf of the CEC Bargaining Team

- c. Premier Ford
- c. Minister Dunlop
- c. College Presidents
- c. CEC Bargaining Team
- c. OPSEU Bargaining Team
- c. 24 College local Union Presidents