Precedent setting: Ontario school boards release first interest arbitration awards

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On Jan. 28, 2025, Arbitrator Russell Goodfellow released a set of eight interest arbitration awards for seven different public and Catholic district school boards in Ontario.[1] BLG had the opportunity to serve as counsel to three of these seven school boards in this complex and precedent-setting litigation, with a team consisting of John-Paul Alexandrowicz, Melissa Eldridge, Jessica Wuergler, Callum Hutchinson and articling students Grace Sarabia, Colleen Williams and Hannah White.

Key takeaways

- Arbitrator Goodfellow's Jan. 28, 2025 decisions were the first of their kind to address local bargaining issues in the Ontario public and Catholic education sector via binding interest arbitration since the *School Boards Collective Bargaining Act*, 2014 was passed.
- Arbitrator Goodfellow's decisions:
    - Applied the fundamental principles of interest arbitration, with particular focus on the key interest arbitration principle of replication, aiming to replicate the outcome that parties would have reached in a free collective bargaining environment, excluding "nice to have" but non-essential terms or "wish lists".
    - Granted modest proposals where evidence was adduced in support of the proposal, showing such language was present in comparator collective agreements within that same school board, or where there was a demonstrated need for the proposal to be granted given a board's northern and geographically diverse nature.
    - Denied proposals expanding the scope of the bargaining unit, following first principles of interest arbitration, concluding that such changes must be negotiated by the parties and cannot be resolved through interest arbitration.
- The use of interest arbitration in the education sector may signal a more conservative approach to future rounds of collective bargaining in the sector, focusing on incremental changes rather than sweeping reforms.
- The central parties will need to carefully assess the potential benefits and drawbacks of using a voluntary binding interest arbitration process to resolve

outstanding issues between the central and local parties again in upcoming rounds of collective bargaining.

Background

On Aug. 31, 2022, the collective agreements in place across the Ontario school boards sector expired. On Aug. 25, 2023, the four parties responsible for negotiating collective agreements between school boards and employees represented by the Ontario Secondary School Teachers' Federation (OSSTF)[2] signed a Voluntary Binding Interest Arbitration (VBIA) Agreement. Those parties were:

1. The Crown in Right of Ontario as represented by the Minister of Education
2. Ontario Secondary School Teachers' Federation (OSSTF)
3. Ontario Public School Boards' Association (OPSBA)
4. Council of Trustees' Associations (CTA)

Under the VBIA Agreement, the parties appointed Arbitrator Goodfellow to determine all outstanding issues for the local portion of their collective agreements which could not be resolved by the local parties by March 28, 2024.[3]

While common in other sectors and industries, interest arbitration had not been used by the central or local parties in the public and Catholic education sector since the *School Boards Collective Bargaining Act, 2014* had been passed. Rather, disputes which could not be settled through collective bargaining have resulted in strikes or even back-to-work legislation, which have been subject to challenge at the Ontario Labour Relations Board or the courts, respectively. The use of interest arbitration for the 2022-2026 round of collective bargaining had the goal of avoiding these turbulent outcomes and minimizing disruptions to students, particularly in the wake of the COVID-19 pandemic.

The decisions

Under the *School Boards Collective Bargaining Act, 2014*, major budgetary issues such as wages and sick leave are typically determined in central bargaining, applying across Ontario.

The OSSTF local bargaining units proposed a wide number of amendments to their collective agreements, as did the school boards, in areas such as:

- Personal leave days
- Retention of employee discipline files
- Salary grid placement
- Transfers and vacancies
- Union leave
- Adverse weather provisions
- Bargaining unit scope and recognition clauses

Given the far-ranging scope of bargaining proposals brought to interest arbitration by the various local parties, it was crucial for Arbitrator Goodfellow to develop a consistent framework for evaluating the proposals. In doing so, Arbitrator Goodfellow drew on longstanding interest arbitration jurisprudence, including the principle of "replication" –

that is, an interest arbitrator's decision should strive to replicate the outcome that the parties would have agreed upon in a free collective bargaining environment, including threats of strikes or lock-outs.

First, Arbitrator Goodfellow emphasized that, under the replication principle, only the most significant issues should be dealt with in interest arbitration:

> An interest arbitrator's decision on outstanding issues is meant to reflect what the parties themselves would likely have done with a strike/lock-out mechanism in place. Would the proposal(s) have fallen away? Would any have been agreed to as is or, perhaps, in some modified form? Would change only come with some corresponding benefit to the other side, a *quid pro quo*, in other words?
>
> Answering the above questions is an art not a science. It is one that involves labour relations judgement, first and foremost as to whether an issue is significant *enough* that it might possibly be pursued to the point of economic sanctions. **Interest arbitration, as is well-known in other contexts, is not a place for parties to bring their "wish lists" – their "nice to have" but non-essential terms** – or terms to which the other party could never reasonably be expected to agree, in any context. Interest arbitration is not a substitute for "hard-bargaining".

Second, Arbitrator Goodfellow pointed out that there will be fewer "one-size fits all" solutions when dealing with the local portion of a collective agreement, "in which operational issues tend to predominate," compared to the central portion. Importantly, the role of comparability – comparing similar collective agreements in the sector – "may be more limited or its focus narrower" when evaluating the local terms of collective agreements. A collective agreement has far-reaching consequences, compared to the limited factual evidence that an arbitrator can hear. This often results in "Uncertainty as to the strength or merits of a proposal," which "is not a basis for change but for maintenance of the *status quo*."

On the other hand, there are some issues which have "such fundamental or out-sized importance to parties' relationships – such as those related to the conduct of union business or that would trench heavily on management's basic right to direct the workforce, for example – that any possible change may be considered better achieved at the bargaining table than at the stroke of an arbitrator's keyboard."

Given these principles, it is of no surprise that Arbitrator Goodfellow denied most all parties' proposals, leaving them to be taken up by the parties in the next round of collective bargaining. However, Arbitrator Goodfellow did grant some modest proposals, as follows:

- Adding an additional Professional Development (PD) day, in recognition of the PD days allotted in that board's comparator secondary school teachers' agreement
- Renewing a Letter of Understanding (LOU) that provided for a fourth Department Head, to maintain the *status quo*
- Allowing employees to access one of three pre-existing paid leave days during the December Seasonal Break closure each year, to address an "economic imperative" for a custodial and maintenance bargaining unit

- Reducing the number of days per year for which a part-time Union leave of absence is paid from 120 days to 100 days, to address an “economic concern” of that school board, but allowing up to 10 unused days to be added to the next year’s allotment
- Requiring requests for voluntary transfers to be “considered” before hiring a new teacher, due to the northern and geographically diverse nature of that board
- Reducing the sunset period on disciplinary letters to from three years to two years, in line with comparator collective agreements at that board
- Allowing bereavement leave for step-grandparents and step-grandchildren, supported by comparator collective agreements at that board
- Allowing a qualified teacher to a transfer in the next year following any three consecutive years of unsuccessful requests, subject to certain conditions, due to the northern and geographically diverse nature of that board
- Changing the first of three existing personal leave days to be a mandatory (rather than discretionary) entitlement, and adding a new circumstance: “to attend to matters of personal importance which, in the judgment of the Member, cannot be attended to in any other way”, due to the northern and geographically diverse nature of that board
- Increasing the number of days that a Teacher in Charge can act for a short term absence of a Principal or Vice Principal from 19 consecutive days to 30 consecutive days, and increasing the total number of days in a school year from 40 to 50, “to grant some needed flexibility”

Significantly, in two of the decisions, Arbitrator Goodfellow denied OSSTF’s proposal to amend the scope and recognition clause of the collective agreement to add additional workers to the bargaining unit.[4] There is significant case law holding that bargaining unit scope issues may not be taken to “impasse.” Expanding or reducing the scope of the bargaining unit must be consensual, through voluntary recognition, and cannot be the subject of a strike or lock-out.[5] Thus, interest arbitrators are not to award such proposals.[6] While Arbitrator Goodfellow did not precisely determine the scope issue with reference to this jurisprudence, he did hold that the VBIA Agreement process is “not the appropriate mechanism for determining the Union’s right to represent approximately 350 employees.”

Conclusions

For the Ontario school boards sector, the VBIA process avoided a strike or back-to-work legislation, and it has ensured that the renewal collective agreements between the numerous local parties are concluded. However, both the school boards and the OSSTF may be disappointed in interest arbitration’s inherently conservative nature, and Arbitrator Goodfellow’s decision to deny most proposals from both sides.

With that being said, the release of these eight VBIA awards may signal a new approach to collective bargaining in this sector, focusing on small, achievable, but significant gains, and not the “‘nice to have’ but non-essential terms” which were largely denied by Arbitrator Goodfellow. The central parties will need to carefully evaluate these outcomes when determining whether to agree to another VBIA process for the next round of collective bargaining for 2026 and beyond.

If you have any questions about these important decisions, please contact John-Paul Alexandrowicz and Melissa Eldridge, the Co-Chairs of BLG's National School Boards Practice.

Footnotes

[1] *Thames Valley District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5903 (ON LA); *Simcoe Muskoka Catholic District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5902 (ON LA); *Waterloo Region District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5901 (ON LA); *District School Board of Ontario North East v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5900 (ON LA); *District School Board of Ontario North East v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5898 (ON LA); *Brant Haldimand Norfolk Catholic District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5897 (ON LA); *Keewatin Patricia District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5899 (ON LA); and *Algoma District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5895 (ON LA)

[2] *See the School Boards Collective Bargaining Act, 2014,* S.O. 2014, c. 5 and its regulation, O. Reg. 144/22: *The 2022 Round Of Collective Bargaining*.

[3] The central portion of the agreements (applying province-wide), including wages, was determined by Arbitrator William Kaplan on April 24, 2024 for Education Workers, and May 29, 2024 for Teachers and Occasional Teachers. See *Ontario (Treasury Board) v The Council of Trustees' Association*, 2024 CanLII 40839 (ON LA); and *Ontario (Education) v Ontario Public School Boards' Association*, 2024 CanLII 48146 (ON LA).

[4] To add "Casual and Temporary Workers" to an Educational Support Staff bargaining unit in *Brant Haldimand Norfolk Catholic District School Board v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5897 (ON LA); and to add "Behaviour Autism Consultants" to a Professional Support Services Personnel bargaining unit in *District School Board of Ontario North East v Ontario Secondary School Teachers' Federation*, 2025 CanLII 5898 (ON LA).

[5] C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review: An Agenda for Workplace Rights (May 2017)*, page 334, *Retail, Wholesale & Department Store Union v. T. Eaton Company Limited*, 1985 CanLII 933 (ON LRB). See also *Re Ford Electronics Manufacturing Corp. and C.A.W., Local 1980*, [1994] O.L.A.A. No. 1299 (ON LA) at para 47.

[6] *Conquest Carpets Corp., Triumph Carpet Centre Ltd., Trust Floor Group & Trust Flooring Group v LIUNA, Local 183*, 2022 CanLII 79946 (ON LA) at page 5; *Good Samaritan Seniors Complex v CUPE, Local 2250*, 2014 CanLII 35930 (ON LA) at page 5.

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