**Deal rejected**
Latest effort to resolve strike of about 400 city workers in Cornwall, Ont., fails again as CUPE says no to offer **pg. 2**

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# Employer discriminated against teachers in private-school union drive: Arbitrator

## First contract negotiated despite tense bargaining

Photo: Google Street View

**DURING NEGOTIATIONS** for a first union contract at the Islamic Foundation School (IFS) in Toronto, the school's principal advised the union that the tuition benefit would soon be discounted.

The benefit had been in place since the formation of the school in 1998. It offered teachers a 50 per cent reduction to the $450-per-month rate the school charged.

But on Sept. 8, 2017, Syed Akbar Warsi, vice-president, sent an email to all teachers. "Br Akbar has asked me to inform you that the 50 per cent staff discount offered to IFS teachers with children in the school is currently under union negotiations."

Jehan Ahamed, union representative with the

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## ARBITRATION AWARDS

### Union alleges senior custodian overlooked during hiring process

**A SCHOOL** custodian at the New Maryland Elementary School in New Maryland, N.B., had worked as a custodian 1 and a school bus driver when she applied for an open custodian 2 position.

Olivia Grass worked for the employer, the Department of Education and Early Childhood Development, since 2014 and submitted her name for consideration when the position came open at the Harvey Elementary School in April 2017.

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## COLLECTIVE AGREEMENTS

BATHROOM MANUFACTURING

### Mirolin Industries

**Toronto**
*(190 production workers) and the United Steelworkers (USW), Local 13571-16*

**Renewal agreement:** Effective July 1, 2017, to June 30, 2020. Signed on July 1, 2017.
**Shift premium:** $0.70 per hour for afternoons. $1 per hour for midnights.
**Paid holidays:** 10 days.
**Vacations with pay:** 2 weeks

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PM #40065782

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United Food and Commercial Workers Union Canada (UFCW), Local 175, received an emailed response on Sept. 20 to another contract proposal that said, "Teacher's children will pay the same school fees like other parents. No discounts."

The employer said the IFS was losing about $33,000 per month because of declining enrolment and it needed to trim costs.

During negotiations on Sept. 21, Warsi said he wanted "the teachers to feel the same pain as the parent."

When the union responded negatively, Warsi claimed he was "only joking."

The issue of one teacher who was charged the full fee for tuition was raised and the employer said it was a mistake and it would be rectified.

Ahamed testified that the tuition issue was not discussed any further and he interpreted this as meaning the employer had backed off on its initials demands and the issue was no longer raised during the remainder of the bargaining talks.

An agreement was reached on the first contract on Oct. 24, after a mediator stepped in. The contact was ratified on Nov. 3 and it was signed by both parties on Nov. 9.

But on Nov. 29, an email was sent to all teachers that said, "As of Dec. 1 (unionized) teachers will be charged fees of $450 per child."

The union grieved the decision and asked for the employer to be estopped from ending the benefit without agreement from the union.

The UFCW argued because the benefit was offered at the IFS's Ajax, Ont., campus, the employer discriminated against those teachers at the Toronto campus.

The employer argued that the Nov. 29 letter constituted clear notice and it should therefore be able to institute a new policy, and because the tuition benefit was not added into the collective agreement, it no longer applied.

**"Decision to eliminate the tuition benefit was made to discriminate against them on the basis of their membership in the union."**

Arbitrator Ian Anderson upheld the grievance and ordered the "employer to make whole any affected teacher for the difference between the tuition which they paid and the tuition which they would have paid but for the employer's breach."

"I conclude the employer's decision to eliminate the tuition benefit for the teachers at the Scarborough Campus was made to discriminate against them on the basis of their membership in the union, contrary to Article 5.01 of the collective agreement."

The "misleading" letter sent to teachers and Warsi's comments during bargaining offered clear evidence that the employer discriminated against the teachers, said Anderson.

"The context for this statement includes Warsi's comment during collective bargaining that he wanted these teachers to 'feel the pain' through the removal of the tuition benefit, and the fact the tuition benefit continues to be offered to the non-unionized teachers at the Durham Campus," said Anderson.

"Taken together, these facts are capable of supporting the inference that termination of the tuition benefit for the Scarborough teachers was motivated at least in part by the fact they were unionized," said Anderson.

**Reference:** Islamic Foundation School and United Food and Commercial Workers Union Canada, Local 175. Ian Anderson — arbitrator. Shazed Siddiqui for the employer. Georgina Watts for the employee. May 30, 2018.

# Worker 'able to perform job' as required in agreement: CUPE

< Senior custodian pg. 1

The job classification specification listed three years' experience under the heading of qualifications.

When Tammy Johnston, human resources officer, reviewed the resumés, Grass listed "years of experience" in custodial duties and she said she had worked a total of 199.71 days as a custodian 1 with the school district.

But Johnston said that although she was the most senior candidate, she did not possess enough experience as a custodian and she wasn't given the custodian 2 position.

Grass argued that because her experience as a bus driver included 1.5 hours per day cleaning buses and doing such things as sweeping, mopping, garbage removal and cleaning graffiti, bodily fluids and fingerprints from the bus, that meant she had plenty of experience with custodial work.

As well, she said she had worked about two weeks in total as a custodian 2 during her time with the district. And she was well-acquainted with the school's cleaning suppliers, which she accessed from the same area that the custodians did.

The union, the Canadian Union of Public Employees (CUPE), Local 1253, argued that the phrase "able to perform the job" in the job description meant that Grass was qualified, and because she was the most senior employee who applied, she should have been hired.

As well, because Grass was only 74 days short of having the required three years of experience, the employer should have exercised discretion and awarded the position to Grass.

Arbitrator John McEvoy disagreed and dismissed the grievance.

"The qualification expressed in terms of 'three years' experience in custodial and minor maintenance work' is specific. Grass does not satisfy this qualification," said McEvoy.

When the union argued that the experience was not listed under a required qualification, and it should have been given less weight, the arbitrator took exception to that characterization.

"The union's argument grounded on the absence of the word 'required' in relation to the 'three years' experience' qualification is not tenable. While the word 'required' is used in relation to some of the subsequently listed qualifications in the classification spec and the posting notice, it is implicit in relation to the three years' experience qualification given its location of precedence as the first qualification listed and the use of the word 'minimum.' It must also be observed that the statement of 'required' in terms of qualifications is also expressed by use of the phrases 'is a requisite' and 'must have.'"

And Grass' stated experience as a custodian 2 was challenged by McEvoy.

"The union drew the conclusion in closing argument that the employer must have confidence in Grass' ability to perform the job or it would not have placed her in a custodian 2 position. Yet, there is no evidence that the employer actually placed Grass in a custodian 2 position. There would surely be a record of such a placement yet none was given in evidence in relation to the 'day or two' or even the 'one week,'" said McEvoy.

**Reference:** Department of Education and Early Childhood Development and Canadian Union of Public Employees, Local 1253. John McEvoy — arbitrator. Louis Leger for the employer. Amanda Atherton for the employee. May 18, 2018.