

IN THE MATTER OF AN ARBITRATION

BETWEEN

**THE CORPORATION OF THE COUNTY OF ESSEX
(ESSEX WINDSOR EMS)**

("Employer" or "Essex")

-and-

**CANADIAN UNION OF PUBLIC EMPLOYEES
LOCAL 2974.2**

("Union" or "CUPE")

Appearances for the Employer:

Matthew Craig

Counsel, Mathews, Dinsdale & Clarke LLP

Appearances for the Union:

Michael Klug

Counsel, Watson Jacobs Bosnick LLP

Hearing held by videoconference: April 21 and May 5, 2026

Interim Award

1. This preliminary award deals with production issues in relation to a policy grievance lodged by CUPE on December 5, 2025 (the "Grievance"). The Union complained as follows:

The Corporation of the County of Essex/Essex Windsor EMS has made significant changes to the part-time availability policy, altering the scheduling structure and related expectations in a manner contrary to previously established terms and conditions of employment. This grievance is filed with respect to, but not limited to, Articles 1.01, 1.02, 2.01, 2.03, 15.02(c) and 15.02(d) of the Collective Agreement, the OLRA, the OHRC, and all other applicable legislation and contractual provisions.

The requested remedies were expressed as follows:

The Corporation of the County of Essex PP 160 – Part-Time Scheduling Policy to be declared null and void to the extent that it conflicts with the Collective Agreement and to revert to administering part-time scheduling in accordance with the agreed upon language in the Collective Agreement; and any other remedy an arbitrator deems appropriate by following the agreed upon, [*sic*] Part-Time Paramedic Article 15.02 of the Collective Agreement.

2. The essence of the dispute as described in opening statements is easily summarized. Prior to the contested change, part-time paramedics were required to specify the shifts for which they would be **available** and were notified by the Employer of shifts they were called upon to fill. Under the policy now in place, part-time paramedics are required to specify the shifts for which they wish to be **exempted** — that is, shifts for which they wish to be regarded as unavailable and thus to be excluded from consideration when the Employer populates the shifts paramedics are to work. Under the present system complained of in the Grievance, the Employer decides whether part-time paramedics' requested exemptions will be granted or whether the part-time paramedics will be scheduled for particular shifts and required to work notwithstanding that they had identified those shifts as ones for which they wished to be exempted.

3. The principal collective agreement provision at issue in relation to the dispute about productions is clause 15.02(c). Article 15.02 addresses part-time paramedics' hours of work. Clause (c) provides:

Part-time Paramedics shall be scheduled on the basis of seniority, from the highest seniority to the lowest seniority, in accordance with their availability as per the Part-time Availability Policy and as described below.

Clause (d) also speaks to the assignment of shifts "to part-time paramedics by seniority, based on their properly submitted availability".

4. During opening statements on April 21, 2026, counsel advised that the language at issue was introduced in a letter of understanding in 2011 and subsequently brought into the collective agreement.

5. The Employer's response to the Grievance at Step 2 included the following under the caption "**Decision**":

Section 15.02 outlines the process for scheduling part-time members. Up until the time of the Policy change, members submitted their preferred availability for shifts for each scheduling period.

. . .

The union has taken the position that the Policy is inconsistent with Article 15.2(d), [*sic*] which states that shifts that are available will be assigned to part-time members by seniority and based on their “properly submitted availability”. However, it is my understanding that shifts are still being assigned based on availability under the Policy, though availability is now properly submitted through exemption requests.

. . .

I am of the opinion that there has not been a violation of the Collective Agreement, and the Grievance should be, and is, denied.

While addressing the “Policy”, the “Decision” does not refer to clause 15.02(c) where the parties refer specifically to the “Part-time Availability Policy” that appears to be central to this dispute.

Production Requests by the Union

6. The Union’s requests for production objected to by the Employer were set out as follows:

3. The four-week master schedules effective at any time between December 15, 2025 and March 1, 2026.

4. The 13 denied “exemption requests” referenced by Justin Lammers at page 122 of Exhibit 1, the County’s response to and denials of those requests, and all written correspondence between the County and the requesting employee(s) about these requests and denials.

5. All written communications after December 1, 2025 about the Part-time Availability policy, and potential exemptions from it, between the three employees who resigned (as referenced at page 123 of Exhibit 1) and between the County and the two additional employees who reached out about the effect of the policy on their mental health (also referenced at page 123 of Exhibit 1).

7. Notwithstanding the concern Mr. Klug expressed for ensuring my understanding of the significance and impact of the change introduced by the Employer and the possibility that the requested material might be relevant to the assessment of individualized requests for remedies not yet made, I am not persuaded that the requests in those three paragraphs are arguably relevant to the exposition or disposition of the Grievance — a policy grievance

as to the alleged impermissibility of the Employer's substitution of the current scheduling scheme for that in place prior to December 15, 2025. Accordingly, I do not order the Employer to produce the documents requested in those paragraphs.

Production Requests by the Employer

8. The Employer's requests objected to by the Union are for the production of the following:

2. Any documents, including any and all notes and/or proposals related to Article 15.02 and/or Part-time availability, generally, between December 1, 2011 to December 31, 2022.

3. Any documents, including any notes or internal communications, including emails, text messages, memoranda, etc., related to the Dec. 15, 2025 Part-Time Availability Policy, including both before and after implementation.

9. In opening the case, the parties had reference — without particulars for the time being — to instances in which aspects of the Part-Time Availability Policy or its operation had been changed by Essex. That history is apparently relevant to the Employer's position that the Part-Time Availability Policy is not incorporated by reference as an element of the collective agreement and was neither fixed nor immutable upon its introduction. Those positions relate to the Employer requests set out above as the contention is that those documents are relevant to an understanding of the factual matrix for the introduction of the policy and thus the parties' intention on those points (if not others).

10. The fundamental objection expressed by the Union is that these requests are to be rejected as "fishing expeditions". I agree with that characterization and uphold the Union's objection.

11. In doing so, I adopt and apply the analysis by Arbitrator Stout in *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2016 CanLII 87623 (ON LA) where he wrote:

43. This leads me to the issue of what is a "fishing expedition". In my view, at a minimum, a fishing expedition is where a party seeks production of documents in order to determine if they have a case as opposed to supporting their case. Furthermore, a fishing expedition is casting a wide net of discovery as opposed to a proportionate and specific inquiry aimed at obtaining documents that assist in the determination of the issues in dispute. In my opinion, proportionality is a necessary

element that must be applied in order to avoid promoting fishing expeditions.

12. Earlier in his decision Arbitrator Stout cited decisions on the need for particularity and for proportionality, two features missing from the requests by Essex — both of which lack any definition of the arguably relevant point that would be informed by the documents it seeks from the Union or any hint at why the Employer would require, for example, production of “any and all . . . proposals related to Article 15.02 and/or Part-Time availability” when all arguably relevant proposals would have passed between these parties.

13. Arbitrator Stout brought out the following that I find apposite:

30. In Nova Scotia, Arbitrator Richardson in *Capital District Health Authority and Nova Scotia Government and General Employees Union (Harding)* (2008), 171 L.A.C.(4th) 93, specifically declined to follow the liberal approach [to requiring a party’s production of documents]. At paragraph 43 of his award, Arbitrator Richardson adopts the approach of Arbitrator Knopf in *West Park, supra*, noting that many superior courts are currently grappling with discovery and how to limit its scope to reduce costs. Arbitrator Richardson went on to say the following at paragraph 44:

In my opinion a pre-hearing order can be made only with respect to particularized documents that are “arguably relevant” or “prima facie relevant” or “rationally linked” to the issues in dispute. The requirement that the documents be particularized is an important one if one is to avoid what might otherwise descend into a “fishing expedition” – a search not for evidence that supports a case but rather to see if one has a case at all: see for e.g. the discussion in *Re Canada Post Corp. and C.U.P.W.* (1986), 1986 CanLII 6670 (CA LA), 24 L.A.C.(3rd) 157 (Weatherill).

31. In Ontario, Arbitrator Richard Brown endorsed the concept of proportionality in *City of Ottawa and Civic Institute of Professional Personnel* (2010), 191 L.A.C. (4th) 62. Arbitrator Brown reviewed a number of earlier arbitration awards, many where arbitrators refused to order production of documents when a party did not properly particularize their allegations or establish a “prima facie” case.

14. In anticipation of the argument on this issue, Essex submitted the decision of Arbitrator Price in *Halton Recycling d.b.a. Emterra Environmental v Labourers’ International Union of North America, Local 183*, 2019 CanLII 11765 (ON LA) (“*Halton Recycling*”) and my decision in *United Steelworkers, Local 2724 v Algoma Steel Inc.*, 2025 CanLII 45742 (ON LA) (“*Algoma Steel*”).

15. In both instances, the immediate dispute was about the admissibility of evidence and not about the production of documents.

16. The evidence the union wished to introduce in *Algoma Steel* was to be about a specific representation allegedly made by the employer in securing the union's agreement to a collective agreement provision affecting layoffs. The grievance text made express reference to the alleged representation and I held that the union had established an appropriate basis for its being permitted to lead evidence as to the context and the factual circumstances under which the relevant collective agreement language was settled.

17. In *Halton Recycling*, Arbitrator Price dealt with a matter that might be more directly comparable to the dispute involving these parties. The relevant collective agreement provision in that instance, article 15.05, concerned benefit plans and referred to a "silver benefit plan" and a "gold benefit plan". The union objected to benefit changes on the bases that the collective agreement language required the employer to provide benefit coverage "pursuant to the 'silver benefit plan' and a 'gold benefit plan' that were in place at the time article 15.05 was negotiated."

18. After reviewing well-known authorities on contract interpretation, Arbitrator Price concluded:

[26] As the above-noted authorities establish, evidence of the factual circumstances or context in which particular language was agreed upon is admissible so as to ensure that the arbitrator is in a position to interpret and apply it within the context of the particular collective bargaining relationship. In my view, the evidence that the Union proposes to lead in this case regarding the circumstances in which article 15.05 was negotiated clearly meets the threshold for admissibility on this basis, even in the absence of any ambiguity.

. . .

[28] . . . I agree with the union that it is appropriate to hear its evidence about the circumstances in which article 15.05 was agreed to and determine its relevance and weight at the end of the case, when deciding the merits of the grievance.

19. Unsurprisingly, in the following and concluding paragraph, Arbitrator Price accepted the employer's argument that if the union were to be permitted to lead evidence of negotiating history it ought to be required to particularize that evidence. Arbitrator Price ordered the union to "provide full particulars of its negotiating history evidence . . . so that the Employer has sufficient time to prepare for the case that it will be called upon to meet."

20. Here, the immediate issue is not about admissibility and nothing in this preliminary award is to be read as ruling on the admissibility of any evidence either party might seek to introduce.

21. However, it is my understanding that the Employer has not yet disclosed particulars about how the factual matrix relevant to the circumstances of the 2011 introduction of the part-time availability process or procedure bears on the interpretation of the current collective agreement provisions. In my view, that is a matter that must be addressed. Similarly, the interpretation of the collective agreement provisions is said to be affected by intervening events comprising changes to the part-time availability process or procedure. Particulars of those events and circumstances should also be disclosed.

22. Accordingly, in the interests of efficiency and economy, I expect and direct the Employer to provide particulars of all contextual evidence it proposes to offer in response to the Grievance, including particulars of instances in which the protocols relating to the availability of part-time paramedics have been altered with or without the consent of the Union. Similarly, I expect and direct the Union to provide particulars of its position with reference to the "factual matrix" that arguably informed the establishment and retention of the contested language and to instances in which the protocols relating to the availability of part-time paramedics have been altered with or without its consent.

23. To the same ends, for the avoidance of doubt and to ensure that timely disclosure is achieved, the Employer and the Union are also ordered to produce all documents upon which they intend to rely in connection with the litigation of this grievance.

24. The next agreed date for hearing is June 11, 2026. The provision of particulars and the production of documents as required hereby shall be completed no later than June 1, 2026 or such other date agreed by the parties.

Interim decision issued May 10, 2026.



Derek L. Rogers
Arbitrator

