

Twelve Things You Need to Know About Interest Arbitration

1. Independent Arbitration has long been recognized as a reasonable way to settle contract disputes, and is the only way to do so in workplaces such as hospitals where employees provide essential services and are forbidden by to go on strike.
2. Because hospital workers do not have the ability to strike, when they are unable to settle a collective agreement with their employer, their dispute must be resolved by interest arbitration. Arbitrators are *independent* adjudicators. They are not in the employ of government, unions or employers. They therefore must use objective criteria to determine collective agreement disputes.
3. Going to interest arbitration takes time; therefore it is often the case that arbitration awards deal with periods of time that have already passed.
4. Mr. David Johnston (now Canada's Governor General) headed a Hospital Inquiry Commission in 1974 that recommended centralized bargaining for all unionized hospital employees in Ontario. His recommendations to centralized bargaining were implemented and continue to this day.
5. The main rationale behind centralized bargaining is that employees doing similar work (and funded by the same government ministry), should be remunerated equally, no matter where in the province they work and no matter how large or small the hospital.
6. This concept of **comparability** has therefore been the strongest criterion for settling hospital labour disputes in this province for the past 40 years. In the *Hospital Labour Disputes Arbitration Act* arbitrators are required to consider the criterion of comparability of similarly classified employees. The criterion of ability to pay was added to the legislation in the late 1990's by the Conservative Mike Harris government.
7. To say an arbitrator must consider a criterion is not the same thing as saying they **must** make decisions on this basis. Arbitrators are independent and can consider all the factors under legislation, but in the end must come to a resolution that replicates, or is closest to what they think would have been achieved if the parties had the right to strike and lockout (this is called the replication principle). Where two criterion under the act would lead to different results (for example comparability versus the ability to pay), the arbitrator must make a choice.
8. Since the precedent of the Johnston Commission in the 70's, arbitrators have, in the majority of hospital cases, identified the criterion of comparability as more important than the criterion of ability to pay. The main reason is because the concept of ability to pay has very little meaning in a public service workplace.
9. If a hospital has an inability to pay, it is not because they haven't sold enough products (they are not in the private sector), it is because they have not received enough funding from government. If government chooses not to fund hospitals sufficiently, it is making a political choice to fund something else instead. A case in point is what is happening with corporate tax cuts. We might argue that there is money to spend on wages because the government has somehow found the cash to spend on corporate tax cuts. The government might argue that

corporate tax cuts are necessary to make the economy competitive so we can afford wages for public employees. There is no way an arbitrator can have any certainty on these macroeconomic issues.

10. Arbitrators rightly conclude that an inability to pay is actually an unwillingness to pay on the part of government as funder. They conclude further that if they were to become a party to these funding decisions, then they would no longer be independent, but would be resolving collective agreements according to the government's wishes.
11. Most experienced arbitrators therefore will pay no attention to budget statements, announcements, suggestions or directives that come from government with regard to collective bargaining. The only way that the government can influence the outcome of collective bargaining is by legislation.
12. The outrage in recent newspapers about recent arbitration awards shows an ignorance of the purpose of arbitration. Mr. Burkett's award for SEIU and participating hospitals does two things. It rejects the Hospitals' arguments of an inability to pay for the above noted reasons. It also follows a pattern already set by another central group of employees doing identical work (CUPE). In other words, Mr. Burkett concluded that comparability was a more compelling criterion than the Hospitals' claims of inability to pay. It is also important to note that the same hospitals that claimed inability to pay the industry norm for the SEIU group have no problem paying industry norms for its other hospital workers.