

## Schedule "A"

1. The Respondent, the United Food and Commercial Workers Canada, Local 1000A (Local 1000A) is the bargaining agent for an Ontario wide bargaining unit of certain employees of all Loblaws Supermarkets Limited (Loblaws) stores in Ontario, excluding the City of Sudbury and the Townships of McKim, Nepean and Gloucester. The Applicant is employed within the bargaining unit and as such is a member of Local 1000A.
2. Local 1000A agrees with the Applicant that Local 1000A and Loblaws are parties to a collective agreement with a term from July 1, 2000 to July 1, 2006, and that the agreement was ratified by the members of Local 1000A on July 28, 2000, in accordance with s.44 of the Ontario *Labour Relations Act, 1995 (the Act)*. Local 1000A disagrees with every other statement made in the Application except to the extent expressly agreed to below.
3. Local 1000A denies that it has in any way failed in its duty under section 74 of the *Act* to represent the Applicant or its other members.
4. The Locals of the United Food and Commercial Workers Canada represent approximately 230,000 individuals in Canada. The Locals of the United Food and Commercial Workers International Union represent an additional approximately 1.2 million individuals in the United States. Approximately 57% of the members of the United Food and Commercial Workers are employed in the retail food industry.
5. Wal-mart is the world's largest corporation and its largest retailer. Its annual revenues exceed the gross domestic product of many countries of the world. It is fiercely anti-union. It has illegally resisted attempts by the United Food and Commercial Workers to organize its stores in various jurisdictions in Canada and

the United States. It has been found to have breached the law by Labour relations tribunals of several jurisdictions in Canada and the United States.

6. To date, Wal-mart has a relatively limited presence, for it, in the retail grocery business in Canada. After approximately a decade in Canada, it has already captured approximately 5% of the food store type merchandise market. By contrast, after 60 years of operation, all of the stores operated by or under Loblaw Companies Limited have approximately 30% of that market. However, the experience of the United Food and Commercial Workers in the United States is that Wal-mart has been very successful in taking significant market share away from the other large grocery retailers. Wal-mart's food store type merchandise sales in the United States are 60% larger than its closest competitor in the United States. Its balance sheet allows it to finance explosive growth seemingly at will.
7. The other large grocery retailers in the United States have a significant degree of unionization by the United Food and Commercial Workers. Part of Wal-mart's ability to undercut those grocery retailers arises from the fact that it pays its employees less than the wages and benefits which the United Food and Commercial Workers has obtained for employees at those grocery retailers. The growth of Wal-mart has come at the expense of those other grocery retailers, and at the expense of their unionized employees. Understandably, the activities of Wal-mart have been a matter of keen interest to the United Food and Commercial Workers and its Locals.
8. In November 2002, Wal-mart announced plans to open six "Sam's Club" stores in Ontario. Prior to this time Wal-mart's presence in Ontario has taken the form of "Wal-mart" department stores which do not have a full range of food items. By contrast Sam's Clubs have a full range of food items. This announcement was of considerable interest to the Ontario Locals of the United Food and

Commercial Workers, and to the grocery retailers whose employees they represent, as it represented an increase in the degree to which Wal-mart would be competing for the food store type merchandise market in Ontario.

9. Loblaws and Zehrs are retail grocery store banners operated by corporate subsidiaries of Loblaws Companies East (LCE). Each has numerous stores in Ontario. LCE is in turn a subsidiary of Loblaw Companies Ltd. (LCL). As noted, Local 1000A, represents a bargaining unit of persons employed at Loblaws stores throughout most of Ontario. The United Food and Commercial Workers Canada, Local 175 (Local 175), represents a bargaining unit of persons employed at Loblaws stores in the City of Sudbury and the Townships of McKim, Nepean and Gloucester. Local 175 also represents a bargaining unit of Zehrs employees in some stores in south western Ontario. The United Food and Commercial Workers Canada, Local 1977 (Local 1977) represents a bargaining unit of persons employed at all other Zehrs stores in Ontario.
  
10. LCL operates directly, or through franchise arrangements, a number of other banners in Ontario and across Canada, including Fortinos, Your Independent Grocer (or "YIG") and Real Canadian Superstore. The only Real Canadian Superstore in Ontario is located in Thunder Bay, and is unionized by Local 1000A. The bargaining unit scope clause of the Thunder Bay Real Canadian Superstore collective agreement is limited to "North Western Ontario including Thunder Bay". Not all stores of all LCL banners are unionized. Notably, a number of YIGs are not unionized
  
11. Commencing in December 2002, John Lederer, President of LCL and Roy Conliffe, Senior Vice President, Labour Relations, of LCL, and from time to time, other representatives of LCL and LCE (for ease of reference, these individuals will be collectively referred to as the "Loblaw representatives") met with Mike Fraser, the Director of the United Food and Commercial Workers Canada, Kevin

Corporon, the President of Local 1000A, Wayne Hanley, the President of Local 175, Brian Williamson, the President of Local 1977 and, from time to time, other representatives of the United Food and Commercial Workers (for ease of reference, these individuals, will be collectively referred to as the "UFCW representatives").

12. The Loblaw representatives reviewed the threat posed by the anticipated expansion of Wal-mart into Canada, and in particular into Ontario, with the UFCW representatives. The information provided by the Loblaw representatives was consistent with information already known to the UFCW representatives.
13. The Loblaw representatives advised the UFCW representatives that LCL had determined that it would meet the threat posed by Wal-mart through the opening of larger "superstores" which, in addition to food store type merchandise, would carry a greater variety and proportion of department store type merchandise. However, LCL had also determined that, apart from replacement stores on sites subject to successor rights under existing collective agreements ("successor stores"), any of the new superstores to be opened in Ontario would have to have terms and conditions of employment which, in the view of the Loblaw representatives, would permit LCL to meet the competitive challenge posed by Wal-mart.
14. LCL's preference was to open the stores under the Loblaws and Zehrs banners, because of existing customer loyalty to those banners. In such a case, LCL also insisted that any existing stores converted into or replaced by superstores would also be covered by all of the same terms and conditions of employment. Accordingly, LCL was prepared to engage in preliminary discussions with UFCW representatives to determine whether or not it would be possible to negotiate amendments to the relevant collective agreements. LCL would only be prepared to enter into actual negotiations if the UFCW representatives agreed

that any agreements reached would be signed by the relevant Local without a ratification vote of the members of the relevant bargaining unit.

15. If discussions indicated that agreement could not be reached as to satisfactory terms and conditions of employment, then LCL would open the stores under a different banner, possibly a "Real Canadian Superstore" banner, which would be essentially an entirely new banner for Ontario. The opening of superstores would be accompanied by the closure of existing conventional stores with consequent job loss for UFCW members.
16. The marketing, and other costs, associated with establishing a new banner meant that virtually all future growth of LCL stores in Ontario, not simply superstores, would take place under the new banner, at the expense of the existing Loblaws and Zehrs banners. This also meant that LCL would only enter into negotiations if discussions indicated that agreement could be reached with all three of Locals 1000A, 175 and 1977.
17. Based on past experience with LCL and its subsidiaries, the UFCW representatives believed that if agreement could not be reached as to satisfactory terms and conditions of employment, then LCL would open the stores under a different banner. The UFCW representatives knew that the opening of many of the new superstores would inevitably result in the closure of existing Loblaws and Zehrs stores in the same communities. Even the opening of more conventional stores, under another banner, would have negative impacts on existing Loblaws and Zehrs stores in the same communities. Based on legal advice, the UFCW representatives were of the opinion that the possibility of succeeding on successor rights or related employer arguments in order to bring the new, non-successor, stores into the existing bargaining units was poor.

18. The closure of an existing store as a result of the opening of a new superstore or conventional store would, therefore, result in significant disruption through the bargaining units as employees exercised bumping rights and, ultimately, would result in the loss of jobs by employees in the bargaining units. Without taking a position on the issue of membership ratification, the UFCW representatives were therefore prepared to enter into preliminary discussions with the Loblaw representatives as to the nature of the terms of conditions of employment that LCL would see as necessary for the superstores.
  
19. The Loblaw and UFCW representatives engaged in protracted, difficult discussions over a number of meetings in the period December 2002, to May, 2003 as to the nature of the terms and conditions of employment that LCL would require. The Loblaw representatives essentially started from the position that they would require terms and conditions of employment very similar to those set out in the existing Fortinos collective agreement, with even lower wage rates applicable to employees in the department store type merchandise departments, and further that those terms and conditions would apply to all new stores and all newly converted stores under the Loblaws and Zehrs banners. Among the provisions of the Fortinos collective agreement which the Loblaw representatives indicated they required were the exclusion of department managers from the bargaining unit
  
20. The UFCW representatives were able to obtain significant movement by the Loblaw representatives from this position. Some of the key points were: all existing rights would be preserved with respect to existing stores and future "conventional" stores, and the new terms and conditions of employment would only apply to superstores which met certain defined criteria as to merchandise sold; that only a few of those new terms and conditions of employment would apply to conventional stores following a major rebuild or renovation which met certain criteria as to size and merchandise sold, and that those terms and

conditions would only apply to the "department store type merchandise" departments of those stores; a personal assurance of employment would be extended to all existing full time employees; that no existing employee would be compelled to go to a new superstore, but rather that employees affected by the opening of a new superstore would have a series of options consisting of generous transfer and buy-out package options, supplementary bumping rights within the conventional stores, and an early retirement option, which would apply initially to all employees and in the future to any employee affected by the opening of a superstore. They also got the Loblaw representatives to accept improvements on the terms and conditions of employment which would be applicable within the superstores, and that the employers would not propose any wage or benefit concessions in the negotiation for the renewal of the collective agreements.

21. The parties also had discussions about contributions towards the education and communication funds maintained by each Local. Most unions have similar funds. These funds are used by UFCW Locals for a variety of initiatives including steward and occupational health and safety committee member training, job related skills training, literacy and general computer skill training for members and the like. Under some collective agreements, including the agreement between Local 1977 and Zehrs, the Locals are able to get employers to agree to make contributions based on a certain number of cents per hour worked by members. Under other collective agreements, the Locals are able to get employers to agree to make lump sum contributions. Application of the hourly contribution rate of \$.15 / hour would have resulted in an annual cost to the employer of more than \$1 million. The Loblaw representatives initially resisted making any contribution to the Locals' funds, but ultimately accepted that a negotiated agreement could include lump sum payments of \$150,000 per year towards each Local's Education and Communication initiatives.

22. On Friday, May 23, 2003, the discussions broke down completely. One reason for the breakdown was that Local 175 and Local 1977 took the position that any negotiated agreement would have to be subject to a ratification vote by their members. The Loblaw representatives repeated their position that there could be no negotiations on that basis. Local 1000A suggested that the negotiations be allowed to take place on the basis that each Local be able to obtain a mandate from an appropriate representative group of employees within each Local. In the case of Local 1000A, this representative group of employees would take the form of the Loblaws Divisional Officers, as discussed further below. The Loblaw representatives declined this proposal, repeating their position that there could be no negotiations with any Local unless there could be agreements with all Locals. The Loblaw representatives announced that they would proceed with the plan to open the new stores under a different banner. The meeting came to an end.
23. Mike Fraser had further discussions with the Loblaw representatives. On Monday, May 26, 2003, Mr. Fraser advised the Presidents of Locals 1000A, 175 and 1977 that LSL was prepared to agree to negotiate with any Local which would agree that any resulting agreement would only be subject to obtaining a mandate from an appropriate representative group of employees. LSL was prepared to abandon its condition that there could be no such negotiations with any Local unless all Locals agreed.
24. Kevin Corporon had been periodically consulting with other members of Local 1000A's executive during the discussions which had been taking place since December 2002. They considered the fact that the alternative to negotiating an agreement with Loblaws was not that new, non-successor, stores would be subject to the unamended collective agreements, as assumed by the Applicant, but that the new stores would almost certainly be subject to no collective agreement, and existing employees affected by the consequent closure of



existing conventional stores would lose their jobs as discussed above. They also considered the progress which had been made in the discussions which had taken place with the Loblaw representatives to date. In the result, Mr. Corporon advised the Loblaw representatives that Local 1000A was prepared to enter into negotiations with them on the basis described by Mr. Fraser.

25. Building on the discussions which had taken place to that date, Mr. Corporon, and other representatives of Local 1000A, began negotiations of an agreement in principle with the Loblaw representatives. It was understood that conclusion of an agreement would be subject to Mr. Corporon receiving a mandate from the Loblaws Divisional Officers.
26. Under its constitution and bylaws, the membership of Local 1000A is grouped into a number of Divisions. Each Division has its own elected officers who conduct regular meetings of the members in the Division. In addition, Divisional Officers of the Local as a whole are elected by and from the members of each Division by means of a secret ballot. Elections are held every four years. The nomination and voting process are publicized to members of Local 1000A, as are the results of the elections. The last election for Divisional Officers took place in November 2000. The members employed by Loblaws fall within the Loblaws London Division, the Loblaws Trenton Division, the Loblaws Ottawa Division and the Loblaws Toronto Division. In total, there are 22 Loblaws Divisional Officers, of whom three are currently also staff members of Local 1000A.
27. At the end of May and beginning of June, Local 1000A began making the necessary arrangements for the Loblaws Divisional Officers from across the province to have two days off work and attend a meeting in Toronto. The meeting of the Loblaws Divisional Officers was held on June 16 and 17, 2003, at

the offices of Local 1000A. With the exception of one individual, who was unavoidably absent, all remaining 21 Loblaws Divisional Officers attended.

28. The Divisional Officers were advised that the purpose of the meeting was to determine whether or not they were prepared to give Mr. Corporon a mandate to negotiate amendments to the Loblaws collective agreement to cover the superstores which would not be subject to ratification by the Loblaws bargaining unit membership. Mr. Corporon advised the Loblaws Divisional Officers that if a majority of them did not vote to give him such a mandate, then he would not enter into the agreement with Loblaws. He advised them that in such a case he believed that LSL would carry through with its stated intention to open the stores under a different banner. He advised them that while Local 1000A would make every effort at the Labour Relations Board to assert that stores under the new banner fell within the Loblaws bargaining unit, based on legal advice Local 1000A considered the chances of succeeding with such arguments to be very poor for any store that was not a successor store.
29. Over the course of the two days, Mr. Corporon provided the Divisional Officers with copies of a number of documents which were extensively reviewed with them. In particular, the Divisional Officers were provided with copies of:
- a. A PowerPoint presentation on "The Wal-Mart Threat". (A copy is attached at Tab 4 to the application);
  - b. A PowerPoint presentation entitled "Loblaws vs. Wal-Mart: The Union Takes a Stand - Protecting UFCW jobs, wages and contracts. Now and in the future." (A copy is attached at Tab 3 to the application). This document describes the negotiating process between the UFCW representatives and the Loblaw representatives which had taken place to

that date, including the fact that the Loblaw representatives would not permit any agreement to be subject to a ratification vote;

- c. A document entitled "UFCW Agreement in principal [sic] June 16-17, 2003 Local 1000A LSL Divisional Officers Meetings". (A copy is attached at Tab 6 to the application.) This document was the working document being used by the UFCW representatives, and in particular the Local 1000A representatives, and the Loblaw representatives for the purposes of their negotiations, which summarized the tentative agreements reached to that date, along with items which were still under discussion;
- d. A copy of the Fortinos full time and part time wage schedules annotated with job titles from the Loblaws collective agreement;
- e. A document which compared the health and welfare benefits applicable to full time employees of the existing stores with the health and welfare benefits which would be applicable to full time employees of the superstores under the agreement (referred to as the RCSS Appendix);
- f. A document dated June 17, 2003, which compared the health and welfare benefits applicable to part time employees of the existing stores with the health and welfare benefits which would be applicable to part time employees of the superstores under the agreement (referred to as the RCSS Appendix); and
- g. A document which set out the major points of difference between the other terms and conditions of employment applicable to employees in the conventional stores compared with those applicable to employees in the superstores under the agreement (referred to as the RCSS Appendix).

30. At the end of the two day meeting, the Loblaws Divisional Officers were asked to vote, by secret ballot, on whether or not to give Mr. Corporon a mandate to negotiate an amendment to the Loblaws collective agreement to include "an RCSS Appendix" along the lines of the agreement in principle which they had reviewed over the course of the meeting. The three Divisional Officers who were also union staff representatives expressly refrained from voting in order to ensure that if the vote was close, the views of rank and file Divisional Officers would decide the matter. The result of the secret ballot vote was that the Loblaws Divisional Officers voted unanimously to give Mr. Corporon a mandate to conclude the agreement with Loblaws.
31. On the basis of the unanimous mandate which he had received from the Loblaws Divisional Officers, Mr. Corporon immediately advised the Loblaw representatives that he had a mandate to conclude an agreement along the lines of the agreement in principle which had been reached to date. Mr. Corporon and other representatives of Local 1000A continued to negotiate the outstanding issues with the Loblaw representatives.
32. Once the decision was made to conclude an agreement with Loblaws, Local 1000A wanted to communicate the nature of that agreement directly to its stewards and members as soon as possible. Rumours about Loblaws future plans had already been circulating amongst bargaining unit employees for months. Further information would now be flowing to the membership from the Loblaws Divisional Officers which was sure to prompt further discussion and questions. LSL had a new superstore in Ottawa and another in Ajax which were, at that point, scheduled to be opened at the end of August. An existing conventional Loblaws store was to be closed simultaneously with the opening of the superstore in Ajax. It was anticipated that the affected members would, of necessity, soon be hearing about the agreement from Loblaws and Local 1000A wanted to speak to its membership first.

33. On or about June 18, 2003, Local 1000A mailed a letter to all of its Loblaws stewards. The letter advised them that Local 1000A had reached an agreement in principle with respect to superstores to combat the Wal-mart threat and invited them to attend day long meetings in their areas of the province which were held on July 3, 4 and 7, 2003.
34. Over the course of each of the day long Stewards' Meetings, Mr. Corporon provided the stewards with copies of a number of documents which were extensively reviewed with them. The presentation was in essence an abbreviated version of the presentation which had been made to the Loblaws Divisional Officers. In particular, the stewards were provided with copies of:
- a. The PowerPoint presentation on "The Wal-Mart Threat";
  - b. The PowerPoint presentation entitled "Loblaws vs. Wal-Mart: The Union Takes a Stand - Protecting UFCW jobs, wages and contracts. Now and in the future." This document describes the negotiating process between the UFCW representatives and the Loblaw representatives which had taken place to that date, including the fact that the Loblaw representatives would not permit any agreement to be subject to a ratification vote;
  - c. The document entitled "UFCW Agreement in principal [sic] June 16-17, 2003 Local 1000A LSL Divisional Officers Meetings". This document was the working document being used by the UFCW representatives and Loblaw representatives for the purposes of their negotiations, which summarized the tentative agreements reached to that date, along with items which were still under discussion;

- d. A document dated June 18, 2003, which compared the health and welfare benefits applicable to full time employees of the existing stores with the health and welfare benefits which would be applicable to full time employees of the superstores under the agreement (referred to as the RCSS Appendix);
- e. A document dated June 18, 2003, which compared the health and welfare benefits applicable to part time employees of the existing stores with the health and welfare benefits which would be applicable to part time employees of the superstores under the agreement (referred to as the RCSS Appendix); and
- f. The document which set out the major points of difference between the other terms and conditions of employment applicable to employees in the conventional stores compared with those applicable to employees in the superstores under the agreement (referred to as the RCSS Appendix) which had been provided to the Loblaws Divisional Officers.

In addition Mr. Corporon discussed the wage grids which would be applicable to the superstores.

- 35. The vast majority of the stewards attending the meetings agreed that Local 1000A had made the right decision in entering into the agreement in principle with Loblaws with respect to the superstores.
- 36. On June 26, 2003, Local 1000A sent notices of special Loblaws Divisions Meetings to each store in the Loblaws bargaining unit for posting. This is the usual method by which Local 1000A advises its members of Division meetings. The meetings were scheduled for July 13, 15, 16 and 17, 2003 in London, Trenton, Ottawa and Toronto respectively.

37. On July 7, 2003, Local 1000A took the extra step of mailing a letter to each of its approximately 15,000 members who are employed within its Loblaws bargaining unit (attached at Tab 1 to the application). The letter advised them that Local 1000A had reached an agreement in principle with respect to superstores to combat the Wal-mart threat. It also invited them to attend special meetings of their respective Divisions, to be held in the evenings, for a complete presentation on the agreement and for answers to any questions they might have. Notice of the time and date of the meetings was given. It also directed them to their stewards or to a web site which was being constructed, [www.ufcwrealcanadian.ca](http://www.ufcwrealcanadian.ca), for further information.
38. On July 13, 2003, Local 1000A launched the [www.ufcwrealcanadian.ca](http://www.ufcwrealcanadian.ca) web site. It is specifically directed to the agreement with Loblaws concerning the superstores: Posted on the web site are:
- a. A message from Mr. Corporon, as President of the Local, with respect to the agreement and the events leading up to it;
  - b. A schedule of the dates and locations of membership meetings being held across the province on July 13, 15, 16 and 17, 2003, to explain the agreement and address members' questions;
  - c. A PowerPoint presentation entitled "The Wal-Mart Threat" which was a condensed and combined version of the PowerPoint presentations which had been provided to the Loblaws Divisional Officers and stewards;
  - d. A document which compared the health and welfare benefits applicable to full time employees of the existing stores with the health and welfare

benefits which would be applicable to full time employees of the superstores under the agreement (referred to as the RCSS Appendix);

- e. A document which compared the health and welfare benefits applicable to part time employees of the existing stores with the health and welfare benefits which would be applicable to part time employees of the superstores under the agreement (referred to as the RCSS Appendix);
  - f. The document which set out the major points of difference between the other terms and conditions of employment applicable to employees in the conventional stores compared with those applicable to employees in the superstores under the agreement (referred to as the RCSS Appendix) which had been provided to the Loblaws Divisional Officers;
  - g. A set of "Frequently Asked Questions" and answers with respect to the agreement on the superstores. (A copy is attached at Tab 5 to the application); and
  - h. Instructions to members on how to obtain a copy of the superstore agreement (referred to as the "RCSS Appendix"), or a copy of the Loblaws Collective Agreement.
39. Mr. Corporon, and other representatives of Local 1000A, attended the Loblaws Divisions Membership meetings on July 13, 15, 16 and 17, 2003. The meetings were, in Local 1000A's experience, very well attended: approximately 400 members attended the July 13 meeting in London, 125 members attended the July 15 meeting in Trenton, 500 members attended the July 16 meeting in Ottawa and 1200 members attended the July 17 meeting in Toronto. Members who attended the meetings were provided with copies of a number of documents



which were reviewed with them. In particular, the members were provided with copies of:

- a. An abbreviated form of the version of the PowerPoint presentation entitled "The Wal-Mart Threat" which was posted on the web site;
- b. A copy of the full time and part time wage schedules which had been agreed to for the superstores;
- c. The document dated June 18, 2003, which compared the health and welfare benefits applicable to full time employees of the existing stores with the health and welfare benefits which would be applicable to full time employees of the superstores under the agreement (referred to as the RCSS Appendix);
- d. The document dated June 18, 2003, which compared the health and welfare benefits applicable to part time employees of the existing stores with the health and welfare benefits which would be applicable to part time employees of the superstores under the agreement (referred to as the RCSS Appendix); and
- e. The document which set out the major points of difference between the other terms and conditions of employment applicable to employees in the conventional stores compared with those applicable to employees in the superstores under the agreement (referred to as the RCSS Appendix) which had been provided to the Loblaws Divisional Officers.

Sufficient copies of the superstore agreement were available for Divisional Officers and Stewards, and they were asked to pick up a copy.

on that basis. If no agreement had been reached, non-replacement superstores would have been opened under a different banner and it was Local 1000A's assessment that they would not be subject to the Loblaws collective agreement, as wrongly assumed by the Applicant. Members affected by the consequent closure of existing conventional stores would have no right to transfer to the superstores and would lose their jobs as discussed above. Faced with this prospect, following consultation with other members of the Local 1000A executive, he had decided to proceed with the agreement if given a mandate by the elected officers of the Loblaws Divisions. He explained that following two days of review and discussion with the Loblaws Divisional Officers, they had unanimously voted by secret ballot to give him that mandate.

41. Members present were invited to ask questions and Mr. Corporon responded to all questions posed at the meetings in a clear and straight forward manner. For example, in response to a question about why Local 1000A had agreed to the exclusion of department managers from the bargaining unit in the superstores, Mr. Corporon explained that Loblaws had insisted on this exclusion as a term of any agreement. In the absence of an agreement the new, non-replacement, superstores would have been opened under a different banner, and would not have been part of the Loblaws bargaining unit. If the banner was not unionized, then none of the employees at those new stores would fall within any bargaining unit. Mr. Corporon also noted that department managers are not automatically included in a bargaining unit and that in some unionized stores, for example Fortinos and some YIGs, they are excluded from the bargaining unit.
42. The bargaining unit members attending the Divisional Meetings were concerned but attentive. While there were a few vocal opponents, over all the presentation was well received by the members.
43. The agreement concerning the superstores was signed by Local 1000A and

42. The bargaining unit members attending the Divisional Meetings were concerned but attentive. While there were a few vocal opponents, over all the presentation was well received by the members.
43. The agreement concerning the superstores was signed by Local 1000A and Loblaws on July 11, 2003. The agreement amended the Loblaws collective agreement in a number of respects. A copy of the agreement is attached at Tab 2 of the application. In addition to setting out the terms and conditions of employment which will be applicable to the superstores, the agreement provides immediate and tangible benefits to Local 1000A members employed in existing stores of the Loblaws bargaining unit. A number of these benefits are reviewed in the following paragraphs.
44. First, and foremost, the agreement protects their jobs. But for the agreement, the Loblaw representatives had made it clear that the superstores would have been operated by a separate LCL subsidiary under a different banner. The non-successor superstores would almost certainly not have been part of the Loblaws bargaining unit and would not have been subject to the Loblaws collective agreement. The opening of superstores would have inevitably resulted in the closure of existing conventional Loblaws stores and corresponding loss of employment by Local 1000A members currently employed in the Loblaws bargaining unit. As a result of the agreement these members were provided with a number of options which they would not have otherwise had, which are fully described in Letter of Understanding No. 38.
45. The first option given to affected employees under Letter of Understanding No. 38 is the right to transfer to the superstore which caused the closure of the conventional store. Employees may transfer to a superstore on a trial six month basis and if they do not like it return to the conventional stores or exercise other options given to them under Letter of Understanding No. 38. Employees who

choose to transfer receive a payment of 3 weeks pay per completed year of service, up to a maximum of \$75,000 for full time employees and \$10,000 for part time employees. All such employees receive a guaranteed minimum transfer allowance. In addition transferring employees retain their bargaining unit seniority and service for the purposes of wage progression and other benefits. Full time employees transferring to the superstore take a personal assurance of full time employment for the duration of the collective agreement with them to the superstore. Department managers, whose option was to transfer to a non-bargaining unit department manager position, are given a further option under Letter of Understanding No. 38, not given to other employees, to choose instead to transfer to a bargaining unit position in the same department, provided one is vacant after all bumps by all affected employees have been exhausted.

46. By contrast, if the superstore had been operated under a different banner, the employer would have been under no obligation to hire them. The terms and conditions of employment within the banner would have been determined unilaterally by the employer. If they were hired by the banner, they would have no seniority and no obligation on the part of the employer to recognize company service. They would not have had a personal assurance of full time employment.
47. The second option given to affected employees under Letter of Understanding No. 38 is the right to take a buy-out. Employees who choose to sever their employment receive a payment of 4 weeks pay per completed year of service, up to a maximum of \$75,000 for full time employees and \$10,000 for part time employees. All such employees receive a guaranteed minimum buy-out package. This entitlement is greater than any entitlement which such employees might have had under the *Employment Standards Act, 2000* or under the terms of the unamended Loblaws collective agreement had there been no agreement.

48. The third option given to affected employees under Letter of Understanding No. 38 is the right to exercise supplementary bumping rights within the conventional stores. Employees are entitled to choose to stay within the conventional stores, and hence subject to the same terms and conditions of employment as they were prior to the amendment of the Loblaws collective agreement. The agreement supplements that right by providing that if such employees have no bump into a conventional store within 40 kilometers of their current store, the employer must nonetheless absorb the employees into a conventional store which is within 40 kilometers of their store. Such employees must be absorbed in the same position and at the same rate of pay. No other employee is to be laid off as a result of the absorption. On the other hand, an employee who elects to bump to a conventional store which is more than 40 kilometers away from their current store is entitled to receive relocation assistance ranging from \$5,000 to \$15,000.
49. The fourth option given to affected employees under Letter of Understanding No. 38 is the right to take an early retirement offer, provided they are at least 55 years of age as of the date that they are affected. Employees who choose to retire receive a retirement allowance of 4 weeks pay per completed year of service, up to a maximum of \$75,000 for full time employees and \$10,000 for part time employees or the equivalent of salary continuance to age 65, whichever is less. No such payment would have been made to these employees had there been no agreement.
50. The agreement also provides immediate and tangible benefits to Local 1000A members employed in existing stores of the Loblaws bargaining unit who will not be affected by the opening of the superstores. For example, a personal assurance of employment has been obtained for all members employed on a full time basis as of January 1, 2003: Letter of Understanding No. 26. All employees, and all former employees who had already retired in 2003, who will

be at least 55 years of age as of March 31, 2004, are offered the early retirement option: Letter of Understanding No. 47. Loblaw's has agreed that it will not propose any wage or benefit concessions in the negotiations for the renewal of the collective agreement, ensuring members of the bargaining unit that they will enjoy at least as good wages and benefits under the next collective agreement: Letter of Understanding No. 51. Loblaw's has agreed to make annual lump sum payments of \$150,000 to Local 1000A for Education and Communication initiatives: Letter of Understanding No. 52.

### **The Applicant's Allegations**

#### **Acceptance of "coercive" information from the employer and relaying it on to the members to "coerce" agreement**

51. The Loblaw representatives advised the UFCW representatives that they considered Wal-mart a threat. Based on their own knowledge and experience, the UFCW representatives agreed.
52. The Loblaw representatives stated that unless an agreement could be reached as to suitable terms and conditions of employment, all new non-successor stores would be opened under a different banner. Based on past experience with LCL and its subsidiaries, the UFCW representatives believed the Loblaw representatives.
53. The Loblaw representatives stated that it would be their position that the non-successor stores opened under the different banner would not fall within existing bargaining units and that accordingly LCL would be able to unilaterally set the terms and conditions of employment at those stores. Based on legal advice, the UFCW representatives believed that the likelihood of a successful challenge this position at the Labour Relations Board was poor.

54. The Loblaw representatives stated that the opening of superstores would be accompanied by the closure of existing conventional stores with consequent job loss for UFCW members if an agreement was not reached which resulted in the superstores being opened within the existing bargaining units. Based on past experience of store openings and closures, the UFCW representatives knew that this was true.
55. Local 1000A was able to negotiate an agreement in principle with Loblaws which provided immediate and tangible benefits to the members of the Loblaws bargaining unit. The Loblaws Divisional Officers were provided with full information about the situation and given a clear choice: provide a mandate to conclude the agreement without a ratification vote or don't. The fact that the choice presented to the UFCW representatives, and ultimately Local 1000A's Loblaws Divisional Officers was hard does not make it "coercive".

#### Failure to conduct a ratification vote

56. Section 44 of the Act requires that "[a] proposed collective agreement that is entered into or memorandum of settlement that is concluded" must be ratified as provided under the Act before it has effect. The agreement negotiated by Local 1000A and Loblaws is neither a proposed collective agreement nor a memorandum of settlement. It is a mid-term amendment to an existing collective agreement. Neither s. 44 nor any other provision of the Act requires that amendments made to collective agreements during their term must be ratified. On the contrary, s. 58(5) specifically provides that unions and employers may "by mutual consent" "at any time" revise "any provision of a collective agreement other than a provision relating to its term".

57. There was, in any event, no possibility of conducting a ratification vote in the circumstances of this case. Loblaw's offer was conditional on there being no ratification vote. Had Local 1000A "conducted" a ratification vote, there would have been nothing to ratify.
58. The *Act* provides no mechanism by which a union could compel an employer to withdraw a demand that mid-term negotiations to amend an existing collective agreement not be subject to ratification by the members. Other than when notice to bargain is given following certification, under s. 16, or in the last 90 days of an agreement, under s. 59, the *Act* provides no mechanism by which an employer can be compelled to negotiate with a union to amend or revise a collective agreement without preconditions. An employer's obligation to bargain in good faith under s. 17 applies only when notice has been given under s. 16 or s. 59. An employer's refusal to withdraw a demand that mid-term negotiations not be subject to ratification by members is not, therefore, bargaining in bad faith.
59. A requirement that such mid-term amendments be subject to ratification would be impractical and contrary to sound labour relations principles. It is inconsistent with the Board's long standing view that the parties should be encouraged to respond to changing circumstances mid-term by consensual amendments. In addition, it would prevent the day to day resolution of disputes arising under collective agreements. Many settlements of grievances can be considered to be amendments to the collective agreement. If each such settlement was subject to a duly conducted ratification vote, labour relations in this province would grind to a halt.



Failure to consult with the members prior to proceeding with negotiations

60. Failure to consult with members prior to proceeding with negotiations is not a breach of a union's duty of fair representation, as alleged by the Applicant. Such a reading of the Act would result in fruitless debate about when negotiations began. The extent of a union's obligation to consult during negotiations depends on the circumstances of the negotiations. The Board has long realized that mid-term negotiations, in which the employer is under no obligation to continue to negotiate, pose special and difficult problems for unions, in particular where the employer opposes any attempt at consultation by the union.
61. On the facts of this case, notwithstanding the position of Loblaws, Local 1000A insisted upon and did consult with the elected Loblaws Divisional Officers prior to concluding an agreement with Loblaws. The result of the consultation was that the Loblaws Divisional Officers gave the President of Local 1000A a unanimous mandate to conclude the agreement.
62. Nothing about first the discussions, second the negotiations, third the process of seeking a mandate from the Loblaws Divisional Officers, fourth the agreement itself or fifth the communication of that agreement to Local 1000A's Loblaws stewards or members in any way suggests bad faith on the part of Local 1000A. On the contrary, Local 1000A worked extremely hard to fulfill its role as representative for the employees in the Loblaws bargaining unit in a difficult and challenging situation and was successful in obtaining for them an agreement which provided them with immediate and tangible benefits as outlined above.

The terms of the agreement itself

63. There is nothing improper, or unusual, about a collective agreement requiring an employer to make payments to educational, communication or other like funds administered by a union on behalf of its members. Many unions have similar funds. It does not constitute "financial or other support" of a trade union by an employer, contrary to s. 70 of the Act, any more than deduction and remission of dues to a union pursuant to a standard "check off" provision of a collective agreement does.
64. There is nothing unusual in the retail store sector about a collective agreement requiring employees to work on Sundays. Section 73 of the *Employment Standards Act, 2000* permits an employee to agree to work on Sundays. Section 7 of the *Employment Standards Act, 2000* provides that an agreement that may be given by an employee may be given by his or her agent and is binding on the employee as if it had been made by the employee. Section 1 of the *Employment Standards Act, 2000* specifically defines an "agent" as including a trade union that represents an employee in collective bargaining.
65. In addition, s. 10 of Regulation 285/01 to the *Employment Standards Act, 2000*, provides:

Despite section 73 of the Act, an employee in a retail business establishment shall not refuse to work on a Sunday if he or she agreed, at the time of being hired, to work on Sundays.

The Fortinos collective agreement contains provisions making Sunday work, at regular rates of pay, non-voluntary for all new hires. Loblaws insisted that non-voluntary Sunday work at regular rates of pay form part of any agreement with respect to the superstores. Since the alternative to reaching an agreement was that Loblaws would open the superstores as a new banner, in which all

employees would be new hires who would be required to work Sundays by the employer as precondition of hiring, Local 1000A agreed to this demand.

66. The Applicant has provided no basis for the absurd suggestion that:

The amendments to the collective agreement have the potential to result in systemic discrimination in employment against women workers, contrary to the Ontario Human Rights Code. By agreeing to these provisions, [Local 1000A] has acted in a manner which is discriminatory.

This statement is nonsense, and is, in any event, denied.

***Disposition***

67. For all of the above reasons, Local 1000A submits that there is no basis for the relief requested by the Applicant, and Local 1000A asks that the application be dismissed on its merits.
68. In any event the Board should deny the Applicant's undemocratic request that:

If a ratification vote is in order, the ratification must be agreed to by an overwhelming majority as opposed to a simple majority.

The result of this request would be that an underwhelming minority could thwart the wishes of the "overwhelming majority" (less one). There is no basis in law, or sound labour relations policy, for such a result and, with due respect, the Board lacks jurisdiction to grant such an order.