



Implication of Arbitration for the StFX AUT

On February 8, the StFX Administration suggested “Final Offer Arbitration” to resolve the ongoing strike at StFX. While the AUT recognizes that any form of arbitration can have advantages (e.g. quick resolution, minimize third party harm to the student), the intent of this leaflet is to explain what arbitration is and why in our current labour dispute it is not favored by the AUT.

What is Arbitration:

- Arbitration: The process in which a neutral third party (arbitrator) enters negotiations that have reached an impasse and imposes a final settlement which becomes the basis for the collective agreement, to which both parties are legally bound (until its expiration). **Arbitration is not commonly used to resolve labour disputes partially due to the fact that it inhibits genuine bargaining.**
 - Arbitration is not conciliation: Conciliation involves the services of a conciliator *as appointed by the Ministry of Labour* to help the parties reconcile their differences in the event that an impasse is reached in collective bargaining.
 - Arbitration is not mediation: Mediation is a process in which a *neutral third party becomes involved in negotiations in an attempt to induce the parties to reach a settlement*. A mediator helps the parties reach a settlement, but does not impose a resolution to which the parties would be legally bound.
- Conventional Arbitration: The imposition of a final settlement upon the parties in the collective bargaining process by an arbitrator based upon the submissions from the two sides and upon the “norm” for settlements covering similar employees elsewhere.
- Final Offer Arbitration: The imposition of a final settlement upon the parties in the collective bargaining process under which an arbitrator chooses between the “final offers” presented by each side. There are two types of final offer arbitration:
 - a. Total package final offer arbitration: An arbitrator chooses either the entire final offer of the administration or the union as the basis for the collective agreement.
 - b. Issue by issue final offer arbitration: An arbitrator constructs a settlement by choosing on an item-by-item basis from the final offers of each party as the basis for the collective agreement.

Four reasons why “arbitration” is a bad idea for the AUT in the resolution of the current labour dispute:

1. **Arbitration will adversely affect the student academic experience both in the short and long term:** A major function of a strike is to encourage the parties to adjust their expectations and

eventually reach a settlement that is more or less acceptable to both. Arbitration undermines this function, forcing the parties to accept an agreement that may be unacceptable to both. The problems that were left unresolved may come up during the life of the collective agreement that follows, as well as subsequent rounds of negotiations. Unresolved problems may lead to “pent up” frustrations that would affect the relationship between the administration and union. A bad relationship between the administration and union will adversely affect the students as well as the academic experience that we are collectively able to offer.

2. **Arbitration in our situation undermines the role and purpose of the union and its primary function.** The primary function of the union is to engage in good faith bargaining with the employer to negotiate the terms and conditions of employment through a process of collective bargaining. In suggesting arbitration, the administration has chosen an arbitrator (a neutral third party) to make a decision concerning the content of the collective agreement, as opposed to acknowledging and recognizing the union as the sole and exclusive legal voice of its membership whose purpose is to bargain on its behalf. In pushing for arbitration, the administration is choosing not to bargain with the AUT, thus undermining its primary purpose and function. The current administrations’ attitude toward the union has negative consequences for its short and long term health.
3. **Arbitration denies the ability of the union to engage in a democratic process and exercise a meaningful voice in deciding on the content of the collective agreement.** Normal contract negotiations resulting in a tentative agreement compel the Executive to take a recommended contract to the members, present the details and answer questions, and finally to have members vote (via secret ballot) on ratification. This is a rigorous democratic process that would be removed in arbitration, as the third-party ruling would simply be received by the AUT with no option for further consultation. Over the past eight months, our chief negotiator, negotiating team as well as the AUT Executive has expended time, effort and energies toward the democratic negotiation of the content of the collective agreement. Arbitration contravenes the democratic right of the parties to resolve the dispute on their own terms by allowing for a third party to impose a settlement. As a result, all expended efforts of the chief negotiator, negotiating team and union Executive are undermined.
4. **Arbitration, in the current labour dispute, overly benefits the party who has deviated the least from their initial position. In the current labour dispute, the party who has deviated the least from their initial position is the administration.** Over the last eight months, the administration has continually engaged in “bad faith bargaining,” (see table #1). “Bad faith bargaining” is a term used to describe a party who engages in negotiations, but has little intention of making meaningful concessions or arriving at a settlement. The administration has shown minimal movement from their initial position (see diagram #1 and #2 for a general depiction) communicated at the start of negotiations in July 2012, and have even regressed on some issues since then. Meanwhile, the AUT has made meaningful concessions to arrive at a mutually acceptable collective agreement, which represents a substantial deviation from their initial position communicated at the start of negotiations (see diagram #1 and #2). Arbitration is especially beneficial for the party who withholds making meaningful concessions in the belief that the arbitrator will be inclined to either:
 - a. Seek a middle ground (in the event of conventional arbitration; see diagram #3) between the final positions of the two parties, in which case the withholding of concession may mean a more favourable outcome;
 - b. Side with one of the parties (in the event of final offer arbitration; see diagram #4), in which case the party who has deviated the most from their initial position (AUT) will naturally lose the most whether the arbitrator sides with them or not. For example, if the arbitrator sides with the administration, the AUT loses. If the arbitrator sides with the AUT (best case scenario), the AUT loses the difference between their initial position and their final offer (see

diagram #4). In this case, since the AUT has deviated the most from their initial position, and the administration has deviated the least, arbitration, regardless of its outcome will unduly benefit the administration.

Diagram #1 – General Initial Position of the Parties July 2012



Diagram #2 – February 7 General Position of the Parties

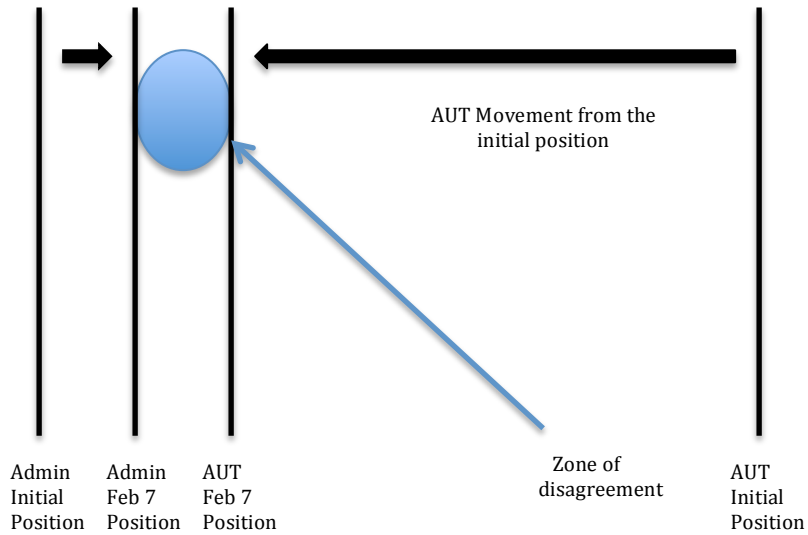


Diagram #3 – Implication of Conventional Arbitration for the AUT

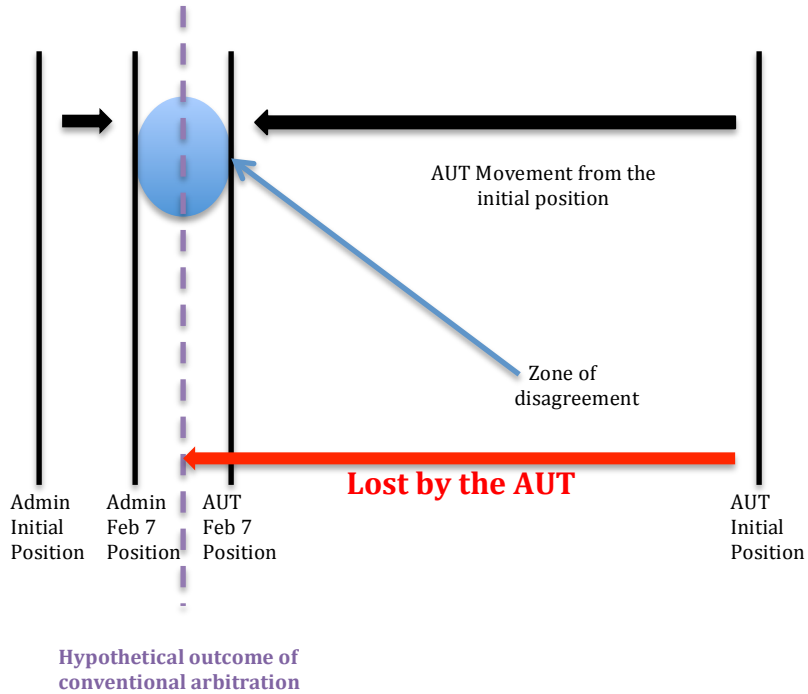


Diagram #4 – Implication of Final Offer Arbitration if Arbitrator Sides with AUT (best case scenario)

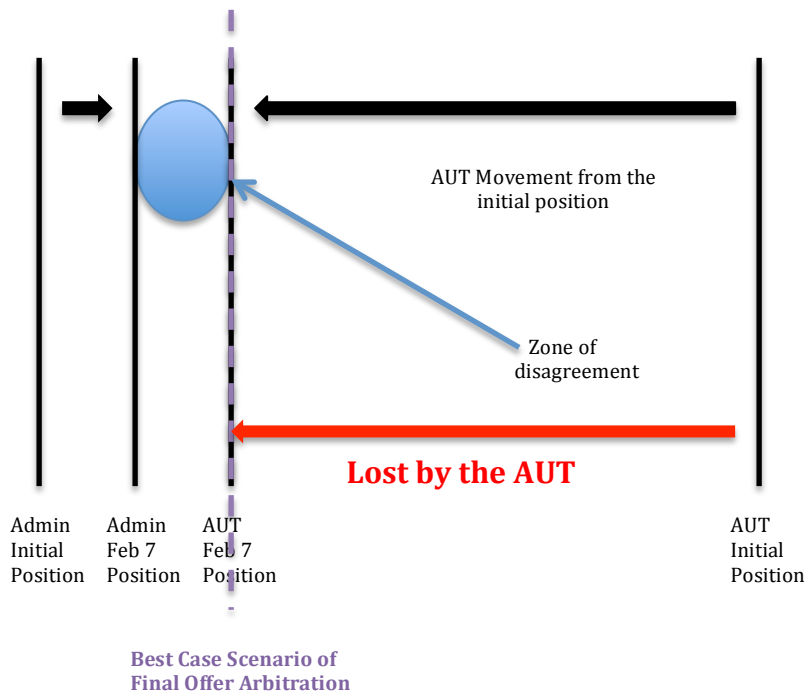


Table #1 – Evidence in support of the administration not engaging in good faith bargaining

What is entailed by good faith bargaining:	Examples of actions by the administration that illustrate a lack of good faith bargaining:
1. The parties meet and commence bargaining.	The AUT filed a notice of intent to bargain with the administration in April 2012. The AUT asked the administration to commence bargaining in June 2012 and the administration finally agreed to begin talks in July 2012.
2. That both parties fully discuss the issues at hand and the rationale for their positions on these issues.	The administration withheld all monetary and financial issues until October 2012 while the AUT tabled all financial and monetary issues in August 2012.
3. That neither party suppress or distort information required by the other party or intentionally mislead the other party.	The administration mislead and distorted the value of their financial offer, one example is the health benefit premium, which was misrepresented as worth 67% less than claimed.
4. That neither party frustrate the bargaining process by contradicting itself or simply going through the motions with no intention of making meaningful concessions (a strategy referred to as surface bargaining).	<p>The administration has frustrated the process by threatening to withdraw previously agreed to language (academic conference travel)</p> <p>The administration has frustrated the process by reporting misleading information on the StFX website, distributed via e-mail to Association members, and in full-page advertisements in the Antigonish weekly newspaper, <i>The Casket</i>.</p>
5. That the administration make no attempt to circumvent the union by making an offer directly to union workers.	While the administration has not circumvented the union by making an offer directly to the union, it has repeatedly communicated their offers to the AUT membership and the broader public prior to AUT Executive deliberations. Furthermore, the administrations' latest rejection of the February 7 AUT offer was announced publically and not at the bargaining table.