In the Court of Appeal of Alberta

Citation: Sobeys Capital Incorporated v United Food and Commercial Workers, Local No 401, 2026 ABCA 39

Date: 20260212
Docket: 2401-0306AC
Registry: Calgary

Between:

Sobeys Capital Incorporated

Respondent

- and -

United Food and Commercial Workers, Local No. 401

Appellant

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice G.H. Poelman
Dated the 18th day of October, 2024
Filed on the 13th day of February, 2025
(2024 ABKB 614, Docket: 2301 16319)

Memorandum of Judgment

The Court:

[1] United Food and Commercial Workers, Local No. 401 (the union) appeals a chambers judge's decision quashing a labour arbitrator's determination of wage increases for certain unionized employees of the respondent Sobeys Capital Incorporated (the employer). The parties, having reached a bargaining impasse, entered a final offer selection process where the arbitrator was asked to choose between the final wage offers of the union and the employer. The arbitrator chose the union's offer, concluding it best replicated what the parties would have achieved through free collective bargaining. On judicial review, the chambers judge quashed the arbitrator's decision as unreasonable and remitted the matter for redetermination before a different arbitrator. The appellant submits that the arbitrator's decision was reasonable and the chambers judge erred in setting it aside.

[2] For the following reasons, the appeal is allowed and the arbitrator's decision is reinstated.

Background

Bargaining history

[3] The respondent employer, Sobeys, is a large Canadian grocery retailer. Since 2013, it has owned and operated stores under the Safeway banner in Alberta. The appellant union, UFCW Local 401, represents about 6,334 employees working in Alberta Safeway stores with respect to three collective agreements with Sobeys (the Safeway Agreements).

[4] The bargaining process for the most recent Safeway Agreements was challenging. The parties met for 44 days of negotiations between March 2017 and March 2020 but were unable to reach an agreement. The respondent's plan to convert about 25% of Sobeys and Safeway stores to the discount banner FreshCo became a major complicating factor in the negotiations. The negotiations were further complicated by the onset of the Covid-19 pandemic.

[5] On March 31, 2020, Mia Norrie was appointed the parties' mediator under the *Labour Relations Code*, RSA 2000, c L-1. With her assistance, the parties engaged in mediation and further bargaining but remained unable to reach an agreement. In July 2020, she issued written reasons containing her recommendations for resolving the bargaining dispute.

[6] The mediator recognized that both parties sought to ensure the sustainability of the Safeway brand in Alberta, while also acknowledging the economic uncertainty generated by the Covid-19 pandemic. She noted the most contentious issues between the parties related to the impact of the

FreshCo conversion on employees and the union. There had been no bargained wage increases for several years, and the province's minimum wage increase to $15 had affected the employer's operating costs and caused compression of the pay scales which the union wished to address. To address the compression issue, Sobeys offered wage increases which would result in a significant increase for employees who had been held at the $15 rate since the minimum wage adjustment. However, the union also sought increases for top rated and over-scale employees.

[7] The mediator proposed five-year agreements with a 2% lump sum signing bonus and the wage scales proposed by the employer, which addressed the pay scale compression issue but did not include the increases for top rated and over-scale employees sought by the union. She proposed letters of understanding setting out a wage reopener process for top rated and over-scale employees for the last two years of the contract (the LOUs). The LOUs provided for dispute resolution through "final offer selection interest arbitration for a binding settlement": LOUs at paragraph 2. If the parties were unable to reach an agreement, they would appoint an arbitrator and formulate their final offers. The LOUs further defined the arbitration process as follows at paragraph 5:

> The final offer selection arbitrator shall hear submissions from each of the Parties and then select one of the final offers. The final offer selection arbitrator shall take into consideration the economic and competitive climate of the Employer's business, and the interests raised in 2020 bargaining.

[8] The parties accepted the mediator's recommendations, and the Safeway Agreements were concluded in August 2020.

The Arbitration Decision

[9] The union commenced the wage reopener process pursuant to the LOUs in February 2023. The parties negotiated but failed to reach an agreement. They agreed to proceed to final offer selection under the LOUs and to appoint Norrie, who had previously served as their mediator, to now serve as their arbitrator.

[10] The employer's final offer was a 1.5% wage increase effective August 2023 plus a $1000 lump sum payment and a 2% wage increase effective August 2024. The union's final offer was a 5% wage increase effective August 2023 and a 5% wage increase effective August 2024. A two-day hearing occurred in July 2025.

[11] In extensive written reasons released in November 2025, the arbitrator selected the union's final offer. She reviewed the full text of the LOUs, the background of the Safeway Agreements and the parties' unsuccessful efforts to negotiate the wage reopener. Relying on arbitral authorities, she outlined her understanding of the key legal principles applicable to interest arbitration, including replicability and comparability.

[12] She then structured her analysis around the agreed upon three factors for consideration set out in paragraph 5 of the LOUs: economic climate, competitive climate of the employer's business, and the parties' interests raised in 2020 bargaining. She subjected each of these factors to scrutiny, summarizing the evidence provided and drawing appropriate conclusions from that evidence. Under the heading of "competitive climate" the arbitrator considered various items, including comparators, the employer's financial circumstances, and the employer's argument regarding the union's likely ability take job action.

[13] With respect to comparators, she concluded that unprecedented economic conditions at the relevant timeframe, following the Covid-19 pandemic, limited the relevance of comparator collective agreements that had been negotiated in a different economic climate, specifically, the Superstore agreement settled in 2021. Therefore, she broadened her consideration of comparators to include "settlements negotiated through free collective bargaining in a sustained inflation environment regardless of the region or sector". Contrary to the employer's argument that key comparators should be limited to its direct competitors, i.e. retail grocers within Alberta and in particular Superstore, the arbitrator found that due to the "extraordinary circumstances" of the post-pandemic economic conditions, out-of-province retail grocery settlements should also be considered. On this basis, she selected as her key comparators two out-of-province retail grocery settlements from 2023, Save-on-Foods in British Columbia and Metro in Ontario — as well as the settlement between the same parties with respect to the Calgary warehouse negotiated in the second half of 2022, and ratified in January of 2023.

[14] Considering the various applicable factors described in paragraph 5 of the LOU, including the "competitive climate", the arbitrator selected the union's final offer. She characterized it as "aggressive" but "not inconsistent" with the Save-on-Foods and Metro settlements, while the employer's offer was "significantly inferior" to these comparators, the Calgary Warehouse comparator and the general "pattern of private sector settlements".

Decision of the Chambers Judge

[15] The chambers judge overturned the arbitrator's decision, finding that it was unreasonable. He began his decision by laying out the "legal parameters" he considered applicable to the arbitrator's mandate. He reasoned that where, as here, "the arbitrator is appointed pursuant to an agreement", then the terms of the agreement are "[m]ost important", citing ***Botten v Botten***, 2024 BCSC 39 at paras 117-121 and ***Voong v GPUN Broadway Investment Inc***, 2017 BCSC 1521 at paras 44-47. In this case, those terms "were contained in paragraph 5 of the LOUs". The chambers judge reasoned that "[g]eneral principles of replication and use of comparators developed in arbitral decisions" ought not to "override" the enumerated factors stated in paragraph 5 of the LOUs.

[16] The employer did not challenge the arbitrator's treatment of two of the three factors set out in para 5 of the LOUs: economic climate and the parties' interests raised in the 2020 agreement.

The chambers judge found the arbitrator's treatment of those factors to be reasonable. However, he emphasized that with respect to the parties' interests in 2020 bargaining, the employer's interest in entering the discount grocery market in Alberta via FreshCo and bringing its wages in line with Superstore, an existing discount grocery store, reinforced the unreasonableness of the arbitrator's decision with respect to the second factor: the employer's "competitive climate."

[17] While the arbitrator acknowledged Superstore should be considered a competitor, the chambers judge concluded that "ultimately she did not give it any discernible weight". In seeking replication through application of comparators, the arbitrator "ignored the modification of that approach required by the LOUs" and ultimately rendered a decision "without giving any significant weight to the competitive climate of Sobeys's business". He held that the arbitrator "was too eager to prefer more contemporaneous negotiations, even though they formed no basis for looking at Sobeys's competitive climate". The chambers judge also expressed concern about the arbitrator's treatment of Superstore wages for 2024 and 2025, because she seemed to accept the union's submission that these wages were subject to a wage reopener despite the record before her not bearing that out.

Grounds of Appeal

[18] The union argues the chambers judge applied the reasonableness standard of review incorrectly by:

1. Misinterpreting the LOUs;

2. Reweighing the evidence regarding the wages at Superstore;

3. Reweighing the evidence regarding comparator collective agreements; and,

4. Ignoring the arbitrator's expertise regarding the employer's competitive climate.

Standard of Review

[19] The chambers judge correctly selected reasonableness as the standard of review applicable to the arbitrator's decision. None of the circumstances which rebut the presumption of reasonableness review arise in this case: ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 at paras 16-17, 23-64, 69; ***Mason v Canada (Citizenship and Immigration)***, 2023 SCC 21 at paras 39-45, 54.

[20] The only issue is whether the chambers judge correctly applied the reasonableness standard. In answering this question, "there is no room for deference" to the court below: ***Canada (Attorney General) v Canadian Civil Liberties Association***, 2026 FCA 6 at para 154. Instead, this

Court "focusses on the administrative decision rather than the reviewing court's decision", undertaking a *de novo* review of the administrative decision: ***Koester v Wheatland County***, 2025 ABCA 308 at para 30, citing ***Horrocks*** at para 10; ***Mason*** at para 36.

Analysis

[21] In conducting reasonableness review, the role of courts "is to *review*, and ... at least as a general rule, to refrain from deciding the issue themselves": ***Vavilov*** at para 83, emphasis in original; see also ***Moffat v Edmonton (City) Police Service***, 2021 ABCA 183 at para 70. In this case, the chambers judge erred by reweighing and reassessing the evidence before the arbitrator, overstepping the court's institutional role in conducting reasonableness review: ***Vavilov*** at para 125; ***Gezehegn v Alberta (Appeals Commission of the Workers' Compensation Board)***, 2021 ABCA 93 at para 13. Stepping into the shoes of the reviewing court and examining the arbitrator's reasons with the "respectful attention" required under ***Vavilov*** at para 84, we conclude the arbitrator's decision was reasonable.

Ground 1: Interpretation of the LOUs

[22] The appellant argues the chambers judge erred in interpreting the LOUs by implicitly finding that the LOUs precluded the consideration of comparators other than the respondent's competitors. Properly interpreted, the LOUs required the arbitrator to consider the enumerated factors at paragraph 5, while still maintaining the usual approach of interest arbitration, including the consideration of comparators other than direct competitors.

[23] The respondent argues the chambers judge correctly interpreted the LOUs by finding that paragraph 5 of the LOUs required the arbitrator to meaningfully consider the enumerated factors, particularly the competitive climate of the employer's business. Given the language of the LOUs, it was "jurisdictionally inappropriate" for the arbitrator to ultimately rely only on comparators drawn from outside the respondent's competitive market when she selected an offer, and the chambers judge properly intervened on this basis.

[24] The Supreme Court recently reiterated that in the context of statutory interpretation, "[a]dministrative decision makers hold 'the interpretative upper hand'" and the reviewing court should not "conduct a *de novo* analysis" but should instead apply the "reasons first" approach to reasonableness review set out in ***Vavilov***: ***Pepa v Canada (Citizenship and Immigration)***, 2025 SCC 21 at paras 45-48. The same approach applies here in the context of contractual interpretation: the arbitrator had the "interpretive upper hand" and any analysis of the LOUs must begin with analysing her reasons for interpreting it the way she did: ***Vavilov*** at para 84; see also ***Mason*** at paras 58-63; ***Pepa*** at paras 46-47, 53.

[25] The arbitrator opened her reasons by noting the parties had agreed to a "final offer selection interest arbitration" process. She quoted the LOUs in full. She then summarized her task as follows:

> The LOU stipulates the sole issue for determination is the top-rates and over-scale wage rate changes and further directs that the matters for consideration are those identified in Paragraph 5 outlined above. As a result, the economic and competitive climate of the Employer's business are relevant as are the interests raised in the 2020 round of collective bargaining.

After outlining the legal principles applicable to interest arbitration and the parties' submissions, the arbitrator structured her reasons around the three factors referenced in paragraph 5 of the LOUs: the economic climate, the competitive climate of the employer's business, and interests raised in 2020 bargaining.

[26] The arbitrator's interpretation of the LOUs and her general analytical approach was reasonable. In the labour law context, "[t]he collective agreement is the fundamental source of the subject-matters that may come within the arbitrator's jurisdiction": David M Beatty, Donald J Brown & Adam Beatty, *Canadian Labour Arbitration, 5th Edition* (Toronto: Ontario: Thomson Reuters) at § 2:3. The arbitrator properly focused on the parties' agreement through the LOUs to define her task.

[27] The parties, through paragraph 2 of the LOUs, agreed to dispute resolution by way of "final offer selection interest arbitration." In interest arbitration, the arbitrator decides the terms of the collective agreement itself. This form of arbitration is "more or less legislative" in nature, in contrast with rights or grievance arbitration, which involves the interpretation of a collective agreement and is adjudicative in nature: ***CUPE v Ontario (Minister of Labour)***, 2003 SCC 29 at para 53, [2003] 1 SCR 539. Generally, the purpose of interest arbitration is to replicate the results of free collective bargaining: ***Gordon v Canada (Attorney General)***, 2016 ONCA 625 at para 139. To assist in determining what the parties would have achieved in free collective bargaining, interest arbitrators rely on objective evidence; most significantly, evidence of relevant comparators, which "illuminate the market forces at play in the economy, providing a guide as to the total compensation being enjoyed by similarly situated employees, both in terms of existing compensation and achievements made in the current collective bargaining environment": ***EMC Emergency Medical Care Inc v Canadian Union of Postal Workers***, 2024 NSCA 55 at para 88, quoting ***Victorian Order of Nurses Canada – Ontario Branch v Ontario Nurses' Association***, 2023 CanLII 122853 (ON LA). By agreeing to proceed by way of final interest arbitration, the parties – implicitly and explicitly – agreed that the basic principles of replication and comparability applied. The arbitrator's interpretation of the LOUs on this point and her statement of these guiding principles was reasonable.

[28] Two further aspects of the arbitrator's treatment of paragraph 2 of the LOUs are worth noting. First, she recognized and explained that the process of "final offer selection" binds the arbitrator to choose either the appellant or respondent's offer *in its entirety*. Second, she emphasized that it "stipulates the sole issue for determination is the top-rates and over-scale wage rate changes." In other words, she understood her task was limited to determining wages for only a subset of employees, which made this context different from the context of the comparator agreements that had been provided to her by the parties.

[29] Finally, the arbitrator clearly expressed that paragraph 5 of the LOUs required her to "take into consideration the economic and competitive climate of the Employer's business, and the interests raised in 2020 bargaining". She went on to structure her analysis around these three factors, engaging extensively with the parties' submissions on each of them.

[30] In summary, the arbitrator interpreted the LOUs as a whole, considering the principles applicable to interest arbitration, the enumerated factors set out at paragraph 5 of the LOUs, and the constraints imposed by the final offer selection nature of the dispute resolution process as well as the fact that she was tasked with determining the wages solely of a subset of employees rather than all the employees under the collective agreement. All these factors reasonably arose from the text of the LOUs.

[31] The respondent urges a much narrower interpretation of the LOUs, arguing that the competitive climate of the employer's business meant that "the collective agreements within Sobeys competitive climate had to remain the primary focus and be afforded the greatest weight" (*sic*). Therefore, the respondent argues, it was "jurisdictionally inappropriate" for the arbitrator to "rely exclusively on comparator agreements outside of Sobeys' competitive climate." They submit that the arbitrator's failure to meaningfully consider its competitive climate amounts to a "departure from [her] jurisdiction".

[32] In ***Vavilov***, the SCC expressly disavowed the "jurisdictional error" category of correctness review: see ***Vavilov*** at paras 65-68, 109. The arbitrator's decision is subject to reasonableness review under ***Vavilov*** and questioning whether her decision was "jurisdictionally appropriate" risks misdirecting the reviewing court and invites disguised correctness review. The proper question is whether the arbitrator adequately justified her interpretation of the LOUs: ***Vavilov*** at para 109. We find that she did.

[33] The arbitrator explicitly considered the narrow interpretation of the LOUs urged by the respondent in this appeal and reasonably rejected it. She engaged at length with the argument that the reference to "competitive climate" in the LOUs limited her to consideration of comparators that were "direct competitors" of the employer, i.e., grocery retailers within Alberta, and more specifically, tied the wage award to Superstore wages, on which the respondent's final offer was predicated. Rejecting this proposed interpretation of the LOUs, the arbitrator reasoned in part:

> The criteria for evaluating the Final Offer proposals includes competitiveness of the Employer in the province. Again, it is important to determine the impact of the information available when assessing this enumerated criterion. **I do not interpret this to mean that the general wage increases, and wage rates must match Superstore or the Employer will not be competitive**. …
>
> ...
>
> I acknowledge that there are a number of provisions that have been sought by the Employer at bargaining in an attempt to get closer to or on par with the Superstore agreements, however **for the purposes of this Final Offer Selection arbitration I do not accept that the LOU was intended to hold the Safeway employees to the Superstore rates of pay regardless of the economic circumstances at the time.** I disagree with the Employer's argument that the impact of the economic factors does not justify interference with the bargaining patterns, **when one is facing unprecedented economic drivers, it would be inappropriate to ignore them on the basis of comparators negotiated in a different economic climate.** [emphasis added]

[34] While the arbitrator acknowledged that collective agreements from competitors like Superstore had to be considered, she rejected the employer's argument that she was therefore required to limit Safeway wage levels to Superstore wage levels to maintain the employer's competitiveness. Instead, she interpreted the LOUs as permitting her to consider the larger economic circumstances together with the employer's need to maintain its competitiveness in the specific market. This interpretation was reasonably available on the text of the LOUs, which specifically required consideration of the economic climate, and which incorporated through the interest arbitration process the principles of replication and comparability. This interpretation was further supported by the reference to interests in the 2020 bargaining in paragraph 5 of the LOUs, as the arbitrator later explained:

> While [the gains achieved by the employer in advancing its interests in the 2020 bargaining process] may not have gone as far as the Employer would have liked, **this does not mean that when evaluating the Final Offer proposals that one of the conditions was to meet or match Superstore rates or general wage increases.** As the enumerated grounds include the 2020 bargaining interests, I find that critical changes such as the FreshCo concessions were achieved by the Employer, however the Union was not as successful at achieving its interests of increasing wages and compensation for its members.
>
> This was largely attributed to the timing of the agreement as in early 2020 there was significant uncertainty regarding the impact of COVID on the economy and as a result the parties achieved a resolution that provided a limited general wage

> increase and lump sum payments. **The Wage Reopener was intended to allow for the impacts to be better understood and for better or worse, to negotiate wage rates when there was a clearer understanding of the economic factors and their impacts.** [emphasis added]

[35] In short, the arbitrator rejected the employer's proposed interpretation of the LOUs, which would have isolated the competitive climate and elevated it above the other enumerated factors set out in paragraph 5. Instead, she read the LOUs as a whole and interpreted them in a manner that balanced the various constraints and interests. Nothing in the text of the LOUs supports the respondent's interpretation that the competitive climate of the employer's business was to be given primacy or special weight. To the contrary, the text of the LOUs clearly supports the arbitrator's interpretation that her task was to consider the economic climate, the employer's competitive climate, and the parties' interests in the 2020 bargaining as equally relevant factors. The arbitrator clearly explained why she considered the economic climate and parties' interests in the 2020 bargaining process to be significant when rejecting the employer's theory that the competitive climate should be given the greatest weight. The respondent's argument that the LOUs ought to have been interpreted as requiring a "primary focus" on its competitive climate merely rehashes an argument that was reasonably rejected by the arbitrator.

[36] There was no basis for intervention in relation to the arbitrator's interpretation of the LOUs.

Grounds 2, 3, and 4: Weighing of the Evidence

[37] The appellant's second, third and fourth grounds of appeal concern the correctness of the chambers judge's interventions based on the arbitrator's treatment of the wages at Superstore, comparator agreements, and the employer's competitive climate. While the appellant frames each of these grounds slightly differently, the real issue raised by these arguments is whether the arbitrator's weighing of the relevant evidence and the outcome she reached was reasonable. The appellant argues it was: the arbitrator reasonably concluded the Superstore wage rates were negotiated in a different economic climate and therefore warranted less weight as a comparator; adequately explained why she weighed the other Alberta retail grocery settlements as she did, particularly in light of her expertise and familiarity with the parties; and her analysis of the employer's competitive climate was reasonable given the respondent's choice to not put detailed financial evidence before her.

[38] The respondent counters that the arbitrator unreasonably discounted the Superstore collective agreement even though Superstore is the respondent's main unionized competitor. Further, it says she cast doubt on the Superstore wage rates based on speculation triggered by the union's false representation that they were subject to arbitration, contrary to the evidence. Finally, the respondent says the arbitrator disregarded the evidence of the respondent's other competitors—Calgary Co-op, Forest Lawn IGA, and Banff IGA—without transparent reasoning.

[39] As explained below, the arbitrator's weighing of the evidence was reasonable, and her reasons justify the outcome she reached. While the dispute between the parties to this appeal focuses on the arbitrator's treatment of the employer's competitive climate, she structured her analysis around all three enumerated factors, and it is helpful to review her reasons holistically to understand her treatment of the employer's competitive climate: ***Pepa*** at para 47.

[40] With respect to the economic climate, the arbitrator considered the economic forecasts with respect to inflation, interest rates, and oil and gas investment in Alberta, but ultimately found the parties' expert reports on these points "less persuasive than the actual impact on wages". She therefore relied on information on private sector wage increases from the Government of Alberta Bargaining Update. Based on these data, she found that "as collective agreements are negotiated in the current environment to cover the 2023 and 2024 period, wage rates are increasing".

[41] The arbitrator then discussed the employer's competitive climate. She considered various matters under this heading, including comparators, the employer's financial circumstances, and the employer's argument regarding the union's likely ability take job action.

[42] Given her findings with the respect to the economic climate, the arbitrator focused her consideration of comparators to collective agreements settled in the last two years. As discussed above, this grounded her rejection of the employer's interpretation of the LOUs as tying Safeway wages to the wage rates of the employer's key competitor, Superstore. She reasoned that she should not ignore the current economic conditions by using a comparator that was negotiated in a different economic climate. She also considered the union's submission that the Superstore rates for 2024 and 2025 included "the potential for binding arbitration", noting there was no evidence on this point but identifying "an open question as to the 2024 rates at Superstore if there was to be an option to arbitrate based on changing economic conditions".

[43] On this point, we reject the respondent's argument that the union's submission about the "potential" for renegotiation of the Superstore wage rates for 2024 and 2025 amounted to a material misrepresentation. This submission was made in the context of the evidentiary record before the arbitrator, which included the relevant Superstore collective agreements. Those agreements do not contain a wage reopener. Therefore, as accurately noted by the arbitrator, there was "no evidence" as to how the "potential for binding arbitration" would apply. But as characterized by the arbitrator in her reasons, the union's representation was only that these wages could potentially be subject to arbitration, not that they would be reopened. The arbitrator's reasoning on this point demonstrates that she understood the evidence and merely noted the possibility that "if there was to be an option to arbitrate based on changing economic conditions" then the Superstore wages for 2024 and 2025 were an open question.

[44] The arbitrator then turned to the three Alberta retail grocery collective agreements settled in what she had identified as the relevant time frame based on her consideration of the economic climate. She found they provided limited guidance: Forest Lawn IGA and Banff IGA were "small

stand-alone sites" and so were not appropriate comparators; Calgary Co-op was an appropriate comparator, but she reasoned "it is difficult to view the wage rates in isolation in that contract as they are extremely low overall". While the arbitrator said she would "not ignore" these three settlements "as indicative of settlements in the industry in Alberta", she concluded they provided insufficient information from which to draw any firm conclusions.

[45] Contrary to the respondent's argument that the arbitrator's explanation for her weighing of the evidence of these collective agreements was not transparent, the arbitrator gave express reasons for why each of these agreements was only of limited assistance to her. Her reasons in respect of each agreement were brief, but they "add up" and explain why she weighed the evidence as she did. This meets the standard of reasonableness: "***Vavilov*** tells us that reviewing courts must not insist on the sort of express, lengthy and details reasons that, if asked to do the job themselves, they might have provided": ***Zeifmans LLP v Canada***, 2022 FCA 160 at para 9, citing ***Vavilov*** at paras 91-94.

[46] Further, the appellant correctly points out that the arbitrator's expertise and the institutional context in which she was writing help to explain why her brief reasons on these points were adequate. As the Ontario Court of Appeal reasoned in reviewing a decision of the Ontario Labour Relations Board, "the reviewing court must bear in mind the expertise of the administrative decision maker with respect to the questions before it": ***Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v Bricklayers, Masons Independent Union of Canada, Local 1***, 2022 ONCA 780 at para 61, see also paras 55, 76, 80, 82. ***Vavilov*** expressly endorses the continued relevance of expertise as a consideration in reasonableness review: see paras 31, 92-93, 119. This does not amount to a relaxation of the standard of review, but it is a reminder to reviewing courts to show restraint considering their institutional role.

[47] Having considered and weighed the Superstore and other Alberta retail grocery collective agreements, the arbitrator reasoned that "because the large, unionized grocery retailers in the province have not been to the table since the start of the inflationary pressures and interest rate increases, one needs to look at grocery settlements in other provinces and settlements within the province beyond the retail grocery industry". In conducting this review of "settlements negotiated through free collective bargaining in a sustained inflation environment regardless of the region or sector", the arbitrator considered two out-of-province retail grocery settlements—the Save-on-Foods settlement in BC and the Metro settlement in Ontario—as well as the settlement between the current parties at the Calgary warehouse. Contrary to the employer's argument that comparators should be limited to retail grocers within Alberta, the arbitrator found out-of-province retail grocery settlements should be considered because of the "extraordinary circumstances" of the case. She also reasoned that BC was "not dissimilar" with respect to competition because it has similar players in the industry. With respect to the Calgary warehouse settlement, she found it "directly relevant as it is the same parties, a similar industry and within Alberta". As with the Alberta retail grocery settlements, her analysis of each of these agreements "adds up" and justifies the weight she accorded this evidence.

[48] Turning to the employer's financial circumstances, the arbitrator noted that the employer did not advance an inability to pay argument, so no detailed financial information was before her. She considered the employer's evidence that retail costs were climbing and its submission that its revenue increase was from inflation and not sales. However, she reasoned some decrease in Safeway sales and market share would logically flow from the FreshCo conversion as some Safeway stores were closed and sales migrated to FreshCo. She also noted "by its own admission the Employer has enjoyed the benefit of increases over the last few years while wages have remained relatively stable".

[49] Lastly with respect to the competitive climate, the arbitrator rejected the employer's argument that the union would have difficulty mounting effective job action on the wage reopener because only about half of Safeway employees were top rated or over-scale employees and therefore immediately affected by it. She found the union would be able to mount a strike, but in any event, she considered the relevance of this factor to be questionable. Furthermore, she found the limitation of the wage reopener to top rated and over-scale employees reduced its financial impact on the employer. She reasoned this should affect her consideration of comparators and average wage increases in the province, which were assumed to be based-on across-the-board increases.

[50] Finally, with respect to the interests raised in the 2020 bargaining, the arbitrator noted the employer had achieved "critical changes such as the FreshCo concessions" while the union was not as successful in achieving its interests. She attributed this to the onset of the Covid-19 pandemic around the time the Safeway Agreements were concluded. Given the uncertainty as to the impact of the pandemic, the parties agreed to a "a limited general wage increase and lump sum payments" along with the wage reopener, which "was intended to allow for the impact to be better understood and ... negotiated wage rates when there was a clearer understanding of the economic factors and their impacts". Lastly, she rejected the union's invitation to consider the sacrifices of Safeway employees as essential workers during the pandemic, which she characterized as a "social justice consideration" which was "strictly not allowed" to be considered.

[51] Following the extensive analysis outlined above, the arbitrator selected the union's final offer. She reasoned the union's offer was "not inconsistent" with the Save-on-Foods and Metro settlements, but the employer's final offer was "significantly inferior" to those settlements and also to the Calgary Warehouse comparator and to "the pattern of private sector settlements" in general. Reading her concluding summary fairly and in the context of her entire reasons, the arbitrator considered all of the evidence before her and reach a reasoned conclusion.

[52] The respondent's bottom-line complaint is that the arbitrator failed to give due weight to the Superstore and other Alberta retail grocery settlements. The arbitrator considered and explained why she accorded each piece of evidence the weight that she did. Considering her cogent and thorough reasons for decision, the respondent's argument boils down to a request for this Court

to reweigh the evidence and adopt their preferred outcome. That is simply not our role, nor was it the role of the chambers judge, who erred by doing precisely that.

Conclusion

[53] The appeal is allowed and the arbitrator's decision is reinstated.

Appeal heard on October 10, 2025

Memorandum filed at Calgary, Alberta
this 12th day of February, 2026

Antonio J.A.

Fagnan J.A.

Friesen J.A.

Appearances:

D.S. Bailey, KC
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D. Blaikie (no appearance)
J. Diebert
for the Appellant