

COLLECTIVE BARGAINING

with

THE UNION OF NORTHERN WORKERS

January 19, 2009

GNWT Response to UNW Demands

Housekeeping and Non Monetary Issues

Government of the Northwest Territories' Response to UNW Non Monetary Issues

Background

On December 5th, 2008 the parties exchanged opening proposals. The following days were used primarily to identify questions we had on each other's proposals, ask those questions and in some cases get responses immediately. Where information could not be provided immediately a commitment was made to get that information prior to the next bargaining session. From our perspective, this process is a vital part of ensuring we understand what is being sought and why, so we can determine the implications of any proposed changes.

We are looking forward to the January 19th session as an opportunity to start negotiations in earnest.

GNWT's Goals

The GNWT's proposal is guided by the goals we outlined in the opening proposal - to maintain an efficient, effective, and sustainable public service by:

- Investing in employees by remaining competitive in employee benefits
- Balancing investment with financial responsibility
- Improving fairness and equity for all GNWT employees
- Clarifying and simplifying rules to reduce confusion and misunderstandings.

As stated in the opening proposal, we believe that these are goals which should be shared by the Employer and the Union.

All the items in our opening proposal are intended to support achievement of at least one of these goals. During the first session, we received questions on how a number of these proposals would work. Particularly with regard to proposals involving changes to Special Leave, and pro-rating of all forms of leave, some concern was expressed that the GNWT proposals might represent a reduction to current benefits. The GNWT's proposal on these items is not aimed at reducing the benefit or saving money. To clarify the intent, we have

provided below additional information on how these proposed changes would work for employees.

Additional Rationale for GNWT proposals

Special Leave

We have proposed changes to special leave to allow for more equitable access to this type of leave. Special leave under article 19 will continue to apply, unchanged, to death in the immediate family and to illness in the immediate family.

The rest of special leave will be replaced with two days discretionary leave for employees to use for whatever purpose they choose. Use of the leave will no longer be limited to the events listed in the remainder of article 19. Instead employees will have much greater flexibility to use the time as they wish for occurrences that do not fit under the current criteria such as death of a friend, volunteer activities, household renovations, illness of a pet, and leisure activities, to name a few. The change to two discretionary days is not a loss in entitlement: two days discretionary leave is an increase compared to the average use of special leave which is only 1.04 days per year (excluding leave for illness or death in the immediate family). This change is not a cost saving measure; the intent is to provide more equitable access to this benefit.

Number of days taken by special leave type

Sum of Total Days	
Special - Death In Immediate Family	1,222
Special - Death in Other Family	341
Special - Illness in Family	4,404
Special - Other Events	66
Special Leave - Other	2,932
Grand Total	8,965

As can be seen from the above table, UNW employees' highest usage for special leave was for death or illness in the immediate family. We do not propose to change special leave for these purposes.

The number of days taken by UNW employees in 2007/08 for special leave other than death or illness in the immediate family was 3,339. Based on the 3,200 UNW employees eligible to take special leave, this represents an average of 1.04 days per employee.

**Number of days taken (consecutively)
by day ranges**

Sum of Total Days	
Day Ranges	Total
1-3 Days	5,482
4-5 Days	2,161
6-10 Days	972
Over 10 Days	350
Grand Total	8,965

As can be seen from the above table, over the year, 61% of employees who took special leave used 1-3 days throughout the year and 24% used between 4-5 days throughout the year.

Number of instances of leave (this is a count of the number of occurrences for each employee)

# of Days	Total
A - 1 Day	2,876
B - 2 Days	698
C - 3 Days	396
D - 4 Days	187
E - 5 Days	287
F - 6 Days	32
G - 7 Days	40
H - 8 Days	23
I - 9 Days	14
J - 10 Days	19
K - 11 Days	9
L - 12 Days	1
M - 13 Days	4
N - 14 Days	5
O - 15 Days	2
P - 16 Days	1
Q - 23 Days	2
R - 25 Days	1
Grand Total	4,597

The above table clearly shows that 77.7% of employees who took special leave used only 1-2 days. Only 56% of UNW employees used any special leave over the past fiscal year.

As stated earlier, we would like to replace special leave, except for illness and death in immediate family, with 2 days of discretionary leave which is more equitable in allowing all eligible employees to take special leave at their discretion.

Pro-rating Leave

We have proposed changes to how leave is earned to allow for equitable accrual for all employee types, be they full-time, part-time, seasonal, or casual employees. For example, vacation leave accrual will be prorated, based on regular hours of work with pay (including regular pay and any leave with pay). Earning leave on a prorated basis will not change the amount of leave earned by full-time and part-time employees, unless they need to use leave without pay at some point. This approach is more equitable when compared to employees on extended leave without pay such as maternity, parental, and education leave.

This approach is also more equitable when comparing full-time and part-time employees to other employee types, such as seasonal or casual employees.

Under the current agreement, vacation leave was earned on a monthly rate (1.375 to 2.92 days), provided that the employee received pay for 10 days in that month. This approach was changed April 1, 2008 by agreement with the Union, to allow accrual of the monthly rate, provided the employee received pay for only one day in that month. This means, for example, that a casual employee who worked one day in a month, and a seasonal employee who worked 12 days, and a full-time employee who worked 20 days in a month would each earn the full monthly vacation leave accrual. In other words the casual and seasonal employee earned as much vacation leave as the full-time employee, even though the full-time employee worked many more hours in that month. The prorated accrual of vacation leave we are proposing will provide a fair and equitable entitlement to vacation leave. This same prorated approach to leave accrual will also apply to sick leave and special leave to provide equitable entitlement to all leave earnings.

General Response to UNW Proposal

Our review of the UNW's proposal indicates that the majority of the proposals were monetary – in other words, agreeing to them would represent an added cost to the GNWT. Many of the non-monetary proposals address bringing more elements of the staffing process under the Collective Agreement and having the UNW play a greater role.

Monetary

At this point we are focusing on the UNW non-monetary and housekeeping proposals. We will provide our response to the UNW monetary issues when we reach that point in the process.

We also would like to have a special session dedicated to Appendix A9 during the non-monetary session. This will allow us to identify non-monetary areas in A9 that hopefully can be resolved and then clarify which monetary issues need to be forwarded to the monetary round.

Non-monetary

One theme we have noted in the UNW proposal is greater involvement by the UNW in the staffing process, as well as in internal competitions. Our concern is that the proposed changes would generally add steps to the staffing process, and make it more cumbersome, more time consuming and less flexible. The interests of UNW members are protected by the existing appeal process, whereby an appeal is heard by an independent Staffing Review Officer.

At the same time, there are positive concepts within the UNW's proposals that we are prepared to discuss, that are consistent with our goals. We are eager to discuss ways for us to work better together. This includes more forums for discussion of issues and

participation in processes that set future direction (for example the Human Resources Strategic Plan and the Corporate Human Resources plan).

We need to find ways to work pro-actively with each other, not just during the bargaining process but on a regular basis to ensure that we can make progress on issues of common interest.

Way forward

Traditionally, parties focus first on non-monetary issues. During the January 19 round of bargaining we hope to work our way through the non-monetary proposals, as well as the A9 Appendix that relates to Aurora College Instructors, as both parties have put forward a number of changes to the Appendix. Our goal is to make as much progress as possible on non-monetary issues the language and sign off as many changes as possible.

We can, however, only move to a final agreement if the parties can find common ground that not only allows both parties to achieve their interests, but also meets the needs of residents of the NWT.

UNW Non Monetary Issues

UNW Proposal

2.01 (y) "Probation" means a period of **one (1)** ~~six (6)~~ months from the day upon which an employee is first appointed to or promoted within the Public Service of the Northwest Territories except that for an employee first appointed to a position at Pay Level 13 or higher, it shall be a period of **four (4) months** ~~one (1) year~~. An employee who is appointed to a position which has the same duties, as his/her previous position shall not serve an additional probationary period. If an employee does not successfully complete his/her probationary period on transfer or promotion the Employer will make every reasonable effort to appoint him/her to a position comparable to the one from which he/she was transferred or promoted. **No employee shall serve more than one probationary period.**

The UNW proposal to shorten probationary periods to one month and four months is not operationally feasible. It does not provide an appropriate period of time to assess the employee's suitability, ability and competence – whether or not they are a good fit for the job. It also does not provide an appropriate amount of time for an employee to learn the job – it doesn't give an employee a fair chance to demonstrate they can do the job.

The UNW proposal to have an employee serve only one probationary period is inconsistent with the remainder of the existing article which specifically provides for probationary periods on transfer and promotion.

We also have a proposal on this clause to clarify its application to transferring employees, something that is already referenced later in the article.

UNW Proposal

2.01(cc) "Reasonable Job Offer" means an offer of indeterminate employment within the Public Service, ~~normally~~ at a pay **range and step** level equal to or greater than the employee's current level. Where practicable, a reasonable job offer shall be within the employee's headquarters.

The focus of the Staff Retention Policy is to keep employees in the GNWT. This UNW proposal reduces flexibility, impacts the training option and also may result in fewer employees being placed in new jobs.

UNW Proposal

ARTICLE 3 RECOGNITION

- 3.01 The Employer recognizes the Union as the exclusive bargaining agent for all employees in the Bargaining Unit. **In any and all matters dealing with employment, including but not limited to disputes, complaints, benefits, transfer assignments, secondments, maternity and parental leave, and on initial and subsequent hires.**

This proposal injects the UNW into all GNWT management – as it references “any and all matters dealing with employment”. What all these matters are and what impact this change will have is not clear.

We already have a rigorous process for areas such as staffing. A central focus of the staffing process is ensuring the proper application of the Affirmative Action policy. The current system includes an appeal process where complaints are heard by an independent 3rd party. This proposal appears to make staffing subject to the grievance and arbitration process. This would significantly lengthen the time required to hire staff.

UNW Proposal

DISCRIMINATION

- 3.02 The Employer and the Union agree that there shall be no discrimination, interference, restriction, harassment or coercion exercised or practiced with respect to any employee by reason of age, sex, race, colour, creed, national or ethnic origin, marital status, family status, sexual orientation, disability, **gender identity or expression**, conviction for which a pardon has been granted, religious or political affiliation, or any other grounds proscribed by applicable legislation, by reason of Union membership or activity, nor by exercising their rights under the Collective Agreement.

We agree that gender identity should be included, it currently is included in the NWT Human Rights Act.

We have conducted research and could not find Canadian use of the term “gender expression”. We do not want to include this term in the collective agreement.

UNW Proposal

ARTICLE 12 TIME-OFF FOR UNION BUSINESS

LEAVE FOR ELECTED OFFICERS

The union wishes to discuss the following clause:

12.09 (b) The Employer shall continue to pay such employees their applicable salary in accordance with the terms of the Collective Agreement. Upon invoice by the G.N.W.T., the Union shall reimburse the Employer for the amounts so paid.

The UNW clarified that they wish us to pay through our payroll system the paid Union Executive both their pay and the top up identified by the UNW. This will ensure that the entire salary is fully pensionable. We can agree to this change.

In addition the UNW raised the issue of their members applying for union leave without pay and how the leave is administered. Our past practice has been to pay the individual and then bill back the costs to the UNW.

UNW Proposal

ARTICLE 13 CHECK OFF

NEW

13.10 The Employer shall provide each new employee with a Union membership application card, provided the Union agrees to furnish the Employer with a supply of union membership application cards.

Currently the collective agreement already provides an opportunity for the UNW to meet with new employees in Article 15.

UNW Proposal
ARTICLE 15

PROVISION OF BULLETIN BOARD SPACE AND OTHER FACILITIES

- 15.04 (a) The Employer will process any mail originating from the Union addressed to Union officers in accordance with the Employer's normal internal mail distribution system **including all electronic mail distribution systems.**
- (b) The Employer will process any mail originating from the Union officers and addressed to the Union head office in Yellowknife in accordance with the Employer's normal internal mail distribution system **including all electronic mail distribution systems.**
- (c) **The Employer agrees to allow the Union to mass distribute information to its members through the GNWT internal electronic mail system.**
- (d) **All mail distributed through the Employer's mail systems, including electronic mail systems shall be treated as confidential and shall not be used in any proceedings between the Union and the Employer and its members.**

This proposal is not acceptable for a number of reasons. The UNW wants all emails to be considered confidential and not to be used in proceedings between the UNW and GNWT. All emails are government property and subject to Access to Information and Protection of Privacy (ATIPP) legislation. Also, if we say all emails are confidential and not to be used in proceedings (for example arbitrations regarding discipline) this could prevent discipline of employees who inappropriately use email.

The GNWT network and email system is used for GNWT business. This includes its extensive use in the healthcare system.

Given these concerns, it is not possible to extend use of the GNWT's email system to the UNW.

UNW Proposal

- 18.08 (c) **In cases where a designated paid holiday falls within the period of annual leave it shall be considered a day of liquidated leave for determining the entitlement to the Winter Bonus Days.**

This change appears to reflect current practice. We can agree to this change in principle but need to work on the language.

UNW Proposal

20.04 The Employer shall only require a variation beyond the basic requirement described in 20.03, in the form of a medical certificate from a medical or nurse practitioner, where there is a demonstrated and reasonable basis for doing so.

When an Employee presents a medical certificate from a medical practitioner or nurse practitioner, stating that they must attend medical treatment, the Supervisor shall not have the right to question the nature of the medical condition involved provided the Employee has enough sick leave credits.

We have a number of concerns about this proposed change. The example provided by the UNW was not related to the requiring of a medical certificate.

We are concerned that this proposal appears to interfere with our obligation to obtain appropriate medical information to allow us to evaluate our ability to accommodate employees as required by Human Rights legislation.

UNW Proposal

24.02

(6) The GNWT shall place the Employee's start date on pay cheques.

We agree that information such as start date is important and should be readily available to employees.

We will work with the UNW to determine which date employees want identified and to make that information available through Employee Self Service.

UNW Proposal – Article 24 Pay

The Union would like to discuss the following issue:

Employees cannot tell if mistakes are being made on their balance of leave credits reporting. A more detailed report indicating the dates leave was taken, the type of leave and a final balance of all leave credits is possible on the People Soft system and should be implemented. Because we no longer use paper formats, it is important that Employees be given accurate balances of all leave taken and that it is shown as individual units in order that mistakes can be corrected in the system.

We agree to work with the UNW to identify what additional leave information should be made available through Employee Self Service.

UNW Proposal

ARTICLE 37 ADJUSTMENT OF DISPUTES

- 37.07 (a) The Union shall have the right to consult with the first level of management as part of processing the First Level Grievance.
- (b) The Union shall have the right to consult with the designate of the Deputy Head prior to the Union presenting a grievance at the Final Level.
- (c) The Union shall have the right to consult with the Financial Management Board Secretariat with respect to a grievance at each or any level of the grievance procedure.
- (d) Where an employee is required to attend a meeting with the Employer or a representative of the Employer to deal with matters that may give rise to the **discipline (not including verbal warnings), or suspension or discharge** of an employee, that employee shall be advised 24 hours in advance of the meeting of his/her right to have a representative of the union at the meeting. At the employee's request, the meeting will be postponed for a maximum of three (3) working days. **This clause shall be inclusive of any investigative meetings where the employee is directed/requested to attend.**

We believe that the current provisions of the collective agreement already provide appropriate protection to employees.

This proposal requires escalating conversations that should be more informal between an employee and supervisor. We believe that supervisors and employees need to be able to informally resolve issues where appropriate. We don't believe that further formalizing virtually all employee-supervisor conversations assists this overall relationship.

UNW Proposal

ARTICLE 40

SAFETY AND HEALTH

- 40.02 (a) The Employer and the Union agree to establish **Joint** Health and Safety Committees. **There shall be a Union co-chair and an Employer co-chair.** A Committee shall be established for each work place where the Employer and the Union agree such a Committee is appropriate.
- (b) The following provisions will apply to the Health and Safety Committees:
- (ii) Records
- A Safety and Health Committee shall keep accurate records of all matters that come before it pursuant to subsection (b)(i) and shall keep minutes of its meetings and shall make such minutes and records available to a safety officer on his/her request. **Such minutes shall be approved by the Employer and the Union.**
- 40.07 (a) Employees shall, as soon as practical, report all personal injuries and/or accidents, which occur on the job, to their immediate or designated supervisor. As deemed necessary, such accidents shall be jointly investigated by one member from management and one employee. Where practical, such members shall be from Joint Health and Safety Committees.
- (b) **If an issue arises regarding occupational health or safety, the Employee or the Union shall first seek to resolve the issue through discussion with the applicable immediate supervisor. If the issue is not resolved satisfactorily, it may then be forwarded in writing to the Committee.**

NEW

40.13 Where an Employee is assigned to work alone, the Employer shall have in place a policy and procedure to support a Working Alone Safety Plan which shall be reviewed annually by the Committee.

We would like to have a broader discussion around Article 40. We are proposing a working group to meet during the life of the agreement to review the new Safety Act and to make recommendations to the parties on how best to move forward.

UNW Proposal

ARTICLE 51 SEXUAL HARASSMENT

51.01

- a) **The Union and the Employer recognize the right of employees to work in an environment free from harassment on a prohibited ground of discrimination as prohibited by the *Canadian Human Rights Act*, or the *NWT Human Rights Act*, free from personal harassment and free from abuse of authority. The Employer undertakes to ensure forms of harassment or abuse of authority will not be tolerated in the workplace.**
- b) **“Personal harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute personal harassment.**
- c) **“Abuse of authority” occurs when an individual improperly uses the power and authority inherent in his/her position to endanger an employee’s job, undermines the employee’s ability to perform that job, threatens the economic livelihood of that employee or in any way interferes with or influences the career of the employee. It includes intimidation, threats, blackmail or coercion.**

~~51.01 The Government of the Northwest Territories is committed to promoting a work environment, which is free from sexual harassment. Every employee has the right to freedom from harassment in the workplace because of sex by his/her Employer or agent of the Employer or by another employee.~~

~~51.02 Sexual harassment is defined as any conduct, gesture or contact of a sexual nature that:~~

- ~~———— (a) is likely to cause offence or humiliation; or~~
- ~~———— (b) that might, on reasonable grounds, be perceived by an employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.~~

51.02 A grievance under this Article may be initiated at any step of the grievance procedure. Grievances under this Article will be handled with all possible confidentiality and dispatch.

Currently the Workplace Conflict Resolution Policy (WCRP) covers sexual harassment, harassment based on prohibited grounds of discrimination and abuse of authority. Currently allegations of bullying are investigated by individual Department, Boards and Agencies. We are open to discussing changes to the WCRP as appropriate.

UNW Proposal

ARTICLE 52 RESIGNATION

52.01 An employee may, within **seventy two (72)** 24 hours of resigning, withdraw the resignation. The Employer will not process a resignation until the **seventy two (72)** 24 hours have elapsed.

We believe that the current provision of 24 hours provides a reasonable period of time in which to re-consider a resignation.

UNW Proposal

NEW ARTICLE WHISTLE BLOWER PROTECTION

XX.01 No employee shall be disciplined or otherwise penalized, including but not limited to, demotion, suspension, dismissal, financial penalty, loss of seniority, advancement or opportunity in the public service, as a result of disclosing any wrongful act or omission, such as an offence against an Act of Parliament, an Act of a legislature of any province or territory, or any instrument issued under any such Act; an act or omission likely to cause a significant waste of public money; or an act or omission likely to endanger public health or safety or the Environment.

This issue was raised by the Legislative Assembly and they continue to have a keen interest in the subject. We are currently assessing the most appropriate mechanism, be it stand alone legislation or inclusion in the Public Service Act to achieve this kind of protection.

Both we and the UNW have proposed to update community names as appropriate.

UNW Proposal

NEW ARTICLE

ORGANIZATIONAL CHANGE

XX.01 The Employer shall ensure that Employees are kept informed of pending operational or organizational changes.

As a result of pending organizational change, the Employer shall endeavour to establish planning committees or working groups involving affected Employees and management:

- (a) Employee representatives shall be selected by the Union to be on any planning committee(s) and/or work groups.
- (b) Relevant information shall be forwarded to the Union representatives on any planning committee(s) and/or work group(s).
- (c) Participation on such planning committee(s) and/or work group(s) shall be with regular pay.

There are a number of avenues, both inside and outside the collective agreement, for consultation and discussion between the UNW and GNWT. These include union - management meetings, including Senior Joint Consultation, under Article 56. If the UNW believes these processes are not working, we are prepared to discuss either new or improved mechanisms to ensure these discussions take place on a regular and timely basis.

We look forward to receiving the UNW's response to the GNWT's housekeeping and non-monetary proposals.