

COLLECTIVE BARGAINING
with
THE UNION OF NORTHERN WORKERS

January 22nd, 2009

GNWT Response

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

Background

Where proposals have been agreed to we are providing draft language to the UNW separately. Agreed to issues do not appear in this document.

UNW Non Monetary Issues

UNW Proposal

2.01 (y) "Probation" means a period of 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 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.**

On January 19th the UNW amended its proposal to withdraw the change in the length of the probationary period. That is reflected above.

The remaining 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. The GNWT has a wide diversity of jobs and we encourage employees to move to other jobs, at times with very different roles. An additional probationary period is required for new jobs to ensure there is a good fit.

The current requirement to serve an additional probationary period already has different rules. Employees are not required to serve an additional probationary period if the duties of the new position are the same. Also the probationary period on transfer or promotion is 6 months for all positions.

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

GNWT Proposal

2.01 (y) AMEND:

"Probation" means a period of six (6) months from the day upon which an employee is first appointed to, **transferred** 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 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.

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 subsequent hires.**

On January 19th the UNW amended its proposal to delete "initial and". That is reflected above.

This proposal continues to inject the UNW into all areas of 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. The UNW's amended proposal does not address our fundamental issue – that the proposal is not operationally feasible.

Employees can consult their union on a wide variety of issues currently. As this remains a concern for the UNW we have proposed additional language below:

GNWT Proposal

3.03 NEW

Employees may consult with the Union with respect to any issues arising out of 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.

GNWT Proposal

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

This language means that we will pay both the collective agreement salary and additional amounts as well as make the appropriate statutory and benefit deductions to the new total amount. An invoice for the total cost will be sent to the UNW for reimbursement.

12.14 NEW

Where an Employee is on leave without pay under this Article, except for leave under 12.09):

- (a) the Employer shall continue to pay for such employees their applicable salary in accordance with the terms of the Collective Agreement. Upon invoice by the GNWT, the Union shall reimburse the Employer for the amounts so paid; and
- (b) the benefits of any group plan shall be extended to such employees and the Union will reimburse the Employer for any costs involved.

UNW Proposal NEW

ARTICLE 13 CHECK OFF

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.

On January 19th the UNW amended its position and proposed that the application for union membership be provided as part of the collective agreement.

We believe that the issue of union membership is one that should be between the UNW and the employee. We have no position on whether employees are members of the UNW.

This language clarifies current practice.

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 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.

We also need to continue to have the flexibility to seek or provide additional information. This may be required to determine whether or not approving sick leave is appropriate or when an employee seeks to return to work.

GNWT Proposal MOU

Within 120 days of the ratification of the new collective agreement, the following information will be available to individual employees through Employee Self Service:

- *Employee's date of hire with the GNWT*
- *Employee's GNWT continuous service date*
- *Details of the employee's leave including date leave was taken, type of leave taken*

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.**

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.

Our proposal for a new Article 3.03 provides additional notification to an employee of the employee's right to speak to the Union.

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 Co-Chairs.**
- 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.

In order to evaluate Article 40.07(b) we need to know the purpose of this change. What circumstances lead to the introduction of this proposal? Could this issue and Article 40.13 be dealt with through the working group that we have proposed for Article 40?

Article 41 - Northern Allowance

The UNW asked how Behchoko (Rae) and Behchoko (Edzo) came to have separate Northern Allowance amounts. Under the Northern Allowance methodology agreed to in the last collective agreement, these two communities have always had separate amounts. This was discussed at the Joint Committee which was reviewing the Northern Allowance, and was set out in the Northern Allowance methodology materials which were provided to the UNW during the last round of collective bargaining.

When the recent collective agreement was negotiated, it was agreed that the current methodology came into force one year later, on April 1, 2006, as provided in Article 41.02(b). From that date, when the methodology was implemented, these two communities had different Northern Allowance rates.

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

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 Members of the Legislative Assembly during the 15th Assembly, and the Minister of Human Resources committed to explore mechanisms such as regulation to ensure whistleblower protection for public service employees.

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.

The Minister has committed to working with the Members of Legislative Assembly to address this important issue.

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.

We want to discuss expanding the joint consultation language (Article 56) to include major operational and organizational change. In addition we want to confirm our overall structure for discussion with the UNW, and focus on renewing our commitment to meet and discuss matters of mutual concern.

We acknowledge that there has been significant change in the GNWT and that, like most other governments and employers, change will continue. We also acknowledge that we have struggled with how best to communicate many of these changes to employees and the UNW.

Based on this experience we are focusing on how better to involve employees and the UNW as change occurs. There are a number of examples of how we currently are working to achieve this. The Yellowknife Consolidated Clinic project has working groups that includes YKHSSA employees. Consultation on a possible Infrastructure Department begins shortly, including consultation with employees.