File Nos.: 166-2-13857 to 13863
166-2-13880 to 13883
166-2-13898 and 13899

No. 85

PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

K.A. BROMPTON, R.J. CARRIERE, D.R. EASTAUGH,
J.W. HAWLEY, G.A. McMAHON, F.H.T. SEVESTRE,
F.H. ST. ONGE, W.D. BOYES, J.F. MacNUTT,
E.R. PATTISON, R.A. PORAYKO, P. BEAUDRY, G.S. BAIN.

Grievors

AND:

TREASURY BOARD
(Transport Canada),

Employer

DECISION

Before: S.J. Frankel, Board Member and Adjudicator.

For the Grievors: Catherine H. MacLean, Counsel

For the Employer: Sheila Ray, Counsel

Heard at Ottawa, Ontario, June 24, 1983.

CODE 402/82

RETRACTIVE REMUNERATION

DECISION

1. The 13 grievances here referred to adjudication pursuant to Paragraph 91(1)(a) of the Public Service Staff Relations Act are consolidated for the purposes of this proceeding. The grievors are persons who are not now, and were not at the time of the filing of their grievances, employees within the meaning of the Act. Their employment with Transport Canada ended on various dates prior to May 28, 1982. Of the 13 grievors, 11 had resigned and 2 had been rejected on probation. The grievances pertain to the entitlement of the grievors to certain retroactive provisions contained in the collective agreement between Treasury Board and the Canadian Air Traffic Control Association, Code 402: /82, expiring on December 31, 1982. The collective agreement was signed and became effective on May 28, 1982.

2. The final level reply to each of these grievances was identical, except for the reference to the particular date of termination of employment, and reads as follows:

> DECISION OF AUTHORIZED EMPLOYER'S REPRESENTATIVE
>
> I have reviewed your request for retroactive remuneration for the period of employment as an air traffic controller from January 5, 1981 to the date of your resignation.
>
> According to the Public Service Staff Relations Act, the grievance procedure is a form of redress available only to employees of the Public Service and to former employees who allege that their termination of employment was the result of a disciplinary action. I do not consider that you are entitled to avail yourself of the grievance procedure since you were not an employee on the date you submitted your grievance presentation form.
>
> Notwithstanding the above, in reviewing the Retroactive Remuneration Regulations, I do not consider that you have an entitlement to

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> retroactive remuneration since you resigned on ..... Only employees who terminate their employment, prior to the signing of a new collective agreement, by retirement, lay-off or death are eligible for retroactive remuneration under the Regulations.
>
> Therefore, based on the foregoing, the corrective action you are requesting is denied.

3. Counsel for the employer called attention to the second paragraph of the final level reply which stated that the grievors in this case were not entitled to avail themselves of the grievance procedure after they had ceased to be employees. I pointed out that the Federal Court of Appeal in The Queen v. Lavoie, [1978] 1 F.C. 778, amplified by its later decision in Gloin v. Attorney General of Canada, [1978] 2 F.C. 307, had found that there were certain circumstances in which former employees could file a grievance and refer a grievance to adjudication. The question to be determined on the merits is whether, in the circumstances, the grievors had the status to refer the grievances in question to adjudication and, if they had such status, whether the grievances were well founded.

4. The parties filed the following "AGREED STATEMENT OF FACT":

> 1. All the Grievors were employed in the Air Traffic Control Bargaining Unit for various periods after December 31st, 1979. The date on which each of the Grievors either commenced or recommenced employment after December 31st, 1979, is shown in the first column of Appendix "A" attached to this Statement.
>
> 2. The date on which the employment of each of the Grievors terminated is shown in the second column of Appendix "A".
>
> 3. On March 21st, 1979, the Canadian Air Traffic Control Association (the "Association") and the

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Treasury Board executed Collective Agreement 402/79. Collective Agreement 402/79 was expressed in Article 31.02 to be in effect until December 31st, 1980.

4. By virtue of Section 51 of the Public Service Staff Relations Act, the terms of Collective Agreement 402/79 remained in force until May 28th, 1982, when the Association and the Treasury Board executed Collective Agreement 402/82.

5. The employment of each of the Grievors ended before the execution of Collective Agreement 402/82 on May 28th, 1982. The employment of each of the Grievors was terminated for reasons other than retirement, layoff or death. The employment of the Grievors was terminated either by voluntary resignation or rejection at the end of probation.

6. All the Grievors were paid for work performed after January 1st, 1981, at rates provided for in Collective Agreement 402/79.

7. Article 14 of the Collective Agreement 402/82 provides for members of the Bargaining Unit to be paid at rates which are retroactive to January 5, 1981.

8. Each of the Grievors filed a grievance requesting retroactive pay pursuant to Article 14 of Collective Agreement 402/82. In addition some of the Grievors requested payment of retroactive operational facility premium pursuant to Article 31 of Collective Agreement 402/82, and some of the Grievors requested retroactive pay for overtime worked at various times after January 1st, 1981, pursuant to Article 15 of Collective Agreement 402/82.

9. The grievance of each of the Grievors was denied.

10. This Agreed Statement of Fact is entered into without prejudice to the rights of either party to introduce further evidence at the hearing.

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It is not necessary to reproduce Appendix "A". It shows that the dates of "recommencement or commencement of employment" fall between January 1, 1981 and January 4, 1982 and that the grievors' "Termination of Employment" occurred on various dates between June 1, 1981 and March 4, 1982, inclusive. No other evidence was adduced at the hearing.

ARGUMENT

5. Counsel for the grievors referred to Clauses 14.02 and 32.02 of the collective agreement, Code 402/82, which state:

> 14.02 An employee is entitled to be paid for services rendered at:
>
> (a) the pay specified in Appendix "A" for the classification of the position to which he is appointed, if the classification coincides with that prescribed in his certificate of appointment,
>
> or
>
> (b) the pay specified in Appendix "A" for the classification prescribed in his certificate of appointment, if that classification and the classification of the position to which he is appointed do not coincide.
>
> ...
>
> 32.02 Unless otherwise expressly stipulated, this Agreement shall become effective on the date it is signed and, in the event that any law passed by Parliament renders null and void any provision of this Agreement, the remaining provisions of the Agreement shall remain in

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effect until December 31, 1982.

In counsel's opinion, Clause 32.02 makes it clear that the rates of pay shown at Appendix A and the "Operational Facility Premium" (Article 31) are "expressly stipulated" exceptions which are subject to retroactive application. The question is whether these provisions apply only to persons who were employees at the time of the signing of the collective agreement or to all persons who had been employees during the retroactive period -- i.e. between January 1, 1981 and May 28, 1982. Counsel agreed that the grievors do not fall within the category of persons covered by the "Retroactive Remuneration Regulations" because the termination of their employment was not due to retirement, lay-off or death. In her submission, however, they were entitled to the retroactive benefits for their employment during the period between the expiration of the previous collective agreement (December 31, 1980) and the signing of the new agreement (May 28, 1982).

6. Ms. MacLean cited three Board decisions -- Cadotte (Board file 166-2-7948), Lessard (Board file 166-2-10531), and Thibault (Board file 166-2-10269) -- for the proposition that the Retroactive Remuneration Regulations do not apply to pay increases provided in a collective agreement that Treasury Board has entered into with a bargaining agent pursuant to Section 54 of the Public Service Staff Relations Act. This interpretation has been confirmed in the recent decision of the Federal Court of Appeal in The Queen V. Thibault (unreported), Court file A-327-82, in which it is stated:

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> ...In other words, the regulations prescribe the effect of approval of a retroactive pay increase by the Governor in Council or Treasury Board, they do not in any way govern the interpretation or effect of a collective agreement providing for such increases. (unofficial translation)

As well, in the three Board cases noted above, the adjudicators found that the grievors were entitled to the retroactive benefits provided in the relevant collective agreements despite a break in their service during the retroactive period. In two of the cases (Cadotte and Thibault), the break in service was for a period of less than five days. In Lessard, there had been a resignation on July 29, 1980, and a new appointment in the same classification but in a different location on August 25, 1980. In the latter case a collective agreement providing for retroactive pay from November 19, 1979 had been signed on October 17, 1980.

7. Turning to the question as to whether the grievors in the present case were entitled to the retroactive benefits of the collective agreement signed on May 28, 1982, counsel referred me to a number of arbitration decisions in the private sector. In Re Penticton and District Retirement Service and Hospital Employees' Union, Local 180 (1977), 16 L.A.C. (2d) 97, the British Columbia Labour Relations Board reversed a decision of an arbitration panel which had dismissed a grievance of the union claiming retroactive pay for former employees. Professor Weiler, writing for the Board, expressed his reservations regarding the applicability of the privity of contract doctrine to the facts of the case reviewed by the B.C. Board. He states at Page 105:

> The gist of that evolving position [i.e. privity of contract] may be summarized in these terms. The standard retroactivity clause defines the period of time during which the new terms and conditions of employment are intended to be effective. However, it does not determine precisely who is to be entitled to the retrospective operation of these new monetary benefits. Instead, those eligible can include only those who remained as employees within the bargaining unit up to the date the new agreement was concluded. Why? Because at the time the Union settled the new contract, these were the only individuals whom the Union was entitled to represent and bind by new contract terms.
>
> That is the argument. Does it stand up under close examination? I note at the outset that this special gloss on the standard duration clause is not justified by reference to the presumed intentions of the parties, or the practical exigencies of collective bargaining or contract administration. Rather, it is perceived as the necessary implication of such legal concepts as employee, unit, privity of contract, and so on.

8. Relying to some extent on the decision of the Ontario Court of Appeal in Mackey et al v. The City of London et al, [1953] O.W.N. 987, [1953] C.L.L.C. para 15,079, the remarks of Laskin, C.J. in Beverage Dispensers and Culinary Workers Union, Local 835 et al v. Terra Nova Motor Inn Ltd. [1975] 2 S.C.R. 749, the wording of the duration clause in the applicable collective agreement, and section 92 of the Labour Code of British Columbia*, Professor Weiler elaborates his reasons (at pp. 108 and

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* 92(3) An arbitration board shall, in furtherance of the intent and purpose expressed in subsection (2), have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties thereto under the terms of the collective agreement, and shall apply principles consistent with the industrial relations policy of this Act, and is not bound by a strict legal interpretation of the issue in dispute.

109) for concluding that the former employees were entitled to retroactive pay.

> ...the employees continue to work for their employer and pay dues to their union. Why do they remain patient, refraining from work stoppages, even though they may not have received any wage increase since some time during the life of the previous contract? Because the employees have a strong expectation -- often as a result of statements from the negotiators -- that the new wage rates will be retroactive. Thus, employees who continue to work after the expiry of the previous agreement do so in the belief that the work that that they are now doing will be paid for at a higher wage rate, at a figure which may be indeterminate now but will be fixed in the near future. For our purposes, the point is that all of the employees who are working share that same understanding. That is not affected by the fact that a few of the employees may choose later to terminate their employment, perhaps for unavoidable personal reasons. Thus any arbitration doctrine which withholds the new wage rates for work actually performed by this latter group definitely does defeat the expecations they reasonably held at the time they were performing the work...
>
> The cumulative force of that analysis supports this conclusion: arbitrators should interpret the general language of a duration clause as conferring retroactivity benefits on all individuals doing work during the period of the contract, even if some of them may have left their employment before the contract was actually signed. Certainly, there is a strong argument to that effect in the case of the renewal of a contract which is made retroactive to the date of expiry of the previous one...

9. In Re Ontario Federation of Labour and Office & Professional Employees International Union, Local 343 (1977), 16 L.A.C. (2d) 265, (G.W. Adams), the arbitrator also found in favour of the union claim for retroactive pay for former employees. His reasoning broadens the position taken by the B.C. Labour Relations Board in Penticton (supra) with respect to the privity of contract doctrine. He states at pages 269 to 271:

> By statute a trade union is made the exclusive bargaining agent for all employees and this deprives an individual employee of any opportunity for direct negotiations with his employer: see Syndicat Catholique des Employés de Magasins de Quebec, Inc. v. Compagnie Paquet Ltée (1959, 18 D.L.R. (2d) 346, / 1959/ S.C.R. 206. Thus where a trade union and employer are unable to arrive at a collective agreement before their current contract expires (a very common occurrence I might add) an employee is prevented from negotiating his or her own wage increase but must await the outcome of the collective bargaining process. Employees, therefore, work during the period of negotiations on the understanding that the new collective agreement will retroactively grant them increased wages for their efforts during this "open" period. However, some employees, having worked during the period of negotiations outside the framework of the expired contract, may leave or quit their employment before a new collective agreement is arrived at. Why should these people, who are unable to deal directly with the employer during this period of time and who may decide to leave the employer for personal reasons over which they may have little control, not be compensated for their efforts that will ultimately fall under the terms of the new collective agreement? To say that the union does not intend to be negotiating on their behalf, is in my opinion, to engage a fiction -- clearly the union is seeking increased compensation for the productive efforts of all its members during the period that precedes the signing of any memorandum of settlement. And similarly to say that it lacks

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"contractual authority" to benefits employees who worked during the term of a new contract but quit before it was signed is equally conclusory. ...In short, it would seem to me that the exclusive bargaining authority granted to a trade union by statute and the very usual phenomenon of negotiations outstripping the term of existing collective agreements means that a trade union is, prima facie, bargaining on behalf of all persons who are employed under the term of a new collective agreement whether or not they happen to be in the company's employ on the date a memorandum of agreement is signed. If they are not to be granted the monetary benefits of a new collective agreement for the period of their employment under it, it is for the company to seek their exclusion.

...

Applying this approach /in Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486 (1975), 57 D.L.R. (3d) 199, 8 O.R. (2d) 103 (Ont. C.A.)/, to the facts at hand, it can also be said that the application of the common law of contract to the signing of a collective agreement and to thereby deprive former employees of benefits under that contract which apply to the period of time they were employed by the company, is to ignore the fact that "/a/ collective agreement is fundamentally different from an ordinary commercial contract or contract of employment"...

For all of these reasons therefore I have come to the conclusion that any employee who is employed during the term of a new agreement, whether or not he or she is in the employ of the company on the date the agreement is arrived at, is entitled to, at least, the negotiated monetary increases for the period of that employment. This should be so unless the collective agreement specifically provides otherwise. (emphasis added).

This approach is generally endorsed by Professor D.D. Carter in Re Salvation Army Grace General Hospital, Ottawa, and Ontario Nurses' Association, (1980) 26 L.A.C. (2d), 253 to 258.

10. Ms. MacLean, counsel for the grievors, asked me to consider the reasoning in the cases cited above as constituting the essence of her argument in the present case. The grievors were employees during the retroactive period. They are therefore entitled to the retroactive rates of pay, and some of them are entitled to the Operational Facility Premium because the bargaining agent had bargained for these benefits on their behalf. The collective agreement signed by the bargaining agent incorporates these monetary benefits which are applicable to the period during part of which the grievors were employees.

11. Ms. Ray, counsel for the employer, emphasized her basic argument that the grievors were not entitled to the retroactive benefits of the collective agreement because they were not employees when that agreement was signed. During the time that they were employees they were governed by the provisions of the collective agreement then in force. This is clearly stated in paragraph 4 of the Agreed Statement of Fact. It was counsel's submission that the question as to whether former employees were entitled to the retroactive benefits of a collective agreement signed after the termination of their employment was not decided in Thibault (supra) nor, for that matter, in Cadotte (supra) and Lessard (supra). Clause 32.01 of the applicable collective agreement states clearly:

> 32.01 The provisions of this Agreement apply to the Association, employees and the Employer.

Given the definition of "employee" in the Act and the provision in the definition of "grievance" to include a "former employee" only in

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respect of a grievance against "disciplinary action resulting in discharge or suspension", it follows that the reference to "employees" in Clause 32.01 applies only to persons who were employees at the time of the execution of the collective agreement. The retroactive provisions of the collective agreement became effective on May 28, 1982 only for those who were employees at that time. The cases of Cadotte, Lessard and Thibault involved grievors who were employees at the time of the signing of the applicable collective agreements. The private sector cases cited by Ms. MacLean must be assessed in the context of the different statutes and collective agreements which governed them.

12. It was counsel's opinion that the decision of the Federal Court of Appeal in Thibault (supra) was that the express language of a collective agreement supersedes the Retroactive Remuneration Regulations. However, there is no express language in the collective agreement before us regarding the entitlement of former employees to the retroactive benefits provided therein. The employer must therefore ask itself what course to follow. The Retroactive Remuneration Regulations provide a useful point of reference. It was reasonable for the employer to assume that since the collective agreement was silent other instruments might be consulted. In this case the employer consulted the Retroactive Remuneration Regulations and found that there was no obligation to make retroactive payments to the grievors whose termination of employment was not due to retirement, lay-off or death. It was the bargaining agent's responsibility, if that was what it wanted, to seek the inclusion in the collective agreement of a provision to grant retroactive benefits to former employees. In the absence of such a provision one cannot infer the employer's implied agreement to such a provision.

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13. Counsel further contended that whatever decision I should reach in respect of the retroactive pay as set out in Appendix "A" of the collective agreement, I should recognize the distinction between retroactive pay and the "Operational Facility Premium" (Article 31). The latter is not a form of remuneration, it is a special bonus. She concluded by reiterating her basic argument that my jurisdiction extended to the grievors "as employees" and that I must therefore determine their grievances by reference to the collective agreement in force at the time they were employees.

14. In rebuttal, Ms. MacLean agreed that the grievances were filed by the grievors "as employees". In her view the only basis for the employer's position is the privity of contract argument which recent arbitral jurisprudence has found to be overly constrictive in the interpretation of collective bargaining agreements. The fact that a collective agreement provides for retroactive benefits because of the lapse of time between the expiry of the former agreement and the signing of the new agreement does not change the entitlement of former employees to be paid for their work at the rates applicable for that work.

15. Counsel agreed that the grievors were not entitled to payment under the Retroactive Remuneration Regulations, but that this was irrelevant. Their entitlement flows from the collective agreement. She also rejected the distinction suggested by counsel for the employer between remuneration and bonus. The Operational Facility Premium, overtime and rates of pay are all aspects of remuneration that were included in the retroactive benefits provided in the collective agreement.

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REASONS FOR DECISION

16. In my judgment, these references to adjudication must be dismissed. The facts are not in dispute and the law is clear and unambiguous. The grievances were referred to adjudication pursuant to paragraph (a) of subsection 91.(1) of the Act:

> 91. (1) Where an employee has presented a grievance up to and including the final level in the grievance process with respect to
>
> (a) the interpretation or application in respect of him of a provision of a collective agreement or an arbitral award, ...
>
> and his grievance has not been dealt with to his satisfaction, he may refer the grievance to adjudication.

The right to present a grievance and to refer a grievance to adjudication devolves on the individual employee. The approval and support of the bargaining agent in a reference to adjudication under paragraph 91(1)(a) (subsection 91(2)) is an ancillary requirement; it does not give the bargaining agent the status of a party to the grievance. The jurisdiction of an adjudicator is set out in section 95. Subsection 95 (2) states:

> 95. (2) No adjudicator shall, in respect of any grievance, render any decision thereon the effect of which would be to require the amendment of a collective agreement or an arbitral award.

17. I referred, in paragraph 3 above, to the decisions of the Federal Court of Appeal in Lavoie (supra) and Gloin (supra) which established that a former employee may, in certain circumstances, refer a grievance to adjudication. In Gloin, referring to the Public Service Staff Relations Act, the Court states at page 311:

> ...the word "employee" as used in the introductory words of section 91(1) must also, of necessity, be read in the same manner as that word is used in the introductory portion of section 90(1) and includes any person who feels himself aggrieved as an employee irrespective of whether he seeks redress under paragraph (a) or (b) of section 91(1).

It follows, therefore, that my jurisdiction to determine the grievances in this case depends on whether the grievors come within the meaning of "employee" as referred to in subsections 90(1) and 91(1) of the Act, insofar as they felt themselves aggrieved as employees.

18. It is clear from the evidence that the grievors are without status to refer the grievances in question to adjudication. Since none of the grievors was an employee on or after the date that the collective agreement (Code 402/82) came into effect -- May 28, 1982, their grievances as employees (pursuant to paragraph 91(1)(a) of the Act) cannot extend to provisions of a collective agreement other than one that was in force during the period of their employment. Paragraph 4 of the Agreed Statement of Facts states:

> 4. By virtue of Section 51 of the Public Service Staff Relations Act, the terms of Collective Agreement 402/79 remained in force until May 28, 1982, when the Association and the Treasury Board executed Collective Agreement 402/82.

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There is nothing in the grievances before me that challenges the interpretation or application of any provision of the collective agreement that was in force when the grievors were employees. What they are claiming is the application of certain provisions of the collective agreement that became effective when they were no longer employees. This is what distinguishes the present references from those of Cadotte (supra), Lessard (supra) and Thibault (supra) who, when they filed their grievances, were employees covered by collective agreements that included a provision for the retroactive pay which they were claiming.

19. It is noteworthy that the Federal Court of Appeal, in The Queen v. Thibault (supra), did not consider the break in Ms. Thibault's employment to have any significance in light of the language of the applicable collective agreement. It referred to Article 27, the first two clauses of which read as follows:

> 27.01 Except as provided in this Article, the terms and conditions governing the application of pay to employees are not affected by this Agreement.
>
> 27.02 An employee is entitled to be paid for services rendered at:
>
> (a) the pay specified in Appendix "B" for the classification of the position to which he is appointed ...

The Court went on to say:

> If we consider only clause 27.02 of the agreement, it seems clear that respondent is entitled to the retroactive pay increase provided for regardless of the fact that she was not

> employed from July 31 to August 6, 1980. She is not, of course, entitled to any pay for the time during which she did not work, but there is nothing in clause 27.02 to indicate that the fact she ceased to be employed for a few days means that she loses the retroactive pay increase to which she would otherwise be entitled for the period during which she worked before ceasing to be employed.

The point, of course, is that Ms. Thibault, as an employee to whom Clause 27.02 applied, was entitled to the retroactive pay provisions of the collective agreement. The grievors, however, are not employees to whom Clause 14.02 of the collective agreement, Code 402/82 (which is more or less identical to Clause 27.02 in Thibault, see paragraph 5 above) applies, and they therefore have no entitlement to the pay specified in Appendix "A" of that agreement or to the Operational Facility Premium (Article 31).

20. Counsel for the grievors placed a great deal of reliance on the reasoning of the arbitrators in the cases of Penticton (supra) and The Ontario Federation of Labour (supra) from which I quoted at some length. These cases, upon analysis, do not persuade me that my conclusion should be other than the one that I have reached in the present reference. In the first place -- and this is not my major reservation -- the decisions of Messrs. Weiler and Adams are not universally considered as authoritative in the arbitral jurisprudence. I need only refer to the examination of these decisions in the more recent case Re Air Canada and Canadian Air Line Flight Attendants' Association (1981),1 L.A.C. (3d), 37, (H.D. Brown). It seems to me that Mr. Brown makes a strong case for his different approach to the interpretation of a collective agreement which contains certain retroactive benefits but makes no specific provision for former employees.

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He states his conclusion at page 45:

> ...In the absence of specific language to include persons other than those specified in the agreement, the assumption cannot be made that the parties intended to benefit persons other than those represented by the bargaining agent at the time of the memorandum. Because the association represents employees as of the expiry date of the collective agreement, it cannot be taken that the employees at that time can be assured that regardless of their subsequent employment relationship or lack of it, their rights as of that time to any increase will be maintained as they lose their right to deal with the agreement as negotiated when they leave their employment.

21. My major objection to the relevance of these cases is grounded in the substantive law that distinguishes them from the present case. In each of the cases cited by Ms. MacLean it is the union that is identified as the grievor which is seeking an interpretation with respect to the entitlement of former employees to certain retroactive provisions of a collective agreement that was executed at a time when they were no longer employees. Since the question is not raised in these cases, one must assume that the status of the union to refer such a grievance to arbitration is derived either from the language of the collective agreement, or the applicable statutes, or both. The status of "grievor" under Sections 90 and 91 of the Public Service Staff Relations Act, however, is limited to individual employees (or persons who feel themselves aggrieved as employees). I have already indicated that each of the grievors, as an employee, was without status to refer a grievance to adjudication regarding "the interpretation or application in respect of him of a provision of a collective agreement..." that

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came into effect after he had ceased to be an employee.

22. I would add the observation that even if Collective Agreement 402/82 contained a provision to the effect that former employees were entitled to receive the retroactive benefits that they would have received if the collective agreement had been in effect on the last day of their employment*, or even assuming that in the absence of express language to the contrary such a provision could be inferred (Ontario Federation of Labour (supra)), the grievors would still be without status. On the basis of these assumptions, which are highly hypothetical, it might have been possible for the bargaining agent -- not the grievors -- to seek to enforce "an obligation that is alleged to arise out of the collective agreement..." by way of a reference to the Board pursuant to section 98 of the Act. That issue, however, is not before me.

23. For all of these reasons, the 13 grievances consolidated for the purpose of this proceeding must be dismissed.

S.J. Frankel,
Board Member and Adjudicator

Ottawa, August 29, 1983

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* Whether such a provision could be included in a collective agreement under the Public Service Staff Relations Act is arguable. See the decision of the Chairman of the Board with respect to Terms of Reference of a Conciliation Board -- Board file 190-2-104.