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PB Section 98 (Backroom)
"Printing of Collective Agreement
File: 169-2-388

JUN 2 3 1983

No. 57

THE PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

Canadian Air Traffic Control Association,

Bargaining Agent,

- and -

Treasury Board,
(Transport Canada),

Employer.

RE: Reference under section 98 of the Act -
Air Traffic Control Group.

BEFORE: J. Harold Brown, Q.C., Chairman.

APPEARANCES AT THE HEARING: Ms. C.H. MacLean for the Bargaining Agent.
R. Cousineau for the Employer.

Heard at Ottawa on June 13, 1983.

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PSSRB 1.11
93/6/83

ART 25
CODE 402/82

PRINTING OF
COLLECTIVE
AGREEMENT

DECISION

1. This is a reference under section 98 of the Public Service Staff Relations Act which was submitted by the Canadian Air Traffic Control Association, the bargaining agent for employees in the Air Traffic Control Group bargaining unit.

2. In a letter dated March 18, 1983, Mr. W.J. Robertson, the President of the Canadian Air Traffic Control Association, set out the allegations on which the reference is based in the following terms:

> The purpose of this letter is to file a complaint[1] under section 98 of the PSSRA alleging that the Employer (Treasury Board) has failed to give full effect to a provision arising from Collective Agreement 402/82, signed May 28, 1982, between the Treasury Board and the Canadian Air Traffic Control Association. As a result of the Public Service Compensation Restraint Act, the above-noted agreement has been amended and extended until December 31, 1984.
>
> Our complaint[1] arises from Article 25 of said agreement which reads:
>
> > "The Employer shall arrange for the printing of this Collective Agreement and amendments to this Collective Agreement."
>
> In attempting to give effect to Article 25, the Employer has printed a loose leaf insert for our Collective Agreement reflecting the amended rates of pay imposed by the PSCRA. He has however, failed to reproduce two Letters of Understanding signed by the parties on August 20, 1982 (copies enclosed) which form part of said Agreement.
>
> By virtue of the Employer's failure to print all relevant amendments to Agreement 402/82, and his failure to do so in a format (i.e. a new Collective Agreement booklet) in the same style as that which contains the Agreement signed on May 28, 1982 (copy enclosed) which constitutes a permanent record, we believe the Employer to be in violation of Article 25 of Agreement 402/82.

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(1) The word "complaint" should be "reference".

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> We therefore ask the PSSRB to order the Employer to print a new Collective Agreement book, identical to that which contains Agreement 402/82, incorporating the aforesaid amendments. In our opinion the Employer is under the same obligation to provide this service under Article 25 as he would be had the parties freely negotiated the renewal of 402/83. Since the amended Agreement will be required for use by all parties until at least December 31, 1984, we strongly feel it should be contained in a single permanent document as we have specified above.

3. In a reply dated April 6, 1983, counsel for the Employer set out his position on the reference:

> (1) The Employer has complied with Article 25 of the collective agreement.
>
> (2) The letters dated August 20, 1982, are not Letters of Understanding, but letters of clarification as they do not provide for any new term or condition of employment.
>
> (3) Article 25 does not carry with it the obligation to print the collective agreement and amendments thereto in any particular format.

4. In a further letter dated April 12, 1983, Mr. Robertson reiterated his claim that the Employer has not complied with Article 25 of the collective agreement and went on to say:

> ...the Letters dated August 20, 1982, are clearly Letters of Understanding, titled and signed as such by the representative of the Employer and the Bargaining Agent. Further it is clear that these Letters of Understanding form part of Collective Agreement 402/82. This latter fact is clear from the Letters and was reinforced by verbal agreement of Mr. Hunt and myself at the time of signing.

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5. Mr. Robertson testified that he had been chief negotiator for the Bargaining Agent during the last round of collective bargaining which resulted in the collective agreement which was executed by the parties on May 28, 1982, Code: 402/82 with a term which extended from January 1, 1981 to December 31, 1982. A copy of this collective agreement was identified by Mr. Robertson and filed by counsel for the Bargaining Agent as Exhibit #1. Mr. Robertson received copies of this collective agreement from the Employer in the same bound format as Exhibit #1 some time in August or September of 1982.

6. With respect to the two Letters of Understanding, also in dispute in the instant reference, Mr. Robertson testified that some time in July of 1982 Mr. Ronald Hunt, the chief negotiator for the Employer, contacted him with respect to certain matters which he wished to discuss. Mr. Hunt set out the substance of their agreement resulting from these discussions in the Letters of Understanding, signed by him, both of which are dated August 20, 1982. Mr. Robertson signed both letters indicating his acceptance of them. These documents, which are clearly headed "Letter of Understanding" were filed by counsel for the Bargaining Agent as Exhibits #2 and #3.

7. Exhibit #2 reads as follows:

> This is to clarify the intent with respect to lieu days accumulated prior to June 1, 1982 as referred to in clause 16.05(h) of the collective agreement expiring December 31, 1982.
>
> At the employee's option, any lieu days accumulated prior to June 1, 1982 will be paid off at the end of a fiscal year at the employee's daily rate of pay in effect at that time.

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8. Exhibit #3 provides:

> This is to clarify the intent of the overtime provisions of clause 15.02(a) of the collective agreement expiring December 31, 1982, for overtime worked on days of rest.
>
> Where an employee's overtime assignment does not commence and end on the same day, such assignment shall be considered for all purposes to have been entirely worked:
>
> (a) on the day it commenced where half or more of the hours worked fall on that day,
>
> or
>
> (b) on the day it terminates where more than half of the hours worked fall on that day.

9. Mr. Robertson stated that the Employer never distributed copies of these letters to the members of the bargaining unit; rather the Bargaining Agent distributed them. He had understood from Mr. Hunt that they would be included in the next printing of the collective agreement. When the revised wage rates resulting from the implementation of the Public Sector Compensation Restraint Act were issued by the Employer as an addendum to the collective agreement Code: 402/82, the Letters of Understanding were not included. The revised wage rates (Exhibit #4) were received in Mr. Robertson's office in March of 1983.

10. Mr. Robertson testified that he has acted as chief negotiator for the Bargaining Agent in the three most recent collective agreements. Counsel for the Bargaining Agent sought to introduce through him extracts from certain notes which Mr. Robertson had made contemporaneously with these negotiations in an attempt to establish what the parties intended Article 25.01 to mean.

11. Counsel for the Employer objected on the basis that, as the words used in Article 25.01 are clear and unambiguous, extrinsic evidence is not admissible as an aid to interpretation. However, counsel for the Bargaining Agent alleged that the Article contained a latent ambiguity in that the word "printing" has a specialized meaning as understood by the parties. The parties always intended the word to mean that the collective agreement would be printed in a bound volume together with all letters of understanding. I ruled that I would hear it with a view to ascertaining whether, in fact, Article 25.01 contains a latent ambiguity. The extracts from Mr. Robertson's notes were filed by counsel for the Bargaining Agent as Exhibit #5.

POSITION OF THE BARGAINING AGENT

12. Counsel for the Bargaining Agent reiterated the position that the Employer has failed to meet the obligation imposed on it by virtue of Article 25.01 of the collective agreement. As a result of the provisions of the Public Sector Compensation Restraint Act, there have been two different types of amendment to the collective agreement. The first type is a statutory amendment whereby the term of the collective agreement has been extended for a period of twenty-four months beyond its original expiry date of December 31, 1982 and the wage rates have been increased by a specified percentage. The second type of amendment resulting from the Public Sector Compensation Restraint Act are negotiated amendments of which the two Letters of Understanding in dispute are examples. No matter what interpretation you give the word "printing", the obligation imposed on the Employer by Article 25.01 has not been met with respect to them.

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13. Counsel submitted that "printing" can have a number of meanings. There is a narrow interpretation which refers to typesetting, inking and the pressing of separate sheets of paper. However, when one considers the negotiating history and the past practice of the parties, it is apparent that the word as used in Article 25.01 means binding in a booklet format. With reference to the last three collective agreements, all wage rates and letters of understanding have been contained in one bound volume.

14. The fact that the two letters in dispute specify that their purpose is to "clarify the intent" with respect to certain provisions of the collective agreement does not alter the matter according to counsel. A clarification is no different than an amendment to the collective agreement. Certainly the purported clarification of clause 16.05(h) of the collective agreement (Exhibit #2) constitutes an amendment to the collective agreement. Furthermore, both of these documents are clearly headed "Letter of Understanding" and they are signed by Mr. R.A. Hunt, the chief negotiator for the Employer, who also drafted them. Clearly, they must be interpreted in the context of the collective agreement. These two letters contain provisions very similar to those set out in Letter of Understanding No. 1-82 dated May 28, 1982, which is found in Exhibit #1.

POSITION OF THE EMPLOYER

15. Counsel for the Employer submitted that one must consider the substance of the two letters in dispute. Their purpose is to clarify the interpretation to be given to existing provisions in a collective agreement without varying or amending them. The term "collective agreement" is defined in section 2 of the Public Service Staff Relations Act as follows:

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> "collective agreement" means an agreement in writing entered into under this Act between the employer, on the one hand, and a bargaining agent, on the other hand, containing provisions respecting terms and conditions of employment and related matters.

The revised wage rates printed by the Employer (Exhibit #4) do not fall within this definition as they were not reached through negotiation by the parties but rather they represent an application of the terms of the Public Sector Compensation Restraint Act. Accordingly, Article 25.01 of the collective agreement does not impose any obligation on the Employer to print the revised wage rates at all much less in the format claimed by the Bargaining Agent.

16. Furthermore, counsel argued that the language of Article 25.01 is clear and unambiguous and extrinsic evidence is not admissible as an aid to its interpretation. The evidence adduced by Mr. Robertson was the clearest type of self-serving evidence and it has no probative value whatsoever.

DETERMINATION OF THE BOARD

17. Article 25.01 of the collective agreement provides:

> The Employer shall arrange for the printing of this Collective Agreement and amendments to this Collective Agreement.

The collective agreement was executed by the parties on May 28, 1982 with a term which was scheduled to expire on December 31, 1982. On August 4, 1982, the Public Sector Compensation Restraint Act was enacted with retroactive effect to June 29, 1982. The effect of this legislation was to extend the term of the collective agreement for twenty-four months beyond the scheduled expiration date, that is, to December 31, 1984. It provided as well for an increase in wage rates of six percent for the first twelve months and five percent for the remaining twelve months of the extended application of the collective agreement.

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Section 7 of the Public Sector Compensation Restraint Act specifies that the parties to a collective agreement which is extended may agree to amend any terms and conditions of the collective agreement other than wage rates or other terms and conditions of the compensation plan.

18. With reference to the interpretation of Article 25.01, I do not find that it contains any latent ambiguity. Accordingly, I am not prepared to give any weight to Exhibit #5 or the oral evidence adduced by Mr. Robertson regarding the negotiating history and past practice of the parties. The Article merely provides that the Employer must arrange for the printing of the collective agreement and any amendments thereto without specifying any particular format. Therefore, I find that, when the Employer had the revised wage rates which were established under the Public Sector Compensation Restraint Act printed as an addendum (Exhibit #4) to the original collective agreement, this constituted compliance with the obligation imposed on the Employer by Article 25.01. I would add that I do not accept the argument of counsel for the Employer that Article 25.01 does not apply to these revised wage rates and that the Employer was not obliged to print them at all. The fact that they were imposed by statute rather than by agreement of the parties does not make them any less a part of the collective agreement.

19. With reference to the two letters in dispute, there can be no question but that they are "Letters of Understanding". They were written and signed as such by the representatives of the parties. Furthermore, I find that they fall within the definition of "collective agreement" in that they are agreements in writing entered into between the parties which contain "provisions <u>respecting</u> terms and conditions of employment" (emphasis added). Indeed, I find that the two Letters of Understanding constituted clarifying amendments to the collective agreement. As such, the Employer is obliged by virtue of Article 25.01 to arrange for their printing. This the Employer has

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failed to do. Accordingly, the reference under section 98 of the Act is allowed to the extent that the Employer is directed to arrange for the printing of the two Letters of Understanding so that they may be available for distribution to employees in the Air Traffic Control Group bargaining unit.

DATED AT OTTAWA this 23rd day of June, 1983.

"J. Harold Brown"
for the Board.