Union News

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TENTATIVE AGREEMENT

As you are aware by now, the bargaining team reached a tentative agreement with the CRA early Friday morning, August 12th. Let me start by thanking the team for their hard work and dedication along with the local executives and members across the country for standing together. This has been a long process with the team working hard to achieve a fair deal. While this offer is not all that they wished it to be, they believed it was the best they could do after considering everything, and are unanimously recommending acceptance.

The process we now fall under for bargaining is really a two-tiered system where we first bargain with the CRA and then with Treasury Board, as they have to go back for approval on everything. We need to begin lobbying the government to return us to direct bargaining with the CRA as our separate employer to enable us to negotiate in a fair and reasonable time.

We will now start the process of having ratification votes across the country. Pursuant to the PSAC Constitution, you must attend a meeting and hear from a team member prior to voting. The Locals will be distributing information on dates, times and places of meetings. The results will be announced as soon as all voting has been completed.

Please cooperate with your local executive and the process will be done as soon as possible.

We have stood together through this long process and have reached the point where you, the members, make the decision to accept or reject this offer. If you have any questions, please see your local executive and they will get the information that you are seeking.

Thank you all for your efforts and support during this long process. We will have information on the next round of bargaining in the future.

Robert Campbell
National President

SI VOUS PRÉFÉREZ RECEVOIR CETTE PUBLICATION EN FRANÇAIS, VEUILLEZ VOUS ADRESSER À VOTRE PRÉSIDENT- E DE SECTION LOCALE

YOU AND YOUR COLLECTIVE AGREEMENT

Welcome back, as mentioned in the previous edition of Union News, the Communications Committee's goal is to provide you, the membership, with information and insight into various clauses contained in your collective agreement. In this edition we will be providing highlighting two clauses in the collective agreement, the first being **Article 54.01 Leave With or Without Pay for Other Reasons** and the second outlining all **two sections of Article 28 of the collective agreement dealing with overtime**.

We remind you that information contained in these articles is not meant to replace consultation with your union representative for guidance and advice.

ARTICLE 54 LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

> *54.01 At its discretion, the Employer may grant: (a) leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld; (b) leave with or without pay for purposes other than those specified in this Agreement.*

This particular clause is requested most often by employees who were either unable to report to work or were late in reporting to work, usually as a result of inclement weather. Over the years, adjudicators have modified their position in respect to this particular clause and through these precedents, in the Union's opinion the application is or should be more reasonable. Unfortunately, even with these adjudication decisions, even in situations virtually identical, leave requests have been denied and the member has unfortunately been required to file a grievance. The good news is that ultimately we are successful in many of these challenges and it truly begs the question, why are employers (it just doesn't happen with CRA) so unwilling to recognize the new realities.

One of the first significant changes was when adjudicators started taking the consistent position that where an employee lives is not relevant as long as the other basic requirements are met. If you ever encounter a situation where this is what you're told by the employer, do not accept it.

The more recent and truly important changes in the view of adjudicators, relate to the efforts of the employees, with respect to the efforts the employee took to attempt to get to work. In recent decisions, adjudicators also commented on the fact that others may have been able to get to work is not necessarily relevant even though this is still a position that seems to permeate decisions made by the employer. In order to get a better understanding of the thoughts of various adjudicators, we will include quotes from some of these decisions. In our opinion, there were two adjudication decisions "Gill-Conlon" and "Coppin" that changed the landscape on this clause.

A summary of the above noted adjudication cases is noted below:

> *The grievors contested the employer's denial of their requests for leave with pay when they claimed that they were prevented from reporting to work due to severe winter weather conditions – Mr. Coppin attempted to move his pickup truck but got stuck and spent two hours shovelling to allow him to park his truck in a driveway – his street was only plowed mid-afternoon that day, and public transportation was not a viable option as the bus stop was too far to walk to and the bus ride too long – Ms. Gill-Conlon attempted to reach work but turned back after finding the roads too risky – she is not aware of any public transportation to her work location – the employer felt that the grievors did not make a reasonable effort to get to work – all other employees at the grievors' work location either made it to work or requested annual leave – the adjudicator held that the grievors should not have their rights restricted by other employees' interpretations of the collective agreement – the employer's decision must be based on the merits of each request – both grievors made reasonable efforts to get to work.*
>
> *Grievances allowed. (Coppin and Gill-Conlon 2009 PSLRB 81)*

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BARGAINING: THE FINAL FOUR DAYS

Monday morning, when we met, the members of the bargaining team were anxious to begin negotiating and were optimistic to finally reach an agreement. Despite the fact that in July we agreed to meet with the employer for four (4) days, we hoped that it wouldn't take until Thursday to reach an agreement.

By the end of the day on Monday, unfortunately it was obvious to us all at that moment, that we would be at the bargaining table until the very last day.

As mentioned during the information sessions in May and June, the two (2) issues that remained to be resolved were the me-too clause and severance pay.

During the four (4) days of bargaining, what was frustrating for us were the long hours waiting for the employer's response to our offers or for them to make us an offer. The reason for the wait was simple, the employer's bargaining agent needed to continually consult and obtain agreement from the Treasury Board officials. For example, on Wednesday the employer spent the entire day discussing amongst themselves and it was only in the afternoon on Thursday that the sprint began, to finally finish in the early hours of the morning.

Following the tentative agreement, members of the bargaining team reflected on the last four (4) years of bargaining. We were unanimous in thinking that this week's success was as a result of the members who rejected the employer's offer in June. Without the threat of a potential strike at the Canada Revenue Agency, we would not have reached an agreement.

Daniel Camara
Member of the Bargaining Team

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Adjudicator quotes from various adjudication decisions

> "*each case must turn on its own particular facts*"
>
> *"The fact that other employees who live in the same area reported for work in no way weakens the validity of a claim for leave."*
>
> *"While the weather conditions may be the factor that is not directly attributable to the employee,* ***there may be other factors that are attributable to the employee that contribute to his/her being prevented from reporting for duty. "***
>
> *"An employee's choice of residence is not sufficient justification, in and of itself, to deny leave with pay.*"
>
> *"The standard used to measure effort is affected by the severity of the storm or weather conditions and is one of reasonableness."*
>
> *"Employees are not required to make heroic or reckless efforts to get to work, and there is room for the exercising of an employee's judgement which must be assessed according to a standard of reasonableness.*

After reviewing these quotes one can see that adjudicators put significant responsibilities on the employer to apply fairness in assessing the situation and coming to the correct determination.

As indicated in bold above, the topic of other reasons why an employee may not be able to report to work should be taken into consideration. This could include emergency situations where in the dead of winter an employee's furnace fails and there is a need for the employee to be home to allow for emergency repairs. Other examples could include serious traffic congestion that just occurred as a result of a traffic accident.

Unfortunately, there are few adjudication cases on these types of matters. Whether this is an influence or not the employer seems to give these situations even less consideration. Hopefully over time more flexibility and reasonableness will be applied when these incident occur.

Hopefully this article provides insight to the reader on considerations that should be included by the employer when reviewing such requests. We believe that often employees are denied this leave or even more likely employees do not prevail themselves to. The comment "I have saved vacation for severe weather conditions" is mentioned regularly. This provision was agreed upon by both the Union and CRA recognizing that occasionally requests for this leave would be made and, as stated in the clause, they "should not be unreasonably withheld".

As is always the case, should you encounter these types of situations, you should consult with your local executive.

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ARTICLE 28 - OVERTIME

This topic was suggested by the Toronto North Local 00048 call centre. While it is particularly important to employees working in call centres, it could impact any employee whose duties may result in them having to work past their scheduled end of shift.

28.04 General

(a) *An employee is entitled to overtime compensation...for each completed period of fifteen (15) minutes of overtime worked by him or her:*
(i) *when the overtime work is authorized in advance by the Employer or is in accordance with standard operating instructions, and*
(ii) *when the employee does not control the duration of the overtime work.*

When the employer regularly schedules overtime in advance as per *Article 28.04(a)(i)* it is clear that employees will be compensated at the applicable overtime rate for the hours worked. However, there are occasionally unique situations that occur from time to time where an employee may be required to work past the end of his or her shift. A case in point it is near the end of your shift and you are engaged in a long call. It is not always possible to manage and complete the call by the end of your shift and the call may take you well beyond the end of your regular work day. *Article 28.04(a)(ii)*, provides you protection to ensure you are properly compensated in situations when you don't "*control the duration of the overtime work*".

This clause is specific in that overtime will be paid for increments of 15 minutes of completed overtime worked. So, if your last call of the day takes you *15 minutes or more* beyond your normal end time, you would be paid overtime. If not, you would not be entitled to any additional pay. Based on the circumstances, you may want to speak to your team leader about how you might be compensated for working less than 15 minutes of additional time (e.g., you may be granted lieu time for working 12 minutes beyond the end of your regular work day).

So, how does one go about claiming this overtime? Well, it's yours to claim, so claim it! If you find yourself in this situation, inform your team leader as soon as possible (i.e., as soon as the call ends or first thing the next morning). You're not asking permission to claim the overtime. Claiming it is your contractual right. You're merely informing your team leader of the occurrence and letting him/her know that you will be claiming the overtime on your timesheet.

If you experience any difficulties getting this time approved, speak to any union representative.

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ARTICLE 28.05 ASSIGNMENT OF OVERTIME WORK

> *(a) Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.*

Has there ever been overtime in your work area where you or others have been advised that you are not eligible to work it as your production isn't quite up to par or there are other performance related criteria established to exclude individuals?

Over the years, we have seen the employer establish conditions relating to distribution of overtime in the workplace. Unfortunately, there are situations where this still occurs.
While one might assume that these restrictions on the surface may not seem unreasonable, when one reviews the wording in our collective agreement on the subject, we come to a different conclusion.

The best test of how the wording in the collective agreement should be applied often occurs when there is a disagreement between the employer and the union on the interpretation of a particular clause. These disagreements can end up at adjudication where an adjudicator reviews the facts of the case, the wording in question and may look at case law to seek advice on the direction their ruling may take.

In this particular clause of your collective agreement the words of importance are "equitable" and "readily available". There are no references contained anywhere relating to either productivity or performance.

The adjudicator must first determine if the criteria used by the employer to exclude employees for the offer of overtime is due to arbitrary conditions, such as levels of productivity or ratings of the employees' performance, and is this acceptable. He or she must assess whether or not this is reasonable based on the wording in the collective agreement or if it is somehow implied in the wording.

We first look at equitable. As mentioned, adjudicators rely on number of sources to assist them in rendering their decision. One obvious source is something as simple as a dictionary. To be clear we would be looking at a recognized standard dictionary rather than relying on something like Wikipedia. Generally speaking "equitable" is defined as "just or characterized by fairness."

A quote from one of the numerous adjudication cases on this matter provides a clear picture of the consensus on how the current clause should be applied.

> *To support the proposition that it would be fair to add restrictive provisions to collective agreement provisions such as office production is a slippery slope. For if one can add an arbitrary modifier such as minimal acceptable office productivity to create an entitlement to*

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individual overtime, one could also add such notions as being discipline free, having one or more fully satisfactory appraisals, being at or below average use of sick leave, etc. As the employer well knows, any such change to existing collective agreement terms can only be achieved at the bargaining table.

This is a very strong statement that clearly speaks against the employer attempting to apply arbitrary provisions into the application of this clause. It further provides clear direction, that if the employer wants to change the collective agreement, he should do so in the proper manner, at the bargaining table.

The other words in the collective agreement that are equally important are “readily available”. This is not readily defined and to the same extent as “equitable” we have to rely on adjudicators to provide insight and guidance as to the application. The question that comes up from time to time is, who are readily available employees?

Generally speaking, adjudicators have ruled that employees who have recent experience and knowledge in the work to be performed, but who are not necessarily working in the work unit where the overtime is occurring, have to be considered with respect to being offered overtime. Adjudicators also mentioned that it is incumbent on employees to advise the employer of their availability to work any overtime offered. Failure to do so would diminish any argument that they should have been considered in any offer to work overtime.

While decisions on this matter are not necessarily as straightforward as the issue of the equitable offering of overtime, in many cases the ultimate decision is in favor of the employee as there was no acceptable reason given to not allow those individuals to work overtime.

Hopefully what everyone will get out of this is article is that

- If you’re being denied overtime because of performance related issues seek the assistance of your local union, as clearly established jurisprudence does not allow for this.
- If you are aware of overtime being offered and you believe you meet the criteria of being both qualified and readily available again speak to a member of your local executive.

Gary Esslinger
Chair, Communications Committee

APPEAL COURT UPHOLDS LOWER COURT RULING ON BILL C-10

The Ontario Court of Appeal upheld the Ontario Superior Court decision that Bill C-10, the *Expenditure Restraint Act*, did not violate the *Charter* rights of federal public service workers.

Bill C-10, passed by the former Conservative government in 2009, rolled back negotiated wage increases for federal public sector workers.

"The decision is certainly disappointing," said PSAC National President Robyn Benson. "We believe that Bill C-10 violates federal public service workers' right to freedom of association and to collectively bargain. Our legal team will review the Court's ruling thoroughly before decisions are made about our next step."

PSAC has 60 days to apply for leave to appeal to the Supreme Court of Canada.

CONVENTION LOGO REVEALED

The Official Logo for the 2017 Union of Taxation Employees Triennial Convention was designed by Matt Christian of the St. John's TC Local and depicts a celebratory fireworks display over Parliament Hill.

In his words :

"I couldn't help but notice that the UTE logo resembles a burst of fireworks. I then linked that burst to the 150th celebration that will take place all over our great country.

My logo also shows 10 other bursts of fireworks. Each burst signifies one of the ten regions that UTE is proud to represent.

To me, my logo represents all ten regions, coming together under UTE National, to cheer our successes and be a part of our nation's sesquicentennial celebrations."

CHANGE OF ADDRESS

Please note that all address changes should be done via e-mail to Louise Dorion (dorionl@ute-sei.org) or via the national web site. If you do not have access to an e-mail, please pass it on

(with your PSAC ID) to a local representative or mail it directly to the National Office at 233 Gilmour Street, Suite 800, Ottawa ON K2P 0P2.