

Arbitration Update - 2 December, 2002

Some groups have already had the opportunity to receive briefings from their representatives and provide feedback to them either informally or otherwise. Over the next few days, it is important that you become informed about the information in this update and provide your views to your representative if you have not done so already.

As you likely are aware, the CFPA was recently invited to discuss the impasse in contract talks with Transport Canada ADM Safety and Security and the Assistant Secretary of the Treasury Board. Ron Young, our negotiator, and I attended representing the CFPA. We were told that the strike action by the CFPA members was extremely effective and was hurting both the department and the industry. It was indicated that the department could no longer tolerate this situation, there must be a solution to rectify the situation within the next few weeks, and that this must be settled before Christmas. There was discussion about what occurred during negotiations and a few misconceptions regarding the CFPA's issues and approach were clarified. We indicated that we were willing to discuss acceptable options for resolution with the employer at any time.

While we reiterated what we saw as acceptable resolutions, it was communicated to us that the employer was not willing to consider those options and that, despite the effectiveness of the strike actions, their last offer would not be significantly improved upon. The option of a legislated settlement was not discussed in detail; however, it was inferred as an option that the employer would use to bring the dispute to conclusion. A legislated settlement would undoubtedly be similar to the employer's offer. We communicated that a standard pattern settlement, in whatever form, would not satisfy the membership. In a somewhat surprising move, the employer suggested that a referral for arbitration would be an option that they would consider, and offered the names of several potential arbitrators. All of the names were pre-eminent private sector arbitrators in this country. After some deliberation, we agreed to consider their proposal if certain conditions could be met.

The conditions that we needed were: an acceptable terms of reference for the arbitrator, an arbitrator that we had confidence in, a resolution of several other outstanding issues, and then approval of the change in process by the CFPA Executive Board. The outstanding issues related to the hours of work clause, the section 23 complaint against strike interference and discipline, the recruitment and retention allowance, and the duration of the potential agreement.

It was made clear to us that time was of the essence and that we only had two weeks to make the decision to move ahead or not. It was agreed that the CFPA would draft a terms of reference document and would meet with Treasury Board the following Wednesday to discuss it. Ron and I met with our legal counsel to examine the issue and prepare a draft document, which was presented to the CFPA Executive in a conference call at noon last Wednesday, prior to our meeting with Treasury Board. The executive representatives discussed the issue and gave approval in principle to continue discussions and seek an agreeable terms of reference.

The discussions over two days with Treasury Board resulted in the Terms of Reference document you will find in the "Members" section of our website. You will note that the recruitment and retention issue could not be resolved and was included for arbitration as

part of the compensation package. We will be meeting with the employer on Wednesday morning in hopes of resolving the hours of work clause. The CFPA Executive will be meeting with the negotiating team by teleconference on Wednesday afternoon to make the final decision as to whether we will proceed with arbitration under these terms or not.

It would seem to be an unusual turn of events to come this far and now be faced with deciding whether to submit to arbitration or not. When we began negotiations two years ago, arbitration was still banned; however, the ban was lifted in June of 2001. Under Section 61 of the Public Service Staff Relations Act (PSSRA) the provision is made for alternate dispute resolution by whatever means the parties at impasse may agree to. The employer has offered arbitration. (A link to the PSSRA is found in the "Links" section of our website)

Section 9.6 of our constitution states that "Should a contract proposal be rejected, any further action shall be on the advice of the Bargaining Committee and the direction of the Executive Board". The referral of these recent developments for the consideration of our negotiating team and the decision of our elected representatives is the process necessary to be consistent with the provisions of our constitution. (A link to our constitution is found in the "Reference" section of our website)

Many may feel that a continuance of our current actions will yield a better result. It is understandable that after investing so much time and effort in support of our cause, members feel that, now that a seeming crisis exists for the employer, it would be giving up to engage in a new process. This must be viewed within the context of what we are faced with.

Despite Herculean efforts by your negotiating team to achieve some recognition for the merits and justification for our proposals, the employer has flatly refused to consider them. The employer maintains that they will not deviate from the standard pattern settlement; the merits of our case are immaterial to them. Whether the employer's representatives, up to the highest levels, are unwilling to recognize our case either by intent or by direction, the result is the same. The statements made to us, that the current situation is untenable, and that they are still unwilling to increase their offer in any meaningful way, are evidence of that. Our work action has been very effective but has not created a willingness on the part of the employer to provide an acceptable settlement. It is very difficult to comprehend why they have chosen this path. It is certainly not of our choosing. The government is the only employer in the country that has the power to legislate a settlement to its own labour disputes, and despite the negative effects that may result, it seems willing to use this power.

What are our options?

The negotiating team could recommend the employer's last offer to the membership for ratification. The offer is not something that the team feels is acceptable and membership feedback indicates that ratification by the membership is unlikely.

We could stand firm and continue our work action and wait to see if the employer decides to legislate. We have met with several politicians and provided significant amounts of information about our labour dispute to the press. We have created considerable pressure but inexplicably this has not translated into a reasonable contract offer. We could attempt to create considerable fear about aviation safety. Creating fear

amongst the public about aviation is likely to engender a significant negative backlash on many fronts. Continued labour action will probably result in parked aircraft and inconvenience to the travelling public. Given the strong and unreasonable position they have taken thus far, it is unlikely that the government will suddenly decide to be accommodating towards us. The impervious nature of the current administration is more likely to decisively solve the public's inconvenience at our expense.

We could consider the employer's offer of arbitration. Arbitration means that the decision regarding any settlement is final and binding on the parties; you will not have the opportunity for a ratification vote, neither will the employer have the opportunity to reject the settlement. It also means that once the dispute is placed in the hands of the arbitrator, all strike action is called off because the employer is no longer in charge of the result.

We have had misgivings and have lacked confidence in recent arbitrations within the current government context. Settlements since the ban was lifted have been largely consistent with the standard pattern that typifies the employer's offer. In the cases examined, the union has not had input to the terms of reference and arbitrators have come from the government's approved list. Considering that we have drafted the terms of reference to remove any artificial or arbitrary restrictions, and that we are currently attempting to obtain the services of a top level private sector arbitrator unfettered by government ties, it is felt that we have mitigated many of our concerns.

We have been to the well, and it is dry. There appears to be no willingness on the part of the employer to deal with us in any reasonable manner. They also appear to be willing to use their ultimate power against us. Unpalatable as it may be, the only apparent option to achieve more for members is to participate in making our case to an independent third party with the power to impose a settlement on the parties based on the merits of their respective cases.

We have not chosen this course; in fact, we have exercised every legal avenue within the system to create a satisfactory negotiated settlement. Unbelievable as it may be, the facts are that we are faced with a situation where the other party to this agreement is unwilling to make any effort to compromise despite all pressure to do so. The important thing to consider now is what is in the best interests of the members. Is there any way to create a process where the result may be better than what is currently available? Arbitration, while somewhat risky, appears to offer the chance at something better. If we can obtain a truly independent arbitrator, and if we really believe in the merits of our case, then we should be willing to stand up, face the risks, and seize the opportunity.

Please make your views known to your elected representatives and get your questions answered. We do not have much time and it is an important decision that your executive will have to make. In spite of all the frustration and emotion towards our employer, we need to make the decision that will enable the best result for our members.

Greg Holbrook
National Chairman