

BACKGROUND PAPER
NEGOTIATING EQUAL PAY
AT
COLLECTIVE BARGAINING

The Government of the Northwest Territories (GNWT) believes in the principle of no discrimination due to a person's sex in the setting of a person's wages. The GNWT believes in the collective bargaining process and respects the right and obligations that the process places on both parties to negotiate collective agreements that comply with the legal principles prohibiting discrimination in the setting of a persons wages because of his or her sex.

This paper summarizes how the GNWT has fulfilled its obligation for ensuring that collective agreements negotiated over the past ten years complied with this legal principle.

In 1989 the Union of Northern Workers (UNW), with the assistance of the Public Service Alliance of Canada (PSAC), negotiated and signed a three-year collective agreement with the GNWT. One of the issues raised by the UNW in that round of collective bargaining was the requirement under the Canadian Human Rights Act for equal pay for work of equal value. The Collective Agreement that was negotiated addressed this issue in the following way:

1. Wages were increased by 14.03% over the three years with the 4.5% average increase in the first year paid as a flat rate. This meant that lower paid employees received a higher increase in their wages than higher paid employees did even though there was no reason to believe that these differences were caused by sex discrimination. This would have narrowed any differences that might have existed between wages for male and female employees performing work of equal value.
2. Hours of work were reduced from 40 to 37.5 weekly for health care workers, including nurses, and correction workers without a reduction in the wages for these employees. This again would have narrowed any differences that might have existed between wages for male and female employees performing work of equal value, regardless of the cause of any such differences.

3. A Joint Equal Pay Study was agreed upon to determine whether there were any problems with the classification system and wages in the collective agreement that might have to be addressed at the next round of collective bargaining.

Unbeknownst to the GNWT at the time of the 1989 collective bargaining, the PSAC in Ottawa had filed an Equal Pay Complaint with the Canadian Human Rights Commission alleging a violation of Sections 7, 10 and 11 of the *Canadian Human Rights Act*. In short, this complaint was filed while the parties were in the middle of Collective Bargaining and dealing with the very issues being complained about. The GNWT found out about the Complaint weeks after collective bargaining concluded with a negotiated agreement for ratification.

The GNWT considered, and still considers, the action of filing a complaint by the PSAC under these circumstances to be in bad faith. However, rather than pursue a bad faith bargaining allegation against the UNW and the PSAC, the GNWT decided to pursue its agenda of ensuring that the Collective Agreements between the UNW and the GNWT complied with all legal provisions including human rights provisions. The GNWT believed in the Collective Bargaining process because it made both the union and the employer jointly responsible and accountable for the Collective Agreements they negotiate.

Unfortunately the Joint Equal Pay Study was a dismal failure. The study was incomplete and provided insufficient information to determine whether there was a problem with the wages in the Collective Agreement. Furthermore, the study did not provide a job evaluation system suitable for implementation at the next round of collective bargaining.

During the 1991/92 round of collective bargaining, the GNWT identified concerns with the Joint Equal Pay Study. The GNWT also indicated its intention to try and salvage some of the work done in the study and evaluate all positions using the Willis Job Evaluation System. The intention stated at collective bargaining was to negotiate the job evaluation system and rates of pay under article 36 of the Collective Agreement during the term of the Collective Agreement.

Unfortunately the flaws with the Study and the Willis Job Evaluation results were too critical and could not be fixed within the timelines available during the 1991/92 round of Collective Bargaining. Nevertheless, the GNWT decided to pursue negotiations under Article 36 of the Collective Agreement and deal with its issues over the job evaluation system and rates of pay with the UNW. Under Article 36 the UNW has the right to pursue interest arbitration if a negotiated agreement cannot be reached. Unfortunately these negotiations failed.

The PSAC spokesperson for the UNW made it very clear that the union was not interested in negotiating a job evaluation system and rates of pay to resolve the equal pay complaint for the past or the future. The union did not refer the matter to arbitration. Instead it said that it would be pursuing the complaint through to the Tribunal process.

At this point the GNWT abandoned any further effort to try and salvage the Willis Job Evaluation System. Instead a three-part strategy was adopted as follows:

- Strategy 1: **Seek clarification of the Human Rights laws that are relevant to the Complaint and the obligations of the parties to negotiate collective agreements that comply with these laws.** This strategy is ongoing and will remain so for as long as the Complaint remains outstanding. Clarification of some of the laws applicable to the Complaint has resulted in making Individual Equal Pay Settlement Agreements to those who requested an opportunity to accept the GNWT's offer. The GNWT is optimistic that the acceptances of the Individual Equal Pay Settlement Agreements will lead to a settlement of the complaint for all affected individuals and avoid the need for long and expensive litigation of the Complaint at Tribunal and in the courts.
- Strategy 2: **In future collective agreements negotiate changes to wage rates that narrow the differences between the rates of pay for employees in lower paying jobs and employees in higher paying jobs.** Also, where possible, negotiate higher rates of increases for categories of jobs such as nursing jobs that are predominately occupied by women to avoid any possible difficulties. This strategy has been successfully pursued in that both wage restraint and increases in the rates of pay for nurses by up to two pay levels has had the effect of narrowing any differences between the rates of pay for employees in lower paying jobs and employees in higher paying jobs.
- Strategy 3: **Identify a suitable job evaluation system and evaluate all positions for implementation at the earliest possible round of Collective Bargaining.** This was concluded at the current round of collective bargaining. The Hay Job Evaluation System is contained as a provision in the Collective Agreement. A joint and Independent appeal process ensures that the Individual Job Evaluation results are gender-neutral. The new pay plan ensures that all employees whose positions are of equal value are paid the same.

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