



TO: CAAT Academic Local Presidents
FROM: Ted Montgomery, 2005 Bargaining Team Chair
DATE: May 5, 2009
RE: Return to work Grievances - 2006

Attached you will find the interim award regarding the 2006 return-to-work grievances. I received the award yesterday the same day our counsel received it from the Board of Arbitration.

Here is how our counsel describes the result:

You will see that we have prevailed.

The majority finds that the Protocol [*the Return to Work Protocol agreed to by the parties in 2006*] reflects an understanding of the parties that there might be a workload attributable to the return to work from the strike and that any such workload was not intended to be governed by Article 11. They find that the “preliminary evidence” indicated that members made adjustments to their workload when they returned to work “that may warrant some additional payment”. They say that they are not prepared to make an actual determination on that issue as they only heard evidence in the context of assessing what they (inaccurately) describe as a joint request for directions and specifically note that the Colleges called no evidence.

The majority goes on to say that fact situations vary depending on the particular circumstances of each case and that accordingly the grievances are to be decided on a case by case basis and that dates will be scheduled at the request of the parties.

So, we have the decision that there may be compensable workload as a result of the post-strike return to work and the colleges’ semester completion strategies. It remains now to consider each claim on its merits – i.e. was there actual work? The Board cannot assume that there was, and they have said they will consider that evidence. The union will be approaching the employer to establish as expeditious a process as possible to get through that next phase. We will certainly be suggesting that bringing every grievor into Toronto to testify would be a very costly and inefficient way to proceed. I will let you know what the colleges’ response is as soon as I can.

Some of you will recall the process in 1989. Each grievor made a written submission setting out facts of the additional work claimed. The employer counsel replied with a written submission essentially saying the grievors did not perform the work claimed, or not for the time claimed, but in any event should not be compensated a penny for some reason. As things now stand, the grievors have made their written claims. The union has

them all on file. Although some have done so, the colleges have generally not replied to the specifics of the claims.

As with any arbitration award, there is the possibility of the unsuccessful party seeking a judicial review of the decision. There is a high threshold for overturning a decision. An arbitration board decision can only be quashed if it is patently wrong or is based on an error in law. An unsuccessful judicial review can also be appealed to the Ontario Court of Appeal. I raise these points simply to let you know in case there are further delays. The award is so clear and so well argued that a review should be unlikely; nevertheless, it is possible.

In summary – great news. The award is a public document, so feel free to circulate it to your grievors. We cannot yet tell the grievors what will be next, but this award is a major leap forward. If you have questions, please call or send me an email at this address.

Ted Montgomery