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IN THE MATTER OF A COLLECTIVE AGREEMENT

BETWEEN:

THE NORTHWEST TERRITORIES PUBLIC SERVICE
ASSOCIATION

AND THE COMMISSIONER OF THE NORTHWEST TERRITORIES

AND IN THE MATTER OF A GRIEVANCE
BY THE NORTHWEST TERRITORIES
ASSOCIATION

SINGLE ARBITRATOR: DUNCAN A. STEWART
J. G. GILMOUR: Counsel for the Employer
ROSEMARY SIMPSON: Counsel for the Association

This grievance filed by the Association which came before me for hearing on May 25, 1981 arose out of a grievance of one Frank Gregory and placed before me (Exhibit "4") was an agreed statement of facts which is set out herein in its entirety.

1. "The Public Service Association submitted a grievance dated July 1980 regarding overtime on behalf of Frank Gregory.

2. This Grievance alleged breach of Article 23 of the Collective Agreement. (Art. 23 deals with overtime)

3. The redress requested was "full payment of three hours at the bonus rate". (Exhibit "1")

4. The above-mentioned grievance was submitted directly to the Third Level of the grievance process.

5. This was responded to at the Third Level by the letter of John H. Parker, Commissioner who states, "I have decided not to respond to the grievance at Third Level until such time as my representatives at the First and Second Levels have had an opportunity to attempt to resolve the matter" (Exhibit "2")

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Article 23 / OVERTIME

6. As a result, a further grievance dated September 6, 1980, was initiated against the refusal to respond at the Third Level.

7. This arbitration concerns the issue of whether or not the N.W.T.P.S.A. has the right to initiate all grievances at the Third Level."

Article 37 of the Collective Agreement between the Employer and the Association sets out the procedures and steps for the "Adjustment of Disputes" between the parties. Under Article 37 on July 18, 1980, the Association launched a grievance on behalf of Frank Gregory, "... at the Third Level", alleging a breach of Article 23 of the Collective Agreement which pertains to "Overtime". On August 22, 1980, John H. Parker, Commissioner responded to the F. Gregory grievance by stating, in part, the following:

"On reviewing the circumstances surrounding the above grievance, it has come to my attention that this matter has not been properly processed through the grievance procedure as stipulated in Article 37.06 of the Collective Agreement. Therefore, I have decided not to respond to the grievance at Third Level until such time as my representatives at the First and Second Levels have had an opportunity to attempt to resolve the matter.

While I sometimes entertain Third Level grievances that have not gone through the lower levels of the grievance procedure, these are generally grievances which are more appropriately brought forward by the Association on behalf of its members, rather than in the form of an individual grievance by an employee. However, in routine grievances such as the one at hand, I see no justifiable reason to circumvent the established grievance procedure."

On September 5, 1980, the Association filed its own grievance against the decision of Mr. J. H. Parker, Commissioner of August 22, 1980. The Association grievance of September 5, 1980 reads in part:

"The Public Service Association hereby initiates a grievance at the Third Level against your

decision not to respond to the Gregory overtime grievance. Your decision was communicated to us in a letter dated August 22, 1980.

Redress in this case will be your response to Mr. Gregory's grievance. It was properly submitted on July 18, 1980 under authority of Clause 37.17."

The Employer responded to the Grievance of the Association on October 5, 1980 and the matter then continued on to a hearing.

The position of the employer is that the Association has the right to initiate and present a grievance on behalf of any employee or the Association under the terms of Article 37. Where, however, the Association and the employer disagree as to the right of the Association unilaterally to determine at which step a grievance filed by the Association may be commenced.

Under Article 37, Articles 37.06, 37.08, 37.14 and 37.17 provide as follows:

37.06 "Except as otherwise provided in this Agreement a grievance shall be processed by recourse to the following steps:

- (a) First Level (first level of management)
- (b) Second Level (second level of management)
- (c) Third Level (Commissioner)"

37.08 "The Association shall have the right to consult with the Director of Personnel with respect to a grievance at each or any level of the grievance procedure."

37.14 "The Association shall have the right to initiate and present a grievance on matters relating to health and safety to any level of management specified in the grievance procedure, on behalf of one or more members of the Association."

37.17 "The Association shall have the right to initiate and present a grievance to any level of management specified in the grievance procedure related to the application or interpretation of this Agreement on behalf of one or more members of the Association."

In Articles 37.04, 37.05, 37.09, 37.12, 37.15 and 37.16 there is express reference to an employee grievance or an employee grievance on behalf whom the Association is acting. Within Articles 37.09 to 37.13 specific time limits are provided for an employee grievance and these Articles provide as follows:

"37.09 An employee may present a grievance to the First Level of the procedure in the manner prescribed in Clause 37.04 not later than the tenth (10th) calendar day after the date on which he is notified orally or in writing, or on which he first becomes aware of the action or circumstances giving rise to the grievance, excepting only where the grievance arises out of the interpretation or application with respect to him of this Collective Agreement, in which case the grievance must be presented within twenty-five days.

37.10 The Employer shall reply in writing to an employee's grievance within fourteen (14) calendar days at Levels 1 and 2 and within thirty (30) calendar days at the Final Level.

37.11 An employee may present a grievance at each succeeding level in the grievance procedure beyond the First Level,

(a) where the decision or settlement is not satisfactory to him, within fourteen (14) calendar days after that decision or settlement has been conveyed in writing to him by the Employer; or

(b) where the Employer has not conveyed a decision to him within the time prescribed in Clause 37.10, within fourteen (14) calendar days after the day the reply was due.

37.12 Where an employee has been represented by the Association in the presentation of his grievance, the Employer will provide the appropriate representative of the Association with a copy of the Employer's decision at each level of the grievance procedure at the same time that the Employer's decision is conveyed to the employee.

37.13 (1) No employee shall be dismissed without first being given notice in writing together with the reasons therefore. When the Employer dismisses an employee the grievance procedure shall apply except that the grievance may be presented at the Final Level.

Under Article 37 it is clearly contemplated that grievances can be filed by the Association, the employee or Association on behalf of an employee. Can it be said, however, that the language of Article 37.17 without more conveys to the Association the unilateral right to launch on behalf of an employee a grievance at "step three" the Commissioner level under subarticle 37.06? Article 37.09 expressly contemplates that an employee with a grievance shall present that grievance within ten (10) calendar days of certain happenings or knowledge unless the grievance, "... arises out of the interpretation or application with respect to him of this Collective Agreement, in which case the grievance must be presented within twenty-five (25) calendar days...". (underlining added) Article 37.09 commences at the First Level and subsequent levels referred to in Article 37.06 are dealt with in Articles 37.10 and 37.11.

The language of Article 37.17 must be read in light of the specific and express terms of Article 37.06 and 37.09. Article 37.06 provides:

"Except as otherwise provided in this Agreement, a grievance shall be processed by recourse to the following steps:..."

Does the wording of Article 37.17 provide to the Association an exception within the language of 37.06 which removes the impact of Article 37.09 and the reference contained therein to the First Level?

In construing the provisions outlined above, the fundamental objective of an arbitrator "... is to discover the intention of the parties to the Collective Agreement". (refer Canadian Labour Arbitration, Brown and Beatty, p. 158) Such intention to be sought within the terms of the agreement itself. (Standard Coil Products (Canada) Ltd. (1971) 22 LAC 377.

In the text "Canadian Labour Arbitration" (supra) at p. 159, the following is stated:

"Thus, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in the agreement itself. (Burns Foods Ltd. [1973], 4 L.A.C. [2d] 4 [Norman]; Standard Coil Products [Canada] L.A.C. [2d] 371 [Dunn], where a claim of no consensus was rejected.) When faced with a choice between two linguistically permissible interpretations, however, arbitrators have been guided by the reasonableness of each possible interpretation, (Canadian General Electric Co. Ltd. [1959], 9 L.A.C. 1541 [Laskin], administrative feasibility, (Kysor of Ridgetown Ltd. [1967], 18 L.A.C. 382 [Weiler]; Canadian General Electric Co. Ltd. [Peterborough Works] [1953], 4 L.A.C. 1541 [Laskin], and which interpretation would give rise to anomalies." (Canadian Trailmobile Ltd. [1968], 19 L.A.C. 227 [Adell]).

On the evidence before me it is clear that the Employer does not deny that the Association has the right to initiate and present a grievance of the Association as to the interpretation or application of the Collective Agreement at the Commissioner level (3706 (c)). In fact, the grievance by the Association here was processed directly to arbitration from this step.

The response of John H. Parker to the F. Gregory grievance contained in the letter of August 22, 1980 set out above, does in fact draw a distinction between what is commonly referred to in arbitratable jurisprudence as "policy" and individual grievance. While the language of the letter of August 22, 1980 does not utilize that terminology the lack of a common distinction between a "policy" or "individual" by the parties to the grievance is here the underlying cause of the grievance before me.

The Association has the right under 37.03 to assist or represent an employee in presenting a

grievance at any level. In addition the Association, under 37.17 has the right to, "...initiate and present a grievance to any level of management specified in the grievance procedure related to the application interpretation of this Agreement...". Article 37.09 specifically refers to an employee grievance arising "... out of the interpretation or application with respect to him of this agreement..." and the reference in 39.09 to the first level limits, I find, the Association to initiating and presenting the grievance to that level of management specified in the grievance procedure, here the first level. To hold otherwise and accede to the position of the association would be to remove from the Collective Agreement the grievance steps referred to in Article 37.06 (a) and (b), as well as 37.09, as cited above.

I, therefore dismiss the grievance filed by the Association on September 5, 1980.

DATED at the City of Edmonton, in the Province of Alberta this 10 day of August A.D., 1981.



DUNCAN A. STEWART
SINGLE ARBITRATOR