IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES
(the "Employer)

- and –

THE UNION OF NORTHERN WORKERS
(the "Union")

Re: Membership Reports/ Union Dues grievances

AWARD

BEFORE:

John Moreau, Q.C. **- Arbitrator**

IN ATTENDANCE FOR THE UNION:

Michael Penner **- Counsel**
Anne Marie Thistle **- Director of Membership Services**

IN ATTENDANCE FOR THE EMPLOYER:

Mark Ishack **- Counsel**
Camilla Offredi **- Witness**
Drew Robertson **- Witness**
Ceilito Rivers **- Witness**

The Hearing was held virtually on September 1 & 2, 2021. Written submissions received on October 4, 2021

AWARD

INTRODUCTION

This case deals with two interrelated grievances which date back more than four years to March 6, 2017. The first grievance (17-P-02089) alleges that the Employer, over a number of years, has systemically violated article 13 of the collective agreement by failing to deduct union/membership dues from the pay of employees in the bargaining unit. The second grievance (17-P-02090) alleges that the Employer is in violation of article 14 of the collective agreement which requires the Employer to provide the Union with monthly membership reports identifying each bargaining unit member employed by the GNWT.

The Union alleges that it has identified numerous errors over the years in the membership reports, which in turn has resulted in errors relating to the deduction of union dues. The Union does not allege any deliberate misconduct by the Employer but rather characterizes the errors as "sins of omission" on the part of the Employer. In addition to a declaration that the Employer has violated the collective agreement, the Union seeks an audit identifying all deficiencies and errors dating back to February 2017, and the collection of all outstanding union dues. The Union also seeks other relief which is particularized in its written submissions to the arbitration board.

The Employer acknowledged that it has previously conceded in its second level Reply to grievance 17-P-02090 *"…the manner in which the Membership Report has been generated does not comply with the Employer's obligation under Article 14.01(1) by*

identifying "each member in the Bargaining Unit". The Employer maintains, however, that questions and concerns over the last four years by the Union about various aspects over the membership reports and collection of union dues have resulted in the parties working collaboratively to improve on the breadth of information in the reports and the manner in which the Employer collects union dues. The Employer submits that the two grievances should be dismissed, other than ordering declaratory relief for that part of the Article 14 grievance that has already been granted by the Employer.

The Union called Anne Marie Thistle, Director of Membership Services for the Union as its only witness. The Employer replied by calling the following witnesses: Camilla Offredi, Adjudication Advisor; Drew Robertson, Client Service Manager, Management Recruitment Services; and Ceilito Rivers, Manager of the Business Performance Unit.

At the conclusion of the evidence, counsel for the parties agreed to provide written submissions to the arbitration board. Their submissions summarized both the evidence presented at the arbitration hearing as well as their respective positions on the issues in dispute.

BACKGROUND: PRE-GRIEVANCE CORRESPONDENCE

The evidence is that Ms. Thistle first raised the issue of the Union's dissatisfaction with the Employer's membership reports in a meeting on October 5, 2016 that included both Ms. Thistle and the Employer's Director of Labour Relations at the time, Ms. Nicole MacNeil. It is worth documenting the background correspondence that followed this meeting as it identifies the concerns of the Union over the membership reports and how the Employer responded to those concerns at the time.

From: Anne Marie Thistle
Sent: Monday, November 14, 2016
Subject: Reports

Hi Nicole,

My apologies for taking so long to write this e-mail. I am following up on our Oct 5th meeting. At this meeting I had raised the issues surrounding Employer reports that the Union receives. I have a couple of different issues and requests.

First, the Relief report. Currently we receive only the information pertaining to individuals who worked during a one-month period which is from mid-month to mid-month (i.e. Sept 17/16-Oct 14/16). This is not a comprehensive list of all Relief. It does not show which Relief were on a term, who didn't accept/get offered any hours in the specified time frame, etc. In order to fully assess, we require a comprehensive list of all relief. Also, as it is mid-month to mid-month it is very cumbersome to compare to the other reports received from the Employer.

With respect to Relief, we would like to request that the monthly reporting break out all Relief employees similar to the Casual for reporting union dues. This is due to the fact that when they are not broken out similar to the Casual, the Union remits a fixed amount per individual who is full-time. As they are not currently broken out, Relief fall into this category. As Relief are not broken out, we remit the fixed dollar amount even if a Relief employee pays only 1.76 (for example) in dues. The Relief employee is unique and should be reported accordingly.

We currently receive 5 different reports; Casual, Relief, Movement, Member and Excluded. All the reports have different end dates or periods of time covered. They all come in different formats and are not compiled the same. For example, the movement and member reports...the end/termination dates are a day off. The movement report always has individuals listed on it that are not found on the member report. What we attempt to do right now is take all five lists and compare/analyze them. This is a very difficult task currently. We analyze in an attempt to see if there are any areas of concern for the Union.

In September we highlighted a number of concerns regarding Relief that, once forwarded to the Employer, you were able to respond to at least 90% of the questions to the Union's satisfaction. This takes a great deal of time on both the Employer and Union's sides. This could be avoided if the reports were generated in a more detailed manner. For example, one of the "flags" the Union looks for is multiple Relief in the same facility. Currently on the monthly Relief report we receive; position #, position title, department description {# and name), community, employee's name, earnings description and sum of hours. This leads us to have to contact the Employer every time a community and department are the same for an individual's 2 positions. Then the Employer has to determine which location/facility the employee is working for each.

If the Employer were able to provide the Union with a more comprehensive report for all of the different categories, or to provide us all the information on one report, it would reduce the administration on the Employer's end as the Union would be doing the analysis. It would also minimize the number of follow up questions once reports received.

The Employer is currently providing most of the information however it is not in an easily digestible format.

It is my hope that the Employer is agreeable to revisiting the reports, how they are generated/compiled and the information they provide. I truly believe that this would help to reduce administration on both sides and would lead to only anomalies needing to be investigated.

From: Nicole MacNeil
Sent: Sunday, November 20, 2016 4:44 PM
To: Dave Mathisen; Cheryl McKay; Walter Gora
Subject: FW: Reports

Hi folks,

This is the email Anne Marie sent along last week about the various reports we provide the union and their request to work on the info contained and the manner in which it is presented. The original discussion about the reports arose through the relief employee grievances.

Walter, could you please start digging into this, first by reviewing the 5 reports we currently provide and the articles of the collective agreement compelling us to provide the information (art. 14, relief MOU...) and confirming who is presently generating the reports. Let's then focus on whether or not the process can be streamlined, to what degree we could combine the various reports, and ensuring the information provided is complete, clear, and attempts to address the concerns set out below. Feel free to discuss with those who produce the reports and your colleagues as needed.

I'll send out a meeting request for next Monday so we can review where we are with things. Thanks, Nicole

Nicole MacNeil

From: Walter Gora
Sent: December 1, 2016 4:28 PM
To: Nicole MacNeil
Cc: Hazel Wind; Dave Mathisen; Cheryl McKay
Subject: RE: Reports
Attachments: RE: Reports

Hello Nicole,

Coralee was out of the office until yesterday. Without speaking to Coralee I am unable to comment on what can be done from a reporting perspective with respect to Anne Marie's suggestions below. In addition, I have not heard back from Anne Marie with respect to what she envisions the report to look like/contain (see attached email sent to Anne Marie on Nov. 22/16). I have a meeting scheduled with Coralee this coming Monday morning to discuss possibilities of a combined report in anticipation of Anne Marie's response and to review the NWTTA Term Teacher reporting amendment.

In the meantime, I can confirm the following with respect to the reports that Anne Marie has mentioned in terms of our obligations under the CA. I have also included who prepares the reports and when they are generated:

1. **Casual Report**

- There is no specific reference to our obligation to supply a monthly "Casual Report" in the CA. This reporting requirement stems from a 2013 MOS arising from grievances filed concerning casual employees holding more than on[e] bargaining unit position. The specific language from the MOS is as follows:

8. The parties agree to use the following process to review and determine whether or not the duties of a position are the same:
(a) The Employer will agree to provide the Union with a monthly report of all casuals who are UNW members who hold a second UNW bargaining unit position.

• This report is generated by BPU on a monthly basis (as of the last day of the month) and sent to Haley who sends the report to the UNW.

2. **Relief Report**

• As per the LOU - Relief Employees in the CA:

The Employer shall provide the Union with monthly reports indicating the use of relief employees.

• This report is generated by BPU every 2 pay periods (not based on a specific day each month) and sent to me to send to the UNW.

3. **Movement**

• As per Article 14 - Information in the CA:

14.01 (2) The Employer agrees to provide the Union with monthly staff movement reports in a form mutually agreed to between the Union and the Employer.

• This report is generated by Payroll on a monthly basis (as of the last day of the month) and sent by Payroll to the UNW with a cc to Coralee.

4. **Member**

• As per Article 14 - Information in the CA:

14.01 (1) The Employer agrees to continue the past practice of providing the Union, on a monthly basis, with information concerning the identification of each member in the Bargaining Unit. This information shall include, but not be limited to, the name, location, job evaluation, and social insurance number of all employees in the Bargaining Unit. The Employer shall indicate which employees have been recruited or transferred and those employees who have been struck off strength during the period reported.

• This report is generated by Payroll on a monthly basis (as of the last day of the month) and sent by Payroll to the UNW with a cc to Coralee.

5. **Excluded**

• As per Article 14 - Information in the CA:

14.05 The Employer shall provide the Union with a monthly report of all positions excluded from the Bargaining Unit as per criteria 41(1.7) of the Public Service Act. This report shall include position number, position title, settlement code and the names of the employees. In addition, the Employer shall provide the Union with a monthly report of all employees that were included or excluded from the bargaining unit during that month. This report shall include employees' names, position number, position title, settlement code, position descriptions and exclusion criteria for those employees in positions not specifically named in the Act (i.e., 41(1.7)(a), 41(1.7)(d-legal officer), and 41(1.7)(h).

• This report is generated by Payroll on a monthly basis (as of the last day of the month) and sent by Payroll to the UNW with a cc to Coralee

SUMMARY OF THE UNION'S EVIDENCE

Ms. Thistle explained that the issue that led to the filing of the membership reports and union dues grievances on March 6, 2017 was prompted by circumstances involving employee Robert Haward. Mr. Haward had been on a transfer assignment in an excluded position. After returning to his home position within the bargaining unit, the Employer failed to deduct his union dues. This error was uncovered by the Union's Kadee St. Croix who notified the Employer's Haley Mathisen in a phone call on February 28, 2017. Ms. Mathisen acknowledged the error in a reply email to Ms. St. Croix on March 1, 2017 which reads in part:

> …Mr. Haward should have been on the Excluded Positions report from September 2012 until January 2016, when he returned to the UNW bargaining unit. However, as you've indicated, he does not appear on the UNW Members reports as of January 11, 2016. I got in touch with Financial and Employee Shared Services who looked into this for me. It looks like an error was made when changing Mr. Haward's employment record back to his primary position of Purchasing Officer I effective January 11, 2016 and, although he was classified in PeopleSoft as a UNW member, he wasn't paying Union dues. The Members report we send the Union is monthly a list of all employees who paid union dues for the month, hence he is not appearing on these lists. He does not show up on the Excluded Positions report as his position is classified as UNW.

Further inquiries from the Union resulted in a more detailed response from Ms. St. Croix to Ms. Thistle on March 6, 2017 regarding the issue of Mr. Haward's union dues. It reads:

> When I got Kadee's call and email about Mr. Haward, I contacted a Payroll Specialist at Financial and Employee Shares Services (FESS), as I was advised that FESS sends you this report. The Payroll Specialist looked into Mr. Haward's employment record for me and noticed that he wasn't paying Union dues, she notified me that this was likely the reason he didn't show up on the Member's report.
>
> The UNW Members report is generated by Informatics Shared Services – HR Systems, not by FESS. Therefore, the Payroll Specialist I spoke with in FESS did not have knowledge of the exact criteria used to run these reports; she provided me with her theory as to why Mr. Hayward didn't appear on the report based on the error she found in his

employment record in PeopleSoft. I was unaware of this when I responded to Kadee. As such, my comments below with regard to the criteria being used to generate the UNW Members reports may not be accurate. We have sent a request into HR Systems for more detailed information about the criteria used to run these reports to accurately answer your questions below.

With respect to the issue of why this employee was not paying dues for the period in question, there are a several places on an employee's *PeopleSoft* record that have to be set up (correctly) to have Union dues deductions taken:

- Primary Pay Group on payroll options page
- Union deduction Code on general deduction page
- Take on all Pay Groups flag on general deduction page
- Pay group on Time and Labour Data page

Once the above data is entered, the system can calculate the deduction based on the earning code used to pay the employee. When the employee moves into a non-union position the above information changes and must be changed back, when moved back into the union position. If one of these items is not changed correctly, the system cannot calculate the dues deduction.

Financial and Employee Shared Services currently have an audit report for employees not paying Union dues, but it is not pulling all the correct information in. FESS will be working with HR Systems to have this modified so that we can catch errors and avoid having UNW members not paying dues when they should be.

In the attached email, you highlight that Mr. Haward wasn't on the Excluded Positions report in October 2016 or April 2016; this is correct. As I mentioned below, Mr. Haward should have only been on the Excluded Position report from September 2012 until January 2016. As of January 11, 2016, he returned to his bargaining unit position and should have started showing up on the UNW Members report; this is where we have established that an error was made.

I was advised that we would be meeting on March 17th to discuss these reports and the other concerns you've brought forward with regard to the casual reports. As such, I intend to provide you with further information at that time.

I look forward to meeting with you on March 17th to discuss these matters further.

Ms. Thistle then reiterated the Union's specific concern (first raised in her November 14, 2016 email to Ms. MacNeil) about the steps being undertaken by the Employer to ensure the accuracy of the reports in a further reply email to Ms. St. Croix on March 6, 2017 (the same day the two grievances were filed):

Thank-you for this additional information. I look forward to meeting with you as well as obtaining a better understanding. In the meantime, can you advise what measures the

> Employer undertakes to ensure the accuracy of its reporting and any measures in place to avoid such errors from occurring, if any.

On February 12, 2018, less than a year after the filing of the grievances, Ms. Thistle emailed Mr. Gora raising a concern over the fact that bargaining unit employees of the Workers Safety and Compensation Commission ("WSCC") were not included in the 2017 membership reports. Mr. Gora responded in a email the same day indicating that it did not appear that the WSCC employees had been included in the membership reports, which consisted of roughly 100-150 members. Ms. Thistle recalled that the missing membership reports and union dues remittances for the WSCC was resolved sometime in 2018.

Ms. Thistle testified to other examples of ongoing deficiencies and inaccuracies with respect to the membership reports.

Ms. Thistle testified that the department codes for employees of the Northwest Territories Health and Service Authority ("NTHSSA") changed in January 2020, as a result of the amalgamation of the regional health authorities. Ms. Thistle testified that this change occurred without notice to the Union. The change in department codes has resulted in a specific concern with respect to identifying works sites for employees in the membership reports. By way of example, the Union is unable to determine which employees work at the Stanton Territorial Hospital and, in turn, their union Local.

On June 23, 2020, Ms. Thistle emailed Mr. Mike Johnston, Manager of Labour Relations, and reported another example of a member moving in and out of the bargaining unit, similar to the case of Mr. Haward. Ms. Thistle noted that this individual was not being

documented in either the membership reports nor paying her required union dues. Mr. Johnston indicated in an e-mail on July 2, 2020 that he would look into the matter. Ms. Thistle, in a follow-up email dated December 14, 2020, inquired as to what steps were being taken with respect to the recovery of union dues from the member. She also asked: *"Had this member had any meetings with the ER over the last 1 year and 8 months to which she would have been entitled to Union representation".* Ms. Georgina Rolt, Adjudication Advisor, replied on behalf of the Employer the same day that the individual had been provided with a letter in regards to the recovery of her unpaid union dues.

With respect to the deduction of union dues, it also became apparent subsequent to the filing of the grievances that union dues were not being deducted from Union employees while on short-term union leave. Ms. Thistle raised the issue with Ms. MacNeil in an email on July 1, 2020. An investigation followed and it was determined that the billing code "U08" was never properly set up for employees who were away on union business. The result from the Union's perspective was that although it was obvious to employees on union leave for an extended period of time that their union dues were not being deducted, it was less obvious to those members who were on short-term training or temporary special projects.

The Union also maintains that it continues to have concerns with respect to the COVID Secretariat. By way of example, Ms. Thistle sent an email to the Director of Labour Relations, Mike Johnston, on August 11, 2021, just a few weeks before these proceedings, indicating that an individual employed at the COVID Secretariat as a training officer did not have her job evaluation process completed. According to Ms. Thistle, the member was still showing, in the previous nine months, as being in her home position.

Ms. Thistle also pointed out that although union dues are being collected for members in the COVID Secretariat, the Union does not know if the correct amount of dues are being paid because new positions have not undergone proper job evaluations. Ms. Thistle, in cross-examination, testified that although unremitted union dues are a debt owing by the member, the obligation to collect and remit union dues in her view falls on the Employer.

In the end, counsel for the Union pointed out that the Employer did provide a substantive response when matters like the COVID Secretariat or the NTHSSA codification of health care workers was raised. Nevertheless, as counsel for the Union put it in his submission, *"…there remained a sense from Ms. Thistle that the Employer was addressing symptoms but was not taking a more global approach to audit its systems to ensure it was meeting its obligations under articles 13 and 14".*

SUMMARY OF THE EMPLOYER'S EVIDENCE

The Employer witnesses testified with respect to the specific issues raised by the Union since the filing of the grievances in 2017.

(a) Ms. Offredi

Ms. Offredi was tasked by her Manager, Mike Johnston, to look into the issue of uncollected dues for Union leave which Ms. Thistle, as noted, raised with Ms. McNeil in her July 1, 2020 email which reads in part:

> Josee brought to Kim Bailey's attention (our Director of Finance & Admin) that she just realized no union dues were being deducted from her pay while on Union Leave. I verified the March 2020 dues report and only 6.23 was deducted, I am assuming from Relief hours at the hospital.

> I then checked Sean Dalton, Frank Walsh, Chris Parsons and Nancy Zimmerman and, same thing. Either not on the list or, relief/holiday/OT hours it appears. We are now also concerned that individuals off for a day or two on Union leave for training may not be having dues deducted. Is this a code issue? Can you have someone look into this?
>
> I want to be 100% up front, this will be linked to the article 13 "Checkoff" grievance.

Ms. Offredi testified that she contacted payroll to investigate the issue. She directed the audit of Josee (mentioned in the above email), who had not paid union dues while on union leave. Ms. Offredi further testified that *"she did a deeper dive to see if the issue was systemic".* Ms. Offredi contacted Ms. Trina Brothers, the Manager of Human Resources Information Systems, and asked Ms. Brothers to conduct an audit by reviewing the list of outstanding dues from June 1, 2020 until February 2021. The results of the audit, which were promised in February 2021, were finally sent by Ms, Offredi to the Union on June 21, 2021 with apologies for the delay. The issue has now been resolved retroactively to June 1, 2020 and has been corrected on a go-forward basis to deduct union dues correctly through code "U08" beginning in February 2021. Ms. Offredi also testified that she was in constant contact with payroll on this issue until it was resolved.

(b) Mr. Robertson

Mr. Robertson, whose duties include providing support to human resources, was directly involved in the creation of the COVID Secretariat. He testified that additional personnel were needed when the pandemic spread into the NWT around March 2020. The Employer first put out a voluntary call for redeployment. A number of casual employees answered the call and were redeployed into their new assignments dealing with COVID-related administrative matters. Those redeployed employees had their

salaries “red circled” unless it was determined that their new duties should receive a higher salary score. No formal changes occurred to the Employer’s records and most of the employees were still identified as belonging to their home positions.

The COVID Secretariat was then formally established (September 3, 2020) once it became evident that the pandemic would persist and positions were required on a long-term basis. Formal positions were then established along with job descriptions within the COVID Secretariat. This information was then forwarded to the Financial Employee Shared Services (“FESS”) for salary-coding purposes. The intention at that time was to scale back those employees who had been redeployed and return them to their home positions. The Employer would then begin to increase staffing in the newly-created Covid Secretariat. Mr. Robertson testified that the staffing changes were provided to the Employer’s Labour Relations Department in the form of reassignment letters. The Labour Relations Department in turn were tasked with preparing the membership reports.

(c) Ms. Rivers

Ms. Ceilito Rivers testified with respect to the monthly reports that are sent from the Labour Relations Department to the Union. She confirmed that every month the Employer produces five reports: a report containing a list of bargaining unit members; a staff movement report; a list of excluded employees; a list of casual employees with multiple positions; and a list of relief employees. Ms. Rivers provided the following background on the monthly reports, which was summarized in detail in the Employer’s written submission as follows:

1. monthly reports are generated during the third week of the following month that is being reported. That three-week delay is to ensure that all the data that should be captured is captured, and to reduce any discrepancies in the reports;

2. an analyst who reports to Ms Rivers produces a report and then circulates that report to the team for review. Next, a senior analyst reviews the report, before passing it to Ms Rivers who does the final review of the report. Ms Rivers flags with her team any issues. If she notices any data entry error, she discusses it with Financial and Employee Shared Services ("FESS"). Ms Rivers then corrects the reports if necessary and sends the reports to Labour Relations;

3. in terms of quality control of the reports, Ms Rivers ensures that all columns are populated and that all columns are where they should be. If there are certain blank entries or columns, she will raise it with FESS. Ms Rivers also cross references as needed the data with what is entered in *PeopleSoft.* She also checks for duplication of names;

4. the person to whom Ms Rivers sends her reports in Labour Relations can (and does, as needed) reach out to Ms Rivers with any questions they may have about the reports;

5. before Ms Rivers joined her current team, some of the monthly reports for the Union were generated by FESS. Around 2017 the responsibility for generating the reports changed from FESS to the BPU, because the BPU had the ability and time to review the reports, check them, correct them and talk to people as needed;

Ms. Rivers confirmed that it is FESS that enters the raw data upon which the reports are prepared and that her review is restricted to the internal consistency of the data she receives from FESS. More generally, Ms. Rivers testified that she has the ability and time to review the reports for accuracy in a way that FESS did not prior to BPU ("Business Professional Unit") involvement.

SUBMISSIONS OF THE UNION

The Union noted at the outset that the Employer partially granted the Union dues grievance in its second level response dated June 7, 2017 given that the *"…manner in which the Membership Report has been generated does not comply with the Employer's*

obligation under Article 14.01(1) to provide a monthly report identifying "each member in the bargaining unit". The Union, through the testimony of Ms. Thistle, maintains that although the Employer has rectified certain symptoms of the problem, it has continued to produce faulty and incomplete membership reports which result in systemic errors in the collection of union dues. Several examples of these systemic errors have been highlighted including incidents which led to the filing of the grievances as well as those which have occurred since the filing of the grievances.

Counsel for the Union noted that Ms. Thistle highlighted in her testimony several examples of the Union's most recent concerns including the following:

1. The Union came to learn in 2017 that the entire bargaining unit workforce at the Workers Safety and Compensation Commission ("WSCC"), consisting of some 100-150 members, were not having union dues deducted and remitted. This issue was not resolved until the following year in 2018.

2. The change to the codification of health care workers at the Northwest Territories Health and Social Services Authority ("NTHSSA"). Prior to the amalgamation of the health authorities, each health authority had its own department code. Ms. Thistle noted that since the amalgamation of the various health authorities into the single NTHSSA, and beginning in January 2020, the department codes used by the Employer of the NTHSSA in its monthly reports have changed. The change in department codes has resulted in a specific concern with respect to identifying works sites for employees. By way of example, and of concern to the Union, the Union is unable to determine which employees work at the Stanton Territorial Hospital and, in turn, their Local.

3. With respect to the COVID Secretariat, the Employer provided the Union with a list of redeployed individuals in the summer of 2020. The Union acknowledges that union dues are being remitted to the Union for members who are employed at the COVID Secretariat. The Union is still uncertain that all the required union dues have been paid given that new positions in the COVID Secretariat have not undergone proper job evaluations. In the absence of job evaluations, the Union does not know what amount to set as Union dues. The Union also cited one example of an individual who was not identified as belonging to the COVID Secretariat for nine months and is still shown as belonging to her home position.

The Union further noted in its submission that although the above concerns received a substantive response from the Employer when the issues were raised, the Union is of the view that the Employer was addressing issues as they arose but was not taking a more global approach to audit its systems to ensure it was meeting its obligations under articles 13 and 14.

In light of the continued and unacceptable practice, the Union is seeking relief beyond a simple declaration that the collective agreement has been breached. The Union maintains that something more compelling is necessary to address the continuing breaches and to ensure the Employer complies with its collective agreement obligations.

The Union cites in support B*irssa Holdings Inc. v. United Food & Commercial Workers Union, Local 175 (Union Dues Grievance)* [2000] O.L.A.A.No. 246 where the employer failed to remit union dues and associated check-off lists. The Union alleged bad faith and requested an award of costs against the employer. Although the arbitrator found that he did not have the jurisdiction to award costs, he did order that in the event of future non-compliance the employer was ordered to pay a penalty of $1000.00. The Union also cites *Professional Institute of the Public Service of Canada and Treasury Board* [1995] C.P.S.S.R.B. No. 57 where the arbitrator, having previously found that the employer had failed in its duty to collect and remit the required union dues, was directed to comply with its obligations to compensate the union for those outstanding union dues that it had been unable to collect and remit to the union for the relevant time period.

In this case, the Union argues that the matter of Union dues involving union officials which Ms. Thistle brought to the attention of Ms. MacNeil on July 1, 2020 was only investigated back to June 1, 2020 and not to the date of the original grievance on March 6, 2017. The Union maintains the remedies should apply from 30 days prior to March 6, 2017 when the Employer's Ms. St. Croix replied to Ms. Thistle's earlier inquiry concerning the circumstances involving the non-payment of union dues by Mr. Haward.

Counsel for the Union also provided submissions and case law with respect to the arbitrator not being limited to declaratory relief with respect to the adjudication of policy grievances. Counsel for the Union noted that the modern view is that, absent express language that restricts the scope of remedial relief, the arbitrator may employ the full range of possible remedies, including monetary damages, to make both the union and its affected members whole. See: *Re: Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486* (1975) D.L.R. (3d) 199; *Re: Belleville General Hospital and Service Employees International Union. Locals 183 and 663* [1981] O.L.A.A. 129. In *Re: Bellleville Hospital,* Arbitrator Picher, citing *Blouin Drywall*, stated that the form of the grievance should not be seen as limiting the jurisdiction of the board of arbitration. The Union also noted Arbitrator Joan Gordon's comments in *Community Social Services Bargaining Assn. v. Community Social Services Assn.* [2006] B.C.C.A.A.A. No. 50, which involved compensation for casual employees on designated statutory holidays:

> **28.** *A refusal by this board to grant any relief to employees affected by the breach of Article 30.1 would, as the Union argues, leave a contravened right without a remedy.* Given the finding in the Award under Article 30.1 and the parties' agreement that all affected employees would be covered by the outcome of the grievance, I find a refusal to provide remedial relief to employees affected by the breach would surely generate further

litigation. In my view, a final and conclusive settlement of this dispute requires individual remedies for the contravention of Article 30.1. (emphasis added)

In conclusion, the Union seeks the following relief with respect to the two grievances:

1. A declaration that the Employer has violated the Collective Agreement;
2. That the Employer conduct a comprehensive audit to identify all salient deficiencies and errors in its reports to the Union going back to February 24, 2017.

   The Union submits that Union dues issue was clearly expressed in the grievance and that deficiencies were acknowledged by the Employer as far back as Ms. Mathisen's email to Ms. Thistle on March 6, 2017. As such, the Union maintains that the remedies should apply 30 days prior to the filing of the two grievances. [1]

3. That the Employer make the Union whole for any identified deficiencies including, but not limited to:

   a. Collecting and remitting all outstanding union dues owed by bargaining unit members;

   b. If those dues are not recoverable from the bargaining unit members themselves, the Employer will remit an equivalent fee to the Union as an in-kind remedy;

   c. The Employer will identify work location as well as geographic location of each bargaining unit member employed by the GNWT pursuant to Article 14.01(1);

   d. If there are ongoing deficiencies with the Member Reports and the Union Dues check-off outlined in Article 13.06 that are not attributable to minor accounting errors and are not corrected by the Employer within a reasonable period of time, a monetary penalty be imposed on each offending report.

4. That the Employer provide current and accurate reports as per Articles 13 and 14 of the Collective Agreement; and
5. That the Employer establish and maintain a monitoring system to avoid errors and ensure accuracy of the reports provided to the Union.

[1] Arbitrator's note in italics.

SUBMISSIONS OF THE EMPLOYER

The Employer first noted that Ms. Thistle has not accused the Employer of any malicious intent. What has been missing, from the Union's perspective, is accurate information from the Employer on an ongoing basis.

With respect to the grievance involving membership reports, Ms. Thistle did indicate that a number of issues have been resolved since the filing of the grievance alleging a violation of article 14. For example, the matter of the members of the WSCC not being included in the membership reports, which neither side had discovered until 2017 when the issue was raised by the Union, was resolved the following year in 2018.

The Employer submits that the evidence also supports the following with respect to the article 14 monthly reports:

1. the parties communicate with one another about these reports;

2. the parties have scheduled and attended meetings whose purpose was to improve the quality and usability of the reports;

3. the Union has raised concerns that it has about these reports with the Employer and the Employer's actions have shown it to be receptive to the concerned communications of the Union;

4. the Employer has altered many aspects of its reports (both changes of form and changes of substance) in response to requests and/or concerns raised by the Union;

5. monthly reports are more comprehensive today (for example containing lists of WSCC employees, casual descriptors, start and end dates for term employees, fullsome capturing of relief workers, more robust capturing of employees who are part of the Bargaining Unit) than they were when these grievances were filed four years ago;

6. the reports sent to the Union depend on the input of many teams, and many people, who work for the Employer; and

7. there are many people who review the reports for accuracy and consistency before the reports are sent to the Union.

With respect to the specific concerns raised by Ms. Thistle involving issues that have arisen since the filing of the grievances, the Employer submits:

1. With respect to the absence of any reference to the work site in the monthly reports involving the NTHSSA, and particularly the Stanton Hospital in Yellowknife, the Employer notes that the evidence of Ms. Rivers was that she could not produce a report that reliably identifies all employees at the Stanton Hospital. The Employer takes the position that article 14.01 (1) does not define the word *"location"* in the reference to *"location …of all employees in the bargaining unit".* The Employer maintains that it satisfies the requirements of the word *"location"* by producing the following for each member of the bargaining unit: the division code of the employee's position, the address of the employee and the employee's community.

2. In terms of the COVID Secretariat, the Employer notes that the pandemic's arrival created an unprecedented situation. The Employer was required to redeploy its staff and resources to respond to the health care crisis. The fact that one employee was missed against the backdrop of an global pandemic should be considered as a "one-off" error that was corrected over time.

The Employer further maintains that it remains committed to continuing to enhance the quality, reliability and consistency of its reports and data, with the caveat that human error on occasion cannot be eliminated. The Employer notes in that regard that the commitment to quality and enhancement of the reports is genuine, as demonstrated by the Employer's recent history of having responded favourably to the Union's requests and concerns in that regard. Certainly, the Employer argues, there is no evidence of bad faith on the part of the Employer. The Employer submits that in fact the

opposite it true: it has been consistently trying to work with the Union to address issues as they arise.

The Employer also submits that there is no authority, either by statute or through the collective agreement, to compel it to take specific internal steps to address the grievance issue involving the accuracy of the article 14 reports.

With respect to the article 13 grievance involving union dues, the Employer submits the following on some of the concerns raised by Ms. Thistle on behalf on the Union, beginning both before and after the filing of this grievance:

1. *The Union maintained that when bargaining unit members moved out of a union position and then later back into a union position, the Employer did not immediately follow-up and ensure that their union dues were being deducted.*

   The specific example of such a concern was set out in the grievance dealing with the circumstances of Mr. Haward whose Union dues were not being deducted after he returned from working in an excluded position. The Employer conceded that a breach of article 14.01 occurred given the failure to include Mr. Haward in the monthly report of bargaining unit employees. The Employer noted in its Step 2 reply to both grievances that the failure to include Mr. Haward in the report was the result of a manual recording entry error when Mr. Haward transferred back into the bargaining unit. The Employer maintains this was a mistake involving human error and was corrected immediately when it was brought to the attention of the Employer.

   The Union cited another example of another employee who was a member of the bargaining but not paying Union dues. Ms. Thistle alerted the Employer of the discrepancy in an email on June 23, 2020. The matter was dealt with in December 2020 when the Employer advised that the employee was in an excluded position prior to taking leave. Upon her return from taking leave on April 1, 2019, the employee was not advised that her previously excluded position returned to the bargaining unit. The Employer further advised the Union that the “recovery process” to collect union dues would be engaged after notification to the employee. The Employer maintains this was another one-off error which was corrected immediately when it was brought to the attention of the Employer.

2. *The Union maintained that employees in the bargaining unit who took certain types of union leave were not paying Union dues for the period captured by those union leave periods (code "U08").*

   On July 1, 2020, Ms. Thistle advised Ms. McNeil that it had been brought to her attention that individuals who were away for a day or two on union leave or training were not having union dues deducted. Ms. Thistle inquired whether this was a "code" issue. Ms. McNeil replied on July 2, 2020 that she would look into the matter. Following an investigation, which included an audit from June 1, 2020 (as explained by Ms. Offredi in her testimony), it was determined that there was a deficiency in the *PeopleSoft* software. The problem was that the Union billable code U08 was never set up for employees on union leave, with the exception of elected officers. The Union submits, as part of its request for relief, that a more detailed audit should be conducted dating back to a month before the grievances were filed.

   The Employer submits that it should not be responsible for payment of any outstanding union dues dating back to a month before the grievances were filed given the absence of an explanation from the Union that it only identified the specific code "U08" issue on July 1, 2020, and the fact the Employer would suffer prejudice given the request is for monetary compensation dating back 3 years. The absence of an unexplained delay in raising the issue by the Union, coupled with the prejudice to the Employer under the circumstances, leads the Employer to rely on the equitable doctrine of laches. In addition, the Employer maintains that the arbitrator does not have the contractual authority to make such an Order.

The Employer further submits that many of the cases relied upon by the Union deal with compensatory awards in circumstances where the compensation can be accurately calculated (i.e. missed overtime days). The Employer notes that in the current arbitration, the Union has adduced no evidence to quantify a dollar amount representing how much any of the alleged violations of the collective agreement have cost the Union, with the exception of the unremitted code "U08" dues.

The Employer also maintains that the contractual authority of an arbitrator must be traceable to the collective agreement, a statute that is applicable in the NWT, or case law

that is binding on an arbitrator in the NWT. The Union has not linked the arbitrator's authority to grant its sought-after remedies to any of these three sources.

In particular, with respect to the Union's request for an audit dating back to February 2017, the Employer maintains that the arbitrator does not have the contractual authority under the collective agreement to order such an audit. The Employer also asserts that a comprehensive audit of the kind requested by the Union would, in practical terms, be an enormous undertaking. Resources would be better spent in the Employer's view on improving the internal quality control processes on a go-forward basis in conjunction with the Union.

The Employer also notes that the Union's request for a remedy beyond a declaration in the form of monetary relief or punitive measures of any kind is inappropriate. The case law cited by the Union hinges either on an element of bad faith, or the existence of some statutory or contractual authority to make such an Order. The Employer cites in that regard *B.M.I.U., Local 1 and 2121122 Ontario Ltd.* 2019 CarswellOnt 8542 where the collective agreement specifically contemplated that a monetary penalty could be ordered against an employer in the event of non-compliance with monthly reporting requirements. By contrast, there is no allegation nor any evidence of bad faith over the years in these matters. The evidence in fact has shown continual communication between the parties which has resulted in positive changes in form and in substance over the years.

The Employer is committed to improving the consistency and accuracy of its reports, and is further committed to providing accurate information to the Union pursuant to its obligations under article 13 and 14 of the collective agreement. Overall, the

Employer, while recognizing that it has granted in part an aspect of the membership report grievance as it relates to Mr. Haward, submits that the grievances should be otherwise dismissed.

ANALYSIS

I note at the outset that the Union maintains that the Employer did not call witnesses who could testify to the accuracy of the content of the membership reports or the accuracy regarding the collection and remittance of union dues. The Union therefore requests that I draw an adverse inference for the Employer's failure to call certain senior officials who could have more thoroughly addressed the grievance issues. I agree with the submission of the Employer on this issue that it responded to many of the specific issues raised by Ms. Thistle in her testimony. Those issues, including the COVID Secretariat and the union billable code "U08", were addressed by Mr. Robertson and Ms. Offredi respectively. In addition, and key to the evidence led in these proceedings, were the numerous emails which set out in detail the involvement of individuals including Ms. Mathiesen, Mr. Johnston, Mr. Gora and Ms. Brothers. Accordingly, I reject the Union's request that I draw an adverse inference for the Employer's decision not to call Ms. Mathiesen, Mr. Johnston, Mr. Gora or Ms. Brothers.

Counsel for the Employer maintains in his submissions on a procedural matter that arbitrators have no inherent jurisdiction similar to a judge of the NWT; arbitrators draw their jurisdiction, or "contractual authority", from the collective agreement or from statute. The Employer submits that the Union has not established that this arbitrator has the

contractual authority to grant any remedy that flows from a breach of the collective agreement, or otherwise.

With respect, I do not agree with the Employer's analysis on the remedial authority available to an arbitrator in the NWT jurisdiction. To begin with, I note that the collective agreement, at article 37.21, states that an arbitrator has the jurisdiction to make a "decision" after hearing and determining the "difference or allegation" between the parties:

> 37.21(2) The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon and employee affected by it.

Article 37.21, in my view, is clear that an arbitrator under this collective agreement has the authority to decide a grievance ("difference or allegation") that arises between the parties. To say that the authority of the arbitrator stops at the point the difference is decided, and that the arbitrator is limited in making further or limited remedial orders, defeats the intended purpose of the arbitration system. Indeed, it would take explicit contractual language in my view to limit the remedial authority of an arbitrator in the event a breach of the collective agreement is found. As noted by the Court of Appeal of Ontario in *Blouin Drywall at* p. 4:

> When a board of arbitration is satisfied on the evidence that a party to a collective agreement is in breach thereof, it is the board's obligation to render its decision accordingly. However, that decision is not simply a statement of the finding of the board with respect to the allegation made in the grievance but is also the consequential order or award, if any, that is required to give effect to the agreement. *Certainly, the board is bound by the grievance before it but the grievance should be liberally construed so that the real complaint is dealt with and the appropriate remedy provided to give effect to the agreement provisions and this whether by way of declaration of rights or duties, in order to provide benefits or performance of obligations or a monetary award required to restore one to the proper position he would have been in had the agreement been performed.* (emphasis added)

The remedial jurisdiction of an arbitrator to order damages in the event of a breach of the collective agreement was also noted in the decision of Arbitrator Weiler in *Canadian Johns Mannville Co*., a case cited by the Union, which dealt with whether an incentive bonus should be included in the monetary compensation paid for the denial of an overtime opportunity.

> **2**…As can be seen, these clauses [**hours of work provisions**] merely define the substantive rights of the employees and there is no doubt that the Company was in breach of them by reason of its mistaken selection of Jackson instead of Scala on January 26,1970. *However, these provisions do not speak to the question of the appropriate remedy for any such breach. Hence the Arbitration Board is required, under the authority of the Polymer decision, to have recourse to the established principles of contract law in shaping the remedies applicable to the overtime clause.* This situation raises two different legal issues which, as we shall see, each raise the same problem of a conflict between the thrust of the general principle of contract remedies and the practical application of such principles in an ambiguous factual situation. No directly relevant arbitral authorities were cited which have dealt with these issues and we have had to reason to our conclusions by reference to what we believe to be the merits of the competing positions.
>
> **3** As the case was originally developed through the grievance procedure, the issue between the parties was whether or not any incentive bonus should be included in the monetary compensation paid for denial of an overtime opportunity. It is apparent that this issue has a more general reach than the context of overtime within which it arose here. The same question of principle would be raised, a fortiori, for the denial of work opportunities by reason of a wrongful discipline, a lay-off in breach of seniority, etc. Of course, the problems of computation may vary, depending on the context of the individual case.
>
> **4** Stated in the abstract, the relevant principle is quite clear. *The purpose of damages for breach of contract is not to punish but to compensate, and the function of compensation is to place the aggrieved party in a monetary position as near as possible to that in which he would have been had the contract been performed.* In this case, it was assumed that had Scala been offered the overtime assignment, he would have accepted it, worked the 8-hour shift, and earned the appropriate premium rate. He can only be placed in this same financial position if he is fully compensated for the earnings he lost that day. As the Company admitted earlier (and subject to our later discussions about the special case of overtime), this requires payment of his wages at the premium rate, as well as any incidental fringe benefits. The logic of this requires, at least *prima facie*, that the employee be indemnified for the incentive earnings he would otherwise have received.
> (emphasis added)

Arbitrator Gordon in the *Community Social Services Bargaining Ass'n* decision, similar to view adopted by the Ontario Court of Appeal in *Blouin Drywall*, endorsed this approach. She states at the conclusion of her decision:

> **49** This decision constitutes a strong statement in support of the expertise of labour arbitrators in fashioning appropriate remedial relief for collective agreement violations. The arbitrator's award was both innovative and reasonable in all of the circumstances of that case...

The Union's case turns to a large extent on the testimony and supporting emails of Ms. Thistle who raised the issue of insufficient member reports and the Employer's failure to remit union dues as far back as the Fall of 2016.

The evidence is that Ms. Thistle formally raised the Union's concerns over the membership and related reports directly with the then Director of Labour Relations for the Employer, Nicole MacNeil, in an email dated November 14, 2016. This was a detailed email following a meeting held on October 5, 2016 which included both Ms. Thistle and Ms. MacNeil. The email, as noted above, covers the challenges the Union was having with the five different monthly reports it was receiving from the Employer (Casual, Relief, Movement, Member and Excluded). Ms. MacNeil copied several of her office officials with Ms. Thistle's email on November 20, 2016, including Mr. Gora, to follow up on the Union's concerns with respect to the reports.

Mr. Gora, as noted above, in turn provided a detailed response email on December 1, 2016 to Ms. MacNeil addressing the Union's concerns over the reports. Mr. Gora indicated in his email to Ms. MacNeil that he had corresponded with Ms. Thistle on November 22, 2016 and was waiting for a response. Further meetings were held to

discuss the issues raised by Ms. Thistle after December 1, 2016 and through to March of 2017, after the grievances were filed. Ms. Thistle noted that a major concern arose in 2017 when the Union discovered that the WSCC workforce of over 100 employees had not been included in the Employer's membership reports. Mr. Gora acknowledged the error in an email to Ms. Thistle on February 12, 2018 and it was corrected sometime in 2018.

Ms. Thistle indicated that, over time, there was a mutual "*want and desire"* to resolve the issues over the reports. Resolution was reached on some of the issues. By way of example, Ms. Thistle indicated that the Employer started to provide information about casual employees. The Employer also began including the names of all employees in the bargaining unit, even if the employee had not worked in a particular month. Ms. Thistle indicated, however, that it took until 2019/2020 before the reports included more comprehensive information, such as casual employee job descriptions.

Ms. Thistle also testified that the issue of union dues remittances has been a problem since March 2017, when the matter of Mr. Haward was raised directly in the union dues grievance. The Union led evidence with respect to a more recent incident involving a union dues issue which was first highlighted in an email from Ms. Thistle to Mr. Johnston on June 23, 2020. The member, as described by Ms. Thistle was not paying union dues *"…due to the move in/out/in of the BU position (similar to Robert Haward)."* Ms. Thistle inquired on June 25, 2020 whether there were further updates and received a reply the same day from Mr. Johnston that he had not received further updates but would follow up again that morning on the matter.

Around the same time (July 1, 2020), Ms. Thistle wrote to Ms. MacNeil regarding *"…individuals off for a day or two on Union leave for training may not be having dues deducted. Is this a code issue?".* Ms. Offredi was tasked with looking into the coding issue ("U08") for union dues. The issue, as noted, was ultimately resolved, but not until February 1, 2021. The adjustments to union dues were implemented to affected employees retroactively to June 1, 2020, one month prior to the issue being raised by Ms. Thistle to Ms. MacNeil.

Two other concerns originating out of the grievances were raised by the Union: one involving the effects of consolidation of the regional health authorities to the NTHSSA; another involving the establishment of the COVID Secretariat.

The evidence is that the Employer changed its reports in January 2020 as a result of the amalgamation of the health regions into the NTHSAA. Prior to the amalgamation, each health region of the NWT had its own department code identifying the various health authorities. The Union is particularly concerned, for example, that employees of the Stanton Hospital, which was previously identified as a specific work site in the monthly reports, is no longer separately identified as it has been in the past. This in turn creates problems for the Union in identifying an employee's Union Local.

Ms. Thistle testified that the Union has been seeking since May 2020 a list of the position titles at the COVID Secretariat as well as the job evaluations and the names of the redeployed individuals. The Union maintains it is unaware if sufficient dues are being paid by the Employer as new positions have not undergone proper job evaluations which determines the appropriate amount of union dues to be set.

The Union alleges as its core submission that the continuous production of flawed membership reports and errors involving the remittance of union dues has caused continuous harm to the Union and its membership despite efforts by the Employer over the years since the filing of the grievances to improve on the membership reports or address issues relating to the collection of union dues.

The Employer maintains that most of the issues relating to the grievances have been rectified over the years. Audits have been undertaken by the Employer in response to the Union's requests and improvements have occurred in certain cases in response to those audits.

One of the decisions tabled in these proceedings that is particularly helpful is *Birssa Holdings,* a case which involved the employer's failure to remit union dues and dues check-off lists. The facts were undisputed that the employer had failed to comply with its collective agreement and statutory obligations to remit monthly dues and check-off lists in a timely manner. As the Arbitrator pointed out (para 22), the employer did not offer an excuse or explanation for its delinquency or non-compliance but rather maintained *"that the issue was simply one of timeliness".* The arbitrator admonished the employer for its failure to comply with its obligations:

> **39** What lies at the core of this grievance is the Union's security as the bargaining agent for this group of employees. The rights consistently denied the Union are enshrined in both the Labour Relations Act and the collective agreement. They were violated by the Employer from the outset of the bargaining relationship. Indeed, the Employer went so far as to settle an earlier grievance on this very issue, and then continued to simply disregard its statutory and collective bargaining duties - *a flagrant display of bad faith.*
> (emphasis added)

It is worth noting that the Employer in this case, by contrast to the facts in *Birssa Holdings*, responded prior to the filing of the grievances to the detailed report complaints documented by the Union in an email from Ms. Thistle to Ms. MacNeil dated November 14, 2016, after they met in person on October 5, 2016. Mr. Gora in turn reported in detail to Ms. McNeil regarding the status of those reports on December 1, 2016. Similarly, Ms. Mathisen responded in detail to the Union on March 6, 2017 when the Union raised the concern in early March 2016 of Mr. Haward's non-payment of Union dues.

There are several examples over the course of the years that followed where the Union raised its concerns and the Employer responded to those concerns, albeit not always in timely manner. Those complaints included: the membership reports issue that arose in 2017 with the WSCC and resolved in 2018; more recent issues involving a couple of employees like Mr. Haward who were not tracked properly for union dues when they returned to the bargaining unit; members who took certain types of union leave (code "U08") who were not paying union dues while away on union leave; and, more recently, membership issues of employees working in the COVID Secretariat.

All of these examples of errors in membership lists correlate directly to the Union not receiving timely payment of union dues. Those "errors of omission", as Union counsel noted, not only affect the monetary resources of the union but also its ability to properly represent its members.

There was and is an understandable level of frustration on the part of the Union that led to the filing of the grievances which continues to this day. One of the notable and

justifiable concerns expressed by the Union is the time it has taken to resolve some of the issues once they are brought to the Employer's attention.

The starkest example is the Code "U08" situation that caused Union dues not to be deducted from employees while they were away on union leave because of a programming error. The issue was first brought to the Employer's attention on July 1, 2020 but was not resolved until February 2021. The Employer, as noted, ultimately dealt with the matter by retroactively correcting the payment of the uncollected ("U08") union dues to June 1, 2020 (30 days after the issue was brought to the Employer's attention). The Union claims that the audit should have extended past June 1, 2020 to 30 days prior to the filing of the Union dues grievance on March 6, 2017.

After a thorough review of the facts, I do not find evidence of the kind noted in *Birrsa Holdings* where the employer outright refused to comply with its collective agreement and statutory obligations. As the arbitrator noted in that case, the facts supported a clear-cut finding of bad faith. Indeed, several of the cases tabled in these proceedings resulted in damage or punitive awards being made against the employer in similar circumstances. I agree with the Employer here that the cases resulting in damage awards were based on bad faith or a contractual reference which permitted such a remedial order.

The facts here simply do not support a finding of demonstrated bad faith or inexcusable negligence that warrants a declaration that there has been a breach of

articles 13 or 14. The only exception I find of a flagrant mistake which requires a further remedial order is with respect to the code “U08” deduction of union dues while employees were on union leave. The Employer only extended their audit back to June 1, 2020, a month before the Union raised the issue with the Employer. The Employer takes the position that it was up to the Union to raise this issue and it should have done so earlier than July 1, 2020. I do not agree. In my view, the responsibility does not lie solely with the Union in these circumstances given that the error was one which originated in the programming of the software *PeopleSoft* which is the Employer’s responsibility. I find there has been a breach of article 13 for failing to deduct union dues for those members who were on union leave. In my view, the appropriate remedy under the circumstances is to extend the audit back a further year, that is the period from June 1, 2019 to June 1, 2020.

The Union is seeking a broader and more detailed audit of the Employer’s operations. I agree with the Employer that such an undertaking would be a disproportionate response to the administrative concerns of the Union that have arisen over the last four years since the grievances were filed alleging a breach of articles 13 and 14 of the collective agreement. I agree with the comments in the written submissions of the Employer that the Government’s financial resources would be *“…more constructively expended on continuing to improve its internal quality of control algorithms and processes on a go-forward basis in conjunction with further discussions with the Union on the issues”.*

CONCLUSION

The Membership Report grievance #17-P-02089 dated March 6, 2017, alleging a breach of article 14 is granted. The relief hereby ordered for the breach of the article 14 grievance is limited to a declaration that the Employer breached that provision when it failed to provide a monthly report identifying “each member in the Bargaining Unit”, as noted in the Employers’ second level reply to the March 6, 2017 grievance. The Membership Report grievance of March 6, 2017 is otherwise dismissed with respect to the alleged ongoing breaches of article 14 since March 6, 2017, as detailed in these proceedings.

With respect to grievance #17-P-02090, the grievance is dismissed with the exception of the circumstances involving the billable code “U08” where I find there has been a breach of article 13 as a result of the Employer’s failure to deduct union dues for those members who were on union leave as detailed herein. The Employer, by way of relief, shall conduct an additional audit for the period of June 1, 2019 to June 1, 2020, deduct the necessary dues from the affected members who are still in the service of the Employer and make the required remittances to the Union.

It is not necessarily my place, nor have I been asked, to make recommendations to the parties on a “go-forward” basis. I do nevertheless believe that the parties need to put into place a resolution vehicle, such as rapid-response committee with representatives from both parties, that can address issues that arise in relation to the

accuracy of the membership reports and the collection of union dues from those members whose dues are outstanding. (I note the Employer is open to collaborating with the Union on engaging the Employers' collection department to try and recover any unremitted union dues from former employees of the GNWT). The parties would also be well-served to have this committee review some of the current issues raised in these proceedings, including addressing the matter of identifying the Local membership from the Stanton hospital in the Employer's membership reports as well as the Union's concerns over job evaluations and positions in the COVID Secretariat.

I wish to express my thanks to counsel for their comprehensive written submissions. Their efforts have facilitated my task in the drafting of this award.

John M. Moreau, Q.C.

January 19, 2022