

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF THE ARBITRATION ORDINANCE,
AND IN THE MATTER OF AN ARBITRATOR REQUIRED
PURSUANT TO THE TERMS OF THE NORTHWEST
TERRITORIES PUBLIC SERVICE ORDINANCE

B E T W E E N :

THE NORTHWEST TERRITORIES PUBLIC SERVICE
ASSOCIATION AND THE PUBLIC ALLIANCE OF CANADA

APPLICANTS

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES
AND THE GOVERNMENT OF THE NORTHWEST TERRITORIES

RESPONDENTS

Application for an Order appointing an Arbitrator

Heard at Yellowknife July 14th, 1978

Reasons for Judgment filed: August 8, 1978

Reasons for Judgment by:

The Honourable Mr. Justice C.F. Tallis

Counsel on the Hearing:

Mr. James R. Scott for the Applicant

Mr. A. Brien for the Respondent

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Mr. A. Brien for the Respondents

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C.F. TALLIS

This is the continuation of an application by the applicants for the appointment of an arbitrator pursuant to the provisions of section 42(3) of the Public Service Ordinance.

This matter first came before me in chambers on July 7th, 1978 and at that time the respondents raised a preliminary objection to the application and submitted that the

same should have been commenced by originating notice rather than by notice of motion. At that time learned counsel for the respondents indicated that even if the preliminary objection was overruled, the respondents intended to oppose the appointment of an arbitrator at this time and would be filing material in opposition to the application.

I delivered a judgment in writing dated July 12th, 1978 dismissing the preliminary objection of the respondents.

On July 12th, 1978 the respondents filed the affidavit of Robin H. Bates in opposition to this application. This affidavit states as follows:

"I, Robin H. Bates, of the City of Yellowknife, in the Northwest Territories, public servant, MAKE OATH AND SAY:

1. THAT I am the Director of the Department of Personnel, Government of the Northwest Territories, and the chief negotiator of the Negotiating Team for the "Government" in the matter of collective bargaining with the Northwest Territories Public Service Association (hereinafter called the "Association") and as such, have a personal knowledge of the matters herein deposed to except where stated to be upon information and belief;
2. THAT on or about the 18th day of January, A.D. 1978, the Commissioner received a notice in writing from the Association to commence collective bargaining pursuant to Article 42 of the Collective Agreement dated 5 August 1976 between the Association and the Government;
3. THAT on the 25th day of January, A.D. 1978, the Commissioner advised the Association in writing acknowledging the notice of intention to negotiate a new collective agreement;
4. THAT on or about the 2nd day of February, A.D. 1978, the Association submitted its bargaining demands to the Government;

5. THAT on or about the 28th day of February, A.D. 1978, the Government submitted to the Association its proposals for amending the Collective Agreement and the agenda for discussion at the first meeting between the respective negotiating teams;

6. THAT the negotiating teams met on the 6th day of March, A.D. 1978 and thereafter until 10th day of March, A.D. 1978 in the City of Yellowknife and discussions with respect to joint consultation items and non-monetary issues were held;

7. THAT on the 13th day of March, A.D. 1978, the Association was a named Plaintiff and the Government was a named Defendant in a Supreme Court of the Northwest Territories action #4273 and on the 15th day of March, A.D. 1978 the application for an interim injunction against the Defendants in the said action was adjourned by Mr. Justice C.F. Tallis as set out in his order dated 15 March 1978;

8. THAT the Government and the Association recommended negotiations on April 4, 1978 and met thereafter on April 5, 7 and 8;

9. THAT on 8 April 1978, the chief negotiator for the Association, David Dunn, requested that negotiations be adjourned until the first week in May due to the fact that he would be unavailable until that date;

10. THAT negotiations did not recommence until 9 May 1978 and then continued thereafter until 12 May 1978;

11. THAT on 18 May 1978, I contacted Peter Dyck, President of the Association requesting that negotiations continue as soon as possible and confirmed the said request by telex, a copy of which is annexed hereto and marked "A" to this my affidavit;

12. THAT on 19 May 1978, I received a telex from the said Peter Dyck advising that the earliest possible date for continuation of negotiations was 29 May 1978, to which telex I advised and confirmed the date of May 29, 1978;

13. THAT negotiations continued from 29 May 1978 until June 1, 1978, on which last date the negotiation team for the Association requested a caucus early in the evening and subsequently thereto the said negotiation team did not return to continue negotiations;

14. THAT on June 2, 1978, I contacted the said Peter Dyck to determine the time for that day's meeting and was advised by him that the chief negotiator for the Association had left Yellowknife on the evening of June 1, 1978 and was not available until June 10, 1978;
15. THAT annexed hereto and marked "B" and "C" to this my affidavit are copies of my telex and letter respectively to the said Peter Dyck confirming our conversation of June 2, 1978 as set out in the preceding paragraph.
16. THAT on June 5, 1978, I contacted by telephone the said David Dunn, chief negotiator, who was in Ottawa and he advised me that the negotiating team of the Association were reluctant to return to negotiations while the court case then scheduled for June 12, 1978 and involving allegations of contempt against the Defendants, was pending. I advised him that the Government was desirous of continuing negotiations irrespective of the court case referred to;
17. THAT on June 6, 1978, I received a telex from the Association advising that the Association was prepared to meet on June 17, 1978 and annexed hereto and marked "D" to this my affidavit is a copy thereof.
18. THAT on June 8, 1978, I forwarded a telex to the Association advising that the Government was prepared to meet on June 17, 1978, but would prefer to meet June 19, 1978 for the reasons set out therein, a copy of which telex is annexed hereto and marked "E" to this my affidavit.
19. THAT on June 12, 1978, the court case referred to in paragraph 16 of my affidavit, was adjourned until the week of 10 July, 1978;
20. THAT on June 13, 1978, I received a telex from the Association advising that the Association saw no further use to continue negotiations and would be moving to arbitration, a copy of which telex is annexed hereto and marked "F" to this my affidavit;
21. THAT on June 13, 1978, I forwarded a cable to the President of the Association in reply requesting the reasons for this change in position and confirming the Government's desire to continue negotiations at earliest possible date, which cable was confirmed by telex, a copy of which telex is annexed hereto and marked "G" to this my affidavit;

22. THAT on June 14, 1978, I received a telex from the said Peter Dyck, a copy of which is annexed hereto and marked "H" to this my affidavit;

23. THAT on June 14, 1978, I forwarded a telex to the Association indicating the wish of the Government to resume negotiations and confirming that the negotiating team for the Government would meet to resume negotiations on June 19, 1978, a copy of which telex is annexed hereto and marked "I" to this my affidavit;

24. THAT subsequent to the telexes referred to in paragraphs 20, 21, 22 and 23 herein, on June 14, 1978, Mr. E. McRae, Executive Secretary-Treasurer of the Association delivered to me by hand a letter and proposed renewal of sections of two Articles of the Collective Agreement signed by representatives of the Association on June 14, 1978, for signature by a representative of the Government, a copy of which letter and attachments is annexed hereto and marked "J" to this my affidavit;

25. THAT on June 19, 1978, the negotiating team for the Government were present at the time and place referred to in Exhibit "I" to this affidavit, and that no one appeared on behalf of the Association and further that I had no reply to my telex Exhibit "I";

26. THAT annexed hereto and marked "K" to this my affidavit is a copy of a letter dated 14 June 1978 received by the Commissioner of the Northwest Territories;

27. THAT annexed hereto and marked "L" to this my affidavit is a copy of a letter dated 20 June 1978 forwarded to the Association by the said Commissioner;

28. THAT annexed hereto and marked "M" to this my affidavit is a copy of a letter dated 22 June 1978 received by the said Commissioner;

29. THAT annexed hereto and marked "N" to this my affidavit is a copy of a letter dated 23 June 1978 forwarded to the Association by the said Commissioner;

30. THAT annexed hereto and marked "O" to this my affidavit is a copy of a letter dated 26 June 1978 received by the said Commissioner;

31. THAT I have read the affidavit of Ed McRae sworn on the 4th day of July, 1978 and filed in this action and in particular paragraph 13 thereof and state that the persons proposed as arbitrators in the Exhibit "A" to the said affidavit and in the said paragraph 13 are not acceptable to the Government;

32. THAT in the event that the Court decides to appoint an arbitrator in this matter, which is opposed, that one of the following be appointed:

1. Kenneth A. Pugh,
10606 - 133 Street,
Edmonton, Alberta.
2. Donald A.S. Lanskaill,
Suite 500, 1055 W. Hastings,
Vancouver, B.C.
3. Kris Jansen,
c/o Great-West Life Assurance Co.,
Winnipeg, Manitoba.

33. THAT in reply to paragraph 15 of the said affidavit of E. McRae referred to in paragraph 31 herein, the said Collective Agreement dated 5 August 1976 provides in Article 42.02:

'42.02 Notwithstanding the preceding, the provisions of this Agreement, including the provisions for the adjustments of disputes in Article 37, shall remain in effect during the negotiations for its renewal and until a new Agreement becomes effective.';

34. THAT from the 15 day of March, 1978 until the date of this affidavit, no changes have been implemented or effected by the Government in those items in Article 40.02 of the said Collective Agreement;

35. THAT the Government negotiating team has been prepared, desirous, and actively involved in proceeding with collective bargaining."

This application was continued before me on the morning of July 14th, 1978. At that time counsel for the respondents advised the court that he had now received instructions to consent to the appointment of an arbitrator so as to conclude the matters in dispute as quickly as possible. Counsel for the respondents frankly conceded that this position constituted a complete change in instructions and this is obvious when one compares that submission with paragraphs 32 and 35 of the sworn affidavit of Robin H. Bates

hereinbefore quoted.

It is always unfortunate when the collective bargaining process breaks down and in this particular case both counsel now feel that as between the parties it cannot continue in realistic terms. During the course of the submissions before me I pointed out to counsel for the applicants and to counsel for the respondents that there appear to be many matters that are unresolved in connection with this dispute. It seems to me that there are a number of matters that could probably be settled by counsel and this would undoubtedly assist the arbitrator in expediting the hearing. Under the circumstances, I reiterate what I said in chambers on this application and that is that I make the recommendation that counsel offer their good offices in trying to resolve a number of matters where further discussions between them would undoubtedly be beneficial to all concerned.

In exhibit "G" of the affidavit of Robin H. Bates there is an indication that the respondents have further proposals with respect to all the further outstanding items. Even if the collective bargaining teams cannot discuss matters further it would undoubtedly be helpful if these proposals could be crystallized and forwarded to Mr. Scott so that he in turn could obtain instructions and discuss the issues with Mr. Brien. I am sure that an arbitrator would welcome this approach so that the issues can be narrowed wherever possible.

Turning now to the appointment of an arbitrator, I would point out that the parties have proposed a number of candidates

for the position but unfortunately no agreement could be reached between them. Under the circumstances, I hereby appoint Joseph Donald O'Shea, Q.C. of 36 King Street East, Toronto, Ontario, as the arbitrator to deal with this matter.

I realize that it is desirable that matters of this kind be resolved as quickly as possible. Under the circumstances I presume that counsel will arrange to get in touch with Mr. Joseph Donald O'Shea, Q.C. in order to make suitable arrangements for the hearing.

DATED at the City of Yellowknife, in the Northwest Territories, this 8th day of August, A.D. 1978.

C. F. Tallis

C.F. TALLIS
J.S.C.

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