



CUPW Prairie Region
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Memorandum

Date: October 29, 2020
To: Edmonton Mail Processing Plant
cc: Lana Smidt, National Director – Prairie Region
Roberta Mitchell, Union Representative – Prairie Region
From: Amanda Cowie, Regional Grievance Officer – Prairie Region
RE: Annual Bids

Sisters/Brothers/Comrades,

This letter is being written as a result of concerns and miscommunication in respect to the upcoming bids.

Canada Post has finally proposed creating dayshift positions. CUPW workers have always pushed for dayshift and full-time positions. The proposed schedule included 60 day shift fulltime, 8 afternoon shift full-time and 23 afternoon shift part-time as well as the addition of 6 P05's, two on each shift. We as workers have never seen a proposal of this nature for Edmonton in at least 30 years. This is a tremendous change to the plant, a positive one, and a victory!!

As a result of this unprecedented change and the amount of day shift assignments, which we've NEVER seen, the position of the Union was to push the Employer to have a monthly bid in November. This will allow all P04's and P05's in the entire post office the opportunity to bid on these new assignments by classification.

The Union believes that Seniority rights are very important and that to deny a worker the right to exercise his/her/their seniority would require clear language in the Collective Agreement. In Article 13.04 it says:

“that if changes are made to a work schedule employees who are incumbents of assignments in the same classification within the same section, or post office if there are no sections, will bid by seniority on the new schedule.”

This language addresses when CPC proposes changes to start and end times and/or rotational days off. The difference is, these proposed schedules have new vacant assignments added which is not strictly a work schedule change. The membership recognized this and that in order to recognize seniority, new language was proposed, voted and agreed on, from the workers to deal with this situation was adopted though negotiation in roughly 2003. This is the new language of 13.18 and 13.19 in how to staff new assignments. The intent behind this language is to allow members the ability to exercise their seniority.

In some instances we have pushed to have expedited bidding practices, or changed the sequence of the bids as outlined in 13.04 (c) and 13.26 (c) which is what we have done for this bid, all in the name of seniority. Which leads us to today's bid. All other cities had also added a number of positions and assignments in every major city in the Prairie Region. We as workers wanted to be consistent in our push to enforce that seniority rights for all members in the Prairie region are to be recognized, which is why we pushed as a collective to have a monthly bid BEFORE the section bid.

I'll attach the law surrounding seniority rights which I will quote a small portion from:

"Seniority is one of the most important and far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process."

This is the reason we the workers bargained to be able to have monthly bids in October, November and December, and this is also why we bargained to be able to change the order in which the bids are done. Although this may not be the consistent practice in Edmonton, this has been the consistent practice of this Union and this Region.

In addition, the membership is pushing for change and, although this is what you are saying you want, and may have been what has been accepted in the past in Edmonton, one has to reflect as a whole what is right as a collective going forward for our Region, and should be consistent in our push for seniority.

In Solidarity,



Amanda Cowie
Regional Grievance Officer
CUPW Prairie Region

AC/sc.cope225

Chapter 6 -- Seniority

6:0000-INTRODUCTION

Seniority systems are an integral part of virtually every collective agreement. They define eligibility for a wide variety of monetary and fringe benefits provided for in collective agreements, and they determine an employee's entitlement to particular jobs in the context of promotions, transfers and layoffs. With all of the terms and conditions of employment to which they are linked, seniority provisions are designed to reward employees for longevity of service. The theory underlying such systems is to provide those employees possessing the longest record of service in the context of a layoff with the greatest job security and, in the context of a promotion, with the greatest potential for advancement. The extent to which a particular seniority provision secures such benefits will depend in large measure on the scope or definition of an employee's seniority, the manner in which the agreement provides for its application, and the extent to which it is qualified by such other considerations as skill and ability. Notwithstanding enormous variation in all of these matters in collective agreements, all arbitrators start from the premise that:

Seniority is one of the most important and far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process. An employee's seniority under the terms of a collective agreement gives rise to such important rights as relief from lay-off, right to recall to employment, vacations and vacation pay, and pension rights, to name only a few. It follows, therefore, that an employee's seniority should only be affected by very clear language in the collective agreement concerned and that arbitrators should construe the collective agreement with the utmost strictness wherever it is contended that an employee's seniority has been forfeited, truncated or abridged under the relevant sections of the collective agreement.¹

Although seniority rights and service credits are closely related and the terms are often used synonymously, they are not always coextensive, and can lead to different entitlements to benefits provided for in an agreement.²

NOTES -- Current References and Leading Cases

¹ *Tung-Sol of Canada Ltd.* (1964), 15 L.A.C. 161 (Reville), at p. 162, has been cited with approval in many cases, including: *Aramark Canada Ltd.* (2008), 173 L.A.C. (4th) 181, 93 C.L.A.S. 270 (Knopf); *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia* (2007), 164 L.A.C. (4th) 1, [2007] 7 W.W.R. 191, 400 W.A.C. 1, 65 B.C.L.R. (4th) 201, 242 B.C.A.C. 1, 2007 C.L.L.C. ¶220-035, 157 C.R.R. (2d) 21, 363 N.R. 226, 2007 SCC 27, 283 D.L.R. (4th) 40, 157 A.C.W.S. (3d) 298 (S.C.C.); *Glen Haven Manor Corp.* (2006), 146 L.A.C. (4th) 415, 84 C.L.A.S. 167 (North); *Lakeport Beverages* (2005), 143 L.A.C. (4th) 149, 201 O.A.C. 267, 2005 C.L.L.C. ¶220-057, 258 D.L.R. (4th) 10, 141 A.C.W.S. (3d) 763 (Ont. C.A.); *Intertek Testing Services* (2002), 111 L.A.C. (4th) 97, 70 C.L.A.S. 267 (Blasina) ("the case of *Tung-Sol* . . . contains the most recognized expression of the significance of seniority rights"); *Canada Safeway Ltd.* (2001), 103 L.A.C. (4th) 1, 67 C.L.A.S. 83 (McPhillips); *Columbia Forest Products* (2001), 96 L.A.C. (4th) 1, 64 C.L.A.S. 19 (Starkman); *University College of Cape Breton* (1998), 90 L.A.C. (4th) 425, 61 C.L.A.S. 176 (Veniot); *Canadian Red Cross Society* (1999), 84 L.A.C. (4th) 315, 58 C.L.A.S. 262 (Whitaker) (interpretation of loss of seniority and termination of employment clause to be made in manner which most strictly limits its application); *Caritas Health Group* (1997), 65 L.A.C. (4th) 406, 49 C.L.A.S. 172 (Lucas) ("this principle would apply to any attempt to adversely affect seniority, whether such attempt be made by an employer or a trade union"); *Children's Aid Society of Cape Breton* (1996), 61 L.A.C. (4th) 70, 46 C.L.A.S. 495 (La Forest); *Zehrs Markets* (1996), 61 L.A.C. (4th) 25, 46 C.L.A.S. 408 (Newman) (seniority should be considered when management exercises its discretion to fill a part-time vacancy); *Canadian Linen Supply Co.* (1997), 61 L.A.C. (4th) 274, 46 C.L.A.S. 494 (Moore); *Nova Scotia (Department of Transportation and Communications)* (1996), 58 L.A.C. (4th) 11, 45 C.L.A.S. 211 (Veniot), at p. 25 ("The remarks of Judge Reville, in *Tung-Sol* . . . are a good example of how a reasoned approach to a commonly occurring problem has provided a benchmark which both establishes the importance of the concept of seniority in the law of the collective agreement, and sets a commonly accepted standard for construing contract language dealing with this subject"); *School District No. 39 (Vancouver)* (1996), 53 L.A.C. (4th) 33, 42

C.L.A.S. 342 (Hope) (employment status fixed according to rule requiring clear expression of intention to abridge seniority rights); **AGT Ltd.** (1995), 51 L.A.C. (4th) 422, 41 C.L.A.S. 556 (Sims); **Dufferin-Peel Roman Catholic Separate School Board** (1995), 48 L.A.C. (4th) 316, 39 C.L.A.S. 414 (M.G. Picher) (seniority rights of part-time employees not to be prorated in absence of clear language); **Newfoundland Farm Products Corp.** (1994), 43 L.A.C. (4th) 46, 37 C.L.A.S. 35 (Browne) (recall rights); **Computing Devices Canada Ltd.** (1994), 41 L.A.C. (4th) 47, 35 C.L.A.S. 384 (Emrich) ("where it is contended that seniority rights are to be truncated, forfeited or abridged, it must be clear that the parties intended such a result"); **Sudbury General Hospital of Immaculate Heart of Mary** (1990), 16 L.A.C. (4th) 172, 20 C.L.A.S. 259 (Craven) (*Tung-Sol* as relevant to application as to accumulation of seniority); **British Columbia Railway Co.** (1988), 2 L.A.C. (4th) 331, 12 C.L.A.S. 30 (Hope) (no clear language giving employer authority to compel employees to take job assignments that would profoundly limit seniority rights); **Toronto Star Newspapers Ltd.** (1983), 10 L.A.C. (3d) 1 (P.C. Picher) ("it is difficult to overstate the importance of seniority to employees"); **Council of Printing Industries of Canada v. Toronto Printing Pressmen and Assistants' Union No. 10** (1980), 25 L.A.C. (2d) 88 sub nom. Photo Engravers and Electrotypers Ltd. (Adams), at p. 99 ("the well-known arbitral concern over the abridgment of seniority rights . . . would support the implication of a contractual intent that the company must exercise its discretion . . . in a reasonable manner, without discrimination, bad faith or arbitrariness"), revd (unreported, February 18, 1982, Ont. Div. Ct.), revd 149 D.L.R. (3d) 53 (C.A.), leave to appeal to S.C.C. refused [1983] 2 S.C.R. vii; **Edwards of Canada, Unit of General Signal of Canada Ltd.** (1974), 6 L.A.C. (2d) 137 (Adams) ("the rule of construction outlined in . . . *Tung-Sol* . . . has achieved a level of consensus between arbitrators and is well worth restatement"). See also **British Columbia Fruit Packers Co-op** (2003), 119 L.A.C. (4th) 1, 74 C.L.A.S. 67 (Blasina) (merger of seniority lists); **Air Canada** (2001), 105 L.A.C. (4th) 151, 68 C.L.A.S. 86 (Burkett), at p. 155 ("Implicit in this reliance upon seniority as the best method to allocate access to these benefits/protections is the understanding that individual employees are in competition with one another for them and that all else being equal, the more senior individual -- the individual with the greater service -- should receive preference. This mechanism for allotment is fair and equitable and makes eminently good sense"), supp. reasons 68 C.L.A.S. 362 (Burkett), supp. reasons 69 C.L.A.S. 115 (Burkett), affd (unreported, June 4, 2003, C.I.R.B.), application for reconsideration dismissed 112 C.L.R.B.R. (2d) 308, [2004] C.I.R.B. 266, affd 346 N.R. 84, 2006 FCA 10, 145 A.C.W.S. (3d) 348 (F.C.A.), as well as related decision **C.U.P.E. (Canadian Component) v. C.U.P.E. (Air Canada Component)** (2005), 140 L.A.C. (4th) 353, 2005 BCSC 810, 139 A.C.W.S. (3d) 863 (B.C.S.C.). Compare **Weyerhaeuser Canada Ltd.** (1996), 60 L.A.C. (4th) 137, 46 C.L.A.S. 329 (Kelleher) (*Tung-Sol* principle does not inhibit employer restructuring where seniority cannot be said to have been "forfeited, truncated or abridged" in any way). See historical references.

² **Fort Erie (Town)** (2002), 109 L.A.C. (4th) 120, 70 C.L.A.S. 82 (Saltman) (service of casual employees does not constitute seniority for purposes of claiming a job); **Metroland Printing, Publishing and Distributing Ltd.** (2001), 101 L.A.C. (4th) 365, 66 C.L.A.S. 112 (Surdykowski) ("the terms 'seniority' and 'service' do not necessarily mean the same thing under a collective agreement"); **Royal Doulton Canada Ltd.** (2000), 90 L.A.C. (4th) 160, 61 C.L.A.S. 100 (Baum) (circumstances in which employment standards legislation distinguishes between service and seniority); **School District No. 37 (Delta)** (1999), 85 L.A.C. (4th) 33, 58 C.L.A.S. 408 (McPhillips) (service credits for casual employees distinguished from seniority rights for regular employees); **Ottawa Civic Hospital** (1996), 59 L.A.C. (4th) 159, 45 C.L.A.S. 498 (Herlich), at p. 188 ("Service and seniority are different concepts. Service, generally speaking, is not necessarily limited to collective bargaining or bargaining unit contexts . . . Seniority, generally speaking, is a collective bargaining or bargaining unit concept"); **Richmond (City)** (1995), 52 L.A.C. (4th) 380, 42 C.L.A.S. 277 (Thompson) (promotions based on length of service rather than seniority); **Durham (Regional Municipality)** (1995), 48 L.A.C. (4th) 135, 39 C.L.A.S. 295 (Craven) (distinguishing service and seniority in context of employment standards legislation); **Leeds and Grenville County Board of Education** (1994), 44 L.A.C. (4th) 140, 37 C.L.A.S. 127 (Thorne) (Employment Standards Act treats rights of employees on maternity or parental leave to benefits like sick leave, that are based on service, differently than accrual of seniority); **Whitecourt-Fox Creek General Hospital District No. 97** (1993), 39 L.A.C. (4th) 430, 34 C.L.A.S. 547 (P.A. Smith) (casual employee's years of service do not constitute seniority for purpose of claiming a job); **Victorian Order of Nurses** (1989), 6 L.A.C. (4th) 50, 13 C.L.A.S. 73 (Easton) (eligibility for severance pay based on service rather than seniority). Compare **Halton (Regional Municipality)** (1995), 48 L.A.C. (4th) 301, 39 C.L.A.S. 284 (Burkett) ("under this collective agreement, the parties have used the terms 'seniority' and 'service' interchangeably"); **Barrie (City)** (1994), 40 L.A.C. (4th) 168, 35 C.L.A.S. 153 (M.G. Picher)

(legislative guarantees of seniority must be interpreted liberally to extend protection to service related rights).

See historical references.

NOTES -- Historical References

¹ *Tung-Sol of Canada Ltd.* (1964), 15 L.A.C. 161 (Reville), at p. 162, has been cited with approval in many cases, including: *Sault Ste. Marie Roman Catholic Separate School Board* (1985), 21 L.A.C. (3d) 107 (P.C. Picher), at p. 111 ("inappropriate to read into the clause an intention to prorate length of service for part-time teachers and thus seriously cut back their accumulation of seniority when that intention has not been clearly expressed"); *H.J. McFarland Memorial Home* (1984), 13 L.A.C. (3d) 391 (Solomatenko) ("seniority has even been referred to as 'the most valuable capital asset of an employee of long service'"); *Northern Telecom Canada Ltd.* (1983), 9 L.A.C. (3d) 224 (M.G. Picher), at p. 229 ("a collective agreement that confers individual rights based on seniority should be construed so that doubtful language is interpreted in a way that preserves and enhances those rights"); *School District No. 36* (1982), 7 L.A.C. (3d) 259 (Bird) ("applying what is said in *Tung-Sol of Canada Ltd.* to the present case, if seniority is to be fully supported, it should only be limited on the basis of reasonably clear contractual language"); *Ryerson Polytechnical Institute (Board of Governors)* (1980), 27 L.A.C. (2d) 378 (MacDowell). **See also** *R. Huber & Co. (Canada) Ltd.* (1976), 11 L.A.C. (2d) 309 (Shime) ("the general purpose of a seniority scheme is to provide security to employees with the longest service").

² See also *Middlesex-London District Health Unit* (1984), 16 L.A.C. (3d) 98 (Saltman) (collective agreement used seniority for job opportunities, and service for wages and other benefits).

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