

Court File No. 08-19-525-CVC

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

NUNAVUT EMPLOYEES UNION

Plaintiff

-and-

GOVERNMENT OF NUNAVUT

Defendant

NOTICE TO THE DEFENDANT

1. You are hereby notified that the Plaintiff may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the Rules of the Nunavut Court of Justice, without further notice to you unless within 25 days after service of the Statement of Claim on you, you cause to be filed in the office of the Clerk of the clerk of the Nunavut Court of Justice either:
 - (a) a Statement of Defence, or
 - (b) an Appearance,and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.
2. The attached Statement of Claim is to be served within 12 months from the day on which it is issued.

3. Every Defendant should consult his or her lawyer, or refer to the Rules of the Nunavut Court of Justice, to determine his or her rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Nunavut Court of Justice at Iqaluit, Nunavut, on November 18th, 2019.



D/ Clerk of the Nunavut Court of Justice

Address of the court office:

Nunavut Justice Centre, Building #510

PO Box 297

Iqaluit, Nunavut X0A 0H0

TO: GOVERNMENT OF NUNAVUT

PO Box 1000 Station 200

Iqaluit, Nunavut X0A 0H0

Court File No. 08-19-525-CK

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

NUNAVUT EMPLOYEES UNION

Plaintiff

-and-

GOVERNMENT OF NUNAVUT

Defendant

STATEMENT OF CLAIM

1. The Plaintiff claims against the Defendant:
 - a. relief in the form of a declaration that the Defendant has violated section 56 of the *Public Service Act*, S.Nu. 2013,c.26 (the "Act");
 - b. relief in the form of an order requiring the defendant to bargain in good faith with a view to the conclusion of a collective agreement;
 - c. damages of ~~\$50,000.00~~ for breach of the duty to bargain in good faith with a view to the conclusion of a collective agreement;
 - d. pre-judgment and post-judgment interest in accordance with the *Consolidation of the Judicature Act*, S.N.W.T. 1998, c.34, s. 1;
 - e. costs of this action; and

- f. such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff, the Nunavut Employees Union, is the certified bargaining agent for a bargaining unit of employees working for the Government of Nunavut, pursuant to section 55(5)(a) of the *Act*.
3. The Defendant, the Government of Nunavut, is party to a collective bargaining relationship with the Plaintiff under section 55(11) and (12), and acts as an employer.

Background

4. The collective agreement between the Plaintiff and the Defendant expired on September 30, 2018. The Plaintiff served Notice to Bargain on September 17, 2018 pursuant to section 56(1) and (2) of the *Act*. According to those provisions, the Notice to Bargain requires both parties to meet and bargain in good faith and make every reasonable effort to conclude a collective agreement.
5. A central concern for the Plaintiff in this round of collective bargaining was increasing the amount of the Nunavut Northern Allowance (“NNA”) paid to employees. The NNA is a benefit paid to Government of Nunavut employees designed to make up for the difference in cost of living between Nunavut and ‘designated’ southern centres and to equalize the compensation of employees across Nunavut who may face different economic conditions in different communities.

6. In the Plaintiff's opening statement, delivered during the first session of bargaining from January 15-18, 2019, the Plaintiff stated that food security and declining purchasing power was a main theme animating the Plaintiff's bargaining proposals.
7. On May 8, 2019, the Defendant tabled its first NNA proposal, which offered no increases to the NNA benefit in any of the 26 communities to which it applied. Upon receiving this proposal, the Plaintiff reiterated that it considered meaningful increases to the NNA an essential part of any deal. However, in order to make progress towards increasing the total NNA amount, the Plaintiff made concessions in other areas as part of a counter-proposal dated May 9, 2019.
8. In response to Plaintiff's concerns, on May 10, 2019, the Defendant tabled its second NNA proposal, which included increases to the NNA in 19 communities, while freezing NNA benefits in the remaining 7 communities. The total value of the May 10, 2019 NNA proposal was increased to \$33,352,726.14.
9. The Plaintiff appreciated the Defendant's willingness to increase the total NNA and acknowledged this by making concessions of its own. On June 5, 2019, the Plaintiff withdrew eleven bargaining proposals, including proposals related to core issues such as overtime, health and safety, holiday pay, and medical accommodation. These proposals were very important to the Plaintiff's members, but the Plaintiff was willing to make exchanges for further increases to the NNA.

10. On June 6, 2019, the Defendant tabled a revised NNA proposal, which again increased the total NNA amount. The total value of the June 6 NNA proposal was increased to \$33,807,738.29. The Plaintiff considered this to be an important move in the right direction.
11. As the parties approached a final resolution, the parties agreed to enter mediation with an eye to concluding a collective agreement. On June 24, 2019, the Plaintiff and Defendant agreed to appoint a mediator pursuant to section 60.1 of the *Act*, to facilitate collective bargaining.
12. On October 28, 2019 – the first day of mediation – the Defendant tabled a revised NNA proposal.
13. Compared to the June 6 proposal, NNA increases were reduced by approximately 50% in terms of total value. The total value of the October 28, 2019 proposal was \$16,537,494.62 – a sudden reduction of \$17,270,243.
14. The October 28, 2019 proposal also changed how the NNA would be distributed. Compared to the June 6, 2019 proposal, which distributed the NNA more equally between the Kivalliq and Qikiqtaaluk (Baffin) regions, the majority of NNA increases under the October 28, 2019 proposal would be allocated to the Qikiqtaaluk (Baffin) region.
15. The Plaintiff was shocked by this offer, as it represented a sudden departure from the Defendant's position throughout the previous five months of bargaining. Upon seeing the

specifics, the Plaintiff declared a bargaining impasse. After meeting with both parties, the mediator concluded that the October 28, 2019 proposal rendered further mediation efforts futile.

The Defendant's October 28 Proposal Violates Section 56(2) of the Act

16. The October 28, 2019 proposal entitles the Plaintiff to the relief described in paragraph 1, above. Between May 8 and October 28, 2019, the parties had made progress in bargaining. The Defendant offered \$33,807,738.29 in NNA funding on June 6, 2019. On October 28, 2019, the Defendant reversed direction, substituting an offer which would decrease the total NNA to \$16,537,494.62. The Defendant's course of action is inconsistent with the duty to make every reasonable effort to conclude a collective agreement.
17. As an employee association under the *Act*, the Plaintiff has a legal duty to bargain collectively in the best interests of its membership. The Defendant's offer was one that the Plaintiff – or any other employee association – could not possibly accept. This course of “receding horizon” bargaining caused needless delays in the bargaining process, revealing bad faith on the part of the Defendant.

18. The Defendant's breach entitles the Plaintiff to the relief claimed in paragraph 1, above. The Defendant's actions destroyed the progress made at a late stage in bargaining. As a result, the Plaintiff will incur increased costs, entitling it to damages.

Place of Trial

19. The Plaintiff proposes that this action be tried at Iqaluit, Nunavut.

DATED at Ottawa, Ontario on November 11, 2019 and delivered by Alison J. McEwen, solicitor for the Plaintiff, whose address for service is c/o Nunavut Employees Union, Bldg 165, Iqaluit, NU X0A 0H0



For Alison J. McEwen
Raven, Cameron, Ballantyne & Yazbeck LLP
220 Laurier Avenue West, Suite 1600
Ottawa, ON K1P 5Z9
Tel: 613-567-2901
Fax: 613-567-2921
Solicitor for the Plaintiff

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IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

NUNAVUT EMPLOYEES UNION
Plaintiff

and

GOVERNMENT OF NUNAVUT
Defendant

STATEMENT OF CLAIM

This statement of claim is issued by:
Alison J. McEwan Raven, Cameron,
Ballantyne & Yazbeck LLP

whose address for service in Nunavut is:
c/o Nunavut Employees Union
Bldg 165
Iqaluit, NU X0A 0H0
Tel: 867-979-4209

Address of the Plaintiff:
Bldg 165
Iqaluit, NU X0A 0H0

Address of the Defendant:
The Government of Nunavut
PO Box 1000, Station 200
Iqaluit, NU X0A 0H0

