

During the last week of June, the AJC negotiations team completed another three days of bargaining with the employer. All told, we have now met with the employer's negotiating team four times (in three day blocks) over the past six months not including our initial exchange of proposals in November, 2006.

Since we will not be meeting again until September, we thought we would take this opportunity to provide the AJC membership with a general update of where we stand at this time, and to respond to some of the questions we have received.

What We Have Been Doing at the Bargaining Table

For the most part, as is typical in collective bargaining, our initial focus has been on "non-monetary" issues, although we have also made comprehensive monetary proposals, and have discussed these at the table as well.

On the non-monetary front, some of the issues we are still struggling with include:

1. Issues unique to lawyers (timekeeping, respecting our professional obligations, reimbursement for the special expenses we face, fair and transparent access to educational and training opportunities, and legal indemnification)
2. Basic protections as employees (union representation on discipline or discharge, a workable grievance and arbitration procedure, fair and transparent promotional opportunities, protection in the event of workforce reduction, paid and unpaid leave protections and entitlement, and the rules for vacation carryover)
3. Issues affecting the representational capacity of the AJC (including dues, information about employees, AJC representatives, leaves for AJC business, preserving and enhancing alternate work arrangements)

While we have made some progress to date in some of these areas, there are still many matters that remain in dispute.

On the monetary front, the number one issue is salary, including parity with Ontario Crown lawyers. Consistent with the AJC's 2004 compensation proposal (available on the AJC-AJJ web page at http://www.ajc-ajj.com/ajc_ajj/docs/AJCcompsubmission.pdf), we have proposed significant increases in both the minimum and maximum of each salary level, corresponding increases in salary for each individual lawyer, improved PREA and performance pay rules and amounts, creation of a merged LA2 level, automatic progression from the

LA1 to LA2 level, and an increase to the number of lawyers to be promoted to the LA3 level. We have also made clear that these increases must be paid retroactively to the earliest possible date.

We are also seeking improvements in a number of other monetary areas. This includes an improved system for compensating lawyers who work excessive hours. The employer's opening proposal was that lawyers should neither be eligible for paid overtime (as under the PIPSC

collective agreement), or for any form of compensating time off. The employer has, in effect, proposed that lawyers work as many hours as may be demanded, with no additional compensation or management leave. Needless to say, we told the employer that we viewed this proposal as an insult, and would not entertain it seriously, but it does provide some indication of the approach the employer has taken to date at the bargaining table.

Why We Remain at the Bargaining Table

Some of you have expressed frustration that the bargaining process is taking too long, or that we have not simply moved forward to arbitration seeking our proposed salary increases. Others have raised the concern that the longer bargaining takes the longer it will take for you to receive any economic increase at all, and/or that we should not worry about anything other than salary during the negotiation of our first collective agreement. We are acutely aware of all of these perceptions and concerns.

In terms of how long it may take to negotiate or arbitrate our first collective agreement, the reality is that bargaining a collective agreement in the federal public sector is a time consuming process (the employer has advised that the average renewal collective agreement in the Federal Public Sector takes in the range of 18 to 24 months, and that first agreements can take even longer). Ontario government lawyers took several years to negotiate and ultimately arbitrate their salary increases in the late 1990s. However, at the same time, we are in no way content to complacently follow these precedents and certainly understand the concerns many of you have over how long it may take to have our first collective agreement in place.

In our first collective bargaining update (April, 2007) we also provided some context and background in explaining why the negotiation of our first collective agreement would likely take some time. We noted that while salary was identified as a very high priority in the collective bargaining survey, it was not the only important issue identified by the membership.

We also explained that, after so many years of DOJ/PPSC lawyers being excluded from collective bargaining, it is vitally important that in negotiating our first collective agreement that we carefully consider the range of important issues impacting on our employment, and ensure that the provisions we end up with reflect our unique situation as lawyers, since what we are doing now will likely become the template and precedent for all of our future collective agreements.

To give but one example of why salary is not the only issue at the table (and without in anyway detracting from the importance of salary increases as our priority at the bargaining table), one of the issues we are dealing with includes our right as lawyers to carry over unused vacation from year to year. Under the employer's proposal – based on negotiated provisions applicable generally in the federal public sector – lawyers would have to forfeit their entitlement to carry over unused vacation time to take in future years in any amount over 25 days, and any unused vacation over this amount (including unused vacation time lawyers have earned over their career), would have to be paid out in cash at the rate of ten days a year. We believe that the employer's proposed approach fails to reflect the reality of workload demands on AJC members, is inconsistent with longstanding past practice, and would be viewed as unfair and unacceptable by many if not most of you.

While vacation carry-over is not directly a salary issue, it is, together with a number of other issues (including, by way of example only, improved access to and transparency of education and training opportunities, stronger entitlement to alternate work arrangements, recognition of our professional obligations as lawyers, improving the fairness and transparency of promotional opportunities and processes, and ensuring that we have a practical and workable grievance procedure) a matter which directly affects the present and future interests and well-being of AJC members. While we may not necessarily obtain the provisions we would prefer in these areas, we do believe it is worth attempting to secure some protection and to make some improvements.

As well, on the salary front, we continue to believe that it is in our collective interests to spend time in educating the employer's bargaining team, discussing and explaining the rationale for our proposal, and responding to the employer's concerns, before concluding that arbitration is the only available mechanism we have to obtain salary redress. In this respect, some of you have suggested that we should save time by simply determining at the outset of our salary negotiations whether the employer sees itself as willing to accept our parity position, and if the employer responds in the negative, proceed to arbitration. However, this is not how collective bargaining works. The reality is that virtually every employer initially does not want to meet the salary and other demands of its employees, and says so at the outset. Bargaining is about taking the time needed to explain and persuade, and to discuss and explore various interests, options and concepts. Indeed, for this reason, the Public Service Labour Relations Act itself provides that the Chairperson of the Public Service Labour Relations Board "may delay establishing an arbitration board until he or she is satisfied that the party making the request has bargained sufficiently and seriously with respect to the matters in dispute." What's more, there are often options and measures available at the bargaining table to advance employee salary interests, which may not be available at arbitration, either because of legislative restrictions on the arbitrator's jurisdiction, or because of the nature of the arbitration process.

As a result, on both the salary front, and in a number of other non-salary areas, we are attempting to move the bargaining process forward as effectively and efficiently as possible.

At the same time, much as we would like to, we cannot entirely control the pace of bargaining. We can control our own progress, and have tried to do so efficiently. We have been prepared at every session with our proposals, and with considered responses to any questions or concerns raised by management. We have demonstrated an ability to draft and redraft proposals in short order. We have also demonstrated a willingness to meet with the employer for as long as it takes to advance the process.

In our view, by contrast, the employer's progress and flexibility has proven to be somewhat wanting. The employer's lack of flexibility includes its refusal up to this point to negotiate or even entertain discussions with us about certain matters it claims to be non-negotiable, including a fair and transparent process for promotions and reforming and improving the way in which lawyers move within the LA salary structure.

The lack of flexibility and slow movement of the employer may also be a function of the limited mandate we believe that the employer's negotiating team has been given. Their team appears to have very little authority to modify their initial proposals without taking considerable time to go back to their principals to receive permission.

Another factor influencing the pace of bargaining is that the employer appears wedded to maintaining the unilateral decision-making authority and discretion it possesses under policies and practices which predate the advent of collective bargaining. As well, the employer is too often seeking to simply replicate the provisions of the PIPSC collective agreement, regardless of the fact that AJC represents over 2500 lawyers, and the PIPSC collective agreement covered just over 100.

We also have concerns about the priority that the employer has assigned to expeditiously concluding the bargaining process. Instead of meeting between bargaining sessions to prepare proposals and discuss the issues, the employer's bargaining team appears to spend significant portions of the days set aside for bargaining doing this work amongst themselves, rather than engaging directly with us across the table. While we have tried to efficiently use any resultant downtime to work on and address some of the many other projects that the AJC has on its plate (exclusions from the bargaining unit, for example), we believe that the meeting habits of the employer are having an impact on the pace of the bargaining process.

In addition, the employer has too often been unable to carry through on commitments it has made to produce information, documentation or counterproposals in advance of upcoming bargaining sessions, which results in unnecessary delay before we can move forward in the bargaining process.

Finally, our time and energies are also directed at trying to educate the employer's negotiating team (which include representatives from Treasury Board, DOJ, PPSC and other agencies employing AJC lawyers), and urging them to recognize the reality that lawyers now have the right to collective bargaining, and that this means the employer will have to accept the notion that a collective agreement will limit its authority while providing for greater transparency, accountability and fairness for lawyers. As you will appreciate, this is not an easy task.

Next Steps

We have scheduled three bargaining sessions in the fall:

- **September 25-27**
- **November 13-15**
- **November 27-29**

We will continue to be vigilant in our efforts to keep the employer focused on our objectives. We will continue in our efforts to bridge the gaps and settle as many of the outstanding issues as possible at the bargaining table, consistent with the interests of the AJC membership. And, at the appropriate time, we will avail ourselves of the next available steps open to us in the negotiation process, including mediation and the final stage of arbitration. But we are not there yet.

We continue to believe that it is in the collective best interests of the lawyers we represent to continue to try to make progress at the bargaining table. Negotiating a collective agreement is very different from litigating before the courts. There is time-tested wisdom behind the labour relations maxim that it is better to make one's own deal than to have it imposed by a third party.

Simply turning the resolution of all of the outstanding issues between the employer and AJC over to a third party board of arbitration at this time would not only be premature; it would, in our view, also be counterproductive to our overall strategic interests. We believe that before turning these issues over to a board of arbitration, which may or may not be sensitive to many of our unique interests as lawyers, we should make every reasonable effort to attempt to work these issues out with the DOJ, PPSC, agency and Treasury Board representatives we are dealing with at the bargaining table.

The fact is that, although it may seem like a long time to some of you, we have only been at the bargaining table in earnest for the past six months. And, while progress has been slow, we still believe that bilateral bargaining provides us with the best opportunity to obtain collective agreement provisions which will work for AJC lawyers.

We are also confident that we are being very ably represented at the bargaining table by Steven Barrett and Marisa Pollock, both of whom are partners at Sack Goldblatt Mitchell.

Both Steven's and Marisa's experience in bargaining is considerable. Steven specializes not just in bargaining generally, but in public sector bargaining in particular. He acts for Ontario government lawyers and articling students, many different groups of physicians, and mid-level Ontario civil servants. Steven has also been actively involved in representing judges in Ontario before the Ontario provincial remuneration commission, and the Supreme Court of Canada.

Bargaining with government can be different from private sector bargaining, and we are very much benefiting from SGM's understanding of the particular dynamics associated with public sector and government bargaining, and their experience in representing professionals.

Most recently, Steven acted for the Canadian Labour Congress in the BC Health Services case, decided by the Supreme Court of Canada in June, 2007.

In that case, the SCC reversed twenty years of jurisprudence, including its own previous decisions, to find that collective bargaining is protected under the Charter of Rights and Freedoms guarantee of freedom of association. This decision represents a historical evolution in the law and a monumental victory for workers and trade unions. It also may have a direct impact on our own bargaining, given the employer's ongoing reliance and expansive view of the legislative restrictions on the scope of collective bargaining in the federal public sector under the Public Service Labour Relations Act.

And we believe that as your dedicated colleagues on the bargaining team, we are providing Steven and Marisa with all of the support and resources that are necessary to ensure that the varied interests of our membership are taken into consideration. Some of us have been employees of DOJ or PPSC for more than 25 years while others have been unionized under PIPSC or have come from the private sector. We have experience as prosecutors, litigators, negotiators, advisory lawyers and legislative drafters and come from across the country. We have 1As, 2As and 2Bs

on the team, representing a range of ages, legal and other experience, linguistic and cultural diversity, knowledge of regional issues and of those emanating from the centre of government.

But we also need your help. We need you to be clear in your support for AJC's bargaining team with your managers. Let your managers know that you have confidence in your bargaining team, that you back the team's efforts, and expect the employer to show the same commitment, preparation and accountability at the bargaining table as they demand of you. Remind them of the need for real and substantial progress at the bargaining table in a variety of areas, most importantly substantially improving the salaries paid to federal government lawyers. Explain to them that you are impatient with the employer and not with the AJC. We must let the employer know that we are resolute in our cause and that we are united in our belief that we deserve better.

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MORE INFO:

If you need additional information about the collective bargaining process, please contact us:

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