



LANGLOIS

AVOCATS - LAWYERS

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Captain Mark Boucher, National President
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Re: Guild Government Ships' Officers Pay Issues
O/files: 214001-0001

Dear Sir:

We refer to our telephone conversations concerning Guild ships' officers pay issues and our subsequent conversations and exchanges with the Guild National Secretary-Treasurer. We understand that several Guild government ships' officers members are experiencing problems in receiving their pay deposits.

We understand that the federal government made an important change to its pay services by replacing its former services with a consolidated system called Phoenix to be operated from Miramichi, New Brunswick. The change was made in view of offering an "off-the-shelf" solution to pay issues, which was to result in "streamlined and modernized" business processes.

Unfortunately, the consolidated system has been the source of several glitches. Some Guild members were not entered into the correct work system in the first place and thus are getting paid less than their base pay entitlement. These and other members are not receiving acting pay or overtime pay but only base pay and some are not receiving the correct allowances or salary amounts even for base pay. Cadet members are not being paid at all while at sea. It is not difficult to imagine the resulting strain on Guild member households.

The Guild has not been idly standing by through this process and has met the authorities on more than one occasion, including the Deputy Minister of the Treasury Board, the Deputy Minister of Defence, the Vice-Admiral of the Canadian Navy, the Acting Deputy Minister of




Fisheries and Oceans and the Commissioner of the Canadian Coast Guard. Some but certainly not all of the problems have been solved following these meetings and, pursuant to the collective agreement for government ships' officers between the Treasury Board and the Guild which expired at the end of the fiscal year in March of 2014 and which is under re-negotiation, several grievances have been filed by or on behalf of the Guild for members still suffering pay shortages.

The problem stems in part from the type of work carried out by Guild members and the way in which pay that is received is confirmed to the member. Paper pay stubs and pay packets are long gone. Direct deposits are made and the amount appears in the member's bank statements but the details of the calculations are not always clear. Guild members work in a variety of operational methods, including lay-day systems where members are several weeks on board and then several weeks at home. These variations in working hours make for variations in pay and require special recognition by the paying service.

The efforts of the Guild have produced some results and many promised results. The government has agreed in principle to refunding bank charges and interest charged to members for over draughts on personal lines of credit. All members are invited to make pay problems known to the Guild. The Guild is aware of those who have grieved under the collective agreement but many Guild members are probably not reporting more minor pay problems to the Guild as their managers are probably promising rectification from one day to the next. Some members may not yet even be aware that they have been short-changed.

We have been asked whether anything more can be done to bring pressure to bear on the government in view of putting an end to the problems that are being experienced. One very effective way for mariners to obtain redress for unpaid wages has for centuries been the arrest of the ship upon which they earned the unpaid wages. This is done by means of an action *in rem* whereby the Federal Court, Canada's admiralty court, has the vessel arrested and the owners pay rapidly once their ship is under arrest. However, this is not possible as Crown ships are immune to arrest so we need to consider alternate possibilities. For example, should members continue grieving on a pay-by-pay basis? Can a complaint be lodged pursuant to the *Public Service Labour Relations Act* (the "Act") with the Public Service Labour Relations and Employment Board (the "Board")? Alternatively, can members simply refuse to work or to work overtime or to fulfill acting positions? We are pleased to set out our thoughts on the way ahead.

First, the grievance process is already underway for several Guild members. We have been shown several from the Newfoundland and Labrador region. They refer to article 35 of the Government Ships' Officers collective agreement. That article covers the right to be paid one's base pay, the right to be paid a supplement for taking an acting position and the right to be paid overtime. It is clear that the intention is to make the government pay regularly and fully the amounts due to a member. In this sense, assuming the grievances or a test case grievance were to be adjudicated, the final award would most likely recognize the obligation



on the employer to pay the agreed wages and the fact that the collective agreement is being re-negotiated does not remove the obligation of the employer to respect the pay rates in place. However, although it would be possible to file a grievance for each short payment, we doubt that such multiplicity of paperwork would be beneficial and rather sending one grievance to adjudication would probably be as juridically effective as sending several.

Secondly, the Act provides a mechanism for complaints to be made to the Board where the employer is not respecting the collective agreement in force or continuing to apply its terms during re-negotiation. The amendments to the Act brought about by the *Economic Action Plan 2013 Act, No. 2*, S.C. 2013, c. 40, transformed virtually all services of Guild government ships' officers into "essential services". The federal government has recently undertaken to revise the Act, especially since the Supreme Court of Canada decision in *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] 1 S.C.R. 245, striking down similar legislation that was considered to be too wide to meet constitutional requirements. Until that time, strikes are not possible for most employees and the government has the obligation to continue to apply collective agreements throughout the re-negotiation period.

We conclude that a complaint could be made to the Board alleging non-compliance with the collective agreement. No bad faith need be proved and the government would likely not be in a position to argue that the collective agreement is being respected.

Finally, with regard to refusing to work, we do not recommend this course of action. At present the Act permits the government to decide what services are essential and those occupying such positions cannot refuse to work through strikes or otherwise. Although the government should be sympathetic to the pay problems of Guild members, it would be risky to recommend to members to walk off the job due to these problems. It is less clear whether Guild members could refuse acting positions, but the same logic would apply. Further, refusing an acting position would allow another employee to assume the position and this could lead to problems re-gaining lost advances once the pay problem is settled. We conclude that taking the matter into one's own hands would not be a recommended solution in the circumstances considering the legislation as presently enacted.

All of this is to say that there are remedies, i.e. adjudication of grievances or filing a complaint before the Board that the government has failed to observe the terms and conditions of the collective agreement. But what would be the effect of a hearing and even of a decision in favour of the Guild? It is likely that the problem would not be settled by a decision. Rather, it will be settled when the government injects sufficient manpower and money to have the problems ironed out. We understand that the Guild is continuing to apply political pressure on the government, in concert with other unions, and will need to decide whether to take a pro-active procedural remedy before an adjudicator or before the Board.

In any event, our services are at your disposal as may be required. We hope this letter will allow you to make a decision on how to move forward and we await your instructions.



In the meantime we remain

Yours truly,

LANGLOIS GAUDREAU O'CONNOR, L.L.P.



John G. O'Connor

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