Professional Dialogue™

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Français ⇨

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Professional Dialogue™

Vol. 1, no. 1, April 2004 Newsletter of the Canadian Association of Professional Employees ISSN 1710-5080

President's Message

Editorial cartoons and front page headlines have made it official: it's public-service-employee-bashing season, again. One could almost smell a federal election in the air. The twist this time around is that politicians are not depicted brunching at the trough,... yet.

Big words are being used: unacceptable, scandalous, not nice. Suddenly, union words that died in the vacuum of parliamentary committees, like whistleblowing and accountability, are being used with reverence by journalists and other respected citizens. Academics are being dusted off for their theories on democracy and governance. Our world resonates with cries of "the sky is falling, the sky is falling"...

In the background, 160,000+

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In This Issue

CAPE Budget in Perspective

The creation of a new federal public service union, CAPE, has resulted in an Association of nearly 10,000 members. Based on the current rate of dues ($23.00 per month) this organization is capable of generating revenues of approximately $2.8 million a year.

The current dues level of $23.00 per month was based upon the rate of dues which SSEA, a predecessor organization of CAPE, had established and maintained for over 12 years. This level is one of the lowest of any federal government bargaining agent. In contrast, the level of dues of the Professional Institute of the Public Service of Canada (PIPSC) is approximately $47.00 per month, and those of the PSAC are substantially higher than that, when national, component and local charges are taken into account.

At issue for CAPE is the question of whether or not the current level of dues is sustainable, particularly in light of the major changes to labour relations arising from human resources modernization. Historical evidence suggests that the CAPE level of dues ($23.00), was not even sustainable in the medium term for the former SSEA. In its last approved budget, SSEA had forecast continued deficits for two years, exceeding $650,000, and consuming 2/3 of its surplus. So, while the merger of CUPTE with SSEA created additional reserves to forestall an inevitable increase, it would seem that such a low level of dues is not sustainable.

To adequately address this question it is necessary to review those expenditures incurred in the fiscal year 2003/04, and those that will be incurred in the fiscal year 2004/05, which result from the merger of the two organizations. Removing these one-time transitional expenses would allow for the examination of any long term structural deficit, and indicate the magnitude of any adjustment to the level of dues.

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federal public service employees are busy at work. Managers are managing. Translators are translating. Statisticians are analysing. Economists are advising. The work goes on. With a dependable regularity and commitment to Canadians that serves as a contrast to a foreground of pandemonium, the work goes on.

Let's be clear about the seriousness of the issues: the "creative" redirection of Canadian taxpayer dollars is serious, very serious. Ineptitude, irresponsibility, neglect and dishonesty are serious matters. Let it be understood that we sincerely hope that the handful of public service employees, and politicians, involved in the patronage scandal are identified and treated justly. Yet, it is truly regrettable that so many thousands of honest Canadians, Canadians serving Canadians, are being besmirched by the broad condemnations that serve to make political campaigns and sell newspapers.

A show of hands: who ever thought that the sponsorship program was pristine?...

Now, who thinks that the sudden concern is not politically motivated? Irregardless of motivation, the matters must be pursued. But motivation goes a long way to explaining why concern is being expressed in the wake of a changing of the guard on Parliament Hill and on the eve of an expected election. Motivation will also explain why little care has gone into protecting the innocent and allowing the entire public service to be caught in a net of suspicion. Is it so difficult to say that there is a problem; that the problem is localized; that the guilty will be pursued and required to account for their actions?

If you want to know the real public service, read on.

The real public service works 24/7 throughout Canada and around the world, to provide services directly to Canadians.

The real public service translates the political will of government into practical action, as confused as it may get when the winds of popularity start twisting. The real public service is on a Coast Guard ship, in a laboratory and in Iraq. The real public service is making decisions for

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CAPE Budget, cont'd from page 1

From the Projected Budgetary Deficits Table which follows, the Association will be sustaining deficits in each of the next two fiscal years with a cumulative total of $1.97 million. This represents approximately 54% of the Association's reserves of approximately $3.6 million. Should these projected deficits be realized, the Association's reserves will be reduced to approximately $1.63 million. The factoring out of transition costs shows a structural deficit in the second year of approximately $576 thousand.

Given the structural deficit and remaining reserves, it would be prudent for the next elected National Executive Committee to undertake a strategic review of the Association's finances. The magnitude of the deficit suggests a need to increase dues by approximately $5 per member per month. This would generate approximately $600,000 in additional revenues.

Table 1: Projected Budgetary Deficits

	2003/04	2003/04
Surplus (Deficits)	$(1,295,320.00)	$(676,430.00)
Transition Cost	$679,660.00	$100,390.00
Structural Surplus (Deficit)	$(615,660.00)	$(576,040.00)

Naturally, the membership has the final say on what dues they choose to pay and indirectly what services the Association provides. Should dues not be increased, then the Association, given its long term contractual obligations and its major expenditures (management and staff salaries and employee benefits, representation and accommodations) would have to consider cutbacks in services, service standards, representation, communication activities and staff levels. However, even with an increase of $5 per member per month, the Association would still offer its members one of the lowest rates of dues for any federal bargaining agent.

President's Message, cont'd from page 2

the well being of Canadians, and standing up to be counted. The real public service is making my life better. The real public service is making your life better.

Unpaid Overtime

Next to my pile of undiscriminating press clippings sits CAPE's study of unpaid overtime. The study was produced from information that was collected by the *2002 Public Service Employees Survey*. The purpose of CAPE's study is to explore the status of information on the issue of unpaid overtime. The study concludes from available information that, while data that can actually identify the causes of unpaid overtime is not available, there is more than enough evidence that shows that public service employees are carrying out a significant amount of work for which they are not remunerated, in spite of the clear entitlement spelled out in their respective collective agreements: 43% of respondents answered that they had worked unpaid overtime in the course of the year prior to the survey. The questions that remain are: why, and, by what process are they brought to a situation where they work extra hours for free. The issue is of particular importance to CAPE. While 39% of SI employees had worked unpaid overtime, a whopping 67% of ES employees reported that they had worked unpaid overtime.

It is expected of public service employees that they commit themselves to their work during their regularly scheduled hours of work. But the collective agreements signed by public service unions and Treasury Board make it clear that any work required above and beyond normal hours is to be remunerated as well. Legally, there is no such thing as free work, nor should there be an expectation of such. Currently, CAPE is at the bargaining table with Treasury Board, negotiating improvements to the collective agreement that regulates the working conditions of our ES and SI members. The issue of unpaid overtime has been raised at the table. CAPE has tabled a proposal for a joint study of the issue, as it pertains in particular to our ES community.

CAPE has argued that the issue of unpaid overtime will never be addressed effectively until appropriate resources are committed by the employer to study the problem, as well as its ramifications.

What are the direct health issues? What are the issues in terms of balancing work and personal life? What are the issues of human resources management? What are the issues of management accountability?

Will there be a study? Hopefully, we won't have to wait for when pigs fly.

Luc Pomerleau Resigns as CAPE TR Vice-President

It was with regret that the CAPE National Executive was advised that M. Pomerleau would be resigning his position as TR Vice-President, effective the end of February, 2004.

True to his ongoing commitment to the union movement within the federal public service, M. Pomerleau planned his departure so as to allow for the smoothest possible transition. "*M. Pomerleau will be sorely missed. His challenging intellect and his vast knowledge and experience have helped to make CAPE the organization that we have today. We wish him the best of luck in future endeavours*," said CAPE President Bill Krause.

The CAPE National Executive will select one of the remaining TR Directors to fill the vacancy left by M. Pomerleau's departure.

Classification Reform

About three months ago, we came to learn that the employer is aiming to produce a first draft of a new classification standard for the EC Group by March 31, 2004. Regrettably, we did not learn this directly from the employer, but through discussions with another Association that has what can best be described as remote connections to the EC Group.

While the employer has never promised we would be equal partners, they have consistently advised us that they are keen to have our participation and input. But how can we have faith in their promises when something like this happens? The first draft is a major milestone in the process, but we appear to be so unimportant that we did not even receive the courtesy of being directly informed, as would befit our status as a principal player in this exercise. Our confidence in the employer's oft stated desire to intimately involve CAPE in the creation of a new standard has been severely undercut.

And frankly, despite our desire to see a new standard, CAPE is not very interested in playing the traditional union supporting role in its development. Since the demise of the UCS exercise and the advent of classification reform, CAPE has taken the position that a new standard should be co-developed by the employer and ourselves. At every opportunity we have made this point (simply put, co-development gives the partners equal control over the final product submitted to higher authority for approval).The employer has strongly resisted our position and, in fact, advised us orally on February 19, 2004 that the standard would not be co-developed. We have since asked for confirmation of the employer's position in writing.

If the employer is truly concerned about the welfare of its employees and has a real desire to produce a useful standard, we must be included as meaningful partners in the design process. In our view, being a meaningful partner is not synonymous with allowing the employer to "cherry-pick" from our suggestions, as they seem to want to do.

Now that we have been limited to some lesser level of participation, we will need to seriously consider our options. At the moment, while waiting for the employer's written confirmation of their co-development position, we are continuing our analysis and waiting to see what they come up with. We have no desire to let the employer claim our involvement when our ability to influence the outcome appears to be so negligible. After all, as much as we might think the current standards need modernizing, the majority of our members are not being hurt by them, and first and foremost, we are in the business of protecting our membership.

If the employer is truly concerned about the welfare of its employees and has a real desire to produce a useful standard, we must be included as meaningful partners in the design process.

Despite our reservations about the employer having total control, and their ability to produce a useful standard, we have consistently advocated the need for classification reform in the public service. The current system is so old and so locked into old standards and values that it is totally unable to respond to the needs of the 21st Century. Work has changed significantly since the introduction of the legacy standards over 30 years ago, and it is still changing. Hand in hand with that, the way that the value of work is measured is changing, as is the way that our members want to be compensated. To cope with these changes, we need a system that can be both responsive to those changes, and fair.

In the particular case of our EC bargaining unit, there is an urgent need for a new standard. Reaching this conclusion is simple: one just needs to look at the facts. We have one collective agreement with a harmonized pay line covering two legacy bargaining units, the members of which are being appointed to

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Classification Reform, cont'd from p.4

positions (with identical pay rates and terms and conditions of employment), the classification of which is determined using two totally different legacy standards that do not even use the same elements to determine the rating. Even where the elements have the same title, such as supervision, the scales and point ratings are entirely different. The current legacy standards are virtually incapable of fairness: effort is only just discernable and conditions of work are not even mentioned.

The standard which CAPE envisages will be completely capable of easily rating the work our members perform. It will be able to rate all elements of their work using the tools and parameters that are applicable. It will be capable of distinguishing between the levels of skill, effort, responsibility and conditions under which the work is performed without the need for subjective interpretation of the work that has been so much a part of the process in the past.

We believe that all of our goals for this review are worth stating clearly so there can be no doubt as to our position:

- to ensure the work of our members is properly valued;
- to ensure a standard capable of properly valuing the future work of our members;
- to allow and support appropriate and fair levels of compensation…

We've said it before, and we'll say it again; if the employer truly wants to produce an effective classification standard for the EC Group, they would be well advised to avail themselves of our knowledge and expertise.

The Duty to Accommodate

The duty to accommodate is a right and concomitantly a principle of work place management, recognized by two major pieces of legislation in Canada: the Canadian Human Rights Act *and the* Employment Equity Act. *The purpose of the duty to accommodate is to ensure that the work place is open to all employees, that all employees can function without barriers to their work and careers. The primary responsibility for accommodation belongs to the employer.*

The employer must organize and manage the work place in such a manner that all barriers are removed. In the event that the requirements of work do not allow removing some barriers, then the employer is obligated to accommodate individuals that could be adversely affected by the barriers. The employer must take whatever measures are needed to accommodate, to the point of undue hardship. The courts have defined undue hardship in very broad terms, whereby the employer is expected to assume practically all costs short of a threat to its financial viability. The only other legitimate limitations are the health and safety concerns of the work place.

All employees have a right to dignity in the work place.

While the employer has the principal responsibility of ensuring an inclusive work place, other parties are also responsible in their own way. In the federal public service, public service unions are responsible for participating in the review of employment systems, advising and representing members, giving precedence to human rights obligations over the terms of their respective collective agreements, and assuming a degree of hardship in their own operations for the purpose of facilitating accommodation.

In addition, employees in the work place are also responsible to the extent that they must lend support and facilitate initiatives meant to create a fully inclusive work place. They may initially feel that some measures taken to break down barriers have the effect of reorganizing aspects of work in ways that are inconvenient.

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Duty to Accommodate, cont'd from p.5

However, over time comes a familiarization with operations and employment systems that eliminate barriers, and an attendant reduction of the feeling of inconvenience. Moreover, resistance to inclusiveness itself would be discriminatory and could lead to sanctions.

In instances where the employer is taking specific actions to accommodate an employee, the accommodated employee has his or her own responsibilities. These include providing information and participating in the exploration of various means to make the work place respectful of individual needs.

Practically speaking, accommodation actions will often require balancing competing interests, but always in the context of respecting the human rights of all individuals involved. All employees have a right to dignity in the work place. Employees have a right to equal opportunity. Employees have a right to an inclusive work place. Such is the duty to accommodate.

Are we there yet? The Saga of Co-development

An alternative to consultation: collective bargaining

The modern history of labour-management relations in the federal public service begins in the mid-nineteen-sixties with Parliament's recognition of the right to collective bargaining for federal public service employees.

In 1967 Parliament passed the *Public Service Staff Relations Act*, "an Act respecting employer and employee relations in the Public Service of Canada." The Act empowered employees with the right to organize and to meet with management at a bargaining table in order to negotiate terms and conditions of employment.

Prior to this, employees and their organizations could not negotiate, they could only be invited to consult on terms and conditions of employment. Management could give consideration to views expressed by employees and their organizations, although there was no obligation for the employer to reconcile management and employee interests. In the event of a conflict of interests, or even of an inconvenience, management could answer "thank you very much" and continue with whatever it had originally intended to do.

For most public service employees who were around at the time, the '90's will be remembered as the decade of legislated wage freezes, increment freezes, suspension of collective bargaining, suspension of recourse to arbitration, and back to work decrees.

By its very nature, the consultation process did not impose upon management an obligation to address in good faith concerns expressed by employees. Management's decision was final. There was no recourse for employees or their organizations. While some managers engaged in what has been called meaningful consultation where they actually listened and considered views that may have been at odds with their immediate interests, the default decision-making process remained the same: management decided.

The *Public Service Staff Relations Act* introduced a second process to address labour-management issues in the federal public service: collective bargaining. The Act recognized two parties: management and

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Co-development, cont'd from page 6

employee organizations or bargaining agents. It established the dispute resolution processes for situations where the parties reached an impasse at the bargaining table: arbitration, and conciliation-strike. By establishing dispute resolution processes, it recognized the legitimacy of the respective interests of management and employees. In the end, the final decision would be either the decision of both parties, or the authority of the decision would be delegated to a third party, an arbitrator.

The Act identified general processes and parameters for the parties to engage in bargaining. The general rule was that the parties could agree to whatever they wished. However, the Act also included provisions prohibiting the negotiation of specific issues and of issues in defined circumstances. Three issues stood out as particularly important exceptions: classification, staffing and pensions. The battle waged over these exceptions became an important current in labour-management relations in the federal public service over the next 30 years.

Crises and Reform

The battle took on prominence at the end of the 1990's, following a series of employer imposed crises. Remember the '90's? For most public service employees who were around at the time, the nineteen-nineties will be remembered as the decade of legislated wage freezes, increment freezes, suspension of collective bargaining, suspension of recourse to arbitration, and back to work decrees, all on a background of program reviews and major cuts that resulted in reducing the public service by over 25,000 jobs. During these years, public service bargaining agents fought back with some success to protect their members to the extent that the laws allowed. But it was becoming abundantly clear to everyone, including third party observers, that labour-management relations were fundamentally skewed against public service employees and their organizations.

Federal public service employees and managers are committed to delivering, regardless of the political landscape.

Moreover, it was clear that the very unevenness of the power relation was responsible for the conflict-ridden and near-sighted approach to problems adopted by government and many managers during the decade. Ironically, in terms of its relations to labour public service, management was less effective because it was too powerful. Government was less effective because management was less effective. Management was abusing its ability to change laws rather than trying to address problems constructively. There were elections to be won, and the Finance Ministers of the time were going to do it at the expense of a few targeted groups of Canadians, including federal public service employees. "Cut" was the word; and cut into the fabric of Canada they did, including the web of operations that kept the public service working.

When the dust settled at the tail end of the decade, public service managers who were proponents of modern human resources management began to exert greater influence on the course of labour-management relations. They had lived through the '90's caught between the exigencies of being on an antediluvian management team and sympathy for a more respectful approach to employees. Now they still were not in the majority. But they could exert some influence. In 1999, the Treasury Board Secretariat established the Advisory Committee on Labour Management Relations in the Federal Public Service (Fryer committee), a committee of former labour and management representatives. The committee released its report in June 2001, unanimously supported by all members of the committee. There were thirty-three recommendations, including a recommendation for a new process of labour-management relations to be added to the existing processes of consultation and collective bargaining: co-development. The report also included a recommendation for the co-development of classification, staffing and pensions. The significance of these two recommendations lay in the definition of co-development. The committee defined co-development as a labour-management process whereby impasses could be resolved through referral to a third party for decision. In short, the default setting for the process whereby the parties should

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Co-development, cont'd from page 7

address classification, staffing and pensions would not be a decision by management. Either both parties would agree, or the decision would go to an arbitrator.

The report was handed over to the Task Force on Modernizing Human Resources Management in the Public Service, chaired by Ranald Quail. The task force reviewed the report as part of its mandate to recommend a modern human resources management legislative and institutional framework. The task force conducted further consultations with bargaining agent and management representatives. The result of the task force's work was Bill C-25, which would become *The Public Service Modernization Act (PSMA)*, first tabled in the House of Commons on February 6, 2003.

The PSMA amended four pieces of legislation, including the Act that gave birth to collective bargaining in the federal public service, the *Public Service Staff Relations Act*. The Act was renamed the *Public Service Labour Relations Act* (the PSLRA becomes effective some time in the Fall of 2004).

Co-development appears in the Act as a form of consultation. The default decision-making process is a management decision. No requirement for agreement of the parties. No impasse resolution process. No referral to a third party. What happened?

A Bone: Section 11

The co-development process defined in the Fryer report was just too much to expect. Bottom line... there are, and can only be, two types of labour-management decisions: the unilateral management decisions of the consultation process, or the shared decisions of the bargaining table. Co-development cannot be a third option. It can only be a variation of either consultation or bargaining. The Fryer report's recommendations made clear where the committee stood: co-development should be a form of collective bargaining. In what would amount to interest-based bargaining, the parties should meet as equals to resolve work place problems through a thorough exploration of the issues. Co-development of this nature would establish a more balanced relation between management and bargaining agents. It would make another era of crises less likely. But the cost to management would be to accept co-development initiatives as human resource initiatives based on shared decision-making authority and on the principle of truly reconciling management and employee interests. In terms of process, it meant accepting a dispute resolution process.

Most public service managers (read most Deputy Ministers), were not prepared to share decision-making authority. Regardless of what third party observers have said, regardless of the recommendations of former public service managers and bargaining agent representatives on the Fryer committee, regardless of the personal leanings of the members of the Quail Task Force, or of some legislators, regardless of what recent history has taught us all, they were not prepared. It is almost as if the federal public service would need to go through the full cycle of yet another era of crises in order to create conditions where managers who are committed to modernized human resources management will be allowed to drive the employer's agenda. Do we need to go through the grind yet one more time before public service management is truly modernized?

Most public service managers (read most Deputy Ministers), were not prepared to share decision-making authority.

It may yet be possible to avoid the troubles experienced in the '90's. Three conditions are different this time around. Firstly, bargaining agents are more united, more experienced and better prepared for the problems that are anticipated for the coming years. Secondly, the proportion of managers, including Deputy Ministers, truly committed to modernization and its sharing of authority with bargaining agents is significantly greater now than ten years ago.

The third condition is Section 11 of the PSMA. Section 11 reads:

> *"Co-development of workplace improvements by the employer and a bargaining agent may take place under the auspices of the National Joint Council or any other body they may agree on."*

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Co-development, cont'd from page 8

Enabling the co-development of workplace issues under the auspices of the National Joint Council is not an insignificant move, in that the NJC By-Laws allow for referral to a third party in the event of an impasse. The limitation here is that both parties must agree to the referral, which means that the employer, as well as the bargaining agent, have a veto over the referral. In other words, unless both parties are truly committed to sharing decision-making power, there is no referral. Both parties can also opt out of discussion of the issue, which means that the decision falls back to the default of a management decision.

Section 11 also allows co-development to take place under the auspices of "any other body they [the parties] may agree on." Again, the employer has veto power over the choice. But, what if management accepted co-developing a human resources initiative under the auspices of the Public Service Staff Relations Board or a similar entity? The result would be an impasse resolution process; and the impasse resolution process would be referral to a third party decision. In short, we would have co-development as a form of collective bargaining rather than as a form of consultation.

The likelihood of management agreeing to invoke Section 11 is commensurate with its commitment to modernization and its wish to manage crisis with an eye to the long term effects of its decisions. With new political masters interfering for the purpose of weeding out past political interference it will not be easy to manage the business of government. Canadians rely on the steadfast delivery of public services. Federal public service employees and managers are committed to delivering, regardless of the political landscape. It would certainly be easier with a true co-development of the many human resources initiatives that are planned for the next few years. But,...are we there yet? (For further analysis of the repercussions of the PSMA, please read "The PSMA, Beyond Consultation and Co-development", on page 13 of this edition of "Professional Dialogue"). ●

TR Negotiations

After a successful round of collective bargaining, the TR group came away with a collective agreement and a pay equity agreement which met with the near unanimous approval of the TR membership.

The results, tallied on February 20 were 99.88% in favour of accepting the tentative agreement, and 99,88% in favour of accepting the pay equity agreement. An exceptional 87% of members eligible to vote returned their ballots.

The agreements were signed on February 23, 2004. The two year collective agreement, ending April 18, 2005, gives TR members annual salary increases of 2.5%, the first one retroactive to April 19, 2003 and the second one coming into effect on April 19, 2004. Parties had previously agreed to an early implementation of new compensatory leave provisions in June 2003. The remainder of the agreement came into effect on February 23, including a new leave for employees on travel status, a new personal leave, a new volunteer leave, and provisions for rounding-off overtime in 15 minute increments.

"The entire Association would like to congratulate Chief Negotiator Luc Pomerleau and the entire Negotiating Committee on their splendid accomplishment," Association President Bill Krause.

The new collective agreement also provides for the formation of a

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The EC Group's Patience is put to the Test

The EC contract ended in June 2003. The Collective Bargaining Committee, composed of 18 members of the EC community, spent a significant amount of time and energy throughout the spring of 2003 in preparation of negotiations, and were ready to arrive at the table fully prepared in early summer.

The Treasury Board requested that we postpone the first exchange of proposals until the fall of 2003. We agreed to the delay and collective bargaining began in September. The EC Collective Bargaining Committee has selected from their ranks a Negotiating Team which sits at the bargaining table across from Treasury Board. CAPE President Bill Krause is Chief Negotiator, and CAPE's Research Officer Hélène Paris acts as researcher and advisor.

After a series of uneventful bargaining rounds, the Employer tabled its pay proposal and provided a response to our key demands in February 2004. The February round of EC negotiations ended on a disappointing note, as the Employer tabled a pay proposal of 1.75%, 1.25% and 1.25%, in each year of a three year agreement. The EC Negotiating Team has digested this as a preliminary offer, structured along the same lines as those being received by other federal public service bargaining agents. However, it does not address our restructuring proposal, our relativity problems with other groups, and does not even come close to catching up to inflation. Your Team is also very concerned with the Treasury Board's new costing methodology: the cost of improvements to current entitlements will now be deducted from the pay increase envelope.

We have not broken off the talks yet as there are still outstanding items that remain on the Table. When negotiations resume in April 2004, we will have a clearer idea if a negotiated settlement is possible or if we proceed to arbitration, where unresolved issues are presented to a neutral third party for a binding decision.

The February round of EC negotiations ended on a disappointing note, as the Employer tabled a pay proposal of 1.75%, 1.25% and 1.25%, in each year of a three year agreement.

Key demands regarding issues such as vacation, training, overtime and family-related leaves are still outstanding. The Employer is still refusing one of our key proposals: that a joint study be conducted by the parties into the issue of overtime, unpaid overtime in particular. The *2002 Public Service Employee Survey* revealed that ES employees are one of the principal groups that suffer from issues relating to overtime, including working extra hours without compensation. The *2002 Public Service Employee Survey* results revealed that:

- 53% of ES respondents were not compensated in the past year for the overtime that they worked;
- 47% of ES respondents did not feel they could claim overtime compensation for the overtime hours that they work;
- 45% of ES respondents cannot complete their assigned workload during their regular working hours;
- 35% of ES respondents felt pressure from others to work more than their regular hours;
- for 50% of ES (and 49% of SI respondents), staff turnover has been a significant problem in their work unit during the past three years.

Details of the proposals and the progress of negotiations can be found on the CAPE Website at www.acep-cape.ca.

Collective Bargaining

Library of Parliament

CAPE represents Analysts and Research Assistants in the Research and Library Services Group at the Library of Parliament.

These analysts and research assistants will receive one last salary increase of 2.5% on June 16, 2004 before their three year collective agreement expires on June 15, 2005. This collective agreement also saw a 2.9% increase on June 16, 2002 and a 2.5% increase on June 16, 2003. In addition, on June 16, 2002, an extra increment was added to the top of the Research Assistants pay scales whereas the maximum of all other employees' pay scales was increased by 2%.

Either party, the Library of Parliament or the Association, may give notice to bargain a new collective agreement within a period of two months before the expiry of the collective agreement. Around this time next year, CAPE will be seeking volunteers to participate on the bargaining team and will canvass all employees of the bargaining unit on their bargaining priorities.

Labour Relations Update

One of the most significant services provided by CAPE is Representation. The 6 Labour Relations Officers currently working at the CAPE National Office carry significant workloads, and often produce impressive results…

- The Association successfully represented a member who obtained a mediated settlement worth $25,000.00. This mediated settlement resolved matters stemming from a grievance against the employer on the grounds that the accommodations and disability needs of our member were being violated in accordance with our Collective Agreement, No Discrimination and the Canadian Human Rights Act. The monetary settlement that the department agreed to included wages, accommodation instruments, and professional development training.

- The Association successfully represented a group of members who filed grievances regarding Commuting Assistance Allowance. The grievances were originally filed in October, 2002, against the Department's decision to revoke the employees' Allowance in February 2002. The Department's reasoning was based on a study that was published by PWGSC in February 2001 which concluded that due to the availability of houses near the location of the two institutions in question, the employees no longer qualified for the allowance.

  In reviewing the report we noticed that vacant lots were included and projections were used in that builders would built houses on those lots shortly. Our argument at the NJC committee that was scheduled on January 8,2004, was that the vacant lot should not form part of the calculation, simply because the houses are not yet built. The grievances were upheld, and the allowances reinstated. The employees will receive approximately $1,000.00 each to cover for the allowance retroactive to February 2002.

- The Association successfully represented a member regarding appointment to an acting position. Despite the fact that the acting position was to be terminated two weeks following the scheduled hearing of the appellant, we obtained substantial gains for the employee, including $10,000.00 worth of training over the course of two years, including three days of self-directed training. In addi-

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Labour Relations, cont'd from page 11

tion, the Association successfully negotiated an arrangement by which the member occasionally assumes the duties and responsibilities of the higher level position, thus allowing the member to gain experience.

- The Association successfully represented a member who filed a grievance regarding entitlements to acting pay and issues surrounding classification. Despite numerous attempts by the member to resolve this matter over a 4 year period, the department conceded on the acting grievance, and as a result of negotiations between the Association and the department the department awarded our member acting pay at the higher level for a period of 15 months.
- The Association successfully represented an ES-05 in a classification grievance hearing. The member's grievance was allowed, and the member was reclassified to the ES-06 level, retroactive from January 2004 to September 1998.
- The Association successfully represented a member in two grievances addressing two separate disciplinary actions. The grievances were allowed, and a discipline-free employment record has been restored to the member.
- The Association successfully negotiated a telework agreement, an employer requested relocation, and reimbursement of 7 months of leave, in addition to reimbursement of sick leave, on behalf of a member who found that the conditions in their office had deteriorated to such a point as to be unsalvageable.

TR Negotiations, cont'd from page 9

Joint Labour-Management Committee to study the Interpretation and Parliamentary Translation Directorate (IPTD).

The pay equity settlement provides for a series of yearly pensionable lump-sum payments from 1990 to 2003, totaling $17,745 for a TR who worked full-time during the whole period, plus a salary increase for all TRs, amounting to $3,845, which constitutes the final pay equity adjustment retroactive to April 19, 2003 and subject to the 2.5% increase mentioned earlier.

"We are very pleased to have obtained these two pay settlements on behalf of our members – especially in light of recent developments at other public service negotiating tables," said Chief Negotiator Luc Pomerleau.

For further information on these agreements, please visit the CAPE website at www.acep-cape.ca, and visit the TR Members' News section. In addition, the employer and the Association have prepared a FAQ regarding the pay equity settlement, which can be found on the Treasury Board site, at http://www.tbs-sct.gc.ca/wnew/PayEquity/tr/petrqa-pstrqr_e.asp

The Financial Incentives Plan has undergone a less auspicious round of negotiations. The interests expressed by the employer on February 25 put a stop to talks aimed at renewing the plan. Essentially, the employer's position is that a maximum of 25% of all TRs should receive an incentive and that the Operations threshold must be established accordingly. In the year 2002 – 2003, 77% of TRs in Operations received an incentive. To bring that proportion down to 25% for all TRs, the multiplier used to calculate the threshold in the Operations part of the Plan would have to be modified to 3.25, from the current 2.59. The employer believes that the average incentive paid out to eligible TRs should be $2,000.00. In 2002 - 2003, the average incentive was approximately $5,600.00. The employer believes that the cap on incentives payable to a TR must be set at 10% of the employee's compensation, or $7,400.00 for a TR-03 at the top of the scale. In 2002 – 2003 the maximum achievable incentive was approximately $25,000.00.

Following receipt of these proposals, the TR Negotiating Committee submitted the offer to the membership for a consultative ballot (under CAPE's Constitution, the FIP's Bargaining Committee has the authority to ratify an agreement on behalf of members). The employer subsequently contacted the TR Negotiating Committee and invited them back to the table. At the time of this printing we are awaiting the outcome of both of these processes.

The Public Service Modernization Act - Beyond Consultation and Co-development

In the emaciated form that the concept of co-development takes in the PSMA, the process of shared responsibility and shared power in the development of policies, espoused by the Fryer committee, is reduced to just another form of consultation. This new form requires large commitments of resources from bargaining agents, with no sharing whatsoever of the decision-making power on contentious issues.

And there are other changes that come as a result of the PSMA. The Act allows lawyers of the department of Justice and of the Canada Customs and Revenue Agency to bargain collectively, and it allows employees of Treasury Board (and now also employees of the Public Service Human Resources Management Agency) to be represented by public service unions.

The Act establishes the low standard of reasonableness for termination of employment or demotion on the grounds of unsatisfactory work.

The Act empowers the employer to withhold the union dues of an employee from its bargaining agent if the employer applies to the Public Service Labour Relations Board for the managerial or confidential exclusion of the employee's position from representation by a union. In the past, dues continued to flow to the bargaining agent until a final decision was rendered at the end of the process by the Board.

There are many more changes to the Public Service Staff Relations Act, several directed quite obviously at making it more difficult to call a strike where a bargaining agent has chosen the strike-conciliation option rather than arbitration for resolving impasses at the table.

In addition, the Act allows the employer to permit the use of employer premises for union meetings and to permit employees to attend to union business during work hours without a deduction to pay. The Act requires that Deputy Ministers establish an informal conflict management system for their respective departments. The Act stipulates that the employer can establish, in any particular policy, a requirement that an employee choose either to avail himself or herself of the complaint procedure established by the policy or file a grievance, not both. The Act allows group grievances, policy grievances and grievances against deployment decisions. The Act establishes the low standard of reasonableness for termination of employment or demotion on the grounds of unsatisfactory work, makes all adjudicator decisions final and binding with no right to appeal in any court, prohibits employees from taking civil actions against the employer on matters of terms and conditions of employment.

In as much as CAPE has serious reservations about several changes to the Public Service Staff Relations Act *cum* Public Service Labour Relations Act, in general the organization has been able to support the final package which on balance is positive. However, CAPE has more than reservations about aspects of the new Public Service Employment Act. The Act is very troublesome.

The first concern is in regards to the deletion of a part of the old version of the PSEA: until the new Act comes into force some time in 2005, the employer is obligated to examine first whether it could fill positions from within the public service before asking the Public Service Commission to recruit from outside the public service. That requirement has been deleted. The concern for CAPE and other bargaining agents is that employees, our members, will no longer be able to plan for career progression in the public service. External recruits will jump in ahead of current employees, rather than starting at the bottom of the promotion ladder. Promotion

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PSMA, cont'd from page 13

opportunities will be blocked as the employer recruits more and more from outside, a process that is less cumbersome than internal recruitment.

The merit principle has been redefined in such a way that the fundamental staffing process... will be based on the notion of individual merit which represents a disincentive to holding competitions.

Secondly, the merit principle has been redefined in such a way that the fundamental staffing process in the public service will be based on the notion of individual merit which represents a disincentive to holding competitions. The new Act even allows a manager to consider a single person for a position without asking whether other persons in the work place would be as good a fit or better qualified. And if you don't like a staffing decision, good luck. The only grounds that you can invoke are abuse of authority, and failure to have qualifications evaluated in the language of choice.

The Public Service Commission will be able to delegate to Departments not only the authority to make appointments, but also the authority to revoke appointments, and to take any corrective actions further to a complaint. A new Public Service Staffing Tribunal will be responsible for hearing most types of staffing complaints, including complaints based on allegations of discrimination, according to the definition of the Canadian Human Rights Act. However, the Tribunal cannot order an appointment nor can it order that a new appointment process be conducted.

Finally, a strong privative clause similar to the equally strong private clause that was added to the PSLRA makes the decisions of the tribunal final and binding; only decisions that raise a question of jurisdiction or that are "patently unreasonable" will be appealable to the Federal Court. Thus, very few decisions will go to Federal Court.

The Public Service Modernization Act and the Public Service Employee

In practical terms, what will the changes to the juridical parameters of labour relations and employment matters really mean to a public service employee? Firstly, it will be more difficult and more costly for

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Upcoming Stewards' Training

If you are a Steward or a member of the Local Leadership, and wish to participate in any of the following programs (and have not done so in the past five years) please contact the CAPE National Office to express your interest.

English Programs:

Stewards' Training: May 12, 13, 2004
Know Your EC Collective Agreement: May 14, 2004
Know Your TR Collective Agreement: May 14, 2004

French Programs:

Stewards' Training: May 26, 27, 2004
Know your EC Collective Agreement: May 28, 2004
Know your TR Collective Agreement: May 28, 2004

PSMA, cont'd from page 14

bargaining agents to protect employees' rights and promote their interests. Increased work in the areas of consultation, support to locals, so-called co-development initiatives, new types of grievances, etc. will strain union resources. The underlying theme of the PSMA is engagement without power. To resist the absorption of unions into the rationale of management, bargaining agents will need to review their allocation of resources and the efficiency of their internal control processes.

The role of a bargaining agent must remain the role of advocate. A bargaining agent exists for the members, to protect, defend and promote. If these actions can be undertaken in fora where dialogue is encouraged, then so much the better. However, the jury is still out on whether the PSMA will allow, let alone encourage, such positive relations. CAPE's assessment is that the PSMA will encourage engagement but at the cost of advocacy, unless bargaining agents tool themselves well with the professional resources to counterbalance the skewed relations established by the new legislation.

What's more, there is serious reason to be concerned about the prospects of career development within the public service. There will be plenty of staffing actions. But who will be allowed access to jobs? If competitions become a rarity and the bulk of appointments are made on the basis of individual rather than relative merit, as all observers have predicted, who will be allowed to have a fair chance to build a career in the public service? Will careers be determined by the good will or short term interests of managers?

This last question is not simply a cynical union response. The PSMA also makes changes to the Financial Administration Act (FAA). The key change to the FAA is a general delegation of power from central agencies such as Treasury Board, to Deputy Heads, who are empowered to further delegate down to line managers. In the new federal public service, the manager can potentially wield a considerable amount of power and authority, much more than in the past. The intent of the PSMA is, according to the often used expression, to "let managers manage." Training staff does not necessarily translate into a benefit for a manager, though it represents an important contribution to the general health of the public service. Will line managers be able to factor into their management decisions the general well-being of the public service while managing the immediate operations for which they are responsible and assessed?

Public service employees will need to actively pursue training opportunities, including language training and management training. It will become important for employees to take advantage of monies set aside for improving employee skills. Not only will they make themselves more attractive to managers staffing new positions; but they will also make it less attractive to go outside the public service to fill positions, as the employer will need to show benefit from its training investment in staff. In fact, the competitions in the future may not be for appointments. Public service employees may be "competing" for training opportunities.

In as much as CAPE has serious reservations about several changes to the PSMA...in general the organization has been able to support the final package.

Not surprisingly, the fourth piece of legislation affected by the PSMA is the Canadian Centre for Management Development Act, which becomes the Canada School of the Public Service Act. The new Act creates a new school: the Canada School of the Public Service, which is mandated to provide learning programs tailored to the needs of the various organizations of the public service. The intent is to centralize learning, as far as it proves practical, not only for managers but for all public service employees. Departments will provide the school with an assessment of its training needs and, for a fee, the school will plan and deliver the training. Of course, the fees will make the cost of training more visible, more accountable. It will also clearly identify training as a benefit, not a right, an object to be

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PSMA, cont'd from page 15

pursued through the favours of a manager, not an entitlement.

The role of a bargaining agent must remain the role of advocate. A bargaining agent exists for the members, to protect, defend and promote.

The Public Service Modernization Act is a reality. The various pieces of the puzzle come into effect over the next year or so. The work environment of the public service will change. As has happened so often in the past, this means that public service bargaining agents will need to adjust in order to continue protecting, defending and promoting their respective memberships as efficiently as they can.

This is our commitment.

Professional Dialogue™

Professional Dialogue is the newsletter of the Canadian Association of Professional Employees, representing approximately 10,000 federal professional employees across Canada.

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