

TR and EC Collective Agreement Ratifications – Questions and Answers

The following are responses, from the Chief Negotiator, Claude Danik, to questions that have been posed by members regarding the TR and EC collective agreement ratifications.

1. Were the TR and EC bargaining processes interrupted in any significant way by the final offer, or were the parties close to completing the current round of bargaining?

In spite of close to a year and a half of bargaining, when the final offer was made by Treasury Board there were still issues on the tables. Therefore it is correct to say that bargaining was interrupted.

2. What was the status at the EC table when the final offer interrupted the bargaining process?

Bargaining at the EC table had been very productive. However, negotiations were moving into the stage of bargaining leave and pay. The premature end of negotiations precluded serious discussion of these matters. For example, Treasury Board met CAPE one last time at the table in September 2008 without having yet secured a mandate from its principals regarding the very important financial issues relating to EC conversion.

3. What was the Status at the TR table when the final offer interrupted the bargaining process?

Bargaining at the TR table had been much less productive in spite of long hours of what became fruitless discussion. Little progress was made as the employer's bargaining team showed reluctance to try solutions proposed by CAPE. For example, the employer agreed to a solution to address a matter raised by CAPE - web casting - and then pulled it out of the final offer because there was a cost attached, and it apparently did not fit the compensation directives for the final offer handed down from their principals. Furthermore, there were several problems that had not been discussed at all that were still on the table when CAPE was handed the final offer. For example, at the end of interest based bargaining the parties revert back to positional bargaining on issues that are said to be the trend in a round: these issues are called normalization issues. The parties had not reached the stage of bargaining normalization issues when the final offer was delivered to CAPE.

4. Why call the ratification vote a vote on the employer's final offer rather than a vote on a tentative agreement?

A tentative agreement implies the parties accept the terms of settlement in the normal course of bargaining. In the current situation the employer delivered the final offer to CAPE offices in a brown paper envelope, without even convening the parties to the bargaining table. Furthermore, it made its final offer under a cloud of undefined legislation: the legislative framework of the final offer was not explained nor has it been defined as of the end of Budget week – January 27th. So only the employer knows the full consequences of a yes or a no vote. It would be inaccurate to say that this is a settlement in the true sense of the word.

5. Is it fair to say that the employer threatened CAPE's bargaining teams and, through the bargaining teams, CAPE's members?

It is important to distinguish the Treasury Board Secretariat and its employees, from the Treasury Board and its Ministers. The Secretariat carries out the mandate set by Ministers. These same Ministers or politicians get counsel from the Secretariat. The decision on compensation was made by politicians, counseled by employees from TBS.

The politicians set the objectives and had their own rationale for the budget and the related approach to public service compensation. The thought of legislation imposing conditions of settlement was probably expressed in discussions between politicians and advisors. In the end, it was the politicians' decision. Therefore, it would be unfair to say that Treasury Board Secretariat, or the employer, threatened CAPE and its members. TBS did communicate to CAPE the government's intention to legislate restrictions on collective bargaining, including the suspension of the right to strike and to arbitration.

But it is the politicians that created the threatening conditions by planning special legislation and publicly announcing that there would be special compensation legislation that would limit bargaining in several ways. Once again you are paying for the fact that your employer has the authority to make laws and change the rules of collective bargaining in mid stream. Moreover, it has been extremely irresponsible of the government to keep the full details of the legislation secret even to this day. In essence, the government is forcing you to vote without divulging the full consequences of your vote.

6. The government has taken extraordinary means to ensure responsible government by preparing special compensation legislation. It is very possible that opposition parties will agree with the government. Is the special legislation necessary, at this time, to ensure predictability of government expenditures?

No.

At this time the evidence of signed agreements and recent arbitral awards prove that legislation is not necessary. Hopefully CAPE and other bargaining agents will be successful in getting either the government or the House of Commons to understand that it is not necessary. On January 23, the 18 unions representing federal government employees sent a letter to Michael Ignatieff, Leader of the Official Opposition, Gilles Duceppe, Leader of the Bloc Québécois, Jack Layton, Leader of the New Democratic Party Elizabeth May, Leader of the Green Party, asking them to oppose the planned special compensation legislation.

On January 26 the 18 unions sent a [letter to Prime Minister Stephen Harper](#) asking that the government reconsider its decision to introduce the planned special compensation legislation.

However, for the purposes of the ratification vote, we need to proceed as if the legislation was a given, even if the details of the legislation are unknown.

7. Why have neither bargaining teams made a recommendation on the matter of the vote?

In good conscience, the bargaining teams could not sign the final offer and then recommend against it. On the other hand, the bargaining teams cannot recommend the final offer either, considering that bargaining was interrupted before crucial matters could be addressed.

The circumstances of the vote are outside the normal course of collective bargaining. To this day the employer has kept CAPE, and CAPE members, in the dark on the matter of the details of the legislative framework in which you are voting.

8. Then why sign the final offer?

We were told that special compensation legislation could potentially suspend bargaining, take away the right to strike and arbitration, and possibly freeze wages at 0%. We were told that if we did not sign, our members would live with the consequences of some or all of the above.

9. What did CAPE sign?

CAPE was presented with a Memorandum of Agreement for each table. The Memorandum stipulated that all matters to which the parties agreed at the table would be part of the final offer, except in the case of the TR final offer. Treasury Board Secretariat excluded from the TR final offer a solution to the problem of web casting to which the employer had agreed at the table. In addition, TBS added the following changes to the TR and EC collective agreements as part of the final offer:

For the EC final offer, TBS added the economic increases announced by the Treasury Board Minister, the employer's solution to the EC conversion pay lines (which was zero dollars), an extension of the implementation period for the collective agreement from 90 days to 150 days, and improvements to the bereavement leave article.

For the TR final offer, TBS added the economic increases announced by the Treasury Board Minister. It also added three changes that would normally have been presented by the employer as proposals during the normalization stage: changes to the check-off article, changes to the grievance procedure and changes to the implementation period. Finally, the employer included one change that CAPE would have sought had negotiations not been interrupted: changes to the Leave Without Pay for the Care of Immediate Family article.

In their first iteration, the final offers stipulated that the bargaining teams would recommend the final offer to their respective memberships. CAPE refused to sign. CAPE did accept to sign a Memorandum of Agreement stipulating that it would put the final offer to the members for a vote.

It seemed to be the most prudent course of action to sign the final offers under the circumstances, and to put the offers to a vote of the membership.

10. Why is the vote taking place at the end of January?

Since the day the final offer for each of its two tables was delivered to CAPE at the end of November, each bargaining team met several times in order to decide on the final offer and review documents and other matters relating to the unusual circumstances of the vote. Then voting packages were prepared, printed and two separate mailings of a total of over 10,000 packages were organized during the period immediately following the holiday season. In addition, time needed to be factored into the process to ensure reasonable time for the packages to go out and a reasonable period of time for members to reflect and respond by mail.

But the schedule was also affected by the fact that the employer referred to impending legislation and was not prepared or able to provide CAPE with information about its content. The bargaining teams wanted to meet their obligations to the bargaining process by organizing a vote in a timely manner and at the same time trying to schedule different steps in the process in order to improve the probability that members would be able to vote with all the information on the special compensation legislation announced by the Minister of Finance.

11. Why have the bargaining teams asked members to wait before voting?

The bargaining teams feel that it is important to see the details of the compensation legislation and be in a position to fully understand the consequences of a yes or no vote.

12. Do we know as of Wednesday February 4, what is in the legislation?

No.

13. How could the legislation affect the final offer?

We know now, but did not know several weeks ago when the Finance Minister first announced the legislation, that we will continue to have access to arbitration. We know that wage adjustments will be set at 2.3% for 2007 and 1.5% in each of the three subsequent years (see *Budget 2009*, Chapter 4; subheading *Structural Changes*, third bullet: www.budget.gc.ca/2009). We know that non-monetary issues are not frozen by the legislation and may be referred to arbitration. What we really don't know is whether the wording of the legislation will be so broad that, in the event of a no vote from either EC or TR members, it will exclude taking important issues back to the bargaining table or to arbitration. Will the legislation preclude negotiating EC conversion salary scales or referring them to arbitration? Will it preclude bargaining other issues at the TR or EC tables that have a cost but that are not monetary *per se*, for example different forms of leave? We do not know.

14. Does the legislation affect all public service employees to the same degree?

Maybe yes, maybe no. We will know only once we see the actual wording of the legislation. We do know that it could have an effect unique in the entire federal public service on members of the ES and SI groups because it could force a classification conversion on them without any bargaining of new rates of pay. Hence the [letter from the president of CAPE sent to the Minister of Finance and to the President of Treasury Board, and to your Members of Parliament.](#)

15. When will we see the actual wording of the legislation?

We expected that the 48 hour notice for tabling the legislation would have occurred last week when the budget was tabled. It appears to have been delayed. We hope that the notice and the tabling of the legislation will occur the week of February 2. As soon as the legislation is made public, it will be reviewed and CAPE will post its analysis of the special compensation legislation and what it would mean for a yes vote and a no vote on its web site

16. How important is it to try to negotiate pay rates for EC conversion?

The last conversion for the ES group occurred in 1981, 28 years ago. Classification conversions occur rarely during the career of a public service employee. It affects pay at the time of conversion and for all the years that follow. It affects pension. It is important.

CAPE cannot guarantee any results from bargaining new EC pay rates. But, it is important that the employer come to the table with a mandate for EC conversion pay, and that the parties get an opportunity to bargain EC pay rates in good faith.

17. What will happen if the members of a bargaining unit, the EC unit or the TR unit, vote in favour of the final offer?

Each bargaining unit that votes in favour of the final offer will see the changes of the final offer added to its collective agreement. The new provisions will be effective as of the date of signing of the collective agreement probably some time in March. Pay adjustments to salary are usually completed within two or three pay periods. Pay owed for the period of retroactivity is paid before the end of the implementation period.

However, because the employer has added a change to the period of implementation to the final offer, it will have 150 days rather than 90 days to provide paychecks for money owed on the pay adjustments from June 22, 2007 to the date that pay rates are adjusted.

18. What will happen if the members of a bargaining unit, the EC unit or the TR unit, vote against the final offer?

There will be an impasse, and CAPE will ask the employer to return to the table to resume negotiations where they left off for that particular table before the final offer was delivered. The employer may refuse to negotiate, which would force CAPE to refer outstanding matters to arbitration. The employer may choose to challenge the authority of the Public Service Labour Relations Board to make awards on some of these matters. CAPE may argue the contrary, depending on the wording of the legislation. CAPE may also file a charter challenge against the special compensation legislation. The actual course of events depends on whether the parties wish to bargain in good faith, which is what CAPE is asking on behalf of its members.

19. You have received hundreds of calls from members asking questions and expressing their feelings about the final offer and the vote since last November. What are my colleagues across the federal public service saying?

There are two feelings that have been expressed time and time again: outrage, and fatigue. Some members are upset about the final offer and how the employer has acted; others just want to get this over with.

20. As the chief negotiator, are you concerned about the results of the votes, one way or the other?

We don't always make decisions with all of the cards on the table. I know that CAPE's bargaining teams have done all that they could to bargain for the members and to inform the members under extraordinarily difficult conditions. But there are matters that the bargaining teams do not control. CAPE continues its efforts to get more information and to advocate on behalf of the members on these matters. But, in the end the members will decide on the final offer with whatever information we can make available. My past experiences have reinforced my conviction that the membership will act wisely and in the end make the right choice whatever that may be.

21. What's next?

CAPE waits for the legislation in order to provide more guidance to the members on the vote.

