

Memo

Date: Friday, May 20, 2005

To: Terry Baxter, OPS Supervisor

From: Cameron Walker, A/Administrator, and
Tim Hadwen, General Counsel

Subject: **Employment Standards Act Application to the OPS Employer's
Proposed Separation Allowance and Article 53 Language
Changes**


The Employer's proposed deletion of the Separation Allowance (Article 20.3) along with the takeaway in Article 53 (Termination Payments) can be implemented notwithstanding the provisions of the Employment Standards Act (ESA). Contrary to the views which we understand have been expressed on this issue, there is nothing in the ESA that we could rely upon to stop these takeaways.

It is correct that the ESA creates certain minimums which the Collective Agreement cannot fall below. However, with regards to Article 20.3, the ESA minimum for termination and severance pay will be met even with the loss to the members of up to 12 weeks separation pay, at two weeks per year, which this Article currently provides. The minimum ESA severance pay requirement is met by the provisions of Article 53 (Termination Payments) alone, even with the employer takeaways for this Article that are being proposed.

The employer's takeaway proposal with regards to Article 53 includes the non recognition of service past a not yet specified date for members who resign. The cost to affected members who resign in future appears to be one week of pay per year of further service. There is no language in the ESA which provides for termination payments for employees who resign. Accordingly, this employer takeaway could also not be stopped by applying the ESA.

As a result, the employer's proposal will produce a real loss for employees who are laid off or resign and ESA cannot prevent that loss.

In solidarity,


Cameron Walker


Tim Hadwen