

**YUFA Special General Membership Meeting
16 June 2006
Draft Minutes**

Location: Computer Science & Engineering, Lecture Hall A
The meeting began at 1:20 pm

1. **Agenda:**

Executive Motion: to approve the agenda. Carried.

2. Discussion and reconsideration of Injunction motion passed at the 7 June 2006 GMM

Motion: that YUFA seek an injunction against the forcible retirement of the July 1, 2006 retirement cohort until the conclusion of the current round of negotiations. Additionally we will seek a second legal opinion on the remedies available to the July 1, 2006 cohort. Moved by B. Kitchen and seconded by E. Mahant. Carried.

Introduction by Arthur Hilliker:

Mr. Kuretsky must find legal grounds that are likely to succeed.

Jim McDonald from Sack Goldblatt Mitchell gave the following presentation:

YUFA has 60-65 members in the July 1 2006 group

Attempted injunction for U of T in 1986 regarding retirement was unsuccessful. MR is clearly discriminatory. HRC does not help any one whose terms and conditions of employment require them to retire at 65. New provision does not come in until Dec 2006, so that employers have time to prepare for adjustments. No lower court judge will grant an injunction that does not follow the case of McKinney at the Supreme Court of Canada (SCC).

Sack Goldblatt Mitchell argued the U of T case using Section 15 of the Charter, but lost. SCC found Charter did not apply to universities. Mandatory Retirement does not violate Charter for librarians and faculty. Charter applies to governmental actors, which faculty are not.

SCC upheld that it was justified and upheld McKinney decision

Sack Goldblatt Mitchell met with Kuretsky after early bargaining collapse on the 2006 retirees issue. An opinion letter of June 6 was sent to YUFA explained that Kuretsky's arguments did not convince SGM that a grievance would be successful.

On June 7 YUFA passed a motion re injunction. SGM opinion on injunction of June 15 decided that the case does not meet the legal test for an injunction. The university would argue that they already have made planning decisions. The Inconvenience of institution would be treated as greater than that of the individual.

A party seeking an injunction must show damages. Here, the costs could include salary of 2006 retirees; it could be 6-10 million dollars. The costs of an injunction are significant; include preparation of affidavits, the challenge to administration's affidavits, and possible intervention by Government of Ontario due to precedential effect.

The action might cost 30-50 thousand on the part of YUFA, plus costs of other side if unsuccessful. McDonald replied to the June 15 letter from Kuretsky that the Wellen? decision has no effect on a possible injunction.

SGM advises YUFA that they support the cause of 2006 retirees, but their opinions are putting their legal situation in context of historical and recent law. An injunction would likely be unsuccessful and would expose YUFA to possible great costs, and no strategic advantage. A motion for injunction would be heard before bargaining starts, possibly. And may have lost by then.

Discussion:

Re the 2nd part of motion of June 7: This was to seek 2nd legal opinion regarding the legal strategy. Bill 2011 now has an opening for a dialogue. The concern of '06 retirees is how their issues will be addressed in bargaining. Kuretsky has outlined an approach. Grievance could be discussed in negotiations. How is their cause to be pursued?

J. McDonald - We have been giving advice on legal remedies, not bargaining strategy.

A. Hilliker - They are in our bargaining position. I am not optimistic. We have found no grounds for grievance. We have 1300 members. Grievance with no grounds could be used against us.

B. Kitchen - Kuretsky believes grievance would be signal to employer. There is the question of how Employer knows this is a priority for YUFA.

J. Bell, Chief Steward - It is YUFA's policy not to file a grievance on something for which there are no grounds.

J. McDonald - If through negotiations or legal means they are allowed to remain they would be reinstated.

D. Clipsham - YUFA has repeatedly declined to meet with those affected. The hope is that a meeting with lawyers will produce in a more favourable context. Possible avenues of redress:

Article 3 – Non-discrimination clause - age is included.

Article 14 - preamble says "principle of timing of retirement shall be influenced by the wishes of the individual."

Distinction between normal and mandatory retirement date. Our CA refers to normal retirement date. Case could be made on the basis of these articles, A pending grievance is

a powerful weapon. In 1986- A bad faith bargaining claim was launched as a part of bargaining strategy.

J. McDonald - Discussions with Kuretsky had to do with the amendments to the HRC. In this CA, normal retirement is Mandatory Retirement. In 14.01 d. Language in CA is that normal retirement age is 65.

Motion: to rescind motion for injunction – Moved: W. Whitely; Seconded M. Mozurkewich

Challenge to Chair – S. Mallin; Seconded B. Kitchen. Challenge failed.

N. Jazairi - At a conference, Mary Eberts discussed whether it is time to launch new challenge to SCC decision on McKinney.

J. McDonald - There remains the question of whether the Charter applies to universities. It is unnecessary for the courts to reconsider.

Question Called: R. Wellen; Seconded Mike Mozurkewich. Carried.

Point of order - Intent of motion was not to preclude discussion.

Motion to rescind: Carried.

J. Bell recommends that we do grieve.
Employer has opportunity to decide who will retire.

Quorum lost at 1:30