The Yukon Legislative Assembly

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Debates & Proceedings

Monday, May 17, 1976

Speaker: The Honourable Donald Taylor

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THE SECOND SESSION OF THE LEGISLATIVE ASSEMBLY FOR THE YEAR 1976, BEING THE SIXTH SESSION OF THE TWENTY-THIRD LEGISLATIVE OF THE YUKON TERRITORY WAS CONVENED IN THE ASSEMBLY CHAMBERS AT 10:00 A.M. ON MONDAY, MAY 17TH, 1976.

The members present were:

The Hon. J.K. McKinnon
The Hon. D. Lang
The Hon. F. Whyard
Mr. G. McIntyre
Mr. A. Berger
Mr. B. Fleming
Mr. J. Hibberd
Ms. E. Millard
Mr. S. McCall
Mr. W. Lengerke
The Hon. D. Taylor, Speaker
Mrs. H.P. Watson

(Mr. Speaker enters the Assembly Chambers, announced by the Sergeant-at-Arms)

Mr. Speaker: I would at this time call the House to order. The sixth session of the twenty-third Legislature of the Yukon Territory has now come to order. Kindly be seated.

I would like at this time to inform the house of the appointment of Susan Johnston to he position of Assistant Clerk and welcome her to the service of this Assembly.

(Applause)

I have been advised that the Commissioner of the Yukon Territory is now prepared to give the speech from the Throne, and I will now stand the House in recess to the call of the chair.

(Proceedings Adjourned)

(The Commissioner enters the Chambers announced by his Aide-de-Camp)

(THE COMMISSIONER PRESENTS THE SPEECH FROM THE THRONE)

MR. SPEAKER,

MEMBERS OF COUNCIL

I have the honour to welcome you to the Sixth Session of the 23rd Wholly-elected Council of the Yukon Territory.

I recognize that a session at this time may have caused members some difficulties, however, the urgency of the legislation to be presented dictated that a session be held.

Mr. Speaker, the Public Service Commission Ordinance which was brought before you last session will be re-introduced. Council had requested more time to study the bill because it is a major piece of Legislation with far-reaching effects. As I mentioned in my address of February, this ordinance will establish an independent Public Service Commission for Yukon. The introduction of this legislation will place Yukon in a parallel position to that of most provinces. It represents a major step forward in constitutional development and guarantees the unbiased treatment of all Territorial Government personnel for the future. The opportunity will be taken to introduce several other legislative items of importance. These are described as follows.

The young offenders welfare agreement ordinance. This ordinance provides for an agreement with the Government of Canada to share the costs associated with the provision of care for young offenders in Yukon.

The Land Acquisition Fund Ordinance. This ordinance will establish a revolving fund to enable the Commissioner to acquire land.

The Motor Vehicles Ordinance will be amended to accommodate recent changes in the criminal code of Canada, and to assure our compatability with the laws of Canada.

The taxation ordinance will be amended to allow municipalities the right to impose a minimum tax on real property on which improvements have been made.

A sessional paper will be introduced discussing the legal aid program for Yukon. New financial restrictions by Canada will require Yukon to reconsider its position in The cost-sharing arrangement.

A number of reports will be brought to council including the Transport Public Utilities Board report and reports on regulations as required by ordinances.

Mr. Speaker, my officers and I stand ready to assist council in any way during the session, that it may be a productive one for all concerned.

J. Smith,
Commissioner

Mr. Speaker: I will now call the House to order. I can report to the House that I've now received a copy of the Throne Speech address. May I have your further pleasure at this time. The Honourable Member from Whitehorse South Centre?

Mr. Hibberd: Mr. Speaker, moved by myself, seconded by the Honourable Member from Pelly River, that the Speech from the Throne be considered on a day following.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse South Centre, seconded by the Honourable Member from Pelly River, that the Speech from the Throne be considered on a day following. Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the motion is carried.

(MOTION CARRIED)

Mr. Speaker: May I have your further pleasures. The Honourable Member from Whitehorse North Centre?

BILL NUMBER 1 - INTRODUCED

Hon. Mr. McKinnon: Mr. Speaker, I move, seconded by the Honourable Member from Whitehorse West for leave to introduce Bill Number 1 - Public Service Commission Ordinance.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse North Centre, seconded by the Honourable Member from Whitehorse West, for leave to introduce Bill Number 1 - entitled an Ordinance respecting the Public Service Commission Ordinance. Is this correct?

Hon. Mr. McKinnon: Yes, Mr. Speaker.

Mr. Speaker: Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare that the motion is carried.

(MOTION CARRIED)

Mr. Speaker: May I have your further pleasure. The Honourable Member from Whitehorse North Centre.

Hon. Mr. McKinnon: Mr. Speaker, pursuant to Standing Order 59, I would beg the indulgence for the unanimous consent of this House to further process Bill Number 1 and give Bill Number 1, first and second reading at this time.

Mr. Speaker: Would the House agree to give unanimous consent to this proposal? Those agreeable?

Some Members: Agreed.

Mr. Speaker: Any disagree? You may proceed.

BILL NUMBER 1 - FIRST READING

Hon. Mr. McKinnon: Mr. Speaker, I move, seconded by the Honourable Member from Whitehorse West, that Bill Number 1 be now read a first time.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse North Centre, seconded by the Honourable Member from Whitehorse West, that Bill Number 1 be now read a first time. Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the motion is carried.

(MOTION CARRIED)

Mr. Speaker: When shall the Bill be read for the second time?

BILL NUMBER 1 - SECOND READING.

Hon. Mr. McKinnon: Now, Mr. Speaker. I move, seconded by the Honourable Member from Whitehorse West that Bill Number 1 entitled Public Service Commission Ordinance, be now read a second time.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse North Centre, seconded by the Honourable Member from Whitehorse West, that Bill Number 1 be now read a second time. Are you prepared for the question.

Mr. Speaker: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the motion is carried.

(MOTION CARRIED)

Mr. Speaker: May I have your further pleasure?

Mr. McCall: Mr. Speaker, I would now move that Mr. Speaker do now leave the chair, and the House resolve into Committee of the Whole for the purpose of considering Bills.

Mr. McCall: Mr. Speaker, I would now move that Mr. Speaker do now leave the chair, and the House resolve into Committee of the Whole for the purpose of considering Bills.

Mr. Speaker: Is there a seconder?

Mr. Berger: I'll second that.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse, pardon me, the Honourable Member from Pelly River, seconded by the Honourable Member from Klondike, that Mr. Speaker do now leave the chair, the House resolve into Committee of the Whole for the purpose of considering Public Bills. Are you preapred for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the motion is carried.

(MOTION CARRIED)

Mr. Speaker leaves the chair.

COMMITTEE OF THE WHOLE

Mr. Chairman: I now call this committee to order. Committee will recess until 1:30 p.m.

RECESS

Mr. Chairman: I now call this Committee to order. We will begin with consideration fo Bill Number 1, Public Service Commission Ordinance.
Mrs. Watson?

Mrs. Watson: Mr. Chairman, before we proceed with calling any witnesses or going into the Bill, the explanatory note on the principle of the Bill is very brief. I wonder if the Commissioner probably, on behalf of the government, could explain to us the reasoning for this Bill and the principle involved behind it. I think it would help a great deal in our considerations.

Mr. Chairman: I think that would be appropriate, Mrs. Watson.
Mr. Commissioner?

The Commissioner: Mr. Chairman, I welcome the opportunity of answering that question. The two paragraphs that the Honourable Members have in the opening page, beyond the title page of Bill Number 1, the purpose of this Ordinance is to repeal the present Public Service Ordinance and replace it by a new one which will establish a Public Service Commission which will be independent of the government.

I may say that the present Public Service Commission Ordinance was passed by this House in 1967. The Ordinance is designed to provide a provincial type administrative framework for the Territorial civil service which will enable the Territory to continue its constitutional advancement.

The Ordinance consists, Mr. Chairman, of effectively 16 parts, and the headings of them are: Interpretations, Management and Direction, Public Service Commission, Appointment and Powers of Deputy Heads, Classification of Positions, Pay and Allowances, Organization and Establishment, Appointments, Transfers, Suspension and Dismissal, Political Office, Layoffs, Contracts of Employment, General, then the regulations section and 16, the application of it.

The following are the salient points. First there are delineated, three types of employment, for example, employment in a position on a full time or a part-time basis for an indefinite period; appointment to a term position where the employment expires at the end of the term; and employment on a casual basis, which is not intended to exceed six consecutive months of employment.

Secondly the Public Service Commission Ordinance applies to the public service including any agency, commission board or corporation of the Territory, unless it is expressly excluded by the Commissioner.

And thirdly, the creation of the Public Service Commission and the appointment of a Public Service Commissioner. Fourthly, the appointment of deputy heads at pleasure. Fifth, the present incumbence designated as deputy heads in the schedule attached to this Ordinance are protected while they hold their present position.

Thereafter, any person appointed to one of the vacant positions allocated to one of the classes in the attached schedule after the coming into force of this Ordinance will be appointed at pleasure.

The Ordinance provides for the delegation of powers from the Public Service Commissioner to deputy heads and provides the authority of deputy heads to delegate within their department. And seven, the establishment of a classification appeal board with a single chairman and where the classification appeal relates to a position occupied by a member of the association, the provision to appoint advisors.

And eight, the authority of the Public Service Commissioner to establish classes of employment and to assign rates of pay to those classes of employment, to be included in a collective agreement.

Nine, the authority of the Public Service Commission to recommend class changes or changes in pay range assignments for managerial classes of employment to the Commissioner.

Ten, the authority of the Public Service Commission to conduct organization studies and maintain records of the establishment of each department, branch or division of the Public Service.

Eleven, the authority of the Commission to exclusively appoint persons to positions in the Public Service and, where practical, appointments will be made from Canadian citizens or Landed Immigrants.

Twelve, the authority of the Commission to establish qualification standards, test applicants, conduct reference checks, conduct interviews and certify that the applicant is fit and capable of performing the duties of the position for which he has applied.

Thirteen, where an employee with five or more years of service has been released on probation, consideration for re-appointment to a position in the Public Service.

Fourteen, no person shall be appointed to a position who is less than age 16 or exceeds 65 at the time of appointment.

Fifteen, the authority of the employer to retire employees upon their reaching the compulsory retirement age and the authority of the employer to retire employees for ill health and re-employ those employees based on medical evidence.

Sixteen, employees will be required to submit a written resignation ten days in advance of the effective date of their resignation from the Public Service.

Seventeen, the authority of deputy heads to abandon an employee who has been absent from duty without authorization for a period of five consecutive working days. The right of an employee who has been abandoned to appeal his release to the Public Service Commissioner.

Eighteen, the authority of the Public Service Commissioner and deputy heads to transfer employees.

Nineteen, a suspension and dismissal procedure with the authority of deputy heads to dismiss and the right of employees to appeal their suspension or dismissal to an independent adjudicator.

And twenty, the inclusion of the right of the employee to participate in federal political activities and to engage in work for, on behalf of or against, a federal candidate in a federal election with the provision that an employee shall not solicit funds nor reveal information solely obtained as a result of their employment.

Twenty-one, the rights of employees on lay-off.

Twenty-two, the authority of the Commission to review requests by deputy heads to enter into contracts of employment.

Twenty-three, the authority of the Commission to request documentation from employees on hire, related to superannuation, the completion of an employee's personnel file and payroll files.

Twenty-four, restrictions on government employees entering into or bidding upon government contracts.

Twenty-five, the authority of the Commission to select training courses and select employees for training, including the employment of handicapped persons.

Twenty-six, the authority of the Commission to exclusively bargain and negotiate on behalf of the government with respect to an authorized bargaining agent.

And twenty-seven, the protection of the Commissior from improper solicitation by persons or employees.

Twenty-eight, the authority of the Commission to interpret the application and provisions of any collective agreement entered into with an authorized bargaining agent.

Twenty-nine, the authority of the Commission tc oversee any recruitment activities conducted by any branch, department, agency, board or corporation of the Public Service.

Thirty, the authority of the Commission to make recommendations with respect to regulations pursuant tc this Ordinance.

And, thirty-one, the authority of the Commissioner upon the recommendation of the Public Service Commissioner to exclude people from the provisions of this Ordinance whole or in part and the application of this Ordinance.

I think, Mr. Chairman, that that delineates in considerable detail and in the order in which I gave the 1€ parts, as to what is basically contained in this Ordinance.

Mr. Chairman: Thank you, Mr. Commissioner. Are there any further questions for the Commissioner at the present time?

We have before us received a brief submitted by the Public Service Association, and they have made the request to appear before Committee as witnesses. Are we in agreement?

Would the members of the Association now come forward, please?

For the record, we now have present as witnesses Mrs. Kay Campbell, President, Tim McCullough, Chief Steward, and Rick Lampshire, Business Agent.

Would you now proceed with your brief?

Mr. Lampshire: First of all, we would like to thank the Assembly on behalf of the Y.T.P.S.A. for the time allotted to prepare our brief. As you can see, the brief is quite comprehensive and quite complex, and we feel that the time given was well used and very much needed.

If it is your pleasure – if it is the pleasure of the Legislature, we would like to read our brief, issue by issue, and accept any questions from the floor at any time.

First of all, Section 2, Definitions of Casual Employee to be amended to read: "Casual employee means a person engaged in a non-reoccurring casual or temporary basis and whose period of employment cannot exceed six months". The amendment is necessary to prevent the shameless exploitation of seasonal employees who are frequently natives or long-established Yukoners living away from major centres. The employment of persons year after year during a particular season tc perform the duties of the same position should not be treated in the same manner as the hiring of a person tc perform a job which lasts a few days or weeks and may never occur again, like helping a crew of researchers carry their equipment.

Seasonal employees are presently treated as casuals

by the Yukon government. Even though the majority of them come back faithfully year after year, they cannot obtain pension rights, sick leave benefits or accumulate other leave entitlements or benefits. They are at the mercy of the local supervisor's likes or dislikes and when they are getting older or sick someone else takes their place and all they can look forward to is welfare and misery.

It is a very nearsighted practice that the Yukon government is participating in at this moment. It is not taking into consideration the future of a large part of the population which can only perform meaningful tasks a portion of the year because of the climate and the special conditions of this land. Sooner or later these people will become a burden on the state. It is also a backward policy which does not ensure that the best of the seasonal employees have an incentive to return and maintain the privileges and benefits which normally accrue to public service.

We are also worried about the word "intended", as it can give rise to a great deal of problems. The length of the casual job should be established fairly easily. If it can take more than six months and its length cannot be specifically -- specified initially, it is therefore indeterminate, like most jobs in the public service, and should be treated as a permanent position. Managers should not be encouraged to try and beat the system by having all kinds of tools at their disposal for that purpose.

Articles are enacted to ensure that principles of merit, justice and accountability exist in the public service, so why make it easy to circumvent them?

Mr. Chairman: Excuse me, Mr. Lampshire. Mr. Berger?

Mr. Berger: Mr.Chairman, I have a question of the witness. Could he possibly tell us how many people at present are involved in a casual position?

Mr. Lampshire: It's hard at times to just get the exact number of casual people employed, because they're not included in the establishment and it's hard to figure out just how many are employed, but we do know in the summer that the casual rate goes up considerably. In the summer, casuals are hired for the road crews, casuals are hired for information services, campground services. The majority of them are hired with the D.P.W., Department of Public Works and Tourism, and these people perform jobs that reoccur every year and are hired on a casual basis.

Many of these people who do return have returned after, you know, five, six, seven, ten years of service, have come back year after year and have been treated as casual employees and therefore do not accrue any of the rights of the collective agreement. They have no pension rights whatever, but I would say they normally run between 300 to 450 and the administration could correct me on that if need be.

Mr. Chairman: Thank you. Mr. McCall?

Mr. McCall: Yes, Mr. Chairman. I just wanted to ask Mr. Lampshire, does he have any figures from past performances over the years?

Mr. Lampshire: Pardon?

Mr. McCall: Any figures from past performances, as far as casual labour?

Mr. Lampshire: The number, the exact number?

Mr. McCall: M'hmm.

Mr. Lampshire: When we were negotiating, we had checked, because at negotiations we had fought the casual problem as part of negotiations and we had stipulated that casuals should be called seasonal employees and therefore should come under the collective agreement, and we couldn't take it to bargaining, so we took it to the Public Service Staff Relations Board, had a hearing on it and we lost the hearing.

At that time, I think we had counted approximately 400 during the summer. As I say, casuals are hard to determine because the job is not established, the position isn't established.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I wonder if Mr. Lampshire could explain to me what non-recurring means in this context?

Mr. Lampshire: We treat these jobs that come up year after year, i.e. on the Department of Highways and with Tourism, as a recurring job - that is, going to come up year after year. A non-recurring job would be one, as the example stated, where you needed a person to perform specific tasks that weren't going to occur on a regular basis at a regular time, that may occur for a two or three week period but it wouldn't occur every summer, it wouldn't occur every winter, it wouldn't occur at Christmas time or whatever the case is.

We state that if the job is reoccurring they should either be seasonal or they should be put on as a specified period of employment.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, could he suggest what kind of job that would be?

Mr. McCullough: If I could try and explain, Mrs. Whyard, the -- for instance, last week we were recruiting for information centres and we had people that have worked in those information centres, particularly in Dawson City and Haines Junction and Beaver Creek, for eight and ten years, recurring every year, they come back to work every single summer, as against someone that is mentioned, I think on the first page here, to help a crew of researchers carry their equipment on a three or four week contract job possibly for them, and the gov-

ernment hires some casuals to assist them, and it's not apt to recur again. Whereas, these information centre jobs and the campground services jobs are year after year, every season, every year.

Mr. Lampshire: The non-reoccurring would happen -- if you read non-reoccurring or casual or temporary basis, non-reoccurring would happen with the clerk typist who may have to be hired for a period when the legislature is sitting in order to type up the minutes or type up the Hansard. You know, I think in our hearings, an example was used as a person playing Santa Claus at a Christmas party is on a reoccurring basis, but obviously --

Hon. Mrs. Whyard: You have just destroyed my faith in Santa - they get paid.

Mr. Lampshire: But the position is obviously in a position like that, it's a casual job that's based for a couple of days or a week or whatever at the time. You have to take the non-reoccurring and the duration of the job into context.

Right at the present time, people who work for the D.P.W. work anywhere from six months up to eight months, same as with the campground services and information services. Now these jobs are seasonal because of the type of season we have, and they are for a long period of time.

Now what happens in a lot of cases with the present Ordinance, the way it reads, the employer breaks the service after -- before six months is up, breaks it for one day, hires the person on again for another two months or as long as they need them. What would happen if they didn't break the service, these people would then fall under the collective agreement and they would have to be given three months' notice of lay-off after that six months. So the employer does break the service now and he hires them back after a day or so; therefore, they haven't been employed for six months on a continuous basis and he circumvents the collective agreement.

Mr. Chairman: Mr. McCall?

Mr. McCall: It doesn't matter, Mr. Chairman.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: The only thing that I rise on, Mr. Chairman, as far as breaking of the time period in order to stay within that six months, as the legislature here we are taking care of public funds, and if it's only a week later or two weeks later, I would think it should be up to the government to decide whether or not that should be a casual position rather than a permanent position.

Because if a person doesn't work for three months, yet the government is bound to pay them for three months, this is coming from the public purse.

Mr. Lampshire: The point in fact though is if you hire a person on a seasonal nature you can determine quite accurately when his job should be terminating, so what you do is you hire a person on and say, okay, at the end of August or whatever your employment will be terminated at that time. So in that case you have already given the man his notice when he was hired on that his employment was going to be for a specified period of time and obviously you wouldn't have to give him the three months' notice.

What we are saying is that the reason the union pushes on the six month basis is because we think the employer is abusing the casual terminology, and if the job is there for over six months we are saying that the person should be entitled to the benefits of the collective agreement, and one of the benefits is the lay-off clause. Really, we use it as a penalty clause for the employer.

Mr. Chairman: Mr. McKinnon?

Hon. Mr. McKinnon: Mr. Chairman, I have a problem except that I've been out of the work force as a casual for a couple of years, and whether the philosophy of the casual has changed that much, but I worked as a casual for Crown corporations, for government, and for private enterprise, and the one thing that I really found about the casuals working for all of these different departments was the last thing that they wanted was to be permanent employees. Number one, I'm sorry, Mr. Chairman, most of them didn't like paying union dues. They all detested them and would have balked against joining a superannuation plan if they thought that it was going to take away from their disposable income as a casual, and the majority of them had it rigged in perpetuity that they came up to the Yukon for their stints as a casual over the summer and then went down to sunnier climates and followed the birds which I was unable unfortunately to do along with them.

It seemed to me in all these different aspects of dealing with these casual employees, that the last thing that they wanted, in any of these enterprises, was to be considered as a permanent employee. It just wasn't their bag.

Mr. Lampshire: The point in fact is that the union negotiates, the members who are in the bargaining unit pay the union dues. The union negotiates the wages for the people in the bargaining unit. That wage is spread equally over everybody's paycheques, so in fact the casuals, although they don't want to belong to the union, nobody has ever argued when we have got an increase for our members, that they themselves don't want the increase.

What we are saying in fact, you could say this, that if you want to get the benefits of the union, you also should belong to the union and should pay the price of belonging to the union. What happens in a lot of cases with casual employees is that they can be dismissed today for no reason whatsoever. In a lot of cases, the exceptional cases, you do get that, where a person is dismissed for no reason whatsoever, whereas the permanent employee has at least has the grievance procedure, he has

adjudication and we can protect his case in that avenue.

Hon. Mr. McKinnon: But certainly we all understand, Mr. Chairman, with a definition then it becomes a drain on the public purse of all the taxpayers of the Yukon Territory, because over six months, all the fringes then, which are eliminated now because of the casual employee, become a charge upon the taxpayer of the Yukon Territory. So, you know, let's not kid anybody, it's going to cost more money for the government to initiate such a change in Legislation.

Mr. Lampshire: Is the Yukon Government going to condone treating its citizens this way? Shouldn't an employee--

Hon. Mr. McKinnon: That is the point of contention.

Mr. Lampshire: Shouldn't an employee if he's going to perform a duty, should he not be paid the going rate of that duty that he's being performed? Secondly, I would also like -- no he's not getting the benefits that Mr. McKinnon was talking about. He's getting a wage increase but he's not getting the benefits.

Secondly, if you notice on the highway it becomes a very contentious issue with vis a vis the full time employees and the casual employees. A lot of casual employees are hired locally, sent out on the road, they get put up in hotels, all the costs are paid for them. Meanwhile, the full time employee is sitting there and he's not getting his costs at all. So in fact it is costing the Territorial Government more money.

Mr. Chairman: Mr. Berger.

Mr. Berger: Yes, Mr. Chairman. In answer to the concern of the Honourable Memb rom Whitehorse North Centre, the casual employ e right now and I'm afraid to say the word, th rip-off position right now because they're worl six months and it's an open secret, 10 hours a da s a week for the territorial government and as s they're out of a job they can apply for unemploy surance and get it too. So I don't see the conc he Honourable Member about costing more mo the taxpayers. Right now they are paying more m y to the casual employees, already.

The other question that I have is of the witness, Mr. Chairman, is was there always a casual employee or was there some seasonal employees too?

Mr. Lampshire: There is presently four seasonal employees in the bargaining unit at this time. They were grandfathered in from the federal government and the Y.T.G. agreed to keep them on as seasonal employees but they will not put in any more seasonal employees. They're trying to get away from it and they are saying that we only have indeterminate, casual people. So there are four, but as they retire, as they leave, they're going down. I think there was 6 or 7 when it started.

Mr. Chairman: Mr. Lampshire, one moment, before we proceed. I would like to remind Members of Committee that we are now hearing a brief submitted by P.S.A.C. and now is not the time to indulge in debate over the issues that have been raised.

Hon. Mr. McKinnon: Right, Mr. Chairman, I would just like to ask a question of the representative of P.S.A.C. I'd like to know, Mr. Chairman, is it their contention then that the majority of casual employees working the the Yukon Territorial would rather be classified as permanent employees?

Mr. Lampshire: This isn't a proposal from the majority of the casual employees, it's a proposal from the union. We are saying that because of reoccurring nature they should be afforded the rights.

Hon. Mr. McKinnon: Mr. Chairman, would the P.S.A.C. if such was granted be democratic enough to take a plebiscite amongst the casual employees and be governed accordingly.

Mr. Chairman: Mr. Fleming.

Mr. Lampshire: By the rand formula, Mr. Chairman, they have a choice of belonging to the union or not.

Mr. Chairman: Mr. Fleming.

Mr. Fleming: Yes, Mr. Chairman, I'd like to ask the P.S.A.C. when they were doing this and coming up with the proposal that you have now here, which I do agree with some of them, the fact that you do need protection, if you're working for the government you should have some of the protection you say you should have and so forth. But did they also look into the other side of the picture, which some of the members have just brought up, and which I myself, feel that we possibly are treating a sick society. Did they look into that side of it too and did you come up with anything as to whether there was going to be possibly quite a rip-off if you hire these people and then you give them unemployment insurance for the winter and their job is promised in the spring, so there is, you know they have more or less of a permanent position and yet they have a 6 month period in the year, that they just don't have to do anything really. This would create in my opinion a rip-off. Did you look into that at all yourself.

Mr. Lampshire: No, Mr. Chairman, in our opinion our jurisdiction is when the employee is employed with the Territorial Government. I think it takes other Legislation to decide what happens when that employee is laid off and are not working for the government. We didn't look into that aspect.

Mr. Chairman: Thank you, Mr. Lampshire. Would you proceed with your brief.

Mr. Lampshire: Class should be amended to read

"Class means a group of similar positions requiring some or like qualifications for which the same rates of pay, pay range or pay grades can reasonably be applied." Reasoning is that this difinition is easier, and takes into consideration the definition of the word "position" which should have a definition of its own.

Position means an aggregation of duties, tasks and responsibilities requiring the services of one individual. The reason is that this definition removes all ambiguity from the word and clarifies many other definitions.

Employee should be amended to add the words "or employed in after appointed". Employee means a person appointed to or employed in a position in the Public Service.

The reason is we feel that this precision is required to protect persons already engaged in the public service or that will become employed but due to some error or omission of some individual, will not have been formally appointed in theory, but for all intents and purposes are employees.

Established position. This definition does not reflect the language used in the Ordinance. More appropriate definitions would be position and permanent. We propose deleting established position to be replaced by the proposed definition of position and the addition of a definitive of permanent position to read, "Definition permanent position means an indeterminate full time or part time position approved by the Commissioner." Definition establishment, "Replace the word established by the word permanent and add the word temporary before position", and it becomes, "Establishment means the total and permanent and temporary positions."

Temporary positions means the position required for a specified period of time.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Yes, Mr. Chairman, just a question. Back to page 3 there where we are talking of the employee, can you give me an example of where you are saying that we should have this precision to protect persons already engaged? Can you give us an example of where you had an omission?

Mr. McCullough: Mr. Chairman, I think what we were thinking of there was within the Ordinance itself, there's an awful lot of delegated powers. It can be delegated right from the Public Service Commissioner to an office of an -- to an officer or a division or branch, and we expect that there might be cases where a person conceivably could be at work for the Territorial Government, but the official appointment has never really gone through.

We make some more suggestions later on, even on the word, on a deputy head, making sure that a deputy head designates someone to act for him if he's going to be absent. But on the other hand, if no one had been officially designated, someone acting perhaps unofficially, might bring someone to work and they're not officially appointed, but they are filling a job.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Would there not be some term or some specified way in which that individual was hired? Maybe the legal advisor can help us out on that one. Is this in fact a situation that does occur?

Mr. Legal Advisor: I have no doubt it occurs from time to time, Mr. Chairman.I'm sure that the procedures are neglected occasionally, but there's a maxim in law, omnia rite acta essa, when a person is subsantially doing a job, the law will assume that he has been validly appointed, unless somebody can attack it by showing that somebody else was appointed or something like that. It's a presumption of law. It happens often that an accused person doesn't believe that the judge who is trying his really is a judge, but he goes to prison just the same.

Mr. Chairman: Mr. Lampshire?

Mr. Lampshire: Mr. Chairman, if I could give an example that we have encountered. We had a person who was a member of the bargaining unit and who resigned or had been fired, it was a contentious issue about what had happened, and anyway, to carry the point on, she eventually got a job again with the Territorial Government as a casual, on a casual basis, which we were happy for, because we thought in her case that she had received an injustice, and so what happened was she was hired on the spot at that point of hire and she was working for a number of days.

Eventually, when the documentation came through personnel, personnel says oh, she was fired once, therefore let her go. She was let go because the documentation hadn't been done properly. This would be what happened in this position. Mind you, we are talking on a casual basis.

Now, if that delegation of authority had been taken down and there was some confusion whether that person had the authority or not had the authority and he did hire the person, assuming that she was on full time and then when the documentation hits personnel, personnel says oops, we're sorry, we gave you the authority but you know, sorry about that. So this did happen, and again the person was let go.

Mr. Lengerke: Thank you, Mr. Chairman.

Mr. Lampshire: We appreciate the fact that some functions have a certain lifespan which can be foreseen and which need only be filled for that period. We also appreciate that there may be -- may not be a possibility of absorbing in the public service on a permanent basis certain persons hired to do a specific job within a specific period.

On the other hand, we feel these persons should not be exploited nor used to the detriment of indeterminate employees. Temporary employees should be made aware that their employment conditions are the same as that of any employee except that their services are

for a limited period, at the end of which they will cease to be employed.

By doing that, Mr. Chairman, that in fact wold satisfy the three months' notice under the collective agreement, so you wouldn't have to hold a person on for three months after a job has been diminated.

Section 9, part 3, Powers of the Public Service Commission. There is no provision in this section for one of the primary functions of a Commission which is to undertake the necessary staffing action. For this reason, we propose that the following be added after (a): Appoint or provide for the appointment of qualified persons to or from within the public service in accordance with the provisions and principles of this Ordinance. This would give an authority for the sections on appointment, an additional aspect which seems to have been omitted is the area of consultation.

Successful labour relations comes about from communication and discussion. Essentially we are all dealing in ways to solve problems or to stop their development, albeit from different points of view. For this reason, it is essential that legislation formally identify a means of communication. On this basis, we propose the following in matters of consultation.

The Commission shall consult with representatives of an employee organization certified as bargaining agent under the Public Service Staff Relations Ordinance within an ongoing program of joint labour management consultation with respect to selection standards that may be prescribed, or the principles governing the appraisal, promotion, demotion, transfer, lay-offs, or release of employees at the request of such representatives or before such instruments are promulgated.

The justification for such an proposal lies in the Public Service Employment Act, Section 12 (3) and a recommendation formulated by Mr. Jacob Finkelman, Q.C. The provisions of the Public Service Employment Act or the procedure pursued thereunder with regard to consultations should be strengthened to provide the bargaining agent with assurance that where the Public Service Commission exercise a discretion in relation to the administration of the Act with respect to the preparation of selection standards, the principles governing promotion and similar instruments of authority, the bargaining agents will be consulted and will have an adequate opportunity to make their views known before such instruments are promulgated.

Mr. Chairman, just a word on Mr. Jacob Finkleman, who is the Chairman of the Public Service Staff Relations Board that scrutinizes the public service Acts, Public Service Employment Act and the Public Service Staff Relations Act, Mr. Finkleman is also the Chairman of the Yukon Public Service Staff Relations Board and he does interpret the same with us.

Section 9(3):

It is suggested that this provision be completed to include access to officers, facilities, installations and information, the reasoning for this, Mr. Chairman, is that if consulation does come in there may be a point in time that we need the information also, so that we can approach it on a grievance or whatever the case is

As a final comment it would be appropriate that the title of the section be amended to include duties in that the word is mentioned in N and O, number 3. The amendment would also serve to dissipate the impression of unresponsiveness created by the mention of power without duties.

Section 10 - duties and powers of the Public Service Commission. It would seem that the tittles of this article is a misnomer in that there are no powers or duties described to the Commissioner except that of delegation However, the great concern with this article is in relationship -- in relation to delegation. It is impossile to conceive of a dynamic organization without a form of delegation but a necessary factor is to temper such authority within strict parameters of control and monitoring. The present section is simply one of unbridled delegation without any accountability or responsibility. For this reason is it proposed that the section be changed to the following; Delegation of authority (1) The Commission may authorize a deputy head to exercise and perform in such manner and subject to such terms and conditions as the commission directs any of the powers, functions and duties of the commission under this Ordinance other than the powers, functions and duties of the Commission in relation to appeals. (2) Where the Commission is of the opinion (a) that a person who has been or is about to be appointed to or from within the Public Service pursuant to authority granted by it under this Section, does not have the qualifications that are necessary to perform the duties of the position he occupies or would occupy, or (b) that the appointment of a person to or from within the Public Service pursuant to authority granted by it, under this Section, has been or would in contravertion of the terms, conditions under which the authority was granted. The Commission notwithstanding anything in this Ordinance, but subject to sub-section 3, may revoke the appointment or direct that the appointment not be made, as the case maybe, and shall there upon appoint that person to that person's previous position or at a level that is commensurate with his qualifications.

(3)An appointment from within the Public Service may be revoked by the Commission pursuant to subsection 2, only upon the recommendation of a board, established by it to conduct an inquiry at which the employee and the dupty head concerned, or their representatives are given an opportunity of being heard.

(4)The Commission may from time to time as it sees fit revise or rescind and reinstate the authority granted by it pursuant to this section.

(5)There's an amendment in (5) where it says subject to sub-section 6, it should be sub-section 4. The amended 5 will read; subject to sub-section 4, a deputy head may authorize one or more persons under his jurisdiction to exercise and perform any of the powers, functions or duties of the deputy head under this Ordinance including subject to approval of the Commission in accordance with the authority granted by it under this section, any of the powers, functions and duties that the

commission has authorized the deputy head to exercise and perform.

Furthermore l0 (2) should be restriced by a power to revoke appointments made by employees of the Commission or direct that such appointments not be made.

Mr. Chairman: Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, I'd like to question the witness on page 3, under permanent position is talking about commissioner, and here he is talking about Commission. Are the two same meanings, or is the Commissioner meant the Commisioner of the Yukon Territory.

Mr. Lampshire: On page 3?

Mr. Berger: Yeah. Under
Permanent Position.

Mr. Lampshire: Under permanent position? The Commissioner of the Public Service. Commissioner was mentioned, it would have to be the Public Service Commission, from the Public Service Commissioner unless otherwise stated. Unless we otherwise state. Okay, Yeah, right. Okay the Commissioner, is the Commissioner of the Public Service Commission

Okay, part four.

Mr. Chairman: Any questions? Mrs. Watson?

Mrs. Watson: Mr. Chairman, I have a question and it goes back to page 6, Powers of the Public Service Commission. I would like to ask Mr. Lampshire why they are proposing such a narrow definition for Section A, where you are suggesting appoint or provide for the appointment of qualified persons and all you are saying is from within the Public Service. You're narrowing it so that their only powers would be to appoint qualified persons from within the Public Service.

Mr. Lampshire: Could you just --

Mrs. Watson: Page 6, at the top of the page, Section 9, there is no provision in this Section for one of the primary functions of the Commission, which is to undertake the necessary staffing action and then you say, "To appoint or provide the appointment of qualified persons to or from within the Public Service", so all you are saying is that the Commission should have the power to appoint or provide for the appointment of people from within the Public Service, or this is what you are saying in that section.

Mr. Lampshire: No, what it means, or we are reading it to mean, that he has the ability or the power to appoint a person to the Public Service from outside the Public Service or within the Public Service, somebody who is already within the Public Service. So if a person had applied on an open competition, he has the power to appoint that person to a position, or if it's a closed competition, somebody already working in the government, he has that power too. He appoints everybody who gets a job within the Public Service, be it from inside the Public Service or within the Public Service.

Mrs. Watson: Mr. Chairman, thanks for the clarification. I thought you were deliberately trying to narrow it down, and this is actually what you are saying, and I wondered what your reasoning was.

Mr. Lampshire: Oh, no, every promotion to the Public Service or of the Public Service, he would appoint.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I'm a little unclear at page 8 at the bottom where it says that "Furthermore 10(2) should be restricted by a power to revoke appointments". Who would have that power? The deputy head?

Mr. Lampshire: The Commissioner, the Commissioner.

Ms. Millard: The Commissioner. So, the Commission, the rest of the Commission, may make an appointment and you recommend that the Commissioner could revoke anything that the rest of the Commission does?

Mr. Lampshire: Right, the rest of the Commission.

Providing there has been a mistake and it hasn't been promoted on the merit principle, i.e. that a wrong examination was used to determine the qualifications of the person, and in some cases they may use an examination to determine personalities in one case, but not in another case, and the Public Service Commission should have the right, if the competition was conducted improperly, to not appoint that person.

Four, appointment and powers of deputy heads. Section 18, we suggest an amendment simply for purposes of clarification whereby this section could state, "Except as otherwise provided by the Commissioner, in the absence of a deputy head, a unit head or any other employee shall be designated by the deputy head to exercise the powers, functions or duties of the deputy head".

It should also be noted that this change is important for purposes of having a constant identification of the various levels of authority.

Mr. Chairman: Mr. McCall?

Mr. McCall: Yes, I would like to ask the witness, the latter part of this suggested language, or any other employee shall be designated. I would like to question or ask the witness what particular employees did he have in mind?

Mr. Lampshire: Some of the powers of the Commission may not be as absolute as, say, the powers to ap-

point or whatever the case is. Some powers may be that a road foreman has the power to suspend, so you would want to delegate that authority down to him. I'm sorry, not to suspend, but to give a recommendation of suspension or whatever. I'm not -- I couldn't say right off the bat what other employees would mean in that case, Mr. Chairman.

Mr. Legal Advisor: Mr. Chairman, perhaps I could help. A unit head is not always the obvious person. A deputy head of a department sometimes is not a unit head, but he may take over that.

Mr. Chairman: Mr. McCall?

Mr. McCall: Actually, Mr. Chairman, this is not what the language is implying.

Mr. McCullough: Mr. Chairman, I think our thought behind this was that the designation is laid out, that it can be designated down to the deputy head, to in turn authorize one or more persons under his jurisdiction, and then it goes on, to exercise and perform any of the powers. And what we are trying to say is that this shouldn't -- this should be designated, probably in writing, so that there are levels available that we know who was acting as the deputy head at the time the person was going on with the duties that had been designated down to him or delegated down to him, rather, from the Commission.

That we know who was acting as the deputy head. It could be someone considerably far down the line, theoretically, I guess.

Mr. Lampshire: So that all employees in the work area know exactly who has the authority to do what. That is the essence of the change, that he shall be designated by the deputy head, and by so designating it should also state and be recorded on a board or wherever, so that all employees know that that person does have the authority.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Could I ask for clarification on what time frame you are considering here when you say "in the absence of". What kind of time are you discussing here? A day, three days, four hours, six weeks?

Mr. Lampshire: There is room for acting appointments under the contract and in the legislature, and the acting appointments -- you know, under the contract you get paid for acting appointments only after a certain length of days. For some jobs it's 15 days, other jobs it's for 5 days, but I think when a person does leave and is going to leave the work area for a number of days, say one or two or three days, there should be a person that is known to be acting in that position so that they can exercise that authority.

Because, if you don't delegate that authority, then how are people to know who is going to exercise it?

Hon. Mrs. Whyard: Mr. Chairman, you say one, two, three days; what do you mean?

Mr. Lampshire: Well, normally what we mean is if a person went on holidays, that's where we definitely want the acting position to be done, but if a person is not there, there should be -- if the director isn't there, there should be a 2 I.C., a second in command, that people know is appointed when that person isn't there and acts in that person's position. So that that authority that is given down to the deputy head or to the unit head is being exercised by the proper person and people know who that person is going to be.

So if it's one day, if the person is on sick leave for one day, people should still know where the authority is emanating from, be it on a 2 I.C., second in command, or whatever the case is.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: Mr. Chairman, I think the language of the section in the Ordinance is practically the same as Section 18 without any number of days stated, but the main thing is that the amendment, proposed amendment, says that the delegation shall be made, and in the Ordinance it leaves that completely up in the air, and the deputy head could leave without delegating his authority to anybody under the Ordinance. So the amendment is quite in order, it clarifies the Ordinance.

Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr. Chairman, I think what the proposal here is trying to say is as the Honourable Member from Mayo pointed out, this happens quite often that a foreman has to leave or a deputy head has to leave to go some place, on an inspection trip or something, maybe it's just for half a day, and nobody is in charge at home. So I think that what he is trying to do is to nail the whole thing down and find out who is in charge here.

Mr. Lampshire: Yes, Mr. Chairman, this is exactly what is the case. We've had, just recently in fact we have a grievance in on it right now about when are you acting and when are you not acting. You know, if your supervisor does leave, does that person automatically assume a position or what person automatically assumes her position, and it is extremely confusing in this light. So we are saying that, when a person does leave, there shall be somebody designated in that position so that everybody knows and she or him herself know, these people know that they are in that position and they are to perform those functions. Or else those functions may not be performed.

Mr. Chairman: Mr. McCall?

Mr. McCall: Yes, Mr. Chairman. I'm still concerned with the further clarification on this suggested language. Am I to assume that there seems to be an open

field as to designation of authority? Where is your limit? This is what I am concerned about.

What you're suggesting in this language, I suspect, is leaving a wide open field. Where is your limit of authority as far as designation by a department head? Otherwise, Mr. Chairman, you're going to have too many chiefs and not enough indians.

Mr. Lampshire: We don't really have the limit of authority. All we are saying is that if you are going to use or delegate the authority, tell us where it's going and who has it at that time.

Ms. Millard: Is it the opinion of the union that there should be some limitations on the delegation of authority?

Mr. Lampshire: Providing what is delegated down; obviously we do have exceptions to delegation of authority down far, but we also recognize that the employer must function in certain units, and if the delegation has to go down -- we would only like to see the authority only go down so far so that the unit itself can function and not any further, so that the delegation of authority, say in a road camp, is some authority is given down to the supervisor, that's as far as a delegation should have to go of any kind of authority, but it shouldn't have to go down to a heavy equipment operator or whatever the case is, unless he was performing on an acting basis the role of supervisor.

Mr. McCall: Well, Mr. Chairman --

Mr. Chairman: Mr. McCall?

Mr. McCall: I don't want to labour this, but the suggested language as put forward by the union itself is – put themselves in a position of restriction. Where is the limitation defined as to how far the designated authority can go?

Mr. Lampshire: Where is the limitations defined?

Mr. McCall: Yes.

Mr. Lampshire: In our brief we haven't defined the limitations. All we said is that if authority does go down, it shall be designated and we shall know who it is.

Mr. Chairman, we would appreciate any help at a later time, you know, if members do have comments on this, when we are not available.

Mr. Chairman: Thank you, Mr. Lampshire. Carry on.

Mr. Lampshire: Five, Classification of Positions. Our position to the issue of classification standards is that they should be bargainable and in relation to classification review, that it should be adjudicable. For the above stated reasons, it follows that we would want to see these sections in the Public Service Staff Relations Ordinance.

Our justification for such a position is twofold. First of all, the Canada Labour Code allows classification to be fully negotiable as they are in private industries, consequently normal procedures of rights dispute resolution applies.

Our second reason is that recognition has been given to the public service sector by the Special Joint Committee of the Senate and House of Commons on employee-employer relations in the Public Service report which was released March 1976; in recommendations 34 to 41, the subject of negotiability of classification standards is covered. These are: 34, that having regard to the established jurisdiction of bargaining agents in the Public Service, bargaining classification standards be interpreted to mean the determination of the relative worth of a job within an occupational group.

35. That provision be made in the law for the bargaining of classification standards following the three year period of promulgation.

36. That collective agreements incorporating classification standards be treated as "special agreements having their own duration".

37. That in accordance with regulations made by the Public Service Staff Relations Board, disputes arising in negotiations and involving the development or redevelopment of a classification standard be subject to reference to and arbitration by the Board.

38. That the provisions of the Act relating to the appointment of conciliation boards or conciliators not apply in cases of disputes arising out of negotiations of classification standards, but the the Board be empowered to appoint a mediator.

39. That resort to strike or lockout to resolve classification disputes be prohibited.

40. That arbitration of the pay plan attached to a classification standard be dealt with by the Public Service Staff Relations Board only with the consent of both parties. The bargaining agents all supported the view that adjudication should be broadened to include classification grievances. This proposal was concurred in by representatives of Treasury Board. Your Committee therefore recommends:

41. That classification grievances which are not resolved in the grievance process should be referrable to adjudications."

Sections 23, 24 and 25 of the proposed Ordinance. Mr. Chairman, would like us to read over the Sections, or just go into our brief on them.

Mr. Chairman: Just carry on with your brief, Mr. Lampshire.

Mr. Lampshire: Thank you. Sections 23, 24, 25 of the proposed Ordinance.

The above articles cause us grave concern. In that we are not considering a separate or neutral Commission, these powers of Employer cannot but engender the greatest apprehension since these sections are essentially the survival of a bargaining agent. The terms of a collective agreement could become completely irrelev-

ant as a result of reclassifications. It is felt that the very minimum to assuage our fears would be to add a requirement for full collective bargaining rights for classification.

Section 26

This section is considered inappropriate since the basic right of any employee is to have a real statement of duties especially in relation to the contents of this section where knowledge of the duties would be widespread and known in advance. Therefore, we recommend deletion.

Section 27 (2)

It is felt that this section will only sserve to create problems and confusion. It is suggested that information may best be supplied within the descriptions of qualifications or duties. For this reason we propose deletion.

In many larger concerns in the private sector, classification structures are more complex but are nonetheles fully negotiable between the parties. We have recently studied the steel industry as a case in point but the same type of system to be described below applies equally well to Air Canada, the Canadian Broadcasting Corporation, Ontario Hydro and others.

The classification structure in the steel industry is based on the first premise that the classification plans must be developed by both parties to be acceptable to both management and employees. The steelworkers rely heavily on the Co-operative Wage Study Evaluation System developed jointly by union and management; it is primarily a point evaluation system for two structures, manual workers and clerical-technical workers. The plans themselves are readily comparable to many or our point rating systems for Operational, Technical and Administrative Support Category positions.

In the steel industry, the steelworkers are the ones who are responsible for proposing the establishment of formal classification standards on the basis of a "co-cooperatively developed and administered plan." In practice, the steelworkers propose a formal classification structure when the number and diversity of the positions in any work unit would dictate a more systematic base upon which to differentiate between job responsibilities; for example, at the present time a plan is being developed for introductions at I.N.C.O. establishments across the country (18,000 employees). The negotiations of standards is achieved at the same time as wages and benefits with a separate negotiating team sub-committee responsible for classification standard negotiations. In summary, the negotiation of classification standards in the industry is dealt with no differently than the negotiation of any of the other issues. Although the matter of classification standards in the industry is usually dealt with in a "classification sub-committee" classification standards are certainly an integral part of the negotiations package.

In specific relation to Section 31, we cannot accept this proposal because our current collective agreement provides for negotiations to take place: Clause 14: 14 of the current collective agreement states: (b) The Alliance shall receive immediate notification from the Employer of the establishment of new classes of employment and the applicable rates of pay, of the modification revisions to the kind and level of work inherent in an existing class or the regrading of an existing class. Where the Alliance is in disagreement with the rates of pay for such classes, the Alliance will notify the Employer within thirty days from the date of the receipt of notification from the Employer. Should no mutual agreement be reached, the matter may be referred to an Arbitrator in accordance with the Yukon Public Service Staff Relations Ordinance.

Section 32

For the purpose of clarifying the language, we suggest that there are statements of qualifications and qualification standards, but that the term standards of qualification may be incongruous.

Section 35 to 39

Right to Classification Review.

There are a number of suggestions which we feel will improve the process. We would want to make it mandatory for an employee to make use of an informal review procedure to seek clarification of any matter relating to the classification of his position by discussion with his supervisor or departmental classification officer.

This informal process would also involve a review board stage where the employee may request union representation. This mandatory action will provide a relatively smoother administration of classification problems.

We are firmly against Section 38 since this imposes a static rule on perhaps a dynamic situation.

In Section 39, we suggest an addition at the end. The addition is, "shall notify an employee occupying such position within ten working days".

Sections 40 to 62, right to classification appeal. Again, we must state our desire to see this aspect moved to the Public Service Staff Relations Ordinance. Notwithstanding that, we have developed a number of comments and recommendations to the existing proposals.

Section 40, this section should provide that the selection or appointment of the Chairman receive the approval of the bargaining agents.

Section 46, we feel that 15 day period is far too short. A minimum would be 30 days while 60 days would be the desirable period.This additional time will permit the proper assessment where required, of each position's classification and will provide enough time being available for the union classification officers to assist the employee.

Our experience has shown that documentation is often incomplete and technical facts which are very important for assessment are simply overlooked. We do not see why management representatives would object to a 60 day period.

Section 49.

We wish to impress upon Committee members the

importance of both management and union representatives having the same classification documentation. It should be stated in the revised legislation that, at the end of the informal review, complete documentation should be made available to the employee and-or his union representative. In that way, many disagrreements on job content, reporting relationships, et cetera, could well be resolved before classification grievances are issued.

In matters of contention on such matters as job content, et cetera, the legislation should provide fact finding by union and management representatives before the initiation of a classification grievance. In addition, there is the principle of – I'll skip over that, which is any legislation governing the relationship between parties should always include. Both sides should be equal.

Section 50

(b). This provision causes some apprehension since it could be -- it could lead to ex parte or even incamera sessions which would be obviously injustices.

It is further recommended for clarification that a new section be added. (c) All parties shall have notice of all material and information supplied to the Board and be provided with an opportunity to submit comments or rebuttal.

Section 51.

The vagueness of this section gives rise to concern. This Section would allow and sanction any error or violation of rights. For this reason, we propose to amend it so that it states, "Shall determine its own procedure in accordance with established practice in administrative law, and thereby assume all parties the opportunity of expression in arriving at a fair and impartial decision".

Section 54.

Naturally, we are opposed to this Section.

There's an amendment here. Section 55 to 57. The amended section 55 t 57. "In our opinion, if implemented in legislation, these sections will cause a virtual collapse of the classification grievance process as a basic redresss mechanism. They call for severe restrictions on the decision making powers of an adjudicator. Indeed, we beleive that the Board would have great difficulty in finding an adjudicator to handle classification grievances under conditions which virtually tie his hands in terms of scope of operation.It is the responsibility of the adjudicator to ensure that all facts obtained are relevant, and that such facts are correct.

Based on all evidence presented by the parties, the adjudicator should be entitled to make a decision as to whether or not he sets aside the decision of a classification officer or agrees that the position classification is correct. These sections must be delted in their entirety. They are not required, and we oppose it on the grounds that the introductions of classification grievance machinery to adjudication would be next to meaningless with these proposed restrictions.

In addition, ever since the Port Arthur Shipbuilding case, which established the same straight jacket, all jursidiction has moved to give the adjudicator the ability to act and render justice.

Section 58.

This is a provision unique in labour law which we feel has no need and should not be instituted. For this reason, we recommend this invention be delted.

Section 63.

This provision deals with material administration and for this reason should not be included in the Ordinance.

We recognize the discretionary authority of the Commissioner in this area, but we would prefer not to have it sanctified in legislation.

Section 64 (1):

We feel that this is a retrograde step for the practice of extended retroactivity and will force unions to automatically instruct employees to file grievances if only to protect their retroactivity in any future classification grievance action. This action would become mandatory when a new government service or branch organization has been established.

There is no difficulty in determining the length of retroactivity in most cases. We believe that an integral part of the testimony presented at a classification grievance hearing should be that related to retroactive application. Under the proposed rules, the adjudicator would be empowered to summon departmental managers, and, in many cases, there will be no disagreement between the parties concerned as to when new or revised duties commenced.

In those rare instances where there is a grey area in this regard and sworn testimony provides the adjudicator with evidence on an appropriate retroactive period, it may be that his decision should not be made retroactive to more than a period of, say, two years back from the date on which a grievance in respect thereof was presented.

For these reasons, we recommend the following amendment: Where the decision of an adjudicator with respect to classification involves an upward change in the classification of an employee's position, the adjudicator should be empowered to determine the period of retroactivity applicable to any pay adjustment, such decision to be made, taken into account, sworn testimony and documents pertaining to the case.

Mr. Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, I would like to question the witness on the adjudication. Can cases take longer than two years, or is it your experience that some cases take longer than two years?

Mr. Lampshire: At adjudication?

Mr. Berger: Yes.

Mr. Lampshire: According to the collective agreement, we have three steps of the grievance procedure and that could take up to 60, 65 days, if you followed all the steps and all the maximum time limits were reached.

Then what happens is we apply for adjudication, we determine if the grievance is adjudicable and whether

the case is there. We apply and once the Board sets a date, then that date could be at any time, depending on the work load of the Board.

I would say it runs approximately six months after when a grievance is first filed. It's hard to stipulate a date or a length of time.

Mr. McCullough: Six, Pay and Allowances. This part should serve only to give authority to negotiate with bargaining agents. It is inappropriate that Sections 67, 68, 69, 70, 71, 72 and 73 should deal with matters that are negotiated in the collective bargaining system as though they were unilateral actions.

For this reason, we demand that either the negotiability of the items of the above sections be repeatedly stated or that these sections be deleted.

Part 7, Organization and Establishment. Section 84. In line with our proposal for Section 9(1)(p), we propose to amend the section in the following manner: The Public Service Commission, with the approval of the deputy head and subject to Section 9(1)(p), may abolish and carry on.

Section 9(1)(p) was the joint consultation that we had asked for previously.

Sections 83 and 87, we wish to draw to the attention of the Committee that the fact that the safeguard provided by Section 83 can easily be circumvented by the hiring of casuals. Proof of this is present practice and Section 87, which provides that casuals are not included in the inventory of position such that restricting the number of positions is meaningless, except for the denial of rights of employees that it allows. For this reason, we would hope that the legislation will move to give meaning and integrity to Section 83.

Part 8, Section 96. Amend proposed text to read: "The Commission has the responsibility and authority to recruit and appoint persons to positions in the Public Service. The exclusivity of the right to recruit, appoint, certify and document all employees appointed to a position on the establishment of a department, branch or division of the Public Service, may conflict with an adjudicator's power to reinstate a dismissed employee or to grant redress to an employee grieving improper selection.

Furthermore, the exclusivity mentioned in Section 96 contradicts somewhat Section 10(2) which provided for delegation of any of the powers of the Public Service Commissioner to deputy heads. It certainly conflicts with proposed Sections 115, 136, 185 and 208.

Section 98. It is a meaningless article, especially when it is preceding articles that provide for appointment according to merit and without discrimination based on race, ethnic or national origin. We do not oppose a preference given to Canadian citizens or Landed Immigrants, but we feel that it is a wishy-washy clause like Section 98 does not really serve that purpose and may give rise to unwarranted discrimination.

Section 99. Amend the word "religious" which is redundant if the word "religion" and "creed" are used. Add a new concept to the list by inserting the word "age" before "sex".

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Sorry to go back. I was trying to get the Chairman's -- in Section 96, I wonder if you could give me an example that you might have in mind, there, where that kind of conflict would take place?

Mr. McCullough: Section 96 says the Commission has the exclusive right and authority to appoint persons --

Mr. Lengerke: Right --

Mr. McCullough: -- and so on.

Mr. Lengerke: -- we understand that.

Mr. Lampshire: It has the exclusive right. What may happen is if a person who is suspended and the adjudicator stated that that person should be brought back to the job, has that not been -- if the Commissioner says no, I won't take him back, does that not conflict with the adjudicator's decision, third party decision?

Mr. Lengerke: Yes, Mr. Chairman, my point was there is that the Commissioner would act on the adjudicator's advice, I would hope.

Mr. Legal Advisor: He's bound by law.

Mr. Lengerke: He's bound by law, I would think, so I can't see any conflict with that. That's my point.

Mr. Lampshire: Then, can he delegate any hiring authority? He has the exclusive right to appoint.

Mr. Lengerke: I'm satisfied in my thinking, Mr. Chairman. Carry on.

Mr. McCullough: Section 101(1): Amend to insert the word "non-recurring" before the word "casual". This word will distinguish true casual employment from seasonal and regular part-time employment.

Section 104: A sub-section (2) should be added to read this way: "An employee dismissed pursuant to subsection 104(1) may grieve and appeal dismissal to an adjudicator appointed pursuant to the Public Service Staff Relations Ordinance".

This addition would provide an avenue of redress to a person who felt that a dismissal under 104(1) was unjustified, unfair or arbitrary. Natural justice alone would dictate that a person would have a right to present his or her case to a neutral party if he disputes the decision that pertains to him or her. Without the right to adjudication, the Public Service Commissioner would be the final level of the grievance procedure as well as probably the person responsible for taking the decision to dismiss. In view of the protection afforded the Public Service Commissioner under Section 6, we see no reason why other employees of the Yukon Territory Government should not be given a minimum of protection.

Section 108: Sub-section (a) should be deleted as it contradicts Section 100 which provided that appointments should be made according to merit.

Section 109: This section to be deleted, its sub-section (2) being in absolute contradiction with Section 100.

If sub-section (a) of Section 108 were to remain, subsection (1) should read: "In case of emergencies or where no better candidate can be identified by the holding of a competition, the deputy head may recommend the appointment of a qualified and readily available person pursuant to Section 108(a)". Following the above amendment, sub-section (2) would no longer violate the merit principle.

Section 111: Sub-section (b) should be deleted. It is in contradiction with Section 100 and useless if above amendments are adopted.

Section 113: This section should be amended to read as follows:

"(1) Where a competition is to be held, the Commission shall constitute a Board of two or more members for the purpose of assessing the qualifications of the candidates for which applications have been received in accordance with the procedure prescribed in the regulations."

"(2) A Board constituted under (1) shall be knowledgeable of the positions to be filled and its members shall be qualified to carry out such tests, interviews or examination as required to determine the relative merit of candidates."

Section 115: This section should be deleted. It contradicts Section 96 and Section 100 of this Ordinance as well as the proposed amended Section 113.

It is ridiculous to bring in the deputy head to consider the recommendations of a competition board after the fact is appointments are to be made according to merit, as competition boards under 113 should be compelled to rate candidates in accordance with merit.

Instead of a Section 115 as it presently reads, which is anomalous, a sub-section (3) should be added to Section 113 to read as follows:

"(3) (a) The deputy head is deemed qualified and has the right to sit as a member of a competition board constituted for the purpose of making a selection for appointment to his department."

"(b) The deputy head shall have the right to appoint a qualified member to sit as his delegate on a competition board constituted for the purpose of making a selection for appointment to his department."

The above would provide deputy heads with a realistic input in personnel selection for their departments without giving them opportunities to monkey around with the findings of competition boards. The control over competition boards would remain with the Public Service Commission, which is the guardian of the merit principle, but at the same time the deputy heads would be in a position to ensure that the Commission does not lose sight of the needs and requirements of departments.

Probation and Trial. Section 116. Amend to read: "Every person appointed to the Public Service shall serve a probationary period of not more than six months, calculated from the date of his appointment to the position." Six months is sufficient to assess whether a person is suitable for appointment to the Public Service. There are sufficient manners under Parts 10, 11 and 12 and throughout the Ordinance at Sections 104, 138, to terminate an employee, rejection during probation need only be used as part of the initial selection process when an employee is appointed to the Public Service.

Appointments from the public service do not give rise to the same risks and problems as those from outside. There has been an opportunity to observe employees to gather information about them and verify it. They should not be subject to a probationary period, but to a different trial period as proposed in a revised Section 120.

Mr. Chairman: Excuse me, Mr. McCullough, I think we will have a brief recess now.

RECESS

Mr. Chairman: I now call this Committee to order.

Mr. McCullough, would you proceed please?

Mr. McCullough: Section 117. Amend this section to read, "A deputy head may determine the length of the probationary period which shall not be less than 30 days and not more than six months". This amendment provides consistance whith Section 116. Extension of probation is not justified and is usually the result of negligence in assessing a new employee.

A statistical study conducted by the staffing branch of the Public Service Commission has revealed that the probationary period after hiring is covered in practically all collective agreements and consists in the vast majority, in periods of two or three months. A very small percentage provide for a six months probation and only exceptionally are there provisions for more than six months' probation. See Appendix 2.

Section 118. Amend to delete "or at any time during the extended probationary period".

Section 119. Amend to all the following as sub-section (2); "Notwithstanding (1), an employee rejected during probation may be reappointed to a position for which he is qualified if such a position is available, and there are no lay-offs waiting for appointments".

Section 120, replace by the following: 1(a) "Every employee promoted from within the public service will be subject to a trial period of six months, calculated from the date of appointment to a higher position. (b) The Deputy head may waive the trial period or portions thereof. "2. An employee may be rejected for cause during his trial period, in which case he will be entitled to reappointment to his former position, if it is availa-

ble, or to a position at the same call level as the position he occupied prior to his trial appointment".

The above section is preferable to having employees subject to a strict probation again, as if they were just appointed to the public service. We accept the principle of probation for employees hired from outside, of which nothing is known, but we cannot agree that after having gone through such a probation once, an employee be made to go through it every time he seeks to improve himself.

Again we believe that there is a bona fide cause -- that where there is a bona fide cause for terminating an employee, the employer has a variety of tools for doing it, and should not try to avoid having to justify his actions before a neutral party. Furthermore, we believe it would be a violation of the merit principle, if an employee who is doing such a good job at his level to merit a promotion, should find himself expelled from the public service while someone perhaps less qualified remains in it for having been unseccessful during the cmpetition.

Probation following a promotion is a sure way to encourage mediocrity in the public service, as employees fail to improve their position for fear of finding themselves going one step too far and out of a job. There is as much responsibility resting on the shoulders of those who make selection as there is on the employee who applies for a promotion. The consequences of an error in selection should not be borne by the employee alone, while the employer reaps only the benefits.

By keeping the trial period short, managing personnel will have to ensure that no time is wasted in assessing newly promoted employees to determine whether the employee is suitable or will have return to his former position. A minimum of disruption will be caused if the trial period is short, and perhaps an increase in efficiency will result if everyone is aware that there is only one kick at the cat, that is, that the employee has six months to show he can do the job, and that the employer has the same time to see that he is able to do it

Section 121.

Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr.Chairman, I would like to ask the witness, what is the current practice in the Territorial Government on probation?

Mr. Lampshire: The current practice is that a person is on probation for a six month period and it can be extended for another six months.

Mr. Chairman Mr. Berger?

Mr. Berger; Does this happen quite often, Mr. Chairman?

Mr. Lampshire; Extended probation periods!? Yes, frequently.

Mr. McCullough; Section 121. This section to be amended to add a a new subsection (1), to delete subsection (b) and to amend the present language to form a sub-section (2).

(1) A deputy head shall notify the commission and the employee of the length of the probationary or trial period at the time of appointment or promotion in the public service.
(2) A Deputy Head shall, prior to the expiry of an employee's probationary or trial period, notify the Commission
(a) whether in his opinion the employee is suitable for continued employment in the position to which he was appointed or
(b) whether the employee has been rejected or, in the opinion of the Deputy Head, will be rejected during his probationary or trial period."

Section 122

Should be deleted. This section could give rise to violation of the merit principle and is inconsistent with the purpose of a probationary period which is to give the employer time to observe the employee on the job. The Madran Case, file Y 67-2 No. 1, is an illustration of the anomaly which may occur when permanent positions are filled on casual basis for pay purposes only. It would seem more sensible to allow for reasonable overlapping in positions for training and continuity purposes than to provide for casual previous to indeterminate status.

Section 123

Mr. Chairman: One moment, Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, since nobody asked, could you tell us the Madran case?

Mr. Lampshire: The Madran Case was case in point where an employee was working as a liquor store, in a liquor store and he was hired on and he had a training period along with the person who was already employed in the store. When the Madran Case come to a point where the employer wanted to dismiss him from probation, on probation, they didn't want to include the time that he had spent on the job prior to the already incumbent employee going. So say Madran started three weeks and he was doing a training period with the other employee, in three weeks, that three weeks they didn't want to include that three weeks as a probationary period. Because they stated that he wasn't filling a permanent position, he was casual. He was on as a casual employee.

Mr. Legal Advisor: Mr. Chairman, the Madran Case is a specific case. A person was appointed to a particular position. The position was already occupied by a person who was resigning, from I think it was the first of

April. So a recruit was selected and told he would get the job. But he could not commence his appointment until the first of April. So he was given the job two weeks as a casual posted to the same place. His probation was terminated six months later. And the department named a day, six months from the first of April and said you are terminated with effect from the date. And he was. He grieved and the argument of the grievance was I was working for six months as a permanent but also two weeks as a casual. And therefore, you must terminate me within six months. And the adjudicator held that the engagement must be calculated from the first moment of his working for the government. So added the two weeks to it and in effect therefore, the termination was two weeks over the end of his time and the grievance date.

Mr. Lampshire: It should be noted Mr. Chairman, the importance of the probation period is the fact that an employee can be dismissed for cause without any recourse to a third party. And that's why we're stating that if an employee is put on probation, the onus should be on the employer to train and judge the person as soon as possible, so that person doesn't have to remain on that status where he's not sure of his job and of his employment. As it appears it lengthens the probation period, the probation period lengthens, the employer has a tendency not to train as quick as possible, or not to scrutinize as quick as possible and leave it up to the last moment. And therefore what we're saying is that shorten the probation period and have the employer put more onus on the training and the evaluation so that person doesn't have to stay on this status for any length of time than necessary.

Section 123

This section should be deleted it contradicts section 125 and is discrimination on the basis of age.

While we oppose child labour we feel that children's protection should be the object of other legislations so that they are free from abuse from everyone not only the Government.

We see no justification in view of sections 124 and 125 to have a section establishing a maximum age of 65 years.

Section 126

This section should be delted.

This section in its present format can only give rise to abuse. Under section 138 the Deputy Head may dismiss an employee for cause including being unable to perform his duties, but this decision is subject to adjudication. Under this section there is no avenue of redress. If the Commission in its great wisdom (and there is no section that requires that the Commission be wise) decides that an employee is ill, he is out of his job without any recourse.

Sick leave is subject to collective bargaining, so should be the conditions under which an employee is treated while ill. It would be most unfair if an employee having earned through the years, all kind of protections for days of ill health, could find himself out of a job because of a bad flu to which the Commission takes exception.

Section 127

Mr. Chairman: Mr. Berger.

Mr. Berger: I'd like to go back to this section once more, Mr. Chairman, 126. Is there any time limit set at the present time for how long, how many days he can can be sick before an employer can dismiss you or is there just anytime will do.

Mr. Lampshire: It's not specified, Mr. Chairman.

Mr. Legal Advisor: The way it's specified is you're entitled to 6 months leave with full pay. If you earned it over a period and then there's a period of leave without pay, so effectively it looks like 12 months before the sick leave would operate. It's all set out in the regulations.

Mr. Chairman: Mr. Berger.

Mr. Berger: Supplementary question, Mr. Chairman, I was always of the opinion that being sick is not privilege, it's an unfortunate thing. And I think as a union I would prefer actually to get away from sick leave all together. I would say that anybody's sick, he's an unfortunate person, who requires days off to recuperate from his sickness. And there shouldn't be no time limit set on this. Because I happen to have a bad back injury and maybe could be off for 2 years. Then I recuperate enough to go back on the job, it means possible that I couldn't get a job because of the position I had before was already filled and I have no job. So I think I would say that maybe they should devise to try and get away from bargaining a sick leave altogether and establish privileged sick days, when required, instead of earning sick leave.

Mr. Lampshire: Mr. Chairman, we couldn't concur more with the Honourable Member. At present in our contract, however, we do have the sick days and we would like to protect what we have at this present time for the members, but I agree whole-heartedly with that position.

Mr. McCullough: Section 127. This section to be delted. It is even more offensive to fair employment practices and justice in general than Section 126. For the same reasons as above, we strongly object to giving the power to negate hard won rights of employees and to arbitrarily terminate an employee appointment for reasons which can be the object of adjudication under another Section.

Section 128 should be delted. It becomes redundant if Sections 126 and 127 are deleted. In any case, it is so wishy-washy that it is almost meaningless and is a mere camouflage of the hideous injustice contained in the

previous sections.

A new section under Retirement would be far more fitting than the proposed Sections 126 to 128, and it is, a new Section 126, "An employee may retire from the public service prior to retirement age for reasons of ill health".

Resignation, Section 130.Sub-section (1) to be amended to delete the words, "not" and "except" before and after the verb "be withdrawn", to read 130 (1); "A resignation takes effect on the effective day and may be withdrawn as provided in sub-section (2)". Subsection (2) to be deleted and replaced by (2) "A resignation may be withdrawn prior to the effective day a written notice cancelling resignation and where no other employee has been appointed to the position".

Mr. Lampshire: Section 131, this section should be deleted. This Section could give rise to many problems where employees will claim that they were not quitting and where unit heads will claim this is what they understood took place. If an employee wishes to give notice orally that he wishes to resign, he should be requested to sign a form on which a space provided, an indication of the effective date as well as a space for signifying acceptance by the deputy head. Many employees intend to resign if they win the Olympic lottery. They many even notify their unit head of this intention thinking it will never happen to them, but may have no wish to resign once it did happen.

Section 132. This Section does not belong under a section entitled "Resignations". It would be far more suitable for Part 14 entitled "General".

Section title. Section 133 should be preceded by the title "Abandonment" or the previous heading should read "Voluntary Termination" or "Resignation and Abandonment".

Section 133. This Section should be amended to bring it more in line with the resignation article. It should read 133 (1): "An employee who is absent from duties without authorization and without valid reason for a period of 10 consecutive working days may be a notice in writing, be declared by a deputy head to have abondoned his position and thereupon the position becomes vacant and the employee ceases to be an employee".

"2. An employee who has been deemed to have abondoned his position may grieve the declaration to the Public Service Commissioner within 10 working days of the service of notice mentioned in sub-section (1) upon him

"3. An employee may, within 10 working days of the receipt of the decision of the Public Service Commissioner, pursuant to 133 (2), appeal the decision to an adjudicator appointed pursuant to the Public Service Relations Ordinance. The decision of the Public Service Commissioner should be appealable to a neutral party as any decision to terminate employment. If an employee voluntarily quits or abondons his position, it is unlikely that a challenge of a decision to accept that fact will rise. It is only in cases of misunderstandings that problems are likely to occur.

Why should a form of misconduct, i.e. taking a week's leave without permission, be treated differently from the form of misconduct consisting of hitting a supervisor?

We see Section 133 (3) as proposed originally as a further erosion to the right of employees to a fair and equitable grievance procedure. In view of the protection this Act is affording the Public Service Commissioner under Section 6, we see no justification in depriving public servants of similar rights in a roundabout manner by enacting restrictions to the rights of employees to fair and neutral disposition of their grievances or appeals.

Part 9, Transfer. Section 136. Delete this Section and replace by, 136 (1): "Where operational requirements so necessitate, a deputy head may request the transfer of an employee by written notice to the employee and the Public Service Commission where the transfer is (a) from one position to another position in the same class within his department or branch, or (b), from one work location to another work location within his department or branch.

"2. Such a transfer will be effected where (a) the employee voluntarily agrees to transfer or (b) where the employee's position is being abolished.

"3. A temporary transfer may be affected during an emergency and for the period necessary to conduct a competition to fill the vacant position. There is no justification for a unilateral decision on transfer of employees from one work location to another or from the position to which a person was appointed to another at the same level but possibly different. In the same manner that an employee cannot demand to be transferred, the employer cannot compel an employee to transfer out of his position.

Section 136 in its original language could give rise to abuse and permit harassment of employees.

Section 137. This Section should be amended to add the workd "with his consent" after the word "employee"; i.e., the Public Service Commissioner may transfer an employee with his consent from one work location et cetera.

Part 10, Section 138. This Section should be deleted and replaced by the following: "A deputy head may discipline or dismiss an employee for cause." Such language would encompass all the items listed and those which may have been inadvertently omitted. At the same time, it would remove the legitimation given under sub-section (d) to a situation where there is considerable room for abuse.

Under Canadian laws, a person is innocent until proven guilty. On the other hand, it may be inadvisable to leave the person charged with drug trafficking in the position where he is responsible for the safekeeping of a whole hospital stock of drugs. There is considerable jurisprudence to guide a deputy head in each circumstance and a dose of common sense is understood when cause for discipline is established.

Sections 139 to 153. These Sections should be deleted as the procedure is cumbersome and competes with the grievance procedure which should be adequate to deal with the question, provided some amendments are

made to the Public Service Staff Relations Ordinance.

In the absence of amendments to the Public Service Staff Relations Ordinance, we would suggest a new Section 139 to read as follows:

"Section 139(1): Any disciplinary action taken pursuant to Section 138 may be the object of the grievance procedure provided under the Public Service Staff Relations Ordinance, except that grievances pertaining to suspension and dismissal may be presented at the final level only."

"(2) Where an employee is not satisfied with the decision at the final level of a disciplinary grievance, he may within 15 working days refer the decision to an adjudicator appointed pursuant to the Public Service Staff Relations Ordinance. The Public Service Commissioner becomes the final level of the grievance procedure under Section 201. He should be the only one to hear suspension or dismissal grievances as it is useless and ridiculous to have someone hear a grievance against his decision, which should have been taken with serious attention in the first place.

Section 156. Amend this Section to substitute disciplinary grievances to the word "appeal".

Section 158. Amend this Section to substitute the expression "disciplinary grievances" to the word "appeals".

Section 159. Delete -- it becomes redundant in view of previous changes.

Section 160 to be deleted.

The Association would welcome an amendment to the Public Service Staff Relations Ordinance making disciplinary sanctions grievable and adjudicable. Notwithstanding that the power to discipline would be granted under this Ordinance, we also feel that disciplinary -- discipline standards and procedures should be subject to collective bargaining, as it is in every labour relations jurisdiction in Canada.

We realize that this Ordinance proposes the creation of a new Public Service Commission and that amendments to the Public Service Staff Relations Ordinance shoule be part of a separate presentation which will be attached in Appendix as related to the proposals in this Ordinance.

Part 11. Political Office. Section 161. Amend to delete the words "without pay" after the expression "leave of absence". Where an employee has the credits, he should be entitled to utilize his annual leave if he so wishes, prior to going on leave of absence without pay.

Section 162. Amend to delete the words "where operational requirements permit" and to provide consistency with Section 161 to read as follows: "162(1): The Public Service Commissioner shall grant leave of absence without pay to an employee (a) to seek nomination as a candidate or (b) to be a candidate for election as a member of the House of Commons or the Council of the Yukon Territory for a period ending on the day on which the results of the election are officially declared or on such earlier day as may be requested by the employee if he has ceased to be a candidate."

"(1) An employee may be granted annual leave with pay in circumstances described under (1) if he has the credits necessary and wishes to utilize these credits."

Section 164. Amend to delete the words "The House of Commons or" and add "or retired" as well as a subsection (2) so that the Section will read:

"164(1): An employee who is elected as a member of the Council of the Yukon Territory shall be deemed to have resigned or retired from the public service from the date of his election."

"(2): An employee who is elected as a member of the House of Commons or any municipal office may remain on leave of absence without pay for the tenure of one term of the office to which he is elected."

Sections 165 to 169. To be deleted and replaced by the following new section 165:

"(1) No employee shall solicit funds for a political party or a candidate for election as a member of the Council of the Yukon Territory during working hours or through their employment contacts."

"(2) No employee may reveal any information that he has procured or which comes to his knowledge solely by virtue of his employment or position in the public service, to speak, write or work on behalf or against the candidate as a member of the Legislative Assembly of the Yukon Territory, or a political party in a Territorial election."

"(3) No employee may during a Territorial election publicly criticize or oppose any policy of the government which he has been instrumental in formulating."

The above proposed section clearly indicates the behaviour which is prohibited to employees during elections. All other actions should be allowed as part of a basic freedom of speech and of association. We agree that employees should not be able to use the special advantages of their employment which ordinary citizens do not have, but on the other hand they should not be deprived of their basic rights which all citizens are entitled to exercise.

Section 170. To be deleted. Contravention of this part is clearly a form of misconduct and should be treated as such. Provisions for discipline are already available under Section 138; this section is both unfair and unnecessary. No employee should see his employment terminated without any recourse to the grievance and adjudication procedure, especially if he feels that the decision is unjustified. For reasons mentioned earlier at Sections 104, 126 and 133, we feel that Section 170 is both unjustified and inequitable.

Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr. Chairman, I trust this witness has mentioned Section 164 in the proposal 1. And I'd like to question him why shouldn't the candidate or employee have the same rights when he's running for a member of Legislative Assembly for the Yukon Territory as running for the House of Commons or municipal office; why shouldn't he be on leave without pay also?

Mr. Lampshire: 164(1). I don't think he's allowed to take money from two sources within the Government.

Mr. Chairman: Mr. Berger.

Mr. Berger: Mr. Chairman, he wouldn't get any money if he's on leave without pay from the Territorial Government. The only thing he would receive is his remuneration as a candidate.

Mr. Lampshire: Mr. Chairman, this is the minimum position we would like to see and we're willing to take any amendments from the floor.

Mr. Berger: Well, I have an additional question on that Section 165(2). The same type of question again is why is he not allowed to speak, write or work on behalf or against a candidate as a member of the Legislative Assembly or the Yukon Territory or a political party in a Territorial election. The point I'd just like to point out, Mr. Chairman, isn't this in the proceeding sentence here, employee may reveal any information that he has procured or which came to his knowledge solely by virtue of his employment or position in his Public Service; shouldn't that be enough? It states clearly that he should not use his position and his knowledge from the position to run as candidate or work for a candidate.

Mr. Lampshire: I'm sorry, Mr. Chairman, we don't have an answer for that.

12. Lay-offs. Section 172 - amend to read: "A deputy head may recommend to the Commission that an employee be laid off when his services are no longer required because of a shortage of work or because of the discontinuance of a function."

We object to singling the two reasons: insufficient appropriated funds and reorganization as a cause of lay-off. We feel that abuse could result if these two circumstances were listed separately. Obviously, if funds are curtailed or a serious reorganization takes place, a department may have to discontinue certain services or functions which would bring about a genuine lay-off. On the other hand, a deputy head should not be able to take advantage of a tight period to lay off employees as a pressure tactic or to rid himself of someone he doesn't like, nor should he be able to pretend a reorganization for the same purpose.

Section 174, amend to delete the word "twelve" and replace by "twenty-four". See Section 176.

Section 175, amend to delete the words "considered for appointment" which would be replaced by the word "appointed" and delete the words "and in priority to all other employees who become lay-offs at an earlier time."

If an employee is qualified he should be given the vacant position, not simply be "considered" for it. To consider is meaningless and impossible to assess. It means such ineffectual concepts as "contemplate mentally, weigh the merits of, reckon with, make allowance for, or think over". This is not good enough. Laying off employees is a very serious matter and there should not be any room for playing around with the livelihood of people because of differences of opinion or because someone in command might have had someone else in mind. An employee is qualified for a position or he is not; this is something which can be assessed. If a lay-off is qualified for a position that is vacant, he gets it without interference from some nebulous consideration.

We see no justification for a later lay-off to have priority on an earlier one. This is unfair. We feel that lay-offs should be recalled on a first come, first serve basis, where merit is equal.

Mr. Chairman: Mr. Lampshire, I presume you mean competent mentally rather than contemplate mentally.

Mr. Lampshire: What was that, Mr. Chairman?

Mr. Chairman: At the bottom of page 39.

Mr. Lampshire: Contemplate mentally, yes.

Section 176, amend to delete the words "twelve months" to replace by the words "two years". There is no justification for reducing the two-year period of lay-off status presently found in Article 29(5) of the Public Service Ordinance to one of twelve months.

Section 178, delete sub-section (c) and replace by: "(c) Years of service". We cannot see what factors the deputy head may consider relevant which would not risk making his decision capricious or arbitrary. There should not be room in the lay-off procedure for the exercise of personal discrimination tendencies of a deputy head.

Section 182. The present section should become sub-section (1) and a new sub-section (2) as follows;

"(2) Notwithstanding (1), an employee may be entitled to such additional notice period as may be provided by this collective agreement.

Section 183. Amend to change the word "permanent" and "permanent employee" to "indeterminate". There appears to be a tendency to use the word "permanent" instead of "indeterminate" but only positions are permanent, not employees.

Section 186 defines tenure as indeterminate or specified, so we can assume that what is envisioned in Section 183 is that an employee appointed for an indeterminate period will be given duties of a casual, non-reoccurring of temporary nature available before he is laid off.

Section 184 If the definition of casual remains as proposed, we recommed that this section be abolished as it is unfair to seasonal employees who often perform duties for the benefit of the Yukon Government for periods longer than six months and this year after year.

Part 13. Section 185 to 188 should be deleted. This part has no place in this Ordinance. All persons appointed to the public service should have their terms and conditions of employment established in a uniform manner. Contracts of emplyment are tools for going around the

spirit of the Ordinance. In the Federal public service they cause no end of scandals and are often used by some departments to hide from the public, and to some extent, to their elected officials, true costs of personal expenditures--personnel expenditures.

Contracts of employment are often buried along with other contracts and it takes a knowledgeable person to be able to recognize them in offical reports.

Our second objection to contracts of employment is that they provide deputy heads with a tool of patronage. It is a convenient way to bring someone in, a friend or a past benefactor for a year or two, without having to worry about the merit principle, holding competitions, et cetera.

Our third reason for objecting to this practice that it may create an impediment to upward mobility of indeterminate public servants. Some very interesting projects are often given to outside firms or to friends which could be proved very stimulating for employees, giving them added experience and improving their worth for the public servie.

Finally, in an era of collective bargaining, there is no room for contracts of employment which could defeat the purpose of collective agreements.

Part 14. Section 191.

Delete this section. We find a little harsh, the treatment suggested in the proposed Section 191. Again we consider that refusal by an employee to provide documents required by the Commission necesary for the completion of their files, may amount to misconduct and should be treated in the same manner as any refusal to obey an order. This type of behaviour could be subject to Section 138. We see no justification for treating one form of misconduct differently than another form, and to deprive an employee of his right to dispute such a severe sanction as dismissal. Please see Sections 104, 126, 138 and 170.

Section 192. Delete sub-section (3) and amend subsection (2) by adding the following words at the end: "Unless the employee can show that notice was received at another date". Section 3 can only give rise to disputes. There is no guarantee that a person living at the same address as an employee will give him a notice left for him for that purpose. If an employee cannot be served a notice personally, it should be sent to him by registered mail.

There are laws which protect a citizen against tampering with his mail, but there are no protection in casses of notice simply left at his place of residence.

Sub-section (2) can give rise to much unjustice if and employee is deemed to be notified while he cannot be because of mail problems or of absence on vacation leave, sick leave or other bona fide activities.

Section 197. Amend to delete "exclusive" and replace by the words "The Commission in consultation with authorized bargaining agents shall have the right and authority to select training".

Section 198 Amend to add after the word employ the following words; "Subject to joint consultations with the authorized bargaining agent."

Section 203. Amend to add after the word "Commissioner" the following words, "and the consent of the employee may loan".

Sections 205 and 206. Delete "improper solicitation or endeavour to influence the commission is a breach of dicipline which should come under Section 138. For the reasons outlined in Section 104, 126, 170, and 191, we so no justificaton for these two section.

Do you want us to go through Appendix 1 which would be Proposed Ammendments to the Public Service Staff Relations Ordinance along the lines of the changes that we had already proposed for the Public Service Commission Ordinance?

Mr. Chairman: Not at the present time. Are there any more questions for the witnesses?

If not, I would like to thank the witnesses. You are excused for the present time.

Mrs. Campbell: Mr. Chairman, at this time I would like to thank the members of the Legislative Assembly for giving us the opportunity to present our brief, and also to express our gratitude for the concern shown us.

Thank you very much.

Mr. Chairman: Thank you.

I will now declare a brief recess.

RECESS

Mr. Chairman: I now call this Committee to order.

It has been suggested that we now call it 5 o'clock and commence the reading of the clause by clause of Bill Number 1 tomorrow morning.

Is tCommittee in agreement?

Some Members: Agreed.

Mr. Chairman: I will now entertain a Motion.

Mr. McCall: I would now move that Mr. Speaker resume the chair.

Mr. Berger: I second that.

Mr. Chairman: It has been moved by Mr. McCall, seconded by Mr. Berger, that Mr. Speaker do now resume the Chair. Are you in favour?

Some Members: Agreed.

Mr. Chairman: The Motion is carried.

(MOTION CARRIED)

(MR. SPEAKER RESUMES CHAIR)

Mr. Speaker: I will now call the House to order.

Could I have a report from the Chairman of Committees?

Mr. Hibberd: Yes, Mr. Speaker. Committee convened at 10:25 a.m. and recessed at 10:27 a.m. Committee reconvened at 1:35 p.m. to consider Bills. Committee commenced by considering Bill Number 1, Public Service Commission Ordinance.

A submission to the Legislature was made by the Yukon Territorial Public Service Association. As witnesses, Mr. Rick Lampshire, Business Agent, Mrs. Kay Campbell, President and Mr. Jim McCullough, Chief Steward, presented their brief and answered questions. The witnesses were thanked and excused.

It was moved by Mr. McCall, seconded by Mr. Berger that Mr. Speaker do now resume the chair and this motion was carried.

Mr. Speaker: You have heard the report of the Chairman of Committees. Are you agreed?

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure at this time? The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: Mr. Speaker, I move that we now call it 5 o'clock.

Ms. Millard: I second that Motion.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse Riverdale, seconded by the Honourable Member from Ogilvie, that we now call it 5 o'clock. Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare that the Motion is carried.

(MOTION CARRIED)

Mr. Speaker: This House now stands adjourned until 10:00 a.m. tomorrow morning.

(ADJOURNED)