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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

MICHEL BRAULT

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Brault v. Canada Revenue Agency

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Léo-Paul Guindon, adjudicator

For the Grievor: Frédéric Durso, Professional Institute of the Public Service of
Canada

For the Employer: Adrian Bieniasiewicz, counsel

Heard at Montréal, Quebec,
December 5, 2006.
(Written submissions filed January 15, February 5 and 16 and March 6, 2007.)
(P.S.L.R.B. Translation)

I. Grievance referred to adjudication

[1] Michel Brault (“the grievor”) occupied a position as a large-case auditor in the Taxation Section of the Montréal Tax Services Office, on Montréal’s south shore, of the Canada Customs and Revenue Agency (“the CCRA”) when he filed a grievance on February 28, 2001. His grievance reads as follows:

[Translation]

...

I contest the CCRA's decision to refuse the reimbursement of my professional fee in the amount of \$75 (plus taxes), which was paid to the Ordre des comptables agréés du Québec and which fulfills the conditions set out in article 22 of the collective agreement.

CORRECTIVE ACTION REQUESTED

I request the full reimbursement of the professional fee in the amount of \$75 (plus taxes) required by the Ordre des comptables agréés du Québec, as indicated in the claim that I submitted to the CCRA on November 2, 2000.

...

[Emphasis in the original]

[2] The collective agreement in this case was signed on November 2, 2000 by the CCRA and the Professional Institute of the Public Service of Canada (PIPSC) for the Audit, Commerce and Purchasing Group bargaining unit (“the collective agreement”).

[3] The grievance was referred to adjudication on December 8, 2004 under paragraph 92(1)(a) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (“the former Act”).

[4] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the former Act.

[5] On December 12, 2005, the CCRA became the Canada Revenue Agency (“the employer”).

II. Preliminary objection regarding the jurisdiction of an adjudicator

[6] At the beginning of the oral hearing, the employer raised an objection as to whether an adjudicator had jurisdiction to hear this case.

A. Objection of the employer

[7] The employer submitted that the grievor received a fee notice on August 31, 2000. On that date, article 22 of the collective agreement, which forms the basis of the grievance, was not yet in force, since the collective agreement was only signed on November 2, 2000.

[8] This grievance may not be referred to adjudication since subsection 92(1) of the former Act provides as follows:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

. . .

and the grievance has not been dealt with to the satisfaction of the employee, the employee may . . . refer the grievance to adjudication.

B. Reply of the grievor

[9] The grievor claimed that the employer's objection took him by surprise by and asked for time to prepare his response, which he desired to base on the case law.

[10] The grievor submitted his claim for reimbursement on November 2, 2000; the employer responded on January 30, 2001.

C. Rebuttal of the employer

[11] On August 31, 2000, the Ordre des comptables agréés du Québec (OCAQ) requested that the grievor pay a special fee. He waited until November 2, 2000, the date on which the collective agreement came into force, to claim reimbursement of that fee from the employer. According to the employer, the date of the incident giving

rise to the grievance is October 31, 2000, when the grievor paid the special fee. The date of November 2, 2000 may not be used to that effect.

[12] An objection about an adjudicator's jurisdiction may be raised at any time during the process; the grievor acknowledged that point.

[13] The objection was taken under consideration, since the parties are required to establish the facts on which their arguments are based. I instructed the parties to proceed with the evidence on the merits of the grievance. At the conclusion of the oral hearing, a schedule was set for the parties to file written submissions both on the objection regarding jurisdiction and on the merits of the grievance.

III. Summary of the evidence

[14] The grievor's grievance is based on article 22 of the collective agreement. Clause 48.01 indicates that its duration shall be from the date it was signed, on November 2, 2000, to June 21, 2001. Article 22 reads as follows:

ARTICLE 22

PROFESSIONAL ACCOUNTING ASSOCIATION ANNUAL MEMBERSHIP FEE

22.01 Subject to paragraphs (a), (b) and (c), the Employer shall reimburse an employee's payment of annual membership fees in one of either the Canadian Institute of Chartered Accountants (CA), the Society of Management Accountants (CMA), or the Certified General Accountants Association (CGA), and to one of their respective provincial organizations.

- (a) Except as provided under paragraph (b) below, the reimbursement of annual membership fees relates to the payment of an annual fee which is a mandatory requirement by one of the governing organizations listed in this clause to maintain a professional designation and membership in good standing. This reimbursement will include the payment of the "Office des professions du Québec" (OPQ) annual fee.*
- (b) Portions of fees or charges of an administrative nature such as the following are not subject to reimbursement under this clause: service charges for the payment of fees on an installment or post-dated basis; late payment charges or penalties; initiation fees; reinstatement fees required to maintain*

membership in good standing; or payment of arrears for re-admission to an accounting association.

- (c) *In respect of requests for reimbursement of professional fees made pursuant to this clause, the employee shall be required to provide the Employer with receipts to validate payments made.*

[15] The grievor has a bachelor's degree in business administration and has been a chartered accountant since 1978. On August 31, 2000, the OCAQ sent him notice that a special fee of \$75 (plus taxes) was due, to be used to build up the OCAQ compensation fund (Exhibit F-1). That special fee, like the annual membership fee, was a mandatory requirement; payment was to reach the OCAQ no later than October 31, 2000. OCAQ members who did not pay the special fee on time could be charged late payment fees and have their names removed from the OCAQ membership list (Exhibit F-2).

[16] The grievor sent a cheque to the OCAQ at the end of the deadline. An official receipt for \$86.27 was issued to him, equal to the special fee and applicable taxes for the April 1, 2000 to March 31, 2001 fee year (Exhibit F-3). The cheque was debited from the grievor's bank account on November 1, 2000 (Exhibit F-4).

[17] On November 2, 2000, the grievor submitted an annual membership fee reimbursement claim (Exhibit F-5). The employer's decision to refuse that reimbursement was communicated to the grievor by Benoit Guay, the PIPSC local representative, who had received an email message about it on January 30, 2001.

[18] The special fee of \$75 to build up the OCAQ compensation fund was first requested in 2000; it later formed part of the annual membership fee.

[19] On January 24, 2001, the grievor checked the CCRA's January 2001 policy regarding professional association membership fees ("the 2001 policy") to ascertain whether the employer's refusal was justified. The 2001 policy (Exhibit F-6) reads in part as follows:

[Translation]

...

Definitions

7. (a) **Annual membership fee** - an annual membership fee that is a mandatory requirement by a governing organization listed in Appendix A to maintain a professional designation and membership in good standing. For reimbursement purposes, the membership fee shall include the GST/HST and other applicable provincial sales taxes, as well as the Office des professions du Québec (OPQ) annual fee.

...

APPENDIX A

TYPES OF ANNUAL MEMBERSHIP FEES THAT MAY BE REIMBURSED AND CONDITIONS OF ENTITLEMENT

...

1.1 Introduction

Annual membership fees paid to one of the three Canadian professional accounting associations — the Institute of Chartered Accountants (CA), the Society of Management Accountants (CMA) or the Certified General Accountants Association (CGA) — and to one of their provincial organizations may be reimbursed to the employees noted below.

1.2 AU Group

- **Starting July 13, 1998** - “**Memorandum of Understanding (MOU) signed with the PIPSC**” - AU Group members became entitled to the reimbursement of their annual membership fees.

...

- **Starting November 2, 2000** - “**Collective agreement and MOU signed with the PIPSC AU Group bargaining unit**” - AU Group employees may claim reimbursement of their annual membership fees paid to one of the Canadian professional accounting associations provided that they do not claim reimbursement of fees paid to a provincial bar association or to the Canadian Institute of Chartered Business Valuators . . .

...

[Emphasis in the original]

[20] With respect to subparagraph 8(1)(i)(i) and subsection 8(5) of the *Income Tax Act* regarding dues for employees who are members of a professional association, according

to Revenue Canada Taxation Income Tax Interpretation Bulletin IT158R2 (“the interpretation bulletin”) (Exhibit F-7), an employee may deduct annual professional membership dues to the extent that they may reasonably be regarded as applicable to that source of income and provided that they are annual dues necessary to maintain professional status. According to the grievor, the interpretation bulletin summarizes the case law on taxation and indicates that the OCAQ special fee is the same as a regular annual membership fee, as does *Lucas v. Canada*, [1987] F.C.J. No. 502 (T.D.)(QL) (Exhibit F-8).

[21] The 2001 policy (Exhibit F-6) replaced an October 2000 policy (“the 2000 policy”, not adduced in evidence), which itself had replaced Revenue Canada’s (the CCRA’s predecessor) May 1999 policy on the fees of professional accountants employed in the AU Group (“the 1999 policy”) (Exhibit E-1) published in chapter 7 of Revenue Canada’s *Financial and Administration Manual*. The 1999 policy reads in part as follows:

[Translation]

...

4. (a) **Professional accountant’s fee** - *The annual membership fee (including GST/HST and provincial sales tax) that is a mandatory requirement for a CA, CMA or CGA to maintain a professional designation.*

...

8. *Reimbursement shall be limited to the annual professional accounting membership fee (and applicable sales taxes) paid to a Canadian professional accounting association (CA, CMA or CGA).*

...

[22] According to the grievor, the special fee to build up the OCAQ compensation fund was included in the definition of “annual membership fee” set out in the collective agreement and in the 1999 and 2001 policies since that fee was required to maintain a professional designation. The special fee of \$75 was not a fee or charge of an administrative nature referred to in clause 22.01(b) of the collective agreement.

[23] The grievor paid his regular annual membership fee for 2000-2001 early in the fiscal year running from April 1, 2000 to March 31, 2001. The employer honoured his claim for the reimbursement of that fee.

[24] Mr. Guay, Audit Team Leader at the Montérégie Tax Services Office on Montréal's south shore, has been a PIPSC local representative since 1975. In that capacity, he advised the grievor regarding this grievance. He also worked on a November 1998 agreement regarding a collective grievance on an entitlement to the reimbursement of the Office des professions du Québec (OPQ) annual fee paid by auditors in the Quebec Region (Exhibit F-10). The collective grievance was presented directly to the third level of the grievance process.

[25] In a January 19, 1999 response (Exhibit F-11), the Assistant Deputy Minister, Regional Operations, Quebec Region, allowed the collective grievance, noting that the OPQ fee is a mandatory requirement to maintain membership in good standing in the “[translation] . . . Institute of Chartered Accountants (CA), the Society of Management Accountants (CGA) and the Certified General Accountants Association (CGA). . . .”

[26] Peter Cenne, Director, Collective Bargaining Division, was responsible for collective bargaining and for managing the grievance process at the CCRA. He helped negotiate the collective agreement and was a signatory to it. Article 22 of the collective agreement is a new article that included the elements of the 1999 policy in the collective agreement. The collective agreement came into force on the date on which it was signed, November 2, 2000.

[27] In putting the annual membership fee reimbursement issue on the bargaining table, the PIPSC's objective was to include the elements of the 1999 policy in the collective agreement and not to extend the scope of that policy. The CCRA's objective was to promote the acquisition or maintenance of a professional designation by auditors while not making a professional designation a requirement of their positions. The 1999 policy provided for the reimbursement of employees' annual membership fees with certain exceptions such as initiation fees that, since they are not the same as regular annual membership fees, are not reimbursable.

[28] Mr. Cenne was of the opinion that the OPQ fee was not reimbursable until the collective agreement was ratified on November 2, 2000. Article 22 of the collective agreement provides for the reimbursement of an annual membership fee required to

obtain or maintain a professional designation that is indispensable to the ongoing performance of the duties of a position. It complements article 21, which formed part of the previous collective agreement and provides for the reimbursement of professional fees when the payment of those fees is indispensable to the ongoing performance of the duties of a position. A professional designation is not indispensable to the performance of auditors' duties.

[29] According to Mr. Cenne, clause 22.01(a) of the collective agreement provides for the reimbursement of annual membership fees with the exception of special fees. In the employer's opinion, the purpose of article 22 was not to allow the reimbursement of all fees that are not annual membership fees. If the CCRA and the PIPSC had intended to include the reimbursement of all fees that are not annual membership fees, they would have so specified and would not have had to provide, in clause 22.01(b), that certain charges of an administrative nature are not reimbursable. According to Mr. Cenne, there is a distinction between basic fees, payable annually to maintain membership in good standing, and other non-recurring fees that may be requested by a professional body.

[30] Réal Lamarche, the PIPSC bargaining team chairperson, helped negotiate the collective agreement and testified that he was a signatory to it. On July 13, 1998, a memorandum of understanding (MOU) regarding the reimbursement of membership fees was signed by the PIPSC, the Treasury Board and Revenue Canada ("the 1998 MOU," Exhibit F-12). The MOU provided for the reimbursement of membership fees paid to the Institute of Chartered Accountants, the Society of Management Accountants and the Certified General Accountants Association and their respective provincial organizations. Fees payable and paid after January 1, 1998 were to be reimbursed; reimbursement was not to cover fees in arrears from previous years. According to Mr. Lamarche, the 1998 MOU provided for the reimbursement of fees that were a mandatory requirement to maintain a professional designation. There was no debate about annual membership fees and special fees. The Treasury Board and Revenue Canada then agreed to make all necessary efforts required to ensure that any new employer would continue to provide the benefit set out in the 1998 MOU.

[31] Mr. Lamarche added that the CCRA developed the 1999 policy without consulting the PIPSC. According to Mr. Lamarche, since the 1999 policy sets out exceptions, it is more restrictive than the 1998 MOU.

[32] In negotiating the collective agreement, the CCRA and the PIPSC intended to include the essence of the 1999 policy; that is, the reimbursement of an annual membership fee that is a mandatory requirement to maintain a professional designation, according to paragraph 4(a) of the 1999 policy. The collective agreement included an entitlement to the reimbursement of fees payable to the OCAQ, since those fees are required to maintain a professional designation.

[33] In 2002-2003, the OCAQ's professional fees amounted to \$650.15, including \$50 to build up the OCAQ's general reserve fund (Exhibit F-13). The fee notice sent to members only included a total amount and did not identify a specific amount to build up the general reserve fund.

IV. Summary of the arguments

[34] The parties filed written submissions on both the objection regarding jurisdiction and the merits of the grievance.

A. Employer's written submissions regarding jurisdiction

[35] Article 22 of the collective agreement was not in force when the grievor received the OCAQ special-fee notice dated August 31, 2000. The special fee was payable no later than October 31, 2000. Nor was the collective agreement in force when the grievor paid the special fee by a cheque that was dated October 31, 2000 and cashed on November 1, 2000.

[36] Until the collective agreement came into force, the reimbursement of professional fees could be claimed under the 1999 policy. That policy was changed when the CCRA and the PIPSC signed the November 2, 2000 MOU ("the 2000 MOU"); I note that the 2000 MOU was not adduced in evidence. The 2000 MOU does not form part of the collective agreement. The 2001 policy replaced the 1999 policy. When the OCAQ special-fee notice was sent, and when the grievor paid that fee, the 1999 policy was still applicable.

[37] The grievor's claim for the reimbursement of the OCAQ 2000-2001 annual membership fee was submitted at the beginning of the fiscal year on the basis of the 1999 policy, and was honoured by the employer.

[38] According to the employer, an adjudicator does not have jurisdiction to hear the reference to adjudication of this grievance since it is not a grievance that may be referred to adjudication under paragraph 92(1)(a) of the former *Act*.

[39] The collective agreement does not provide that fees payable before the collective agreement was signed are reimbursable.

B. Grievor's response regarding jurisdiction and written submissions regarding the merits of the grievance

[40] According to the grievor, the employer errs when it submits that article 22 of the collective agreement does not apply because it was not in force “[translation] when the fee became payable” since that interpretation would add to the wording of the collective agreement.

[41] The grievor submitted his claim to the employer on November 2, 2000, on the day on which the collective agreement came into force. Since the collective agreement does not include any transitional provisions, the claim was validly submitted.

[42] The collective agreement only sets out one condition on submitting claims for the reimbursement of annual membership fees. Its clause 22.01(c) stipulates that employees shall provide the employer with receipts to validate their claims.

[43] In this case, the grievor submitted his claim on the day on which the collective agreement came into force. He provided the employer with a receipt, satisfying the requirement set out in clause 22.01(c) of the collective agreement. Therefore, this grievance contesting the application of the collective agreement may be referred to adjudication under paragraph 92(1)(a) of the former *Act*.

[44] The employer refused to reimburse the grievor, since it considered that the claim was not for an annual membership fee. Article 22 of the collective agreement provides for the reimbursement of an annual payment that is a mandatory requirement to maintain a professional designation. The special fee required by the OCAQ is the same as an annual membership fee since according to the fee notice, its payment is a mandatory requirement to maintain a professional designation and membership in good standing.

[45] According to Mr. Cenne, the wording of the collective agreement would exclude any special fees since, like the wording of the 1999 policy, it provides only for an

annual membership fee. However, that argument does not hold up, because the fees or charges of an administrative nature excluded by clause 22.01(b) are defined in the collective agreement.

[46] According to Mr. Lamarche, the objective of the 1998 MOU and the collective agreement was to reimburse fees required to maintain a professional designation and membership in good standing. The excluded fees or charges of an administrative nature do not include fees that are a mandatory requirement to maintain a professional designation and membership in good standing.

[47] The special fee was payable during the April 1, 2000 to March 31, 2001 year and corresponds to the definition of the word “annual” found in *Lucas*:

...
... *Certainly the word “annual” is capable of two definitions, i.e. occurring from year to year or dues paid in that year.* ...

...
That definition should be used in interpreting the applicable collective agreement, which also uses the word “annual.”

C. Employer’s rebuttal regarding jurisdiction and its response regarding the merits of the grievance

[48] The principle of the non-retroactivity of a collective agreement must be applied. *United Association of Plumbers & Pipefitters, Local 593 v. London Labour Bureau* (1961), 11 L.A.C. 306, emphasizes the principle that in the absence of explicit wording, a collective agreement is not retroactive. That principle was upheld in *Bunka v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2002 PSSRB 15. The collective agreement contains no indication that its article 22 applies retroactively.

[49] Also, accepting that article 22 of the collective agreement is applicable to the OCAQ fee claim, when that fee predates the collective agreement’s coming into force, would mean accepting fee claims from any year before the collective agreement came into force. Thus, reimbursement could not be claimed based on the collective agreement but could be claimed on the basis of the 1999 policy, which was applicable when the fee was paid and when the claim was submitted.

[50] On the merits of the grievance, the employer submitted that article 22 of the collective agreement does not provide for the reimbursement of special fees. The definition of the word “annual” found in *Lucas* is not applicable to this grievance since it is based on tax law principles and not on the interpretation of the former *Act*.

[51] Mr. Lamarche pointed out that the OCAQ special fee is non-recurring. The non-recurring nature of the special fee means that it may not be considered the same as an annual membership fee.

[52] Although the exceptions set out in clause 22.01(b) of the collective agreement include initiation fees and fees in arrears from previous years, payment of those fees is nonetheless required to maintain or regain a professional designation and membership in good standing. Thus, contrary to the grievor’s arguments, those exceptions are not limited to fees or charges of an administrative nature. The English version of clause 22.01(b) (“portion of fees or charges of an administrative nature”) includes two terms and thus has a broader scope than the French version (“*frais de nature administrative*”).

D. Grievor’s counter-rebuttal regarding jurisdiction and rebuttal regarding the merits of the grievance

[53] The grievor’s claim for reimbursement was validly submitted; the collective agreement was then in force, and the grievor could take advantage of it since no transitional provisions limited its application. The principle of non-retroactivity set out in *United Association of Plumbers & Pipefitters* merely supports the grievor’s position.

[54] *Bunka* dealt with the principle of non-retroactivity of a collective agreement as follows:

...

[38] . . . My understanding of the jurisprudence on the retroactive application of the provisions of a collective agreement is that they only become effective on and from the date the collective agreement is signed unless some other date is expressed or implied.

...

[55] The date on which the collective agreement came into force is the date it was signed, November 2, 2000. The former policies provided for the reimbursement of

professional fees starting January 1, 1998, and there was no need to specify an additional retroactivity date in the collective agreement. If the employer had intended to include additional limitations, it was responsible for adding them to the agreed wording.

[56] On the merits of the grievance, the employer interprets the word “annual” outside the context of article 22 of the collective agreement, which links the reimbursement of fees to the maintenance of a professional designation and membership in good standing. In so arguing, the employer has limited the article and altered its scope. The employer submitted no argument that might set aside the dual definition of the word “annual” found in *Lucas*, and no indication is made that the parties to the collective agreement intended to give that word any special meaning. In drafting the 1998 MOU and the collective agreement, the various stakeholders intended to provide for the reimbursement of fees payable each year to a professional order to maintain professional status and membership in good standing. Those two points cannot be dissociated.

[57] The employer’s argument contradicts its response to the collective grievance at the third level of the grievance process (Exhibit F-11), which reads in part as follows:

[Translation]

...

... It appeared to me that the Employer’s intention was to reimburse to employees fees that are mandatory to maintain membership.

Also, a check with the Office des professions du Québec (OPQ) showed that the OPQ fee is mandatory to be a member in the above-noted organizations.

...

V. Reasons

[58] The employer raised an objection under section 92 of the former *Act* regarding the jurisdiction of an adjudicator. Paragraph 92(1)(a) of the former *Act* provides that a grievance on the interpretation or the application of a provision of a collective agreement may be referred to adjudication. According to the employer, this grievance may not be referred to adjudication, because when the grievor paid the special fee to

the OCAQ, the collective agreement was not yet in force. Since article 22 of the collective agreement was not then in force, it could not have formed the basis of this grievance. The grievor's grievance cannot be heard; at a time when the collective agreement did not recognize entitlement to the reimbursement of special fees by the employer, a grievance could not challenge its refusal to reimburse such a fee based on the collective agreement. According to the employer, the principle of non-retroactivity of collective agreements applies to this grievance. According to that principle, in the absence of an explicit clause, a collective agreement is not retroactive (see Brown and Beatty, *Canadian Labour Arbitration*. 4th ed. para 4:1610).

[59] Secondly, the employer submitted that the grievor's grievance cannot be heard since article 22 of the collective agreement only covers annual membership fees, not special fees.

[60] In ruling on jurisdiction, I must examine the nature of the grievor's grievance. The grievance contests the employer's decision to refuse to reimburse him the OCAQ special fee; specifically, it alleges that the employer erred in interpreting or applying article 22 of the collective agreement by refusing to reimburse the special fee. Thus, the grievance clearly contests the interpretation or application of a clause of the collective agreement regarding the grievor. At first glance, that allegation fulfills the conditions set out in paragraph 92(1)(a) of the former *Act* for referring a grievance to adjudication. It has not been contradicted that the grievance was presented up to the final level of the grievance process. I therefore have jurisdiction to rule on the merits of this grievance, and the employer's preliminary objection is dismissed. An examination of the facts will allow me to rule on the merits of the grievance; that is, whether the grievor is entitled to the reimbursement of the OCAQ special fee.

[61] The employer submitted that the grievor is not entitled to the reimbursement of the OCAQ special fee for two reasons: (1) article 22 of the collective agreement cannot be applied retroactively to fees paid before it came into force, and (2) under article 22, a special fee (as opposed to an annual membership fee) is not reimbursable. Either reason is a valid ground for dismissing this grievance.

[62] With respect to the date on which the collective agreement came into force, article 48 of the collective agreement reads as follows:

ARTICLE 48**DURATION**

48.01 *The duration of this Collective Agreement shall be from the date it is signed to June 21, 2001.*

48.02 *Unless otherwise expressly stipulated, the provisions of this Collective Agreement shall become effective on the date it is signed.*

[63] When the grievor filed his grievance on February 28, 2001, the collective agreement had been in force since November 2, 2000. Article 22 of the collective agreement had also been in force since that date, since no clause of the collective agreement sets out another date on which that article was to come into force. Therefore, on the date the grievance was filed, article 22 covered the employer's obligation to reimburse an OCAQ annual membership fee paid by an employee, and the grievor was entitled to claim reimbursement of such a fee.

[64] The evidence demonstrates that on August 31, 2000 the OCAQ sent the grievor a special-fee notice. The special fee was to be paid no later than October 31, 2000; it was paid by a cheque that was cashed on November 1, 2000. On November 2, 2000, the grievor submitted to the employer an annual membership fee reimbursement claim; on January 30, 2001 he was notified of the employer's refusal. Those facts have not been contested.

A. Entitlement to reimbursement of annual membership fee

[65] Article 22 of the collective agreement deals with the reimbursement of annual membership fees paid to one of the Canadian professional accounting associations and to their respective provincial organizations, as well as the OPQ annual fee. This grievance has solely to do with the interpretation and application of article 22. The employer's obligation to reimburse annual membership fees paid to one of those organizations is clearly stipulated.

[66] Clause 22.01(a) of the collective agreement reads as follows:

. . . reimbursement of annual membership fees relates to the payment of an annual fee which is a mandatory requirement by one of the governing organizations listed in this clause to maintain a professional designation and membership in good standing . . .

[Emphasis added]

The entitlement to the reimbursement of membership fees has three aspects: (1) a payment (2) that is annual and (3) that has as its objective to maintain a professional designation and membership in good standing. Taken together, the three aspects define the scope of an employee's entitlement to reimbursement. According to the wording of the clause, the three aspects cannot be dissociated. To entitle a grievor to reimbursement, the circumstances giving rise to a grievance must include the three aspects set out in clause 22.01(a).

[67] Clause 22.01(b) of the collective agreement sets out an exception to the entitlement to reimbursement for fees or charges of an administrative nature, including fees associated with certain methods of payment, fees paid late or past the due date, initiation fees, reinstatement fees and fees in arrears from previous years. Clause 22.01(c) provides that the employee shall provide the employer with receipts to validate his or her reimbursement claim.

[68] The evidence has established that the grievor paid the special fee required by the OCAQ to rebuild its compensation fund. The payment was made by cheque and debited from the grievor's account on November 1, 2000. The payment corresponds to the first aspect required under clause 22.01(a) of the collective agreement. It also raises the issue of the application of the principle of non-retroactivity of a collective agreement, which will be addressed later.

[69] The second aspect required under clause 22.01(a) of the collective agreement, that the payment be "annual" or that the fees be for "annual" dues was central to the parties' arguments. Since the collective agreement does not define the word "annual," the commonly accepted meaning must be used, which defines "annual" as something that recurs each year or is for a one-year period.

[70] In this grievance, the evidence demonstrates that the OCAQ requested the special fee on August 31, 2000 in a manner that made the special fee the same as an annual membership fee because of its mandatory nature and because of the possibility of having one's name removed from the OCAQ membership list if it were not paid. Although the evidence shows that the fee to rebuild the OCAQ compensation fund later formed part of the OCAQ annual membership fee, the special fee requested on August 31, 2000 was not annual since it was the subject of an individual fee notice

and was separate from the annual membership fee for the year from April 1, 2000 to March 31, 2001. The OCAQ's decision that for the years following 2000-2001, part of the annual membership fee would be used to rebuild the compensation fund does not change the special fee requested on August 31, 2000 into an annual membership fee.

[71] Also, it appears that the special fee did not cover all of 2000-2001, since it was only requested on August 31, 2000, four months after April 1, 2000. Thus, the special fee cannot be considered annual since it applied not to the entire year concerned but only to the period from November 1, 2000 (payment being required no later than October 31, 2000) until March 31, 2001.

[72] The OCAQ considered the special fee to be the same as an annual membership fee in that failure to pay it on time could cause one's name to be removed from the OCAQ membership list. Although that circumstance corresponds to the third aspect required under clause 22.01(a) of the collective agreement, it cannot by itself form the basis of entitlement to reimbursement.

[73] Thus, the special fee requested on August 31, 2000 to rebuild the OCAQ compensation fund does not include all of the required aspects of entitlement to the reimbursement of fees set out in the collective agreement. The grievance is dismissed on this ground. That said, it is also important to rule on the issue of the application of the principle of non-retroactivity of a collective agreement.

B. Application of the principle of non-retroactivity of a collective agreement

[74] With respect to the principle of non-retroactivity of a collective agreement, I must note that a collective agreement gives rise to rights and obligations from the date on which it is signed. In this grievance, entitlement to the reimbursement of fees set out in article 22 of the collective agreement has existed since November 2, 2000, when the collective agreement was signed. Also, clause 48.01 stipulates that the duration of the collective agreement shall be from the date it was signed until June 21, 2001.

[75] According to the principle of non-retroactivity set out in *Canadian Labour Arbitration* and applied in *Bunka*, in the absence of an explicit clause, a collective agreement is not retroactive.

[76] Clearly, the factual aspect giving rise to the grievor's entitlement and the employer's obligation under article 22 of the collective agreement is the payment of

the fee. Neither the wording of clause 22.01(c) in particular nor the wording of article 22 in general makes it explicit that fees paid before the collective agreement came into force are reimbursable. No other clause in the collective agreement provides for retroactivity. Consequently, to ensure entitlement to reimbursement, the fee must have been paid while the collective agreement was in force. In those circumstances, the principle of non-retroactivity of a collective agreement must be applied.

[77] The grievor's argument that the employer was responsible for articulating its intention not to make article 22 of the collective agreement retroactive, when previously (since January 1, 1998) annual membership fees had clearly been reimbursable, cannot be accepted. That argument runs counter to the rule of interpretation that extrinsic evidence (intentions by the parties during collective bargaining or expressed in other circumstances) may be used to clarify the wording of a collective agreement only if that wording is ambiguous or confusing. In this grievance, article 22 is not confusing and is clear: it does not provide for retroactivity. That argument, which would require one party to articulate an intention not to make certain clauses retroactive, also runs counter to the principle that in the absence of an explicit clause, a collective agreement is not retroactive. Contrary to the grievor's argument, the principle of non-retroactivity of collective agreements cannot be applied *a contrario*.

[78] For all of those reasons, I conclude that the applicable collective agreement is not retroactive. Accordingly, the grievance requesting the reimbursement of the fee paid by the grievor before the date the collective agreement came into force cannot be allowed.

[79] For all of the above reasons, I make the following order:

(The Order appears on the next page)

VI. Order

[80] The employer's preliminary objection regarding jurisdiction is dismissed.

[81] The grievance is dismissed.

October 17, 2007.

P.S.L.R.B. Translation

**Léo-Paul Guindon,
adjudicator**