1985 CarswellOnt 2663
Ontario Arbitration

Carleton University v. C.U.A.S.A.

1985 CarswellOnt 2663, 18 L.A.C. (3d) 304

Re Carleton University and Carleton University Academic Staff Association

A. M. Kruger

Judgment: 1985 Year only
Docket: None given.

Counsel: C. Lace, for the union
B. H. Stewart, Q.C., for the employer

***A. M. Kruger*:**

1 This matter comes before me as a result of a grievance filed by the association on June 6, 1984. The association's complaint was that the university had violated arts. 41 and 45 of the collective agreement in calculating the salary increases due to take effect on May 1, 1984.

2 It was agreed at the outset that this board of arbitration had jurisdiction in this matter.

3 Fortunately there is no dispute about the relevant facts.

4 The parties signed a memorandum of settlement on February 26, 1982, which served as the basis for the current collective agreement. The contract has a term of three years from May 1, 1982 to April 30, 1985.

5 Article 41 of that agreement provides for a career development plan. Members of the bargaining unit are subjected to a performance evaluation annually. As long as their performance meets certain criteria specified in that article, they should receive a career adjustment increment (CDI) as part of their May 1st salary adjustment in each of the three years of the agreement.

6 Article 45 of the agreement outlines the way in which May 1st salary changes, including the CDI, are to be made.

7 The parties do not appear to have experienced difficulties in agreeing on the method of adjusting salaries on May 1, 1982, for the budget year 1982-1983. They would not likely have experienced problems in the two succeeding years except for the fact that the *Inflation Restraint Act*, 1982 (Ont.), c. 55 (Bill 179), was enacted later in 1982. That Act was deemed to have come into force on September 21, 1982.

8 There is no dispute about the fact that Bill 179 was applicable to Carleton University and its employees. Nor is there any disagreement that for the budget year 1983-1984, Bill 179 had the effect of changing the salary increases from what would have been awarded under the collective agreement in the absence of the *Inflation Restraint Act*, 1982. Instead of the across-the-board increase of 8.95% that would have come into effect on May 1, 1983, under art. 45.2(b) of the agreement, these employees received only a 5% increase because of Bill 179. Furthermore, while all members of the bargaining unit were evaluated for CDIs and almost all found to be eligible for such increases, CDIs were paid only to the extent that the addition of the CDI to the salary would not raise the salary above $35,000. This too was a result of Bill 179.

9 The association, on July 27, 1983, wrote the Inflation Restraint Board requesting approval for payment of CDIs for 1983-1984 to all members of the bargaining unit who had been favourably evaluated. Section 12(5) of Bill 179 provided for increases above 5% even for those earnings over $35,000 "as a result of the proper promotion ...".

10 The Inflation Restraint Board denied the association's request, in a decision issued on August 3, 1983. The board concluded that progression through the career development plan did not constitute promotion. The decision concluded by stating:

> Accordingly, the payments fall within the scope of those described by cls. 12(5)(a) to (e) and, consequently, the board advises the parties that the subject payments may not be made to employees earning in excess of $35,000 per year.

11 The parties agree that the "control year" for these employees under Bill 179 covered the period from May 1, 1983 to April 30, 1984. Salaries in the third year of the collective agreement, for the period May 1, 1984 to April 30, 1985, were to be calculated according to the collective agreement. However, there was a difference of opinion concerning what impact, if any, Bill 179 had on salaries during the current budget year.

12 Before proceeding further to explain the position of the parties on this matter, it would be helpful to reproduce here the relevant provision of art. 45 of the collective agreement which states that:

> 45.1 The nominal salary of each continuing employee during the period May 1st, 1982, to April 30th, 1983, May 1st, 1983 to April 30th, 1984, and during the period May 1st, 1984, to April 30th, 1985, shall be composed of the following:
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> (a) the nominal salary as of April 30th of the previous year of employment as modified by any increases as provided for under Article 45.2, plus
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> (b) the career development increasement for the current year, unless denied, as provided for under Article 41, plus
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> (c) any adjustment made to nominal salary as a result of the operation of Article 44 (Salary Rationalisation).
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> 45.2 (a) The nominal salary as of April 30th, 1982, of each continuing employee shall be increased by 12.5%.
>
> (b) The nominal salary as of April 30th, 1983, of each continuing employee shall be increased by the average increase in CPI for Ottawa for the twelve months preceding January 1, 1983 less 1.0%.
>
> (c) The nominal salary as of April 30th, 1984 of each continuing employee shall be increased by the average increase in CPI for Ottawa for the twelve months preceding January 1, 1984 less 1.0%.

13 When the time came to fix 1984-1985 salaries under art. 45, the association took the position that the "nominal salary" on April 30, 1983, was not the actual salary paid to employees on that date but, rather, the salary that would have been paid under the agreement in the absence of Bill 179. This would have meant that the base salary on which the 1984-1985 increase was calculated would exceed the actual salary for all employees by 3.95% (the difference between the 8.95% that would have been paid on May 1, 1983, under art. 45.2 and the 5% that was paid under Bill 179) plus the CDIs that would have been paid to eligible staff in the absence of Bill 179.

14 The association did *not* seek to recover salary increases rolled back by Bill 179 during 1983-1984. What it sought was to have the 1984-1985 salaries calculated as they would have been had Bill 179 not been enacted.

15 For whatever reason, the parties chose to treat their disagreement over this matter as two separate grievances. One of these involved the issue of whether the April 30, 1984 nominal salary was the April 30, 1983 nominal salary raised by 5% or by 8.95%. That matter proceeded to arbitration. On December 20, 1984, Mr. M. Teplitsky, sole arbitrator, found in favour of the university's position, namely, that s. 12(1) of Bill 179 had the effect of changing the nominal salary as of April 30, 1984, from the level it would have reached under the collective agreement in the absence of Bill 179.

16 The matter before me involves the question of whether those assessed as eligible for CDIs during 1983-1984 should have the CDIs, whether actually paid or not, included in the nominal salary on which 1984-1985 increases would be calculated under art. 45 of the collective agreement.

17 To complicate matters further, the university paid CDIs in 1983-1984 to those favourably assessed for them and as long as this payment did not raise the employee's salary above $35,000. When the university calculated 1984-1985 increases, those employees who received part or all of their CDIs in 1983-1984 had these payments included in the nominal salaries on which 1984-1985 were calculated. However, at the hearing on this matter, counsel for the university took the position that, under Bill 179, no CDIs should have been paid in 1983-1984, even to those earning below $35,000 without the CDI. Since no CDIs should have been paid in 1983-1984, he argued that none should have been included in the nominal salaries on which 1984-1985 increases were calculated.

18 The university developed an alternative argument should I find that those who received CDIs in 1983-1984 were properly paid under both Bill 179 and the collective agreement. More will be said about this later.

The association's case

19 Counsel for the association directed this board's attention to the definition of "nominal salary" to be found on p. 10 of the current agreement. It reads as follows:

> 22. *Nominal Salary* designates for any given period the gross salary to which an employee is entitled if engaged in full-time service at Carleton University excluding any stipends and/or payments for overload teaching but including career development increments.

20 There is no dispute between the parties that the nominal salary defined in this way may differ from the actual salary received by an individual for a number of reasons. The individual may be in receipt of a stipend or of payment for overload teaching which are excluded from nominal salary under this definition. In the case of professors on sabbatical or unpaid leave or reduced time, actual salary will be less than nominal salary.

21 The definition of "nominal salary" explicitly includes the CDIs. In the opinion of the association, the fact that some professors did not receive CDIs in 1983-1984 because of Bill 179, affected their actual salaries but not their nominal April 30, 1983 salaries. The April 30, 1983 nominal salary set by the terms of the collective agreement, art. 45, included the CDIs that should have been paid under that agreement had Bill 179 not intervened. All Bill 179 did was to alter actual salaries paid. In the association's view it did not alter the need to include the CDIs in nominal salaries. As indicated earlier, the collective agreement contemplated the possibility of nominal salaries being different from actual salaries and that is the only impact of Bill 179.

22 As for the Teplitsky award, the association directed our attention to a crucial difference in the wording of s. 12(1) and (5) of Bill 179. It is worth citing these provisions in full:

> 12(1) Notwithstanding any other Act, every compensation plan to which this Part applies shall be deemed to include a provision to the effect that compensation rates in effect under the plan on the first to occur of either,
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> (a) the day that, but for section 11, the plan would expire; or
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> (b) the day immediately preceding the plan's anniversary date referred to in clause 11(*b*),
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> shall be increased for the twelve-month period immediately following the day determined in accordance with clauses (*a*) and (*b*),
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> (c) in the case of a compensation plan included in a collective agreement, by 5 per cent; and
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> (d) in any other case, by not more than 5 per cent.

. . . . .

(5) During the period commencing with the 21st day of September, 1982 and ending with the expiry of the twelve-month period referred to in subsection (1), no increase in compensation, for or in recognizing of,

(a) meritorious or satisfactory work performance;

(b) the completion of a specified period of work experience;

(c) the successful completion of a program or course of professional or technical education;

(d) regularly scheduled increments in remuneration; or

(e) length of time in employment,

may be paid to or received by a person who is a member of a compensation plan to which this Part applies to the extent that such increase would, at the time the person becomes entitled to it, increase his or her annual compensation above $35,000, but nothing in this subsection prevents increases in compensation as a result of the proper promotion of a person to a different or more responsible position, the compensation plan for which was established,

(f) before the 21st day of September, 1982; or

(g) with the approval of the Board; or

(h) after the usual and proper evaluation of the compensation applicable to that position.

23 Counsel for the association asked me to take special note of the words "shall be deemed to include a provision ..." which appear in s. 12(1) but which are about from s. 12(5). It was because of these words in s. 12(1) that Mr. Teplitsky found that Bill 179 amended the collective agreement in a way that affected both the actual and the nominal salaries of members of the bargaining unit as of April 30, 1984.

24 The matter before me arises from a difference of opinion of the impact of s. 12(5) of Bill 179. Since that provision did not amend the collective agreement, its impact was limited to actual salaries in the control year and it had no impact on the nominal salary for April 30, 1984, which was determined solely by art. 45 of the agreement.

25 Counsel for the association argued that it was a principle of statutory interpretation that an Act be construed so as to leave intact any pre-existing rights of those affected, unless those rights were specifically altered by the Act in question. Bill 179 did amend collective agreements under s. 12(1). Section 12(5) did not amend collective agreements and, therefore, it should not be construed so as to take away the association's rights under art. 45 of the agreement.

26 The parties are agreed that these employees were brought under Bill 179 by s. 6(1)(*c*) of that Act. Under s. 8(1) of Bill 179, the existing contract is continued throughout the control year without change. There is no dispute that s. 11(*b*) of Bill 179 defines the control year for these employees as May 1, 1983 to April 30, 1984. Section 12(1) amended the agreement so as to change both the nominal and actual salaries during the control year, reducing them by 3.95% from the level they would have reached.

27 Section 12(5) changes the actual salaries for some of the employees by denying earned CDIs to those whose salaries would exceed $35,000 if full CDIs were to be paid to them. As I indicated earlier, the association's position is that unlike s. 12(1), s. 12(5) had no effect on nominal salaries.

28 As for the Teplitsky award, the association argued that the following excerpt from that award supports its position concerning the impact of s. 12(5) of Bill 179:

I am required to construe the collective agreement and determine pursuant to art. 45.2(a) the "nominal salary as of April 30, 1984". To that salary a certain increase is to be added based on a precise formula. "Nominal salary" is defined in the definition section, No. 22, as:

> `Nominal salary' designates for any given period the gross salary to which an employee is entitled if engaged in full-time service at Carleton University excluding any stipends and/or payments for overload teaching but including career development increments.

There was only one salary to which employees were "entitled" in 1983-1984. Although the word "entitled" means, in my opinion, pursuant to the terms of the collective agreement, the effect of s. 12 of the *Inflation Restraint Act* was to deem included within the collective agreement a provision limiting increases to 5%. The collective agreement must be construed in the light of that deemed provision.

29 The association contends that had s. 12(1) not included the words "shall be deemed to include ...", Mr. Teplitsky would have ruled in favour of the association. His award explicitly states that the definition of "nominal salary" includes the words "is entitled" which he defines as entitled under the collective agreement. Since s. 12(5) of Bill 179 does not amend the agreement, it does not affect nominal salary.

30 In support of the association's position, Ms. Lace referred me to *Re Municipality of Metropolitan Toronto and C.U.P.E., Local 43* (1983), 9 L.A.C. (3d) 113 (Kennedy). On p. 121 of that award, Mr. Kennedy says:

> It is clear that s-s. 12(5) limits the payment or receipt of increases in compensation for or in recognition of the achievements referred to therein within the specified period, regardless of whether the employee became entitled to those increases before or after September 21, 1982. Nowhere else in the Act is reference made to the payment or receipt of increases in compensation rates. The absence of this language elsewhere in the Act supports the view that the legislation was only intended to restrict payment or receipt within the prohibited period in the limited circumstances of s-s. 12(5).

The university's case

Position No. 1

31 Earlier I indicated that the university takes the position that it erred in paying anyone a CDI in 1983-1984. Mr. Stewart stated that this was done in violation of Bill 179. He further argued that the university also erred in including 1983-1984 CDIs in April 30, 1984 nominal salaries for those making $35,000 or less at the time.

32 In support of this position, Mr. Stewart, counsel for the university, directed this board's attention to the following provisions of Bill 179:

> 4. In this Part,
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> . . . . .
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> (f) "compensation rates" means single rates of remuneration or ranges of rates of remuneration, including cost-of-living adjustments, or, where no such rates or ranges exist, any fixed or ascertainable amounts of remuneration;
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> . . . . .
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> 8(1) Nothwithstanding any other Act, except the *Human Rights Code*, 1981, and section 33 of the *Employment Standards Act*, every compensation plan that is in effect on the 21st day of September, 1982, shall be continued without change to and including its scheduled expiry date.
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> . . . . .
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> (4) Where a compensation plan to which this Part applies and to which subsection (1) or (2) is also applicable, provides for any increase in the value of compensation in the twelve-month period referred to in clause 11(*b*), such increase in value shall not take effect or come into force in that twelve-month period, but nothing in this subsection prevents an application's being brought under section 14 in respect of a change to the terms and conditions of the compensation plan equivalent to an increase in compensation rates to take effect in that twelve-month period.
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> . . . . .
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> 11. Every compensation plan that is in effect on the 21st day of September, 1982, to which this Part applies and that expires on or after the 1st day of October, 1982, including every compensation plan extended under section 9, shall,

. . . . .

(b) where the expiry date is scheduled to occur on or after the 1st day of October, 1983, be subject to this Part for the twelve-month period commencing with the plan's anniversary date falling within the period beginning with the 2nd day of October, 1982 and ending with the 1st day of October, 1983.

12(1) Notwithstanding any other Act, every compensation plan to which this Part applies shall be deemed to include a provision to the effect that compensation rates in effect under the plan on the first to occur of either,

(a) the day that, but for section 11, the plan would expire; or

(b) the day immediately preceding the plan's anniversary date referred to in clause 11(*b*),

shall be increased for the twelve-month period immediately following the day determined in accordance with clauses (*a*) and (*b*),

(c) in the case of a compensation plan included in a collective agreement, by 5 per cent; and

(d) in any other case, by not more than 5 per cent.

. . . . .

(5) During the period commencing with the 21st day of September, 1982 and ending with the expiry of the twelve-month period referred to in subsection (1), no increase in compensation, for or in recognition of,

(a) meritorious or satisfactory work performance;

(b) the completion of a specified period of work experience;

(c) the successful completion of a program or course of professional or technical education;

(d) regularly scheduled increments in remuneration; or

(e) length of time in employment,

may be paid to or received by a person who is a member of a compensation plan to which this Part applies to the extent that such increase would, at the time the person becomes entitled to it, increase his or her annual compensation above $35,000, but nothing in this subsection prevents increases in compensation as a result of the proper promotion of a person to a different or more responsible position, the compensation plan for which was established,

(f) before the 21st day of September, 1982; or

(g) with the approval of the Board; or

(h) after the usual and proper evaluation of the compensation applicable to that position.

. . . . .

16. Notwithstanding any other Act or any agreement, any provision of a compensation plan to which this Part applies that provides for an increase in compensation rates in excess of the limits set out in this Part on or after the 21st day of September, 1982 shall be of no effect.

. . . . .

19. A provision of a compensation plan, to which this Part applies, entered into or established at any time, is of no force or effect to the extent that it provides for an increase in compensation rates that would bring compensation rates to a level that they would, but for this Act, have reached.

33 Mr. Stewart also filed a regulation [O. Reg. 819/82, s. 3] made under Bill 179 in which the following provision is found:

3. In subsections 12(2), (3) and (5) of the Act, "compensation" means single rates of remuneration or ranges of rates of remuneration, including, cost-of-living adjustments, or, where no such rates or ranges exist, any fixed or ascertainable amounts of remunerations.

34 The university placed considerable emphasis on the fact that both "compensation" in the regulation and "compensation rates" in s. 4(*f*) of Bill 179 were defined so as to be interchangeable. Under s. 8(4) of the Act, "the value of compensation" in the control year could not rise by more than 5%. As for s. 12(5), it provided for exceptions in cases where employees received salary increases in a lock-step grid pay system or where employees were promoted. At Carleton, there was no such lock-step payment system. Rather, each employee had a unique rate that altered annually in accordance with art. 45 of the agreement.

35 The combined effect of ss. 8(1) and (4), 11(*b*) and 12(1) of Bill 179 is to make null and void the contractual increases negotiated under art. 45 for the control year 1983-1984 and to replace these with an across-the-board 5% increase under s. 12(1)(*c*) of the Act. This is why arbitrator Teplitsky found in favour of Carleton.

36 The only permissible increase for 1983-1984 at Carleton was 5%. Any payment of CDIs in that year, even to those earning less than $35,000, was a violation of the Act.

The university's alternative position

37 If I should find that, under s. 12 of Bill 179, it was proper to pay CDIs to those who actually received them in 1983-1984 (*i.e.*, those earning less than $35,000), then the university argued that it would be improper for me to find that the April 30, 1984 nominal salaries included the CDIs recommended but not paid in 1983-1984 because of Bill 179.

38 Mr. Stewart pointed to the words "to which an employee is entitled" in the definition of "nominal salary" under the agreement. Entitled had to mean enforceable in law. But CDI payments to those earning over $35,000 were not made because to do so would have violated the law. This was clear in the decision of the Inflation Restraint Board cited above, which ruled on an application of the association. The university did not in fact pay CDIs to most of the members of the bargaining unit because of this ruling.

39 Under art. 45, the salaries of 1984-1985 are to be based on the nominal salaries for 1983-1984, since it is the 1983-1984 salaries that would be in effect on April 30, 1983. All that these employees were entitled to on April 30, 1984, is what they received on that date if they were full-time employees, exclusive of stipends or pay for overload teaching.

40 The university points to s. 19 of Bill 179 (cited above) as further support for its position. In the opinion of the university, what the association seeks would clearly violate s. 19 by attempting to "bring compensation rates to a level that they would, but for this Act, have reached". Section 19 is not confined to the control year and is clearly intended to extend into the future to prevent action which would negate the impact of Bill 179. Mr. Stewart conceded that enforcement of this would be difficult as time went on but this did not change the legal situation resulting from the indefinite duration of s. 19 of Bill 179. In his view, what the association seeks is to raise compensation rates in the control year beyond the level permitted by Bill 179 for purposes of calculating 1984-1985 salaries. This would violate s. 19 of the Act.

41 As for Mr. Teplitsky's comments, cited by Ms. Lace, these were *obiter* and in no way decide the issue before this board.

The association's reply

42 Counsel for the association argued that the university's position was based on a misinterpretation of Bill 179.

43 Section 12(5) was applicable to members of this bargaining unit. The decision of the anti-inflation board, cited above, supported this view by stating that the CDI payments at Carleton "fall within the scope of those described by cls. 12(5)(*a*) to (*e*)".

44 Ms. Lace further argued that Mr. Stewart has misconstrued s. 8 of Bill 179. In her view, all s. 8(4) did was to wipe out increases in excess of 5% during the control year save for those permitted under s. 12(5). It also provided that multi-year contracts (like this one) that extended beyond the control year would continue without change.

45 As for s. 19 of the Act, the union contends that the university's interpretation is absurd. It would mean that, into the indefinite future, all wage settlements in sectors covered by Bill 179 would have to be scrutinized to ensure that there was no catch-up for control period roll-backs included in these settlements. In the opinion of the union, all s. 19 does is to prevent the parties from waiting until the end of the control year and then agreeing to a payment to an employee of part or all of any wages rolled back. Here the union does not seek to recover CDIs lost during the control year. What it wants is to have the lost CDIs included in the base on which 1984-1985 salaries are calculated under art. 45 of the agreement.

46 As for the contractual meaning of nominal salaries, Ms. Lace denied that entitled meant entitled under Bill 179. The contract pre-dated Bill 179. "Nominal salaries" as defined in the contract can and do differ from actual salaries received by many staff members. Mr. Teplitsky defined "entitled" as meaning entitled under the agreement and not as entitled by Bill 179. His award was based on the fact that s. 12(1) of the Act amended the agreement. But the association's claim arises under s. 12(5) which does not purport to amend the agreement.

47 Finally, the association took the position that since the university had paid some staff members CDIs in 1983-1984 and included these payments in nominal salaries on which 1984-1985 salaries were calculated, it was estopped from now claiming that no one was entitled to CDIs in the control year. Mr. Stewart responded that no prior action by the university could compel it to act contrary to the law. The parties agreed to defer argument on this matter until I ruled on the other issues before me. If it was necessary at that point to deal with this issue, they would submit written argument.

The award

48 The issue before me is a complex one involving the interpretation of several sections of Bill 179 as well as a number of provisions of the collective agreement.

49 I cannot accept the university's position that under Bill 179 no CDIs should have been paid even to those earning less than $35,000. I find no support for the view that s. 12(5) was inapplicable to these employees because of other provisions of the Act. While these employees had different starting salaries, they did in fact move along a set grid, with a small number of exceptions who got less because of deficient performance or more because of market pressures. In any cases, the term "salary grid" does not appear in Bill 179. The terms "compensation", "compensation rate" and "compensation plans" are defined so as to be applicable to these employees. Finally, in its decision, the anti-inflation board, stated that s. 12(5) applied to these employees (except for the provision on promotion) and that CDIs could be paid to those who qualified and whose salaries would not exceed $35,000 after CDI payments were made to them.

50 Accordingly, I find that those whose April 30, 1984 nominal salaries included full CDIs paid to them in 1983-1984, had their 1984-1985 salaries properly calculated for them.

51 The remaining issue before me is what should be done about employees who had part or all of their CDIs withheld in 1983-1984 because of Bill 179.

52 In order to determine this issue, one must decide on the meaning of s. 19 of Bill 179 and cl. 22 of the definitions section of the collective agreement.

53 There is no dispute about the fact that s. 19 combined with the final portion s. 12(5) justified the withholding of CDIs in whole or in part from most of the eligible employees in this bargaining unit in 1983-1984. There is also agreement that under s. 19, the union cannot now seek to recover for its members the sum lost as a result of this roll-back in the control year.

54 Does s. 19 of Bill 179 also preclude a claim to include in April 30, 1984 nominal salaries, the CDIs lost in 1983-1984 because of the Act?

55 The union states that Mr. Teplitsky's award does not resolve this matter, even if his reasoning is accepted. I concur. Mr. Teplitsky was concerned about the impact of s. 12(1) of Bill 179 which is deemed to amend collective agreements. He was quite correct in concluding that because this section amended the agreements, it altered the April 30, 1984 salary from the level originally set under the agreement. Mr. Teplitsky had no occasion to comment on what impact, if any, s. 19 of the Act had on the calculation of the nominal salary on which 1984-1985 salaries are calculated under art. 45 of the agreement.

56 I cannot accept Mr. Stewart's argument that s. 19 was intended to ensure for all time that the parties did not restore any rolled-back sums to salaries in future negotiations. There would be no possible way of analyzing salary agreements so as to untangle whether the thinking that underlay the decisions included some element of catch-up because of the roll-back.

57 The more difficult issue is whether s. 19 precludes raising the April 30, 1984 nominal salary rates as distinct from the April 30, 1984 actual salary rates.

58 I find that s. 19 was not intended to influence the operation of this collective agreement beyond the control period, except that it precluded any association demand for restoration of the sums lost due to the roll-back.

59 In this, I find support in various other arbitration awards that dealt with the impact of Bill 179.

60 In *Re City of Thunder Bay and C.U.P.E., Local 87* (1984), 4 L.A.C. (3d) 97 (Solomatenko), the arbitrator refused to disturb salaries set for the past control year in a multi-year agreement, even those whose salaries were set 7% above the pre-rolled back control year salaries. It is true that in that case, the third year salaries (post-control period) were stated in the agreement in dollars rather than as 7% above the rates in the contract that were rolled back. This is different from the situation at Carleton where the post-control rates are set by adding percentage increases to the nominal salaries.

61 Another award that is consistent with my finding in this matter is *Re West End Creche Child & Family Clinic and C.U.P.E.*, June 25, 1984, unreported (Devlin). Arbitrator Devlin on p. 5 of her award states that:

> Turning first to the *Inflation Restraint Act*, the employer in this case did not suggest that ss. 16 and 19 of the Act operate in light of the wording of the legislation. I have no difficulty in reaching a similar conclusion to that which was reached in *Essex Nursing Home*, *supra*, and *City of Thunder Bay*, *supra.* The only provision of a compensation plan in a collective agreement rendered of no force and effect by ss. 16 and 19 of the *Inflation Restraint Act* is that which purports to be operative during the control period.

62 However, it should be noted that in that case, the employer did not argue that s. 19 operated so as to nullify compensation plans outside the control period. There is no way of knowing whether the arguments made by Mr. Stewart in the matter before me were raised before arbitrator Devlin.

63 What remains to be resolved is the proper determination of the nominal salary on April 30, 1984, under the collective agreement.

64 As I indicated earlier, the association argues that the word "entitled" in the definition of "nominal salary" means entitled under the agreement. The university argues that it means entitled in law.

65 This collective agreement was negotiated and came into force prior to the enactment of Bill 179. The parties, in defining their respective rights, were contemplating the enforcement of those rights through the grievance procedure (art. 30). When they spoke of entitlement, they must have meant entitlement under this agreement and not entitlement under a law yet to be enacted.

66 We have already noted that nominal salaries can and do differ from actual salaries for a variety of reasons. The fact that, on April 30, 1984, many employees did not receive CDIs in their actual salaries does not alter that these payments were properly part of their nominal salaries under the collective agreement. Unlike s. 12(1) of Bill 179 which was deemed to amend agreements, the roll-back of CDIs took place as a result of s. 12(5) of the Act which had no such "deemed to include" provision.

67 For all of these reasons, this grievance is sustained. I order the university to recalculate 1984-1985 salaries for those who were denied part or all of their 1983-1984 CDIs as a result of Bill 179 so as to include the lost CDIs in the April 30, 1984 nominal salaries under art. 45.

68 In the event that the parties experience difficulties in implementing this award, I shall remain seised of this matter for a period of 60 days from the date of this award.