

OUR LEGAL POSITION

One of the problems in defining our legal position is the sheer ambiguity of the Anti-Inflation Act. Much of it is a hodge-podge thrown together in short order, meaning that it is open to varying interpretation. Also, because it's still relatively new, there is no lengthy and consistent history of precedents to guide one in its implementation.

The following is our legal position as far as we have been able to determine it through careful reading of the act, questioning of AIB representatives, and consultation with legal opinion. Some of it is uncertain, but in all cases where this is so it is indicated in the text.

First of all, the AIB is a consultative body which does not have authority to make binding orders on its own. Rather, its function is to serve as "watchdog" of the Anti-Inflation Act. It has the power to demand information from various groups, and then to decide whether or not, in its opinion, they have violated the guidelines. If it decides they have violated the guidelines, as it did in our case, it then advises them of this, and tells them they should take steps to bring themselves into line. This is what the AIB did in our case. The AIB "ruling" in itself is not binding on us: what it is is an opinion that we have violated the Anti-Inflation Act.

Therefore, a decision by us not to comply with the AIB ruling is not necessarily in and of itself an offense. But violation of the Act is an offense. Even at the moment we are therefore not immune from possible prosecution, although this seems an unlikely possibility.

If we vote not to comply, a membership meeting is sure to be called to determine our next step. At this point we would have two alternatives:

(i) Having refused to comply with the recommendation of the AIB, we could then appeal to AIB Administrator Brian Tansley. This would be a legal course of action. We would not have to implement any part of the ruling before having him examine our case. He would look at the AIB's recommendation rolling back our contract, but he would not be bound by it. He would, in fact, independently assess the facts of our case and then make an order. This order could be the same as the AIB's previous recommendation; it could provide for a larger settlement; or it could provide for a smaller settlement. People should realize that Tansley has a history of frequently worsening the roll-back, often to the guideline figure of 8%. Also, it is likely that he would order a payback (the \$422 we all owe) and this payback would almost certainly go the Crown, not to the University.

If the Administrator ordered a rollback, we would be legally bound by it. If after his order we refused to comply, the Act provides for fines and possibly jail terms ("possibly" because we have been unable to determine whether just the organization, or individual members, e.g. Officers, could be penalized).

Our next legal recourse would be an appeal to the Appeals Tribunal. In the interim, it seems we would have to implement the rollback. Also, if the Administrator ruled that we had to give our payback to the Government (most probably), we would have to make this payment, or provide security satisfactory to him guaranteeing its payment, before the appeal could be held. (We don't know exactly what kind of security the Administrator would require). The Anti-Inflation Act provides for a hearing of the appeal which is normally open to the public. We could make it a nationally publicised case over the issue of sex discrimination and equal pay for work of equal value. The Appeal Tribunal (and the Government) might be open to considerable public pressure on the issue. In several cases the Tribunal has shown itself to be more lenient than Tansley.

Our second alternative if we vote not to comply:

(ii) We could simply sit tight, and refuse to cooperate or do anything. The AIB would then refer the matter to the Administrator. He in turn would conduct an investigation into our settlement, and then make a ruling. He would not be bound by the AIB's previous recommendation. He could leave our original 19% settlement untouched, or he could roll it back any amount right down to the arithmetical guideline figure of 8%. In other words, he would do the same thing to us as if we actively appealed to him. There could, however, be two differences: (a) he might not be so favourably disposed toward us because of our uncooperativeness, and reflect this in his rollback; and (b) he might be inclined to impose a further penalty on us because of our obstinacy. This penalty would be payable to the Crown and could amount to 25% of the payback we already owe. This would have to be paid (or assurance of payment satisfactory to him given) before we could appeal to the Appeals Tribunal.

My own views on the matter:

As one can see from the above, a majority vote for NO would leave us with two alternatives. One would be to appeal. The other would be to refuse to comply right down the line and be prepared to suffer the legal consequences. The first alternative would obviously be far more prudent, although the second would give us more publicity(!) This second alternative would subject us to considerable legal risk, and the end result in terms of our wages could be worse than if we simply appealed. But the first alternative, that is, appealing, is not without its pitfalls as well, due to the Administrator's notoriety for rolling contracts back even further. And there is the possibility (a likely one) of having to implement our payback (or, in lieu, provide security) before being able to appeal to the Tribunal.

But appealing would be a tremendous opportunity for publicizing the issue of equal pay for work of equal value on a national scale. And the public pressure accompanying this publicity, especially in the context of an unpopular government and anti-inflation programme, could help us win our case.

It is for this reason that I intend to vote NO. At the same time I realize the risks involved, and want every other member to realize those risks as well. I want to fight against this injustice, and feel strongly enough about it to risk even greater hardship. At the same time, I realize that there are members who feel they just can't take those risks, and I don't blame them a bit for voting YES. This is perhaps the most agonizing decision our Union has ever had to make. I urge people to vote only after the most careful consideration of all the pros and cons.

-Ian Mackenzie