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VIA EMAIL – schr@gov.yk.ca

The Select Committee on Human Rights
Yukon Legislative Assembly
Box 2703 (A-9)
Whitehorse, Yukon Y1A 2C6

Dear Sir/Madam:

Re: *Improving the Yukon Human Rights Act – Whitehorse Fire Fighters’ Association, IAFF Local 2217*
Our File No. 165-210

I act as counsel for the Whitehorse Fire Fighters’ Association, IAFF Local 2217 (“Association”). We have had the opportunity to review the Human Rights Commission Working Document – Improving the Yukon *Human Rights Act*. As a result of that review, we take the opportunity afforded by the Committee to provide brief comments to one aspect of that review.

We note on page 17 that Commission staff and members suggest a change to section 15 of the Act which addresses the issue of pay equity. The change would see the principle of “equal pay for equal work of equal value” apply to all employers, not just those in the public sector. Additionally, it is recommended by the Commission staff and members that section 15(2) be expanded so it covers differences in pay for not only “work of equal value”, but also for “the same work or substantially the same work”.

While the Association takes no issue with the proposed changes, the current and proposed changes will continue to result in an unintended consequence of the section as it relates to collective bargaining in the city of Whitehorse.

The city of Whitehorse has established a pay equity program that the city itself utilizes as *THE* criterion for determining wage rates for all city employees. It is the primary consideration relied on by the City in setting wage rates for any of its employees including fire fighters.

Association members have contractually agreed for many years not to engage in strike action should they not be successful in negotiating a new collective agreement. Instead, the fire

fighters' contract provides for binding interest arbitration to settle the outstanding terms and conditions of the new collective agreement.

In past interest arbitrations (1991 and 1993) between the fire fighters and the city, the city introduced its own pay equity program as the most important criterion to be examined by an interest arbitrator. Such a notion goes against well established arbitral jurisprudence which embraces the notion of "like compared to like" in that fire fighters should be compared to other fire fighters. The city's past position is troubling in that there is nothing currently in the *Human Rights Act* which suggests that pay equity considerations should be given paramountcy during an interest arbitration process under the *Canada Labour Code*. However, without specific language in the Act to prevent an employer from elevating a pay equity program to a status that was not contemplated by the legislature, employers like the city of Whitehorse will continue to try and convince interest arbitrators of this notion.

Given the reality of this situation and the recent Supreme Court of Canada decision (*Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, (2007 SCC 27)) which determined that the freedom of association in section 2(d) of the *Charter* protects the right to collectively bargain, the Association respectfully submits that section 15 must be amended so that an employer can not avoid its collective bargaining responsibilities. While pay equity is important, it should not be utilized by an employer to artificially depress any sector's wages.

We want to thank the Committee for the opportunity to put forward the Association's position.

Yours truly,

A handwritten signature in blue ink, appearing to read "Sean McManus". The signature is fluid and cursive, with a large initial "S" and "M".

Sean McManus

c.c. Brian Fedoriak, IAFF Local 2217 President