

**IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
AND A DISPUTE AFFECTING THE
FEDERAL GOVERNMENT DOCKYARD TRADES AND
LABOUR COUNCIL EAST, AS BARGAINING AGENT,
AND THE TREASURY BOARD, AS EMPLOYER,
IN RESPECT OF THE EMPLOYEES IN THE
SHIP REPAIR-EAST GROUP**

ARBITRATION AWARD

Before: Ken Norman, Chairperson

Ronald A. Pink, Q.C., Bargaining Agent Nominee

Pierce Sutherland, Employer Nominee

For the Bargaining Agent: David A. Mombourquette, Counsel

For the Employer: Marc Thibodeau, Negotiator; Marc Richard, Senior Researcher

Heard in Halifax on August 30 & 31, 2005

[1] This board of arbitration was established on May 9, 2005, by Yvon Tarte, Chairperson, Public Service Labour Relations Board, who endorsed the agreement, earlier reached by the nominees, to have Ken Norman serve as chairperson of the board.

[2] On July 15, 2005, this board's terms of reference were established by a ruling of Chairperson Tarte that resolved a dispute between the parties as to the board's jurisdiction over matters concerning the employer's statutory right to determine the organization of the public service and to assign duties to positions therein.

[3] The bargaining process preceding these events began with the filing of a notice to bargain by the Federal Government Dockyard Trades and Labour Council (East) [the Council] on November 10, 2003. Following the expiry of the collective agreement on December 31, 2003, the parties were at the table from February 22 to 26, March 22 to 26, May 17 to 21 & August 17 to 19, 2004. Bargaining continued, with the assistance of a conciliator, from December 6 to 8, 2004, and on January 20 & 21, 2005, when, though many clauses had by then been signed off, an impasse was reached on a handful of items.

[4] At the outset of this board's meetings with the parties on August 30, 2005, efforts were made to assist the parties to reconcile their differences on these remaining items. When the time came for the parties to make their formal representations to this board, common ground had been reached on the deletion of pay notes (6) and (7) from Appendix "A".

[5] Other than rates of pay, the few unresolved issues left for this board to consider are duration of the agreement, with the Council seeking a three-year agreement and the Employer calling for a four-year agreement; related consultation clauses sought by the Council on technological change [Article 21] and contracting out [proposed new Article 38]; and an eight hour cap on call-back pay in any given eight-hour period sought by the Employer [Article 18].

[6] With regard to duration of the agreement, this board is constrained by s.156 (3) of the *Public Service Labour Relations Act* which provides that an arbitral award may not be for a term of more than two years from the day on which it becomes binding on the parties. As there is no term of "any other" relevant collective agreement, [s.156 (2) (b) (ii)] to which this board may look to escape the two-year cap imposed by s.156 (3), this board is not persuaded by the

Employer's contention that a current pattern of four-year agreements in the core public administration warrants interpreting s.156 (2) (b) (ii)'s singular reference to "any other" relevant collective agreement as including a number of collective agreements that have no particular relevance to this bargaining unit. In addition, a three-year agreement, running from January 1, 2004, to December 31, 2006, even though it will lead to a new round of bargaining within two years, least disturbs the *status quo* for this bargaining unit. [The calendar year end termination date of a three-year agreement is retained. And, the collective agreement that expired on December 31, 2003, was signed just under two years beforehand on January 11, 2002.]

[7] The consultation clauses sought by the Council with regard to technological change and contracting out are not grounded in evidence of pressing problems of abusive managerial unilateralism with regard to these matters.

[8] Similarly, the cap on call-back pay, sought by the Employer, lacks a foundation of recent experience of multiple single-shift call-backs at Fleet Maintenance Facility [FMF] Cape Scott warranting such a restriction.

[9] With regard to rates of pay, rhetorical concerns about recruitment and retention expressed by the Council, backed by the Department of National Defence [DND], do not budge the current facts of the matter. The Employer is experiencing no problem in recruiting and retaining the local skilled workforce at FMF Cape Scott that DND rightly takes pride in. No doubt, part of the story here is that, currently, the Council's membership enjoys a significant entry level wage premium as compared to the three shipyards in the Atlantic area. (This board confines our market comment in this regard to these shipyards as it is common ground that FMF Cape Scott recruits locally.)

[10] However, that said, the internal equity comparison between the Council membership and their first-level supervisors, The Federal Government Dockyard Chargehands Association, [the Chargehands] cannot be ignored. On March 18, 2004, an arbitration board chaired by Jules B. Bloch, awarded a three-year collective agreement, running from April 1, 2003, to March 31, 2006, with an initial "new 5% pay increment" on top of economic increases of 2.5%, 2.5% and 2%. [7% in total] [*PSSRB File: 185-2-395*] (For the record, the nominees to this board, Ron Pink and Pierce Sutherland, served respectively as chief counsel to the Chargehands and Employer nominee to the chargehands' board of arbitration. Thus, this board was in a position

to talk knowledgeably about the Chargehands' case.) In terms of economic increases, there is no fiscal or economic impediment to increases for the Council's membership that reflect the current pattern – of 2.5%, 2.25% and 2.4% [7.15% in total] for the relevant three years – established within this past year at the core public administration bargaining tables. On top of these economic increases, the right thing for this board to do is to acknowledge the power of the internal equity comparison between the Council membership and the Chargehands by positing a 4.85% structural equity adjustment.

[11] AWARD

Rates of Pay

- **Introduce one structural equity adjustment of 4.85% on January 1, 2004.**
- **Economic increases of 2.5% on January 1, 2004, 2.25% on January 1, 2005 and 2.4% on January 1, 2006.**

Article 18 Call-Back

Renew

Article 21 Technological Change

Renew

Article 34 Duration

This award is to expire on December 31, 2006.

Proposed New Article 38 Contracting Out

Not to be included in this award.

Appendix A Pay Notes

Delete pay notes (6) and (7)

[12] Finally, I wish to thank my colleagues Ron Pink and Pierce Sutherland for their spirited assistance to the parties in facilitating some further negotiations and to me, throughout the hearing and deliberation processes. I feel privileged to have been selected by and to have worked with such experienced and effective board members. In the end, the comprehensive briefs filed by the parties, supplemented by the able arguments of their representatives and the interventions and astute comments of board members have left me with no shortages of information or arguments with regard to this matter. However, I need to be clear, especially to those readers who choose to lump rather than to like it, sole responsibility for this award is mine and mine alone.

Dated at Saskatoon this 16th day
of September, 2005.

“Ken Norman” _____
Chairperson, Arbitration Board