PSSRB File 190-34-334

C A N A D A

IN THE MATTER OF THE PUBLIC SERVICE STAFF RELATIONS ACT

AND IN THE MATTER OF A DISPUTE

BETWEEN

Public Service Alliance of Canada

Bargaining Agent

And

Canada Customs and Revenue Agency

Employer

In Respect of all the employees in the Program Delivery and Administrative Services Group bargaining unit

REPORT OF THE CONCILIATION BOARD

Heard Before: Thomas Kuttner, Q.C., Chairperson
James Wolfgang, Bargaining Agent Nominee
Sandra Budd, Employer Nominee

Appearances:

For the Bargaining Agent: Theresa Johnson, Negotiator;
Liam McCarthy, Research Officer

For the Employer: Peter Cenne, Chief Negotiator and
Anne Ross-McLuskie, Negotiator

Dates of Hearings: Ottawa, ON
7, 8, 9 & 10 August 2004

Date of Report: 27 August 2004

I. Introduction

[1] On Application of the Public Service Alliance of Canada [PSAC] filed 12 May 2004 pursuant to section 77 of the *Public Service Staff Relations Act* [PSSRA], the Chairperson of the Public Service Staff Relations Board [PSSRB] established a Conciliation Board, pursuant to PSSRA ss. 79(2) & (5), for the investigation and conciliation of the dispute affecting PSAC and the Canada Customs and Revenue Agency [CCRA] in respect of all employees in the Program Delivery and Administrative Services Group bargaining unit. The Conciliation Board comprises as members Mr. James Wolfgang and Ms. Sandra Budd, being the nominees respectively of the interests of the bargaining agent, PSAC, and of the employer, CCRA; and Thomas Kuttner, Q.C. as Chairperson. On that same date, the Chairperson of the PSSRB issued as well his statement of matters upon which the Conciliation Board was to report its findings and make its recommendations to him as stipulated at PSSRA s. 84, being those issues still outstanding between the parties at the time the request for the establishment of the Conciliation Board was made, namely:

Outstanding Items

Article 2	Interpretation and Definitions
Article 14	Leave with or without Pay for Alliance Business
Article 18	Grievance Procedure
Article 22	Health and Safety
Article 23	Job Security
Article 25	Hours of Work
Article 28	Overtime
Article 30	Designated Paid Holidays
Article 33	Leave – General
Article 34	Vacation Leave
Article 35	Sick Leave with Pay
Article 36	Medical Appointments for Pregnant Employees

Article 38 Maternity Leave without Pay
Article 40 Parental Leave without Pay
Article 41 Leave without Pay for child care
Article 43` Leave with Pay for Family Related Responsibilities
Article 45 Marriage Leave with Pay
Article 46 Congé non payé en case de reinstallation du conjoint
Article 47 Bereavement Leave with Pay
Article 54 Leave with or without pay for other reasons
Article 58 Employee Performance Review and Employee Files
Article 62 Part time employees
Article 64 Pay Administration
Article 66 Duration
Appendix A Rates of Pay and Pay Notes
Appendix E Work Force Adjustment Appendix
Proposal related to Term and Seasonal Employees: [Art. 34.03 (c)]
Proposal for a Social Justice Fund

Following its final sitting on the evening of Tuesday 10 August 2004, at which time each of the parties gave a formal presentation of its wage position, the Board advised that it would require an extension of time to report its findings and recommendations to the Chairperson of the PSSRB, to which the parties were amenable, their agreement pursuant to PSSRA s. 87(1) to the filing of the Report on or before 27 August 2004 being subsequently confirmed in writing by their respective nominees.

[2] By agreement of the parties sittings of the Conciliation Board took place in one intensive set of hearings over four (4) consecutive days commencing Saturday 7 August 2004 and continuing through to 10 August 2004. Initial presentations by the parties were limited to short introductory statements made upon filing of their expansive written briefs at an initial joint session. Following this initial session, the Board initiated a more informal and flexible mediation process designed to assist the parties in reducing the matters in dispute between them which at the time of its establishment apart from wages, comprised over 50 discrete matters within the enumerated list above. Over the course of

that informal mediation process the parties, with the assistance of the Conciliation Board, were able to reach agreement over the great bulk of these items, many being withdrawn in whole or in part, and others negotiated to the satisfaction of both. As a result, the only matters upon which the Board must report its findings and make its recommendation are as follows:

Items Remaining in Dispute:

Article 14	Leave with or without Pay for Alliance Business
Article 23	Job Security
Article 25	Hours of Work
Article 34	Vacation Leave
Article 35	Sick Leave with Pay
Article 43	Leave with Pay for Family Related Responsibilities
Article 47	Bereavement Leave with Pay
Article 64	Acting Pay
Appendix A	Rates of Pay and Pay Notes
Appendix E	Workforce Adjustment Appendix
Appendix XX	Social Justice Fund Proposal

[3] Apart from the Employer's hours of work issue [Article 25], which entails consequential amendments throughout the agreement as it calls for the conversion to hours of all its provisions which now specify days, the non-wage items remaining in dispute are bargaining agent proposals. For convenience sake, the Board proposes in its Report to deal thematically with all non-monetary matters remaining in dispute between the parties, commencing first with the Employer's hours of work issue, continuing on to the Bargaining Agent's several issues which touch principally upon Job Security [Article 23 & Appendix E Workforce Adjustment]; Leave for Alliance Business [Art. 14]; Leave Entitlements [Art. 34.02, Art. 43.03, Art. 47.02]; Term Employee Benefits [Art. 34.03 (c), Art. 35.08]; Pay Administration – Acting Pay [Art. 64.07] and the proposed Social

Justice Fund. The Report will conclude with Findings and Recommendations on duration and wage rates for the renewal collective agreement [Art. 66 & Appendix A].

(a) **Background**

[4] The Program Delivery and Administrative Services Group [PDAS] comprises all employees who are primarily involved in the planning, development, assistance or delivery of CCRA policies, programs, services or other activities directed to the public or the CCRA. Formerly engaged in the central administration as part of the core civil service prior to the establishment of the CCRA in November 1999 as a separate employer under Schedule 1, Part II of the PSSRA, employees in this bargaining unit number some 32,500 workers of whom close to 25% are term employees, the majority of these latter, hired to respond to recurring seasonal or program work. The great bulk of the workforce are engaged in the following classification categories:

Sub-Group	**Number of Employees**
Administrative Services [AS]	2,003
Clerical and Regulatory [CR]	10,018
Data Processing [DA]	2,231
Management Group [MG]	2,334
Programme Administration [PM]	15,292

Smaller sub-groups include:

Sub-Groups	**Number of Employees**
Information Services [IS]	101

Office Equipment [OE]	3
Organization and Methods Group [OM]	21
Purchasing and Supply Group [PG]	141
Secretarial, Stenographic and Typing [ST]	92
Drafting and Illustration Group [DD]	6
General Technical Group [GT]	41
Printing Operations Group [PR]	5
General Labour and Trades [GL]	26
General Services [GS]	279

[5] Payroll totals over $1.4 billion with an average wage across the bargaining unit of $43,400. Employees are distributed across the country, and of the indeterminate [permanent] workforce 13.74% are located at central headquarters in Ottawa, a further 19.18% in Southern Ontario and 14.57% in Northern Ontario, 8.7% in the Atlantic Provinces, 12.8% in Quebec, 17.47% in the Prairies and 13.53% in the Pacific. This is a mature workforce with 23% employees in the 21-40 age bracket; 40% in the 41-50 age bracket, and 25% in the 51-60 age bracket. It is also a steady workforce, 42% having 0 to 10 years of service; 33% having 11 to 20 years of service; and 25% having over 21 years of service. The gender distribution is 35% male; 65% female.

(b) **Bargaining History**

[6] This is the third round of bargaining engaged in by PSAC and CCRA. The first round, initiated 1 November 1999 resulted in a one year agreement with a 2% increase; a

restructuring of the PM 1-4 and AS 1-3 classifications; a lump sum bonus for the remainder of the bargaining unit; a reduced work week for the GL & GS groups; and improvements to vacation, bereavement, family related and responsibilities and pre-retirement leave. The second round of bargaining resulted in a three year collective agreement expiring 31 October 2003 with annual economic increases of 3.2%, 2.8% and 2.5%; harmonization and restructuring of pay scales for several groups; the reduction of pay zones for the GL and GS groups from 7 to 2 and further improvements to vacation, family related responsibilities, personal leave and management group performance.

[7] Notice to bargain for the current round of negotiations was given by PSAC on 1 August 2003 with electronic exchange of proposals on 19 August 2003. Three sets of bargaining sessions were held between the parties on 27-28 August 2003; 29 September – 5 October 2003 and 10-13 November 2003, but with little progress. With the creation of the Canada Border Services Agency in December 2003, 7,000 employees, the majority of whom were members of the PDAS bargaining unit, were transferred from the CCRA back to the core civil service for which Treasury Board is the employer, this pursuant to the *Public Service Rearrangement and Transfer of Duties Act*, *2003*. In short, responsibility for Customs no longer falls under the CCRA umbrella. Naturally this transfer had a significant impact on the bargaining positions of both parties and precipitated a move from direct negotiations to the appointment of a conciliator at their joint request. The parties met for conciliation in two sessions from 16-20 February 2004, and from 15-17 March 2004, but with little progress, the conciliator informing the parties on 17 March that he would file his report to the Chairperson of the PSSRB pursuant to

PSSRA s. 54 advising of his inability to further assist the parties in reaching agreement. As already noted this Conciliation Board was appointed on 29 June 2004.

II. Items Remaining in Dispute

A. Employer Proposal: Conversion of Days to Hours

[8] The agreement stipulates at Article 25.01 that a day comprises a 24-hour period commencing at 00.00 hours, and at Article 25.06 that the normal work week shall be thirty-seven and one-half (37 ½) hours from Monday to Friday, and the normal work day seven and one-half (7 ½) consecutive hours exclusive of lunch. It also provides at Article 25.09 for a compressed work week "upon request of an employee and the concurrence of the Employer", allowing an employee to complete the weekly hours of employment in a period of other than five full days, provided that over a period of 14, 21 or 28 calendar days the employee works an average of 37 ½ hours per week. The agreement provides as well at Article 25.13 for the Employer to schedule hours of work on a shift basis in accordance with operational requirements with a standard shift schedule at Article 25.17 of three eight-hour shifts. Article 25.23 allows for variable shift schedule arrangements [VSSA] upon consultation held at the local level with a view to establishing shift schedules different from the standards established at Articles 25.13 and 25.17 for shift work.

[9] The principal objective of the Employer in this round of bargaining has been to ensure that employees working a compressed work week or a VSSA receive no additional benefits because of their extended daily hours of work whether by way of

leave or premium pay, compared to those received by employees working normally scheduled hours and shifts. At the time allowance was first made for the scheduling of compressed work weeks and VSSA's in Article M-40 of the old Master Agreement between the parties, provisions were made generally for the terms of all master and group specific agreements which specify days, to be converted to hours; and in particular of the conversion into hours of all leave provisions specifying days – in both cases a day to be converted to 7.5 hours where employees work a 37.5 hour work week. With the subsequent incorporation of Article M-40 into the group specific agreements, such as that between PSAC and CCRA, these broad-reaching provisions for the conversion of days to hours were dropped. The Employer now wishes to reintroduce them.

[10] The catalyst for this proposal are two sets of adjudication decisions issued under the PSSRA by members of the PSSRB over the past several years. In the first set, exemplified by the recent decision of Board Member McKenzie in *Urs Breitenmoser et al v. Treasury Board*, (2004) PSSRB 103, the Board has held that the combined effect of (i) the definition at Article 25 of 'day' as a 24 hour period, (ii) the general provisions governing leave at Article 33, and (iii) the provision in the leave specific Articles for days of leave, is to entitle employees to calculate leave entitlement on the basis that a day of leave is equivalent to the regularly scheduled hours of work for the individual employee. This is consistent with the fact that "leave" itself is defined at Article 2 as an authorized absence from duty by an employee "during his or her regular or normal hours of work". The second set of decisions, exemplified by that of Board Member Simpson in *King v. Treasury Board* (1999) 36 PSSRB Decision 11, upheld on judicial review in *Canada*

(AG) v. King [2000] SCJ 1987 [TD] appeal dismissed, 2002 FCA 178 [CA], establish that a VSSA scheduled employee is entitled, in addition to regular pay for any two week period calculated at 75 hours work, premium pay based upon hours actually scheduled and worked in accordance with the employee's VSSA schedule, whether or not in excess of 7.5 hours a day.

[11] Inasmuch as, with the hiving off of customs employees from this bargaining unit to the Canada Border Services Agency, the number of VSSA scheduled employees engaged by the CCRA is not of significance, the Conciliation Board proposes to limit its recommendations to the issue of an employee scheduled to work a compressed work week. These number approximately 40% of the bargaining unit. The Employer submits that the deletion of provisions for the conversion of days to hours under Article M-40 of the old master agreement was inadvertent and never intended by the parties, thus producing a windfall for employees working the compressed workweek. It is inequitable that an employee working a compressed work week would be eligible for greater leave benefits than an employee working a normally scheduled work week i.e. greater than 7.5 hours pay for each day of paid leave. PSAC counters that, as leave entitlement only vests when conditions stipulated are met, there is no uniformity in any event in the amount of leave to which members of the bargaining unit are entitled. As to the intention of the parties, this has been determined consistently by the PSSRB in several adjudication decisions to be clearly expressed in the collective agreement: a day comprises any 24 hour period regardless of the hours of work scheduled.

[12] The Board is inclined to agree with the Employer that in all probability, the deletion of the 'days to hours' conversion provisions of the old article M-40 at the time of its incorporation into the group specific agreements, was inadvertent. Supportative of that view is the fact established during conciliation proceedings that, notwithstanding the several adjudication decisions to the contrary, employees working the compressed work week as a matter of general practice claim leave on the basis of a 7.5 hour work day, and either amend their work schedules to report to work on another day to make up for those hours in excess of 7.5 originally scheduled for a leave day; or allocate such excess hours to vacation or other leave entitlement. Given the fact that the scheduling of a compressed work week is done only upon the request of an employee with the concurrence of the employer, it cannot be said, as in the case of the VSSA scheduled co-worker, that an employee has no voice in determining how leave entitlement is to be calculated in his or her particular situation: the employee is always entitled to work the normal 7.5 hour work day.

[13] That being the case, the Conciliation Board is inclined to recommend amendment of the agreement to accord with the Employer's proposal, thus bringing the leave entitlement provisions in line with the general practice as well as with the original provisions of Article M-40. However, the Conciliation Board considers the suggestion that Article 25 be amended to provide that all reference to days throughout the agreement be converted to hours, to be much too broadly framed with the potential for unintended consequences, the term 'day' being ubiquitous throughout the Agreement. A much more focused approach must be taken to address the specific problem identified: the calculation

of entitlement to leave for employees working a compressed work week, and accordingly the Conciliation Board recommends as follows:

Recommendation 1.1 That provision should be made at Article 33.01 as follows:

33.01.xx Where an employee works variable hours pursuant to Article 25.09 [compressed work week] the following leave provisions, which specify days of leave shall be converted to hours [1 day = 7.5 hours]: Article 43, Leave with Pay for Family Related Responsibilities; Article 45 Marriage Leave with Pay; Article 53.01 Pre-Retirement Leave; Article 54.02 Personal Leave; Article 54.03 Management Performance Leave.*

Recommendation 1.2 That the provisions of Article 25.27 be renewed.

*Note: As an element of its proposal to harmonize wage rates for employees in the MG Group with the equivalent Group in the Agreement between CCRA and PIPS, the Employer proposes to convert Management Performance Leave into a Management Performance Bonus as found in the PIPS Agreement. As PSAC opposes such conversion, the Conciliation Board recommends renewal of Article 54.03 as currently framed.

B. Bargaining Agent Proposals

i. Security of Employment: Article 23.01 & Workforce Adjustment Appendix

[14] PSAC identified job security as its number one priority, asserting that the 'lean government' policy championed by the federal government over the past several years has eroded the public service through initiatives designed to transfer public sector work in whole or in part from the federal government to the private sector, whether by way of contracting out, alternate service delivery initiatives, or public/private partnering. The movement of public sector work to the private sector removes public services from the public realm, has a negative impact on wages and working conditions, and increases workload and job insecurity with concomitant stress at the workplace. PSAC proposes an absolute ban on layoffs and contracting out during the life of the agreement. This would require amendment to Article 23 which at present provides a modicum of job security by imposing upon the Employer the obligation to "make every reasonable effort to ensure that any reduction in the workforce will be accomplished through attrition", subject to the willingness and capacity of individual employees to accept relocation and retraining. The Employer notes that there is scarce evidence of layoff of members from the PDAS group, nor can contracting out of work be described as anything other than miniscule. To the contrary there has been an increase in the number of employees engaged in this bargaining unit – as is candidly admitted by the spokesperson for PSAC. He stressed that the moratorium on layoffs and contracting out for the term of the collective agreement was being proposed as a preventative measure to ensure job security in the future in the face of rapidly advancing technological change and infrastructure reorganization

affecting the operations of CCRA. In light of the foregoing, the Conciliation Board is not disposed to a strengthening of the job security clause as sought.

[15] In point of fact, the parties have turned their minds to the issue of job security and the smooth accommodation of the workforce to the demands of lean government with the joint development of the Workforce Adjustment Appendix to the agreement [WFAA], the objective of which is "to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them" [p. 187]. The WFAA is appended to the agreement as Appendix "E" and comprises seven (7) parts occupying twenty-five (25) pages of text. Its provisions are expansive and address a wide range of issues in the event of a workforce adjustment including relocation of a work unit, retraining, salary protection, options for employees, and alternate delivery initiatives as well as administrative and logistic matters. PSAC proposes to undertake a detailed review and modification of the WFAA in this round of bargaining which it tabled only at the proceedings of the Conciliation Board. In the circumstances and given the intricacy of its terms, the Conciliation Board considers it inappropriate to undertake a detailed review of the WFAA with a view to modification of its terms. It is simply not fitted to do so. Amendment to the WFAA should be arrived at mutually between the parties through negotiations. Accordingly the Board makes the following recommendations on job security:

Recommendation 2.1 That the provisions of Article 23 governing job security be renewed**.**

Recommendation 2.2	That proposed amendments to the WFAA be referred to direct negotiations between the parties.

ii. Leave for Alliance Business: Article 14

[16] As is common in the collective bargaining regime, the agreement makes provision for leave with or without pay for PSAC business. Provisions of this sort reinforce the role of the bargaining agent as representative of the employees in the bargaining unit and highlight its mandate to administer the collective agreement on behalf of its members. PSAC has proposed several amendments to the provisions of Article 14: first, to expand the role of employee representatives in the grievance process; second, to expand the role of PSAC representatives generally in meetings between Employer and employee touching on terms and conditions of employment broadly speaking, including Employer policies as well as the collective agreement; and third, to allow for long term employee representatives to continue with their role in the labour relations process while on leave without pay without undue detriment to financial benefits under the agreement.

[17] During the course of the Conciliation Board process, the parties reached agreement as to the value i) of informally resolving problems prior to the presentation of a formal grievance and ii) of the use of alternative dispute resolution mechanisms to resolve grievances filed, as stipulated at revised Article 18.01. Sub-paragraph (d) of that Article allows for PSAC representation at the request of the employee in both the informal and alternate dispute resolution processes. The Board would recommend that this expanded role for PSAC representatives be integrated into the provisions of Article 14.07, the terms of which should be amended accordingly so that the two provisions

complement one another. The Board recommends no further expansion of the role of such representatives beyond this. As to the financial burden on long-term employee representatives who are engaged extensively in the labour relations process, the Board rejects the original bargaining agent proposal that these be deemed to be "on loan status" and exempt from the five-year leave without pay limitation established under the *Public Service Superannuation Act.* However, as suggested to the parties during the conciliation process, it recommends that bargaining unit employees engaged in contract negotiations remain on the Employer's payroll while on leave without pay, PSAC to reimburse the Employer accordingly together with the applicable administrative fee. Accordingly the Board makes the following recommendations:

Recommendation 3.1	That the provisions of Article 14.07 be amended to include the right to PSAC representation for the informal resolution of problems prior to presentation of a formal grievance, as well as during any alternative dispute resolution mechanism engaged in during the grievance process, as agreed to between the parties at Article 18.01(d), the provisions of the two articles to dovetail with one another.
Recommendation 3.2	That arrangement be made by way of letter of understanding for the retention on the payroll of employees on leave without pay pursuant to Articles 14.05 and 14.10 to attend contract negotiation meetings thereunder on behalf of PSAC, the bargaining agent to reimburse the Employer for such wages paid, together with the applicable administrative fee.

iii Leave entitlements: Articles 34, 43 & 47

[18] PSAC proposes enhancement to three (3) categories of leave entitlement with pay: vacation leave [Article 34], family related responsibilities leave [Article 43] and bereavement leave [Article 47]. PSAC proposes an additional week of vacation for every five years of service, i.e. four weeks after five years; five weeks after ten years; six weeks after 15 years; seven weeks after 20 year. At present vacation entitlement is to four weeks after 8 years, 22 days after 16 years, 23 days after 17 years, five weeks after 18 years, 27 days after 27 years and six weeks after 28 years. Improvements were made to vacation entitlement during the previous two rounds of bargaining, which entitlement is neither in the forefront, nor in the rearguard of provisions for vacation entitlement in the Canadian public sector. Vacation entitlement enjoyed by members of this bargaining unit is consistent with that found throughout the federal public service. The Board is not inclined to recommend enhancement to vacation entitlement to members of this bargaining unit.

[19] PSAC proposes two (2) enhancements to the provisions of Article 43 governing leave with pay for family related responsibilities [FRR]: the addition of appointments of a professional nature, and of temporary child care to the enumerated list of circumstances from which the Employer will grant leave with pay pursuant to Article 43.03. The Board is not inclined to accede to the request for paid leave for professional appointments. As is clear from the enumerated list of circumstances for which FRR leave with pay is granted, the objective is to address health, safety and welfare concerns directly touching the employee or a family member. FRR leave is already granted for medical or dental

appointments; there is no rationale for its expansion to include other professional appointments which do not fall within the rubric of family health, safety and welfare. By way of contrast the grant of FRR leave to provide for temporary child care in unforeseen/emergency circumstances mirrors provisions of the Article allowing for such leave in the case of a sick or elderly member of an employee's family. Given the age profile of a predominantly female workforce such as this, the accommodation of childcare obligations where ordinary child care arrangements have been unexpectedly disrupted makes eminent good sense, and the Board would recommend acceptance of the PSAC proposal in this regard.

[20] The third request is for an enhancement to the provisions for bereavement leave with pay to ensure that such be granted for interment of the body of a member of the employee's immediate family where such does not coincide with the funeral. The Conciliation Board is of the view that isolated examples of the exercise of discretion in the granting of leave should be addressed globally rather than on a case by case basis, by acknowledging what is the case generally: that such leave will not be unreasonably denied. Accordingly, the Board makes the following recommendations as to leave entitlement enhancements:

Recommendation 4.1	That the provisions of Article 34.02 governing vacation leave be renewed.
Recommendation 4.2	That the provisions of Article 43.03 governing leave with pay for family related responsibilities be amended to add to the circumstances for which such leave will be granted to allow the employee to provide for immediate and temporary child care and to make alternate care arrangements where, in

	the event of unforeseen/emergency circumstances ordinary child care arrangements have been disrupted.
Recommendation 4.3	That the provisions of Article 47.05 governing the grant of additional or alternate forms of bereavement leave to meet individual circumstances, be amended to specify that such leave will not be unreasonably withheld**.**

iv. Term employees – break in service: Article 34.03(c) & Article 35.08

[21] PSAC recommends two (2) improvements to the terms and conditions of employment for term employees so as to allow them certain benefits equal to those enjoyed by indeterminate employees. It proposes that a clause be added to vacation leave article 34.03 so that recurring term employees move to the next level of vacation credits on the same basis as full time and seasonal employees. Similarly PSAC proposes that earned but unused sick leave credits be restored to a term employee who is reappointed within two years from the date of termination of contract, this to mirror sick leave entitlement for indeterminate employees as stipulated at article 35.08. In the joint PSAC/CCRA Study on Term Employment presented in 2003 to the CCRA, a recommendation was made that bridging of service for term employees for the purposes of vacation and sick leave entitlement be addressed through collective bargaining. This is but one of a raft of recommendations made by the joint committee in the Report, which is now being considered by the CCRA for implementation. The Conciliation Board is of the view that it would be inappropriate to carve out of the 26 recommendations made by the joint committee, all of which are now under review by the Employer, those

addressing the break in service issue. Accordingly, the Conciliation Board makes the following recommendation:

Recommendation 5.1	That the issue of entitlement by term employees to sick leave and vacation leave credits, notwithstanding break in service, be addressed by the Employer in its review of the final Report of the joint PSAC/CCRA Study on Term Employment.
Recommendation 5.2	That the provisions of Article 34.03 and of Article 35.08 be renewed.

v. Acting Pay increment: Article 64

[22] Generally speaking, indeterminate employees are entitled to a pay increment within their classification level upon annual anniversary date of appointment. In the case of both full-time and part-time term employees the parties have provided that these are entitled to receive an increment after having reached fifty-two weeks (52) of cumulative service with the Employer at the same occupational group and level, whether continuous or discontinuous. This differs from the norm in the public service where such increments for term employees are received only upon reaching fifty-two (52) weeks of continuous service. PSAC proposes that the same principle apply in the case of an indeterminate employee receiving acting pay for performing the duties of a higher level in an acting capacity. At present, such an employee would be entitled to receive an increment within the higher-rated classification level only upon each annual anniversary date of continuous service in an acting capacity. Ought such an employee be entitled to receive an increment where performing in an acting capacity on the basis of cumulative service in that capacity whether continuous or discontinuous? Although superficially attractive, given the provisions for entitlement to such an increment in the case of term employees,

on closer analysis the Conciliation Board concludes that such is not warranted. The thrust of the provision made for term employees is to extend to them the benefit of advancing through the ranks in the same occupational group and level as is already the case for the indeterminate employee. The indeterminate employee even while serving in an acting capacity at a higher-rated classification, continues to accumulate service for receipt of an annual increment at the employee's assigned occupational group and level. Should the employee perform work in an acting capacity in excess of fifty-two (52) weeks of continuous service, then the employee will receive an increment within the acting occupational group and level. There is no warrant for crediting discontinuous service in an acting capacity by an indeterminate employee in calculating entitlement to an increment at the higher-rated classification level, and the Board declines so to recommend.

> **Recommendation 6** That the provisions at Article 64 governing pay increments for indeterminate employees performing the duties of a higher classification level in an acting capacity be renewed.

vi. Social Justice Fund

[23] At its triennial convention of 2003, PSAC initiated a Social Justice Fund, the objective of which is to support a wide-range of programs both domestic and international including international development work, Canadian anti-poverty and development initiatives, emergency relief work in Canada and around the world, worker to worker exchanges and worker education. Several private sector trade unions in Canada have established Social Justice Funds as a tangible response to economic globalization, so as to further the globalization of human rights generally and the rights of workers in particular. PSAC proposes that the Employer contribute to the Fund one cent

(1¢) per hour worked, which approximates twenty dollars ($20) per employee per year. It asserts that such contribution would be in keeping with long-term partnering relationships between the Government of Canada and a variety of NGO's engaged in social justice and development initiatives.

[24] The Employer declines to contribute to the Social Justice Fund. There is no question that the objectives of the Social Justice Fund are laudable. It is also clear that government is open to partnering with PSAC in initiatives undertaken under the Fund as it is generally with other NGO's engaged in such activities. However, the manner in which PSAC seeks participation by the Employer – by way of direct contribution to the Social Justice Fund - falls outside the norm for such partnership arrangements. Unlike the case of a private sector employer, all government expenditures, including those of CCRA, are of public funds for which it is responsible to the taxpayer. Rather than to expend such funds by way of direct contribution, government signals its moral and fiscal support for such initiatives by the grant of tax-free charitable status to those entities engaged in them. This is the case with the Social Justice Fund established by PSAC, which is in the process of obtaining for it tax-free charitable status. The grant of such status is a very real contribution to the Fund, its sponsor and the many individuals who will make contributions to it, all of whom will receive a tangible benefit from CCRA for doing so: tax relief; and by the same token government will forego tax revenues. Accordingly the Conciliation Board recommends:

Recommendation 7: That the PSAC Social Justice Fund proposal be withdrawn.

C. Wages and Duration

[25] There is agreement between the parties that a renewal Collective Agreement should be of three (3) years duration, expiring 31 October 2006. There is no agreement between them as to the wage rates which should obtain for its term. The pattern in the Canadian public sector generally, and in the Federal Public Service in particular has been for improved wage rates comprising three elements:

i. A targeted restructuring of wage rates to address perceived inequities in wage rate structure when measured against internal comparators;

ii. A wage adjustment to address inequities as between public sector rates and those of appropriate external private sector comparators;

iii. A general economic increase.

In addressing the issue, the parties had recourse to the same data on the shape of the Canadian economy generally, and in particular wage settlement trends in both the private and the public sectors. There is a recognition of the robustness of the Canadian economic performance since the abandonment of deficit financing by government and the commitment to balanced budgets – a trend which commenced early in the last decade. Since 1996 the Federal government has posted budged surplus which on average exceed budget projections by 10 billion dollars. Economists predict a growth rate in the Canadian economy of 2.7% in 2004, and one of 3.3% in 2005. Labour force participation is at a all time high, the unemployment rate being down to 7% in the fourth quarter of 2003 with an increase in the labour force participation rate to close to 70%. Increases in the base salary rates negotiated in the public sector have been outpacing inflation since 2001 with average increases in 2003 of 2.9%, and in the first quarter of 2004 of 2.8%.

[26] Settlements in the Federal public service within a timeframe roughly identical to that here being considered were reviewed in the recently released arbitral award between the *Canadian Merchants Service Guild and Treasury Board* for the Ships' Officers Group [Mitchnick, 13 August 2004]. Two years agreements show patterns of annual increases of 2.5% in 2003 and 2.5% in 2004 [Applied Science and Engineering Group]; 2.5% in 2003 and 2% in 2004 [Translation Group]; 2.5% in 2004 and 2% in 2005 [Law]. Three-year agreements show general wage increases of 2.5% in 2003; 2.5% in 2004 and 2% in 2005 [Ship Repair and Charge Hand and Production Supervisor Group]; 2.5% in 2003 2% in 2004 and 2% in 2005 [Ship Repair West], and in the case of the Ships' Officers, an award of 2.5% in 2003, 2.5% in 2004 and 2.5% in 2005. Many of those agreement allow for the addition of new increments either across the board for all classifications, or for select classifications. In the case of the Ships' Officers award, the Board awarded a new increment at the top end of the grid levels for all sub-groups in the unit, roughly equivalent to a 3.5% increase on the rates. Although in its submissions the Employer emphasized that such restructuring was to address recruitment and retention issues or distortion in internal salary relativities, such adjustments have to date been widespread. The Conciliation Board cannot but be aware of their impact on the overall wage packages awarded or negotiated in the Federal public sector. This in turn has an impact on the overall wage rates recommended here.

i. Internal restructuring

[27] The Employer has proposed harmonization of the rates for employees in the Management Group [MG] to accord with those paid to their counterparts employed by CCRA both in the excluded category and in the collective agreement governing between it and PIPS, both of which groups share the same classification standard as that of the MG group. Such would be effective on commencement of the renewal agreement, 1 November 2003. Naturally PSAC is in accord with this proposal, although as noted above at the note to Recommendation 1.1, it rejects the proposed concomitant conversion at Article 54.03 of management performance leave to a management performance bonus. PSAC proposes a further series of wage grid adjustments for the remaining PDAS classifications by way of internal harmonization of both administrative and technical classifications. However it provides no substantive justification for doing so.

ii. External comparator adjustment

[28] Similarly PSAC proposes an adjustment to the wage rates for the GL and GS classifications premised on private sector external comparators. However, this adjustment is based upon justificatory evidence prepared for such classifications in the PSAC core civil service bargaining unit for which Treasury Board is the employer. PSAC also proposes that a single national pay rate should obtain for the GL and GS classifications, i.e. the abandonment of zone pay rates and adjustment of wage rates for employees engaged in Zone 2 [Canada east of British Columbia] upward to be equivalent

to wage rates for Zone 1 [British Columbia, Yukon, Nunavut and the Northwest Territories]. Zone rates are an anomaly in this bargaining unit. In the core civil they were originally intended to mirror local rates for general labour and trades and general services groups so as not to distort competition in local markets unduly. With the reduction of zones over time from a high of 26 to 2 at present, this rationale no longer holds. The principle of equal pay for equal work militates towards abolition of wage differentials for employees of the same classification group engaged by the same employer. That being the case, the Board proposes abolition of a two-tier zone rate structure for the GL and GS groups in favour of a single grid national rate.

iii. General economic increase

[29] PSAC originally proposed an economic increase of 8% in each of three years. At the close of the Conciliation Board sittings it had altered its position, proposing economic increases of 4.75% effective 1 November 2003, 4.5% effective 1 November 2004, and 4.5% effective 1 November 2005. The Employer initially put forward a proposal for annual general economic increases of 1.5%, 1% and 1% in a three-year agreement. At the conclusion of Conciliation Board proceedings its position was: 2% effective 1 November 2003; 1.5% effective 1 November 2004; and 1.5% effective 1 November 2005.

[30] Having considered all of the foregoing, the Conciliation Board makes its recommendations for wage rates in a renewal agreement as follows:

Recommendation 8.1 That effective 1 November 2003, wage rates for the Management Group [MG] be adjusted upward to be equivalent to those governing for CCRA employees engaged in the PIPS bargaining unit who share the same classification standard.

Recommendation 8.2 That effective 1 November 2003, a single national wage rate grid be established for employees in the GL and GS groups, equivalent to that now obtaining for such employees in Zone 1.

Recommendation 8.3 That general wage increases be granted as follows:

1 November 2003	**3%**
1 November 2004	**2.75%**
1 November 2005	**2.5%**

Conclusion

[31] The Board of Conciliation respectfully submits these recommendations to the Chairperson of the PSSRB, confident that they will be of assistance to the parties in resolving their differences.

Dated at Fredericton, New Brunswick, this 27th day of August 2004.

……
Thomas Kuttner, Q.C.,
Chairperson

……..
Sandra Budd, CCRA Nominee
Partial dissent and comments

……..
James Wolfgang, PSAC Nominee
Partial dissent and comments

Appendix

Summary of Recommendations

Recommendation 1.1 That provision should be made at Article 33.01 as follows:

33.01.xx Where an employee works variable hours pursuant to Article 25.09 [compressed work week] the following leave provisions, which specify days of leave shall be converted to hours [1 day = 7.5 hours]: Article 43, Leave with Pay for Family Related Responsibilities; Article 45 Marriage Leave with Pay; Article 53.01 Pre-Retirement Leave; Article 54.02 Personal Leave; Article 54.03 Management Performance Leave.*

Recommendation 1.2 That the provisions of Article 25.27 be renewed.

Recommendation 2.1 That the provisions of Article 23 governing job security be renewed**.**

Recommendation 2.2 That proposed amendments to the WFAA be referred to direct negotiations between the parties.

Recommendation 3.1 That the provisions of Article 14.07 be amended to include the right to PSAC representation for the informal resolution of problems prior to presentation of a formal grievance, as well as during any alternative dispute resolution mechanism engaged in during the grievance process, as agreed to between the parties at Article 18.01(d), the provisions of the two articles to dovetail with one another.

Recommendation 3.2 That arrangement be made by way of letter of understanding for the retention on the payroll of employees on leave without pay pursuant to Articles 14.05 and 14.10 to attend contract negotiation meetings there under on behalf of PSAC, the bargaining

agent to reimburse the Employer for such wages paid, together with the applicable administrative fee.

Recommendation 4.1 That the provisions of Article 34.02 governing vacation leave be renewed.

Recommendation 4.2 That the provisions of Article 43.03 governing leave with pay for family related responsibilities be amended to add to the circumstances for which such leave will be granted to allow the employee to provide for immediate and temporary child care and to make alternate care arrangements where, in the event of unforeseen/emergency circumstances ordinary child care arrangements have been disrupted.

Recommendation 4.3 That the provisions of Article 47.05 governing the grant of additional or alternate forms of bereavement leave to meet individual circumstances, be amended to specify that such leave will not be unreasonably withheld**.**

Recommendation 5.1 That the issue of entitlement by term employees to sick leave and vacation leave credits, notwithstanding break in service, be addressed by the Employer in its review of the final Report of the joint PSAC/CCRA Study on Term Employment.

Recommendation 5.2 That the provisions of Article 34.03 and of Article 35.08 be renewed.

Recommendation 6 That the provisions at Article 64 following pay increments for indeterminate employees performing the duties of a higher classification level in an acting capacity be renewed.

Recommendation 7: That the PSAC Social Justice Fund proposal be withdrawn.

Recommendation 8.1 That effective 1 November 2003, wage rates for the Management Group [MG] be adjusted upward to be equivalent to those governing for CCRA employees engaged in the PIPS bargaining unit who share the same classification standard.

Recommendation 8.2 That effective 1 November 2003, a single national wage rate grid be established for employees in the GL and GS groups, equivalent to that now obtaining for such employees in Zone 1.

Recommendation 8.3 That general wage increases be granted as follows:

1 November 2003	**3%**
1 November 2004	**2.75%**
1 November 2005	**2.5%**

DISSENT IN THE

CANADA REVENUE AGENCY - PROGRAMME DELIVERY and ADMINISTRATIVE SERVICES and the PUBLIC SERVICE ALLIANCE OF CANADA - CONCILIATION BOARD

The decision of the Board covers the history of this bargaining unit and the events leading up to this report and need not be repeated here. I believe some substantial improvements were made and those should be well received. While I may have come to a different outcome than is contained in the report on a number of issues I am prepared to agree with the report with the exception of three issues. They are:

1. A DAY IS A DAY. The conversions of days to hours for leave purposes.
2. PAY AND RELATED PAY ISSUES.
3. SOCIAL JUSTICE FUND.

The Employer proposed a conversion of days to hours for all forms of leave covering all employees. This was a key demand of the Employer and was granted in the Board report; however it is limited to those employees working on a “compressed work week”. This was a major gain for the Employer. I am not making a different recommendation than the Chair on this issue but further consideration should have been given to some of the key demands of the Union.

The pay proposal proposed by the union had three components. Those proposals relating to adjustments to specific groups of employees, those relating to comparisons with outside employers and a general pay increase.

The harmonizing of the MG rates between the PSAC and PIPS bargaining units was achieved during the mediation process. The question of the other proposals to harmonize various groups was not addressed and should have been.

The proposal to end pay zones is long overdue and welcome.

I was disappointed there was no recommendation on the implementation of any part of the Morneau-Sobeco Joint Pay study as it relates to the GL and GS classifications. The joint Pay Study was conducted to find the comparison of private sector rates of pay to those in the Federal Public Service, particular for the GL and GS classifications. That study, conducted by a third party, found a serious disparity between comparable jobs exists in the rates of pay for public sector workers with those in the private sector. I recognize that study was done on a group where the employer is Treasury Board. It must be remembered that before the establishment of a separate employer status for CCRA or CRA as it is now known all the employees covered by the study were under the same classification plan. The number of employees affected in this bargaining unit is not large however the data is valid for this group and should have been addressed.

> The last general pay proposal by the Union was for a 4.75%, 4.5% and a 4.5% increase for a non-compounded increase of 13.75% over the three year term of the agreement. The Employer argues this is substantially more than has been given in other settlements in the public service. It is significant to note the Union did not propose any incremental step increases for this group. Remember this unit sought to achieve increases of a more general nature. If we look at other settlements we find a large number have had step increases added in addition to a general increase. Those step increases range from 3% to 5% and, when added to the general increases provide non-compounded increases of from 9.5% to 12% in 3-year agreements. The increase proposed in this award only provides a non-compounded increase of 8.25%, well below the lowest increase where step increases were introduced.

As an example of the loss in relativity with similar groups in the public service we can look at the comparison of rates between the AU-2 and the PM-2 maximum rates. From the time of the freeze on rates in 1996 until July 2003 the AU-2 maximum rates have increased 5.2% more than the PM-2 rates.

If we look to the Ships Officers Arbitral Award we find the non-compounded increases over 3 years equals 11%. The 8.25% contained in this report falls well short that.

I will deal with the proposal for a Social Justice Fund. While I agree with the Board this may be more prevalent in the private sector, many public employers have recognized the need to provide some form of assistance to those less fortunate. A Social Justice Fund is found in many collective agreements across Canada. The cost, at one cent per hour worked, is not of the magnitude that places a serious burden on the Employer. It would be a demonstration of our commitment, as Canadians, to improve the lives of others.

I want to thank the parties for their co-operation and understanding during this process.

Signed J. Wolfgang 27/8/2004

Date _____-

PARTIAL DISSENT AND RECOMMENDATIONS **OF THE NOMINEE FOR**
THE CANADIAN CUSTOMS AND REVENUE AGENCY

With respect to the Conciliation Board Report
Concerning the Program Delivery and Administrative Services Group

I agree with recommendations proposed by the Board with the following exceptions:

Pay

I do not agree with the recommendations of the Chair for either a national rate for the GL and GS Groups or the general economic increases over the three years.

GL and GS Zones

While Zone rates may be an anomaly in this bargaining unit, that includes all Agency classifications represented by the Public Service Alliance of Canada, they exist for all GL and GS employees in the greater Federal Public Service. While the number of Zones has gradually decreased over the years it is totally unfounded to state that the rational for their continuation no longer holds. Historically and to this day GL and GS employees in BC and the north continue to be paid higher rates than the rest of Canada in both the public and private sectors. At CCRA, the vast majority, close to 85%, of these employees work in Zone 2 and receive rates of pay in excess of 7% higher than comparable groups in the Public Service working in similar Zones. The remaining 15% in Zone 1 receive rates of pay that are in excess of 8% higher than these same comparator groups working in the same Zone. There is no justification for moving to a national rate that is the highest rate of pay currently provided, as this would put 85% of the population at a rate that is between 17% and 18% ahead, using a weighted average, of the same groups in similar Zones in the rest of the Public Service.

General Economic Increase

I do not agree with the recommended economic increases proposed by the Chair

Settlements within the Federal Public Service cited in the report and others presented by the Employer clearly demonstrate that economic increases for 2003 were around 2.5% for 2004 increases were predominately 2% or 2.5%. For 2005 there is still little data available but the trend is to a lower increase than in 2004. It must be noted that CCRA rates of pay for all groups in the bargaining unit are higher than comparable Treasury Board and most Separate Employers groups; CCRA rates on average range between 2% and 8.6% higher.

As stated in the report there is no justification for any restructuring to address recruitment and retention issues or distortion in internal salary relativities for this bargaining unit. The

lack of restructuring should not then be used to recommend greater economic increases than that received by other Federal Public Service groups for a similar time frame.

Based on the above, I recommend economic increases as follows:

November 1, 2003	2.25%
November 1, 2004	1.75%
November 1, 2005	1.75%

Other Issues

Conversion of days to hours

While I agree with the recommendation to convert days to hours for the specified leaves for employees scheduled pursuant to Clause 25.09(Compressed Work Week) I would recommend that, as the principle is the same, the conversion of days to hours apply to employees scheduled to work variable shifts pursuant to clause 25.23 (Variable Shift Schedule Arrangements).

Article 14 Leave for Alliance Business

I do not concur with the recommendations to amend clause 14.07 as it is not required to give effect to the agreement reached between the parties with respect to 18.01(d).

Article 43 Family Related Responsibility Leave

I do not concur with the recommendation to amend clause 43.03. It is a long standing principle that employees are responsible for their own child care arrangements. There is no collective agreement in the Federal Public Service that has such a provision. Any emergency regarding illness is already appropriately covered under the existing article; situations related to interruptions in child care arrangements should remain the responsibility of the employee.

I recommend that this additional leave not be included in the agreement.

"Sandra H. K. Budd"
Representative of the Canada
Customs and Revenue Agency

Ottawa, Ontario
August 27, 2004