

IN THE MATTER OF AN ALTERNATE DISPUTE RESOLUTION
UNDER SECTION 61 OF THE PUBLIC SERVICE STAFF RELATIONS ACT

BETWEEN

PROFESSIONAL INSTITUTE OF THE
PUBLIC SERVICE OF CANADA

(Bargaining Agent)

AND

CANADIAN FOOD INSPECTION AGENCY

(Employer)

AND IN RESPECT OF A DISPUTE CONCERNING THE
VETERINARY MEDICINE GROUP

DETERMINATION OF THE DISPUTE RESOLUTION BOARD

BEFORE: Philip Chodos, Chairperson
Michael McTaggart, Member nominated by the Bargaining Agent
Sandra Budd, Member nominated by the Employer

APPEARANCES:

For the Bargaining Agent: Michel Gingras, Negotiator
Malcolm Brown, Research Officer

For the Employer: Robert Derikozis, Negotiator
JoAnn Parton, Manager, Corporate Compensation

HEARD AT OTTAWA, ONTARIO, APRIL 29, 30 and MAY 1, 2 and 3, 2002.



INTRODUCTION

The Canadian Food Inspection Agency became a separate employer under Schedule I, Part II, of the Public Service Staff Relations Act (PSSRA) in 1997. In the same year, the Professional Institute of the Public Service of Canada became the certified bargaining agent for the Agency's employees in the Veterinary Medicine (VM) Group. The parties signed their first collective agreement on November 8, 1999, which expired September 30, 2000. Following the issuance of Notice to Bargain by the bargaining agent on July 7, 2000, the parties engaged in an extensive and protracted round of negotiations which included two separate attempts at conciliation under the auspices of two different conciliation officers appointed by the Public Service Staff Relations Board.

In February 2002, the parties agreed to refer the outstanding matters in dispute to an alternate dispute resolution process under section 61 of the PSSRA, which the parties described as binding conciliation. This is in fact the first time that this provision of the PSSRA has been resorted to. This Dispute Resolution Board (hereinafter referred to as "the Board") was duly appointed, after agreement of the parties, under section 61 of the PSSRA; subsection 61(1) provides that...a bargaining agent for a bargaining unit for which the process for resolution of a dispute is by the referral thereof to conciliation may, at any time in the negotiation of a collective agreement and with the concurrence of the employer, elect to refer any term or condition of employment of employees in the bargaining unit that may be embodied in a collective agreement to final and binding determination by whatever process the employer and the bargaining agent agree to.

The parties jointly identified the following issues, which they wished to be addressed by the Board:

- *Interpretation and Definitions*
- *Shift Work*
- *Call Back*
- *Travelling Time*
- *Part-time Employees*
- *Vacation Leave*
- *Maternity-Related Reassignment or Leave*
- *Career Development*
- *Leave for Staff Relations Matters*
- *Stewards*
- *Grievance Procedure*
- *Sexual Harassment*
- *Registration Fees*
- *Pay*

- Duration
- Appendix "A" - Rates of Pay
- Appendix "B" - Employment Transition Policy
- New - Wash-up Time

Throughout the proceedings the Board attempted to assist the parties to settle these issues. The Board would like to commend the negotiators and bargaining team members for their efforts in successfully resolving a number of the issues, which are identified more fully below. At the outset of the proceedings, the parties exchanged extensive briefs, which were also provided to the Board. When it became clear that the parties had reached an impasse in respect of the remaining issues, the Board proceeded to more formal hearings where each side, commencing with the bargaining agent, presented evidence and submissions. The employer then presented its evidence and responded to the bargaining agent's submissions, as well as presenting its own proposals, including its proposals with respect to rates of pay. This was the first occasion on which the employer had formally presented its pay proposals to the union bargaining team. The bargaining agent was then given the opportunity to rebut the employer's submissions. In the course of the formal proceedings, the parties reached an understanding with respect to some of the outstanding issues.

The following is the determination of the Board in respect of the issues remaining in dispute, as well as the disposition of those issues which the parties were able to resolve during the course of these proceedings. (It should be noted that a number of issues were resolved during negotiations and consequently were not referred to this Board.)

ARTICLE A7 - INTERPRETATION AND DEFINITIONS

Article A7.01(d), the definition of "day of rest", provides as follows:

"day of rest" in relation to an employee means a day, other than a designated paid holiday, on which that employee is not ordinarily required to perform the duties of his/her position other than by reason of his/her being on leave;

The bargaining agent proposed adding the following to the definition:

A day of rest is a full 24-hour period, commencing at 00:01h.

The employer submitted that the definition should remain unchanged.

It is the Board's determination that this definition shall be renewed without change.

ARTICLE B2 - SHIFT WORK

[1] Article B2.01(b) concerning "shift work" provides that:

Shift work shall only be scheduled during the normal work week, Monday to Friday.

[2] The employer proposed the deletion of this provision.

[3] The bargaining agent maintained that the provision should be renewed without change.

[4] It is the Board's determination that Article B2.01(b) should be renewed without change.

The bargaining agent proposed a new Article B2.09.1, which would read as follows:

Work performed on a Saturday or a Sunday, is paid at 150 percent or 200 percent for all hours worked, irrespective of those days corresponding to a day of rest.

The employer opposed this provision.

[7] In light of the Board's determination (see above) that Article B2.01(b) remain unchanged, the Board rejects the proposal for a weekend premium payment.

[8] Article B2.10, "Shift Premium", provides as follows:

An employee will receive a shift premium for all hours worked, including hours of overtime, on shifts more than half of which are scheduled between 6:00 p.m. and 6:00 a.m., at the rate of one dollar and a quarter (\$1.25) per hour.

[9] The bargaining agent proposed that this provision be changed to provide for a premium of five dollars (\$5.00) per hour for work performed between 6:00 p.m. and midnight and seven dollars (\$7.00) per hour for work performed between midnight and 6:00 a.m., whether it is considered shift or non-shift work. The bargaining agent also submitted that this provision be made retroactive to October 1, 2000.

[10] The employer proposed retaining the current language, and increasing the rates to one dollar and seventy-five cents (\$1.75) effective the date of the agreement and a further increase to two dollars (\$2.00) per hour effective October 1, 2002.

[11] It is the determination of the Board that the shift premium be increased to two dollars (\$2.00) per hour effective the date of this decision.

ARTICLE B4 - CALL-BACK

[1] The parties reached agreement that Article B4.01 should be renewed without change.

[2] The bargaining agent proposed the deletion of Article B4.02, which states as follows:

Where an employee completes a call-back requirement without leaving the location at which the employee was contacted, the minimum of three (3) hours provided in B4.01(a) shall be replaced by a minimum of one (1) hour which shall apply only once in respect of each one (1) hour period.

[3] The employer submitted that this provision should be renewed without change.

[4] It is the determination of the Board that Article B4.02 shall be renewed without change.

ARTICLE B7 - TRAVELLING TIME

[1] Article B7.01 currently reads as follows:

When the employer requires an employee to travel outside

their headquarters area for the purpose of performing duties, the employee shall be compensated in the following manner:

On a normal working day on which such employee travels but does not work, the employee will receive their regular pay for the day.

On a normal working day on which such employee travels and works, the employee shall be paid:

their regular pay for the day for a combined period of travel and work not exceeding seven and one-half (7 $\frac{1}{2}$) hours,

and

at the applicable overtime rate for additional travel time in excess of a seven and one-half (7 $\frac{1}{2}$) hour period of work and travel, with a maximum payment for such additional travel time not to exceed seven and one-half (7 $\frac{1}{2}$) hours pay at the straight time rate in any day.

On a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours traveled to a maximum of seven and one-half (7 $\frac{1}{2}$) hours pay at the straight time rate.

[2] *The Board determines that the cap found in paragraph B7.01(b)(ii) and paragraph B7.01(c) be increased from seven and one-half (7 $\frac{1}{2}$) hours to twelve (12) hours.*

[3] *The bargaining agent withdrew its proposal for a new Article B7.09.*

ARTICLE B13 - PART-TIME EMPLOYEES

[1] *The Board notes that the parties agreed to consequential amendments for part-time employees reflecting the changes to the collective agreement.*

ARTICLE C2 - VACATION LEAVE

[1] *The parties reached agreement with respect to Article C2.02, "Accumulation of Vacation Leave Credits". The new provision, which is effective the date of this decision, shall read as follows:*

An employee shall earn vacation leave credits for each calendar month during which he receives pay for at least ten (10) days at the following rate:

(a)

one and one-quarter (1 $\frac{1}{4}$) days until the month in which his first (1st) anniversary of service occurs;

one and two-thirds (1 $\frac{2}{3}$) days commencing with the month in which his first (1st) anniversary of service occurs;

one and five-sixths (1 $\frac{5}{6}$) days commencing with the month in which his sixteenth (16th) anniversary of service

occurs;
one and eleven-twelfths (1 11/12) days commencing with the month in which his seventeenth (17th) anniversary of service occurs;
two and one-twelfth (2 1/12) days per month commencing with the month in which such employee's eighteenth (18th) anniversary of service occurs;
two and one-quarter (2 1/4) days commencing with the month in which such employee's twenty-seventh (27th) anniversary of service occurs;
two and one-half (2 1/2) days per month commencing with the month in which such employee's twenty-eighth (28th) anniversary of service occurs.

ARTICLE C6- MATERNITY-RELATED REASSIGNMENT OR LEAVE

[1] This provision currently states the following:

Preamble

In respect to applications for leave made pursuant to this Article, the employee may be required to provide satisfactory validation of the circumstances necessitating such requests.

C6.01

An employee who is pregnant or nursing may, during the period from the beginning of pregnancy to the end of the twenty-fourth (24th) week following the birth, request the Employer to modify her job functions or reassign her to another job if, by reason of the pregnancy or nursing, continuing any of her current functions may pose a risk to her health or that of the foetus [sic] or child.

An employee's request under clause C6.01(a) must be accompanied or followed as soon as possible by a medical certificate indicating the expected duration of the potential risk and the activities or conditions to avoid in order to eliminate the risk. Dependent upon the particular circumstances of the request, the Employer may obtain an independent medical opinion.

*An employee who has made a request under clause C6.01(a) is entitled to continue in her current job while the Employer examines her request, but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties until such time as the Employer:
modifies her job functions or reassigns her,
or*

informs her in writing that it is not reasonably practicable to modify her job functions or reassign her.

When reasonably practicable, the Employer shall modify the employee's job functions or reassign her.

Where the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the employee in writing and shall grant leave of absence without pay to the employee for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than twenty-four (24) weeks after the birth.

An employee whose job functions have been modified, who has been reassigned or who is on leave of absence shall give at least two (2) weeks notice in writing to the Employer of any change in duration of the risk or the inability as indicated in the medical certificate, unless there is a valid reason why that notice cannot be given. Such notice must be accompanied by a new medical certificate.

[2] The bargaining agent has proposed that clause C6.01(c) be modified to read as follows:

An employee who has made a request under clause C6.01(a) is entitled to continue in her current job while the Employer examines her request, but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties and shall be granted a leave of absence with pay at her regular rates of wages until the Employer:

modifies her job functions or reassigns her;

or

informs her in writing that it is not reasonably practicable to modify her job functions or reassign her.

The onus is on the Employer to show that a modification of job functions or reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable.

[3] The employer proposed the renewal of the existing language without change.

[4] It is the determination of the Board that Article C6 be renewed without modification.

ARTICLE C19 - CAREER DEVELOPMENT

[1] In the course of these proceedings the bargaining agent withdrew its proposal concerning

this subject matter.

**C20 - LEAVE FOR STAFF RELATIONS MATTERS/
PUBLIC SERVICE STAFF RELATIONS BOARD HEARINGS**

[1] *During these proceedings, the employer withdrew its proposal concerning this subject matter.*

[2] *The bargaining agent also withdrew its proposals with respect to this Article, with the exception of Article C20.13. That provision now reads:*

*Institute Executive Council Meetings and Conventions
Where operational requirements permit, the Employer will
grant leave without pay to an employee to attend Executive
Council Meetings and Conventions of the Institute.*

[3] *The bargaining agent proposed that this language be modified so that it will provide as follows:*

*Where operational requirements permit, the Employer will
grant leave without pay to an employee to attend meetings
and conventions provided in the Constitution and By-Laws of
the Institute.*

[4] *The Board notes that in the course of these proceedings the employer accepted this proposal.*

ARTICLE D4 - STEWARDS

[1] *In the course of these proceedings, the employer withdrew its proposal with respect to this subject matter.*

ARTICLE D6 - GRIEVANCE PROCEDURE

[1] *The bargaining agent proposed modifications respecting the steps in the grievance procedure. The current language provides as follows:*

D6.06 *There shall be no more than a maximum of four (4) steps in the grievance procedure. These steps shall be as follows:*

Step 1 - first level of management;

*Steps 2 and 3 where such steps are established -
intermediate step(s);*

*Final Step - Chief Executive or their authorized
representative.*

[2] *Under the bargaining agent's proposal, this provision would now read as follows:*

D6.06 *There shall be no more than a maximum of four (4) steps in the grievance procedure. These steps shall be as follows:*

Step 1 - Regional Director or equivalent;

*Steps 2 and 3 - Where such steps are established -
intermediate step(s);*

Final Step - President or authorized representative.

(3) The employer proposed that the provision remains unchanged.

[4] The Board would note that in the course of these proceedings the parties agreed that paragraph D.6.06(c) would be modified by replacing "Chief Executive" with "President".

[5] The bargaining agent had also proposed a new provision, Article D6.24; however, it withdrew this proposal during these proceedings.

ARTICLE D11 - SEXUAL HARASSMENT

[1] The current provision reads as follows:

D11.01 The Institute and the Employer recognize the right of employees to work in an environment free from sexual harassment and agree that sexual harassment will not be tolerated in the work place.

D11.02

Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.

If by reason of D11.02(a) a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

[2] The bargaining agent proposed to add the word "personal" to Article D11.01 so that it would read as follows:

D11.01 The Institute and the Employer recognize the right of employees to work in an environment free from sexual and **personal** harassment and agree that sexual harassment will not be tolerated in the work place.

[3] The employer proposed that the current language remain unchanged.

[4] It is the determination of the Board that the current language be renewed without change.

ARTICLE E2 - REGISTRATION FEES

[1] Article E2.01 reads as follows:

The Employer shall reimburse an employee for his payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his position.

[2] During these proceedings, the parties agreed to replace the above provision with the following. (N.B. The parties remained in dispute as to the amount of the fees, the employer proposing a maximum of six hundred dollars (\$600), the bargaining agent proposing a maximum of one thousand dollars (\$1,000).):

E2.01 The Employer shall reimburse an employee for his/her payment of membership or registration fees to an

organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his/her position.

E2.02 Where the reimbursement of professional fees is not a requirement for the continuation of the performance of the duties of his/her position:

the Employer shall reimburse an employee for his/her membership fee paid to a regulatory body governing the practice of Veterinary Medicine, to a maximum of \$X;

effective November 1, 2002 upon receipt of proof of payment, the reimbursement referred to in (a), will commence for fees that become due for 2003.

[3] The Board determines that the maximum amount in Article E2.02(a) should be eight hundred dollars (\$800).

ARTICLE G1 - PAY

[1] Article G1.08, "Acting Pay", reads as follows:

When an employee is required by the Employer to substantially perform the duties of a higher level classification level on an acting basis for:

ten (10) consecutive working days for levels VM-1 to VM-3;
twenty (20) consecutive working days for levels VM-4 and VM-5;

they shall be paid acting pay calculated from the date on which they commenced to act as if they had been appointed to that higher classification level for the period in which they act.

When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be construed as a day worked for the purpose of the qualifying period.

[2] The bargaining proposed the elimination of the threshold period for acting pay.

[3] The employer proposed a five (5) day threshold in respect of all levels.

[4] The Board determines that the threshold period for VM-1's be one (1) day and for all other levels, five (5) days.

[5] The bargaining agent also proposed a new provision - Article G1.09 - concerning "Salary Protection", which would read as follows:

Every employee who is reclassified, pursuant to a new classification standard or job evaluation plan, to a new classification level with a lower maximum rate of pay than the current maximum rate of pay for the employees' current classification level, shall be paid at the classification level that has a maximum which is equal to or greater than the maximum of the employees' current classification level.

[6] The employer opposed this proposal.

[7] The Board determines that the following new provision shall be added to the collective agreement as Article G1.09:

If, during the term of this Agreement a new classification standard for the group is established and implemented by the Employer, the Employer shall, before applying rates of pay to new levels resulting from the application of the standard, negotiate with the Institute the rates of pay and the rules affecting the pay of employees on their movement to the new levels.

ARTICLE G3 - DURATION (EXPIRY DATE)

[1] During the course of these proceedings, the parties agreed to a three (3) year collective agreement, expiring September 30, 2003.

APPENDIX "A" - RATES OF PAY

[1] The bargaining agent proposed a three (3) year agreement, with economic increases of 3.7%, 3.3% and 3.0%, effective October 1, 2000, October 1, 2001 and October 1, 2002 respectively, and the removal of a minimum step grade at the bottom of each salary range and the addition of an increment of 4% at the top of all pay levels, effective on each of the following dates: October 1, 2000; October 1, 2001; October 1, 2002 and September 30, 2003.

[2] The employer responded with the following pay proposal:

effective October 1, 2000, increase all rates of pay by 3.2%;

effective October 1, 2001, increase all rates of pay by 2.8%;

effective October 1, 2002, add a new step at the maximum, then effective October 1, 2002, increase all rates of pay, including in respect of the new step, by 2.5%.

[3] The Board determines that the rates of pay shall be adjusted as follows:

effective October 1, 2000, restructure the rates of pay by adding a step at the maximum at all levels, the new maximum rate to have a dollar value equal to the difference between the current penultimate step and the maximum;

effective October 1, 2000, drop the bottom step at all levels;

effective October 1, 2000, an across-the-board increase of 3.2%;

effective October 1, 2001, increase the rates of pay across the board by 2.8%;

effective the date of this decision, add a step at the maximum with a dollar value equal to the difference between the penultimate step and the maximum, and

drop the bottom step at all levels;
effective October 1, 2002, increase the rates of pay across the board by 2.5%.

APPENDIX "B" - EMPLOYMENT TRANSITION POLICY

[1] The current collective agreement provides, in Appendix "B", that the employment transition policy expires on March 31, 2001. The bargaining is proposing that Appendix "B" be renewed without an expiry date.

[2] The employer is proposing that Appendix "B" expire one (1) year following the expiry date of the new collective agreement, that is, September 30, 2004.

[3] In the course of these proceedings, the parties agreed that Appendix "B" would continue in effect until September 30, 2004.

NEW PROPOSAL - WASH-UP TIME

[1] In the course of these proceedings, the parties agreed to a wash-up time provision, which would read as follows:

Where the Employer determines that due to the nature of work there is a clear cut need, wash-up time up to a maximum of ten (10) minutes will be permitted before the end of the working day.

The Board shall remain seized with this matter for a period of three (3) months from the date of this decision in the event that the parties encounter difficulties with its implementation.

DATED AT OTTAWA, May 27, 2002.

*Philip Chodos, Chairperson,
for the Dispute Resolution Board*