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*Parliamentary Employment and
Staff Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

and

HOUSE OF COMMONS

Employer

Indexed as

Professional Institute of the Public Service of Canada v. House of Commons

Request for Arbitration

Procedural Clerks and Analysis and Reference

REASONS FOR DECISION

Before: Michele A. Pineau, Mary Anne Griffith and Claude Rioux,
Members of the Board for the purposes of the arbitration of the above-cited
matter

For the Bargaining Agent: André Lortie, negotiator

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
October 10, 2007.
(P.S.L.R.B. Translation)

Application before the Board

[1] On August 29, 2006, the Professional Institute of the Public Service of Canada (“the PIPSC”) served a notice to bargain with the House of Commons (“the employer”) on behalf of the Procedural Clerks and Analysis and Reference group (“the bargaining unit”). The PIPSC’s collective agreement expired on August 31, 2006. Negotiations began on December 15, 2006. The parties met from January 20 to 22, 2007.

[2] Before requesting arbitration, the parties had agreed on most of the issues in dispute. However, disagreement on a protection mechanism to ensure the integrity of the bargaining unit’s wage structure has resulted in a deadlock on the entire matter. The parties have not sought the services of a mediator.

[3] On May 8, 2007, the PIPSC filed a request for arbitration with the Public Service Labour Relations Board (“the Board”) under section 50 of the *Parliamentary Employment and Staff Relations Act* (PESRA) with respect to renewing the collective agreement.

[4] The employment conditions for which the PIPSC is requesting arbitration are as follows:

[Translation]

1. *Except for the four issues mentioned below, the PIPSC suggests that the collective agreement remain unchanged and that it be extended until August 31, 2008.*
2. *The PIPSC proposes changing the definition of “continuous employment” to reflect changes in legislation.*
3. *For maternity and parental leave and related benefits, the PIPSC proposes replacing the current wording with the corresponding provisions that were negotiated and agreed to by the PIPSC and the Treasury Board on December 23, 2005.*
4. *A proposal is made to strike appendices D and E from the collective agreement.*
5. *Two 2.5 percent economic increases to be paid on September 1, 2006, and September 1, 2007, respectively and, as the case may be, retroactively. Furthermore, the PIPSC proposes a trailer clause that would guarantee the bargaining unit in question the difference between any greater economic increase granted to another group of*

the House of Commons for any part of 2006 and/or 2007.

[5] The employer filed its response to the request for arbitration on May 16, 2007, as well as a notice of request for arbitration of additional issues, in accordance with section 51 of the *PESRA*.

[6] On May 29, 2007, the employer informed the Board that it had chosen Mary Anne Griffith to represent its interests. On May 31, 2007, the PIPSC informed the Board that it had chosen Claude Rioux to represent its interests. On June 8, 2007, the Chairperson of the Board, in accordance with section 52 of the *PESRA*, appointed this arbitration board, including the undersigned Vice-Chairperson, to render an award on the issues in dispute.

[7] A hearing before the arbitration board took place on October 10, 2007, and the parties were able to present their evidence and arguments. The parties had exchanged briefs a few days before the arbitration hearing.

[8] Before the hearing officially began, the arbitration board met with the representatives of the parties and learned that the parties had agreed on most of the provisions in the collective agreement to be renewed and that the parties were willing to continue meeting to settle most, if not all, of the provisions that were still outstanding. In the time allotted for that discussion, the parties reached agreement on all of the outstanding provisions except for the fifth proposal quoted in paragraph 4 of this award, on the terms of economic increases. The parties also reached consensus on a two-year collective agreement ending August 31, 2008. The provisions are reproduced in the attached schedule.

[9] On October 12, 2007, after the hearing had been concluded, the arbitration board met to deliberate. In rendering its award, the Board considered the briefs and arguments submitted by the parties, the wage analysis presentation by the PIPSC's representative and the advice from the representatives of the parties.

Summary of the arguments

[10] The PIPSC points out that at the same time as this arbitration, there is an application before the Board from the employer, under section 17 of the *PESRA*, to merge the seven bargaining units of the House of Commons into a single bargaining unit. Hearings for that application are still in progress; therefore, the PIPSC is not able

to determine the consequences of a Board decision that could allow the employer's application in whole or in part.

[11] In that context, the PIPSC believes that to properly represent its members there should be a mechanism to preserve the integrity of the bargaining unit's wage structure. That is the crux of the dispute between the PIPSC and the employer. The PIPSC refers the arbitration board to a January 1981 House of Commons employment and compensation study that mentions a single wage structure with a pay equity system for the various position levels. The study also notes that at least one arbitral award already concluded that a deviation from that single scale had occurred for a House of Commons group.

[12] Because of the uncertainty about the Board's coming decision on the structure of bargaining units, the PIPSC suggests a "trailer" clause to preserve the integrity of the bargaining unit's salary scale in the event that the arbitral award is more favourable toward another bargaining unit, namely the Communications, Energy and Paperworkers Union of Canada (CEP), under the same employer.

[13] The PIPSC argues that pay scale protection was omitted from the collective agreement because of an oversight.

[14] According to salary analysis results for the current year and estimates for 2008, a strong economy, a shortage of workers and a low unemployment rate will result in estimated average increases that suggest future increases greater than those already given. The economic increases of 2.5 percent for 2006 and 2007 in the federal sector appear to be well below those in the Canadian private and public sectors overall for those years. The PIPSC notes that since 1987 employees represented by the PIPSC have received 73.6 percent in economic increases, while those in the private sector have received 134.1 percent.

[15] The PIPSC points out that "trailer" clauses are used in the private sector; for example, in the Alberta paper industry. The PIPSC also points out that an appropriate clause would not be a simple wage adjustment clause but a mechanism to preserve the integrity of the salary scale at the employer, given the uncertainty surrounding the Board's decision regarding the application to merge bargaining units.

[16] The PIPSC concedes that the 2.5 percent economic increase set out in the agreement between it and the employer is sufficient if the other groups receive the same increase. However, the PIPSC argues that the current trend of 3.2 and 3.5 percent increases in the public and private sectors justifies including a trailer clause for the bargaining unit.

[17] The employer maintains that the arbitration board must consider the factors listed in section 53 of the *PESRA*. The employer argues that it has no problems recruiting or retaining employees and that employees have better employment conditions than the federal public service overall, such as 1820 hours of work per year (35 hours per week) instead of 1980 hours per year (37.5 hours per week) and four weeks of vacation at the start of employment instead of three weeks.

[18] The employer points out that an economic increase has already been granted to 66 percent of House of Commons employees, including two unionized groups and non-union employees, and that an increase of greater than 2.5 percent for other employees would not be in keeping with section 53, given the work environment. The employer submits that the unit represented by the CEP, the groups represented by the Public Service Alliance of Canada and the Reporting and Text Processing (RTP) Sub-groups have not demanded a trailer clause in their collective agreements.

[19] The employer argues that the trend for the federal public service overall is a 2.5 percent economic increase for each of 2006 and 2007. Furthermore, the four unionized groups of the Library of Parliament each received a 2.5 percent increase in 2006 and 2007. Senate employees received a 2.5 percent increase in 2006. In 2007, they received a special increase of 1.25 percent to prevent any discrepancies resulting from moving to a universal salary scale.

[20] The employer emphasizes that there are currently no trends leading to 3.0 or 3.6 percent increases in the federal public service. Rather, the employer believes that the request for a trailer clause was made to counter its arguments for its application to merge bargaining units. The employer further emphasizes that the PIPSC's argument is flawed, because all bargaining units would need the clause to better serve their employees. Moreover, preserving the single scale cannot be considered until the Board's decision has been rendered. The employer views the request for a trailer clause as premature. The employer believes that the integrity of the salary scale could just as easily be preserved by negotiating collective agreements at a common bargaining table.

[21] The employer submits that its salary data are more relevant than the PIPSC's, because the employer's data are based on the whole of Parliament Hill and the public service, while the PIPSC's data are based on surveys conducted at various private-sector businesses that are not representative of federal public service employers. As well, the PIPSC's data show that retention and recruitment problems justify higher increases, but the House of Commons does not have those problems.

[22] The employer lends no credence to the PIPSC's argument that the omission of pay scale protection in previous collective agreements occurred because of an "oversight."

[23] The employer argues that the history of the negotiations shows that the PIPSC has always received the same economic increase as the other groups, except in 1998-1999; however, the group then caught up by receiving an above-average economic increase, without the help of a trailer clause in the collective agreement.

[24] The employer is of the opinion that section 53 of the *PESRA* gives the parties and the arbitration board a means of comparison with which the salary scale may be preserved, without the need for a trailer clause.

[25] The PIPSC replies that section 53 of the *PESRA* gives the arbitration board the factors it needs to consider but does not prevent it from looking at what is taking place in other bargaining units.

[26] The PIPSC maintains that the arbitration board is not required to restrict itself to groups of the House of Commons. Of course it must consider them, but it can also go beyond them. The PIPSC takes the position that the arbitration board should disregard the fact that non-unionized employees received a 2.5 percent economic increase because their employment conditions were not negotiated. Negotiations for three bargaining units are still in progress.

[27] The PIPSC argues that the Library of Parliament and the Senate signed agreements well before 2007, when economic conditions were different. The salary trend analyses submitted by the PIPSC are very recent and include the settlements negotiated this year.

[28] The PIPSC submits that indexing clauses are no longer found in collective agreements. Trailer clauses should not be rejected outright because the PIPSC is the first to suggest them. The PIPSC does not agree with the employer's proposal to negotiate collective agreements at a common bargaining table as long as the application to merge bargaining units has not been decided.

Reasons

[29] The *PESRA* sets out the factors that the Board must consider in rendering its award:

53. In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, the Board shall consider

(a) the needs of the employer affected for qualified employees,

(b) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations of employees,

(c) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered, and

(d) any other factor that to it appears to be relevant to the matter in dispute,

and, so far as consistent with the requirements of the employer, the Board shall give due regard to maintaining comparability of conditions of employment of employees with those that are applicable to persons in similar employment in the federal public administration.

[30] Uncontradicted evidence shows that House of Commons salary increases since 1998 are as follows:

History of salary increases for the House of Commons since 1998

	98	99	00	01	02	03	04	05	06	07
SSEA	2.5	2.0	2.5	3.0	2.5	3.0	3.0	3.0	2.5	2.5
PSAC (CAT technicians)							3.0	3.0	2.5	2.5
PSAC	2.5	2.0	2.5	3.0	2.5	3.0	3.0	3.0		

(OPRS)										
PSAC (PS)	2.5	2.0	2.5	3.0	2.5	3.0	3.0	3.0	2.5	2.5
PSAC (RTP)	2.5	2.0	2.5	3.0	2.5	3.0	3.0	3.0		
CEP	2.5	2.0	2.5	3.0	2.5	3.0	3.0	3.0		
PIPSC	2.0	2.0	3.0	3.0	2.5	3.0	3.0	3.0	2.5	2.5
<p><i>Note 1: In 2003, CAT technicians, who were non-unionized employees (ADS),* were certified and (PHAC)* became their bargaining agent.</i></p> <p><i>Note 2: In January 2004, the Classification Renewal Program resulted in a universal salary scale for all employees. This table does not take into account monetary increases related to that conversion.</i></p>										

[31] The table shows that economic increases negotiated for seven units within the House of Commons administration since 1998 have been the same for all seven groups. The exception in 1998 and 1999 for groups represented by the PIPSC was corrected in negotiations for 2000 and 2001.

[32] Moreover, settlements for other federal public service groups employed by the Treasury Board, as well as other separate employers, also show a balance similar to that of the House of Commons:

Recent Federal Public Service Settlements

Employer	Union	End date	2006	2007
<i>Canadian Food Inspection Agency</i>	<i>PIPSC</i>	<i>June 13, 2007 * arbitral award</i>	2.5%	
<i>Canadian Food Inspection Agency</i>	<i>PIPSC</i>	<i>May 31, 2008</i>	2.5%	2.4%
<i>Canadian Food Inspection Agency</i>	<i>PIPSC</i>	<i>September 30, 2007</i>	2.5%	
<i>Canadian Food Inspection Agency</i>	<i>PSAC</i>	<i>December 31, 2006</i>	2.5%	
<i>Canada Revenue Agency</i>	<i>PSAC</i>	<i>October 31, 2007</i>	2.5%	
<i>Canada Revenue Agency</i>	<i>PIPSC</i>	<i>December 21, 2007</i>	2.5%	
<i>Canadian Nuclear Safety Commission</i>	<i>PIPSC</i>	<i>March 31, 2008 * arbitral award</i>	3.0%	2.5%
<i>Canadian Tourism Commission</i>	<i>PIPSC</i>	<i>June 21, 2007</i>	2.5%	
<i>National Capital Commission</i>	<i>PSAC</i>	<i>December 31, 2007</i>	2.4%	2.5%
<i>National Research Council of Canada</i>	<i>PIPSC* four bargaining units</i>	<i>Various end dates in June and July 2007</i>	2.5%	

National Research Council of Canada	RCEA* two bargaining units	April 30, 2008 * arbitral award	2.5%	2.4%
Canadian Commercial Corporation	PIPSC	June 19, 2007	2.5%	
Canadian Institutes of Health Research	PSAC	March 31, 2007 * arbitral award	2.5%	
Canadian Museum of Civilization	PSAC	March 31, 2009	2.25%	2.4%
Canadian Museum of Civilization	PSAC	June 15, 2010	2.5%	2.4%
Canadian Museum of Civilization	PIPSC	September 30, 2008	2.0%	2.0%
Canadian Museum of Nature	PSAC	June 15, 2010	2.5%	2.4%
National Gallery of Canada	PIPSC	September 20, 2008	2.5%	2.25%
National Gallery of Canada	PSAC	June 30, 2010	2.5%	2.5%
Canada Science and Technology Museum	PSAC	September 20, 2008	2.5%	2.25%
National Film Board of Canada	PIPSC	June 30, 2007	2.5%	
National Energy Board	PIPSC	June 20, 2007	2.5%	
Parks Canada	PSAC	August 4, 2007	2.5%	
Treasury Board of Canada Secretariat	PIPSC	June 21, 2007 * arbitral award	2.5%	
Treasury Board of Canada Secretariat	PSAC* various bargaining units	June 21, 2007	2.5%	
Canadian Security Intelligence Service	PSAC	March 31, 2007 * arbitral award	2.5%	

[33] Also, agreements with other Parliamentary Precinct employers, namely the Library of Parliament and the Senate, display the same increases:

Comparison with the Senate and the Library of Parliament

	Library PSAC	Library PSAC	Library PSAC	Library CAPE	Senate SPSEA	Senate PSAC	Senate PIPSC
2006	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
2007	2.5%	2.5%	2.5%	2.5%	1.25%	1.25%	1.25%

[34] Moreover, in 2006 and 2007, the consumer price index was less than the above increases:

Consumer Price Index

	2006	2007
CPI	2.0%	1.7%
<i>Source: Statistics Canada, Consumer Price Index, August 2007</i>		

[35] All the data show that the economic increase already agreed to by the parties compares favourably with that of other federal public service groups. The PIPSC has not submitted that the positions covered by the bargaining unit do not compare with other public service positions. It should be noted that no other House of Commons group, the CEP included, has demanded or is demanding a trailer clause in its collective agreement. Consequently, the economic increase in the parties' agreement satisfies the factor regarding the need to maintain comparable conditions of employment for comparable positions in the federal public service.

[36] However, the PIPSC is concerned about two other issues that it believes could affect the integrity of the wage structure: a potential arbitral award that is more beneficial for the bargaining group represented by the CEP, and the consequences of a potential Board decision on the merging of bargaining units.

[37] The Board views an arbitral award that is more beneficial to another group as hypothetical. The PIPSC's premise that stronger current economic conditions, a labour shortage and a low unemployment rate should result in settlements that are more favourable in 2008 for the federal public service sector has not been proven. The Board also notes that the conditions leading to more generous settlements in the private sector are not present with this employer, since the House of Commons does not have any problems recruiting or retaining employees. On the contrary, the employer has no difficulties attracting qualified candidates, because it has very favourable employment conditions. Therefore, the Board is of the opinion that a trailer clause is not necessary to support the employer's need for qualified staff.

[38] The Board believes that the PIPSC's concerns regarding the consequences of a bargaining unit merger are premature. Hearings before the Board are still in progress and are expected to continue until the end of February 2008. Considering the length of the deliberations required for a matter of that magnitude, a decision is unlikely before the end of April 2008, if not later. Those circumstances mean that there will be at most

four months between a Board decision and the termination of the collective agreement. In that case, those few months would be a negligible period during which the bargaining unit could be at a disadvantage compared to other bargaining units. Therefore, that concern cannot be a satisfactory justification for a trailer clause. Furthermore, with respect to employment conditions overall, the PIPSC has not expressed any concern that the bargaining unit's employment conditions are not fair or reasonable given the skills required, work performed, responsibility assumed and services rendered. A trailer clause is therefore not justified on that basis.

[39] As for an economic increase in staff compensation in the federal public service, it appears that in this case, it is unlikely that another group of public servants of the House of Commons will receive a larger economic increase through arbitration.

[40] For all of the above reasons, and based on the provisions of the *PESRA*, the Board has determined that the trailer clause demanded by the PIPSC is not appropriate.

[41] The articles that the parties have consented to are in the attached schedule and constitute the award of the Board. Unless otherwise stated, the arbitral award applies from the date of the award until August 31, 2008.

[42] The Board will remain seized of this matter until the award is implemented.

December 4, 2007.

P.S.L.R.B. Translation

**Michele A. Pineau,
Vice-Chairperson**