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File: 485-HC-34

Citation: 2008 PSLRB 14



*Parliamentary Employment and  
Staff Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA**

Bargaining Agent

and

**HOUSE OF COMMONS**

Employer

Indexed as

*Communications, Energy and Paperworkers Union of Canada v. House of Commons*

Request for Arbitration — Technical Group

**ARBITRAL AWARD**

**Before:** Ian R. Mackenzie, Dale Clark and Ronald LeBlanc,  
Members of the Board for the purposes of the arbitration of the above-cited  
matter

**For the Bargaining Agent:** David Migicovsky, counsel

**For the Employer:** Carole Piette, counsel

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Heard at Ottawa, Ontario,  
January 10 and 11, 2008.  
(Written submissions filed January 17 and 24, 2008.)

## ARBITRAL AWARD

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[1] By letter dated July 25, 2007, pursuant to section 50 of the *Parliamentary Employment and Staff Relations Act (PESRA)*, the Communications, Energy and Paperworkers Union of Canada, Local 102-0 requested arbitration for the bargaining unit consisting of “all employees of the Employer in the Technical Group.” The collective agreement expired on March 31, 2006.

[2] The Terms of Reference for the arbitration board were set by the Chairperson of the Public Service Labour Relations Board (“the PSLRB” or “the Board”) on September 13, 2007 (2007 PSLRB 97), and subsequently amended on October 1, 2007 (2007 PSLRB 103).

[3] The employer objected to a proposal from the bargaining agent relating to job postings on the basis that the arbitration board was without jurisdiction. The Chairperson of the PSLRB directed the arbitration board to address this jurisdictional issue. At the commencement of the hearing, the bargaining agent withdrew its proposal on a “without prejudice” basis.

[4] In correspondence to the Board dated August 9, 2007, the bargaining agent accepted the employer proposal on article 13.2.6 (an editorial change to the title of the article).

[5] Prior to the commencement of the hearing, the arbitration board met with the representatives of the parties and learned that the parties were willing to meet to discuss the remaining items in dispute. With the assistance of the members of the arbitration board, the parties made significant progress on the outstanding issues, including the duration of the collective agreement (until March 31, 2008). In the end, however, the parties were unable to agree on a number of issues.

[6] At the commencement of the hearing, the following bargaining agent proposals remained in dispute:

- Article 4.6.2: Leave to Attend Contract Negotiations
- Article 4.6.5: Leave for Adjudication
- Article 11.1.2 (b): Medical Certificates
- Article 11.1.2 (c): Medical Examinations
- Article 11.1.8: Accumulated Sick Leave (new)
- Article 11.1.9: Fitness Allowance (new)
- Article 11.2 (a): Health and Insurance Benefits
- Article 11.3.4: Parental Leave without pay
- Article 11.4.1: Bereavement Leave
- Article 11.9 (b): Leave with Pay for Family-Related Responsibilities
- Article 11.11: Personal Leave (new)

Article 13.2.1: Annual Leave  
Article 14.7: Non-Discrimination  
Clothing Allowance (new)  
Article 21: Wages

[7] The following proposals of the employer remained in dispute:

Article 11.3.1 to 11.3.6: Maternity Leave, Parental Leave and Allowances  
Article 21: Wages

[8] The bargaining agent requested that its submissions on the employer's proposal to change the maternity and parental leave articles be addressed through written submissions. The arbitration board allowed the submissions of both parties on the proposal to be made in writing. Those written submissions were filed on January 17 and 24, 2008, and are summarized below.

[9] The bargaining unit is composed of approximately 82 employees employed in the Information Services area of the House of Commons. The Technical Group consists of two subgroups: Electronics and Broadcasting.

[10] The bargaining agent and the employer framed their submissions in light of the considerations to be applied by an arbitration board set out in the *PESRA*:

...

*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.*

...

#### Article 4.6.2: Leave to Attend Contract Negotiations

[11] The bargaining agent proposed that the leave provision for contract negotiations be changed from leave without pay to leave with pay. The employer proposed that the provision be renewed. The arbitration board has determined that the article should be renewed.

#### Article 4.6.5: Leave for Adjudication

[12] The bargaining agent proposed that the leave provision for adjudication include the following note:

*For greater certainty, adjudication, as per past practice, includes hearings before the Public Service Labour Relations Board or other quasi-judicial or administrative tribunals.*

[13] Counsel for the bargaining agent submitted that this was a language issue, as hearings such as the present one as well as applications before the Board other than grievance adjudications were not directly addressed in the current article. Counsel also submitted that there had been a dispute with the employer on leave with pay for an ongoing application before the Board. That issue was ultimately resolved in favour of granting leave with pay. The bargaining agent also submitted that the language of the present article is narrower than the language in all other agreements with the employer. Counsel for the employer agreed that there had been discussions about the application of this article but that it was no longer an issue. The employer also objected to the general language in the bargaining agent's proposal, which it felt could apply to all quasi-judicial tribunals. The arbitration board has determined that the article should be amended to reflect the range of proceedings before the Public Service Labour Relations Board:

*Leave for Proceedings before the Public Service Labour Relations Board (PSLRB)*

*The Employer will grant leave with pay to two (2) employees who are:*

(a) a party to a proceeding before the PSLRB;

(b) the employee representative(s) in a proceeding before the PSLRB.

#### Article 11.1.2 (b): Medical Certificates

[14] The current article allows the employer to request a medical certificate for any period of absence in excess of three days. The bargaining agent proposed that the employer be required to pay for any medical certificate that it requests from an employee. The employer opposed the proposal and requested that the article be renewed. The arbitration board has determined that the bargaining agent's proposal shall be included in this arbitral award:

*(ii) employees shall be reimbursed by the Employer for the medical certificates required above.*

#### Article 11.1.2 (c): Medical Examinations

[15] The bargaining agent proposed that the current article permitting the employer to send an employee to a doctor of its choice for a medical examination be changed to an "independent medical practitioner." The employer submitted that the employer's practice is to use a doctor from Health Canada when an examination is required. The employer also submitted that the employee's consent is required for an assessment by Health Canada. The bargaining agent did not agree that a doctor from Health Canada was an independent doctor. The arbitration board has determined that the article should be renewed.

#### Article 11.1.8: Accumulated Sick Leave (new)

[16] The bargaining agent proposed a payout of 50 percent of accumulated sick leave on resignation or retirement. The employer opposed the proposal. The arbitration board has determined that the proposal should not be included in the arbitral award.

#### Article 11.1.9: Fitness Allowance (new)

[17] The bargaining agent proposed a fitness allowance for all employees of up to \$500 per year. The employer objected to the proposal and submitted that employees had free access to employer health facilities. The arbitration board has considered the proposal and determined that it should not be included in the arbitral award.

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Article 11.2(a): Health and Insurance Benefits

[18] The bargaining agent proposed a decrease in the deductibles for health and dental plans, an increase in vision care, the payment of all premiums by the employer, and payment by the employer of the Ontario Health Tax Premium. The employer submitted that it could not change the health and dental plans as those plans are negotiated at the National Joint Council. It also objected to the proposal that it pay the Ontario Health Tax Premium. The arbitration board has determined that the article should be renewed.

Article 11.3.1 to 11.3.6: Maternity Leave, Parental Leave and Allowances

[19] The employer proposed changes to the maternity and parental leave allowances to reflect statutory changes to the Quebec Parental Insurance Plan and to reflect improvements negotiated with other bargaining units. The bargaining agent proposed that leave granted under those articles should be considered for purposes of calculating severance pay, vacation leave and sick leave. As noted above, the arbitration board allowed the bargaining agent to make written submissions on this employer proposal. In correspondence received at the PSLRB on January 17, 2008, counsel for the bargaining agent stated that the bargaining agent was in agreement with the employer's proposal "with the exception of its refusal to allow employee accrual of sick leave during periods of parental leave":

...

*In CEP's submission, it would be inconsistent to deny accrual of sick leave to employees during parental leaves, since the same periods of leave already count for the purposes of pay increments and for the calculation of both vacation and severance pay owing . . . . Allowing the continued accrual of sick leave during these time periods is also consistent with human rights principles, which oblige the employer to permit employees to exercise their rights to such leaves without penalty in the form of, for example, loss of benefits.*

...

[20] The employer replied in correspondence received on January 24, 2008, that sick leave was accrued on the basis of each calendar month for which the employee receives pay for at least ten days. The lack of accrual of sick leave during leave without pay was not discriminatory. The employer cited the decision of the Ontario Court of Appeal in *Ontario Nurses' Association v. Orillia Soldiers' Memorial Hospital* (1999),

40 C.C.E.L. (2d) 263; leave to appeal to the S.C.C. dismissed, [1999] S.C.C.A. No. 118 (QL).

[21] The arbitration board has determined that the proposal of the employer shall be included in this arbitral award. The text of that proposal shall be the same as that contained in the current agreements between the employer and the Public Service Alliance of Canada (Scanners and Postal Services), the Security Services Employees Association and the Professional Institute of the Public Service of Canada.

Article 11.4.1: Bereavement Leave

[22] The bargaining agent proposed that the current article be changed from five consecutive calendar days of leave to five consecutive working days. The employer submitted that the norm for other Parliamentary employers and Treasury Board collective agreements was five consecutive calendar days. The employer proposed that the article be renewed. Counsel for the bargaining agent submitted that five consecutive working days were in the collective agreements with the Senate and one agreement with the Library of Parliament. The arbitration board has determined that the article should be renewed.

Article 11.9 (b): Leave with Pay for Family-Related Responsibilities

[23] The bargaining agent proposed the removal of the daily maximums on the use of leave for family-related responsibilities and an increase in the number of days of leave. At the hearing, the bargaining agent withdrew its proposal for an increase in the number of days of leave. The employer submitted that it would not object to the removal of the daily maximums. The arbitration board has determined that daily maximums for the use of the five days of family-related responsibility leave should be removed from the article.

Article 11.11: Personal Leave (new)

[24] The bargaining agent proposed a day of leave for personal needs. The bargaining agent submitted that unrepresented managers received such leave and also submitted that other bargaining agents have received one day of leave for volunteer activities. The employer opposed the proposal. The arbitration board has carefully considered this proposal and determined that it should not be included in the arbitral award.

Article 13.2.1: Annual Leave

[25] The bargaining agent modified its proposal at the hearing and proposed that the number of years of service required for earning two and one-half days of leave per month be reduced from 28 years of continuous employment to 25 years. The employer proposed that the article be renewed. The arbitration board has determined that the article shall be renewed.

Article 14.7: Non-Discrimination

[26] The bargaining agent made no submissions on its proposal to change the Non-Discrimination clause. It had proposed adding discrimination on the basis of language. The arbitration board has determined that the article should be renewed without change.

Clothing Allowance (new)

[27] The bargaining agent proposed an annual clothing allowance of \$200. The bargaining agent was seeking similar treatment to those security employees who do not wear uniforms. The employer disputed the number of security employees who received a clothing allowance. The arbitration board has carefully considered this proposal and determined that it should not be included in the arbitral award.

Article 21: Wages

[28] The bargaining agent proposed economic increases of 5 percent in each year of the 2-year collective agreement. The employer proposed economic increases of 2.5 percent in each year of the 2-year collective agreement.

[29] Counsel for the bargaining agent submitted that paragraph 53(c) of the *PESRA* was of particular importance, as were other relevant factors including labour market trends and wage settlements in the quasi-public sector and the federal private sector, and the overall economy. Counsel for the bargaining agent argued that the employees in this bargaining unit were in highly specialized jobs and were highly skilled. He also submitted that there are a number of ways to “get money into employees’ pockets” and that economic increases do not always tell the whole story. He reviewed other collective agreements with the employer and argued that there were other benefits that increased total compensation, including increased opportunities for overtime. He further submitted that in a recent arbitration award (*Research Council Employees’ Association v. National Research Council of Canada*, Board File No. 585-09-09,



20070516), a lump sum payment was awarded as compensation for the delay in reaching a settlement and suggested that it was an option for this arbitration board to consider.

[30] Counsel for the employer submitted that paragraph 53(b) of the *PESRA* was of particular importance in determining the appropriate wage increase and submitted that recent settlements with the employer and other parliamentary employers were 2.5 percent per year. Counsel for the employer also argued that recruitment and retention were important factors in determining wages and that there was no evidence of any issues with recruitment or retention in the bargaining unit. She also submitted that recent wage settlements in the federal public service have been for 2.5 percent or less. Counsel for the employer also submitted that the specialized and technical nature of the jobs within the bargaining unit are recognized through the job evaluation system and that adjustments were made in 2004 when a new job evaluation system was introduced for all House of Commons employees. The employer's counsel also submitted that comparisons with other positions outside of the House of Commons had to be examined with the understanding that employees of the House of Commons work fewer hours in a year than employees in the federal public service and those in the private sector.

[31] The arbitration board has determined that, in the absence of demonstrated recruitment and retention issues, the economic increase should be consistent with that negotiated and awarded to other bargaining units with the employer. The arbitration board awards economic increases of 2.5 percent for the first year of the collective agreement and 2.5 percent for the second year of the collective agreement.

[32] The arbitration board will remain seized of this matter for a period of three months from the date of this award in the event that the parties encounter any difficulties in its implementation.

February 22, 2008

**Ian. R. Mackenzie,  
Vice-Chairperson**