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*Parliamentary Employment and
Staff Relations Act*

Before the Public Service
Labour Relations Board

IN THE MATTER OF
THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*
and a dispute affecting
the Public Service Alliance of Canada, as bargaining agent,
and the House of Commons, as employer,
in respect of employees in the Operational Group.

Indexed as
Public Service Alliance of Canada v. House of Commons

ARBITRAL AWARD

Before: Dan Butler, Joe Herbert and Ron Leblanc, Members of the Board for the purposes of the arbitration in the above-cited matter

For the Bargaining Agent: Morgan Gay and Seth Sazant, Public Service Alliance of Canada

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
January 22 and 23 and February 18 and 19, 2008.

REASONS FOR DECISION

I. Application before the Board

[1] On April 11, 2006, the Public Service Alliance of Canada (“the bargaining agent”) served notice to bargain on the House of Commons (“the employer”) on behalf of the Operational (“OPG”) bargaining unit under section 37 of the *Parliamentary Employment and Staff Relations Act* (“PESRA”). The last OPG collective agreement expired on April 20, 2006.

[2] The bargaining unit is composed of two dozen job classifications organized into three subgroups: Restaurant Services, Printing Services and Operations. Functions performed by bargaining unit members include food preparation, distribution and serving, dishwashing, procurement, cashier duties, bartending, waiting, press operations, electronic printing, bindery operations, technical support, cleaning, repairs and maintenance, shipper-receiver duties, messenger duties, transportation services, trades, and materiel handling. Payroll information presented by the employer indicated that, as of December 17, 2007, there were 311 employees in the bargaining unit. The total value of the payroll was \$12 401 471 with an average annual salary of \$39 876.

[3] The parties met for seven negotiation sessions between February 14 and June 5, 2007. On June 22, 2007, the bargaining agent requested conciliation assistance from the Public Service Labour Relations Board (“the PSLRB”). The conciliation session took place on August 15, 2007, but did not resolve the bargaining impasse.

[4] On August 20, 2007, the bargaining agent filed for arbitration under section 50 of the *PESRA*. The employer submitted its additional matters in dispute on August 28, 2007.

[5] The bargaining agent selected Joe Herbert from the panel of persons representative of the interests of the employees to be a member of this Board of Arbitration (“the Board”). The employer selected Ron Leblanc from the panel of persons representative of the interests of the employer. The Chairperson of the PSLRB appointed me as chairperson for these proceedings.

[6] The Vice-Chairperson of the PSLRB established the mandate for these proceedings in *Public Service Alliance of Canada v. House of Commons*, 2007 PSLRB 102, consisting of the parties’ proposals regarding the following collective agreement articles and appendices:

<i>Article 2</i>	<i>Interpretation and Definitions</i>
<i>Article 7</i>	<i>Employee Representatives</i>
<i>Article 11</i>	<i>Use of Employer Facilities</i>
<i>Article 12</i>	<i>Leave With or Without Pay for PSAC Business</i>
<i>Article 13</i>	<i>No Discrimination</i>
<i>Article 20</i>	<i>Other Leave With or Without Pay</i>
<i>Article 24</i>	<i>Hours of Work and Overtime</i>
<i>Article 27</i>	<i>Call-Back Pay</i>
<i>Article 28</i>	<i>Shift Premiums</i>
<i>Article 35</i>	<i>Health and Safety</i>
<i>Article 40</i>	<i>Seniority</i>
<i>Article 43</i>	<i>Pay Adjustment Administration</i>
<i>Article 44</i>	<i>Duration (and Effective Date)</i>
<i>Appendix A</i>	<i>Rates of Pay</i>
<i>Appendix A-1</i>	<i>Rates of Pay/Universal Scale</i>
<i>Appendix B</i>	<i>Uniform Entitlements</i>
<i>Appendix C</i>	<i>Memorandum of Agreement</i>
<i>Appendix E</i>	<i>Memorandum of Agreement</i>
<i>Appendix H</i>	<i>Letter of Agreement</i>
<i>New Article</i>	<i>Social Justice Fund</i>
<i>New Article</i>	<i>Bilingual Bonus</i>
<i>New Appendix</i>	<i>Departments</i>

[7] The arbitration hearing opened on January 22, 2008. At that time, the representatives of the parties indicated that they had agreed to a two-year duration for their new collective agreement. Article 44, Duration, nevertheless remained in dispute, because the parties did not agree on the effective date for changes to the collective agreement.

[8] The Board heard the opening statements of the parties and then adjourned to allow itself to explore in mediation the possibility of a voluntary resolution of some or all of the issues in dispute. Through that process, the parties reached agreement on a number of outstanding issues, with the result being that the following articles and appendices were, in their entirety, no longer in dispute:

<i>Article 7</i>	<i>Employee Representatives</i>
<i>Article 11</i>	<i>Use of Employer Facilities</i>
<i>Article 12</i>	<i>Leave With or Without Pay for Union Business</i>
<i>Article 13</i>	<i>No Discrimination</i>
<i>Article 20</i>	<i>Other Leave With or Without Pay</i>
<i>Article 27</i>	<i>Call-Back Pay</i>
<i>Article 35</i>	<i>Health and Safety</i>
<i>Appendix A</i>	<i>Rates of Pay</i>
<i>Appendix C</i>	<i>Memorandum of Agreement</i>
<i>Appendix H</i>	<i>Letter of Agreement</i>

<i>New Article</i>	<i>Bilingual Bonus</i>
<i>New Appendix</i>	<i>Departments</i>

[9] In the course of the hearing, the bargaining agent's proposals concerning Appendix C of the collective agreement were renumbered as Appendix XX.

[10] The mediation process also resulted in partial resolution of the following articles and appendices:

<i>Article 24</i>	<i>Hours of Work and Overtime</i>
<i>Article 28</i>	<i>Shift Premiums</i>
<i>Article 43</i>	<i>Pay Adjustment Administration</i>
<i>Appendix A</i>	<i>Rates of Pay</i>
<i>Appendix B</i>	<i>Uniform Entitlements</i>

[11] The provisions agreed on during the mediation phase of the arbitration hearing are reproduced in Schedule A to this decision.

[12] I wish to thank Mr. Herbert and Mr. Leblanc for working with the parties to reduce substantially the number of outstanding matters for determination in this award.

[13] The formal hearing resumed on February 18, 2008, at which time the parties presented their submissions to the Board on the remaining issues in dispute. During the hearing, the parties reached agreement on the remaining issue in dispute concerning Article 44, Duration. The agreed provision, with changes from the original in bold, reads as follows:

Article 44

Duration

44.01 *Unless otherwise expressly stipulated in this Agreement, the provisions of this Agreement shall become effective **on the date of the arbitral award** and shall remain in force until **April 20, 2008**.*

II. Reasons

[14] 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.

...

[15] The Board has taken those factors into consideration in weighing the proposals made by the parties.

[16] Under subsection 56(1) of the *PESRA*, I am the only signatory of this arbitral award as the Chairperson of the Board:

56. (1) An arbitral award shall be signed by the member of the Board who is not a member selected from a panel appointed under section 47 and copies thereof shall be transmitted to the parties to the dispute and no report or observations thereon shall be made or given by either of the members selected from a panel appointed under section 47.

[17] Subsections 56(2) and (3) of the *PESRA* governed the process by which the Board Members decided the arbitral award:

(2) Subject to subsection (3), a decision of the majority of the members of the Board in respect of the matters in dispute

shall be the arbitral award in respect of the matters in dispute.

(3) Where the majority of the members of the Board in respect of the matters in dispute cannot agree on the terms of the arbitral award to be rendered in respect thereof, the decision of the member of the Board who is not a member selected from a panel appointed under section 47 shall be the arbitral award in respect of the matters in dispute.

[18] For a number of the major issues in dispute, the Chairperson's decision constitutes the arbitral award.

[19] In the arbitral award that follows, revised or new language for the collective agreement is indicated in **bold**.

A. Article 2 Interpretation and Definitions

[20] As an adjunct to its proposals concerning Appendix E, the bargaining agent argued that a cross-reference to that appendix be included in the existing definition of "Seasonal Certified Indeterminate Employee" (SCI) in article 2. The employer opposed the cross-reference if the Board were to accept the bargaining agent's proposals in Appendix E regarding the striking-off strength of SCI employees.

[21] The award of the Board is as follows:

*(r) Seasonal Certified Indeterminate Employee (SCI) (Full-time or Part-time) means employees working ordinarily more than seven hundred (700) hours but less than eighteen hundred and twenty (1820) hours in a calendar year. SCI employees may be required to work on shifts and weeks of more or less than thirty-five (35) hours **pursuant to Appendix "E" of this Agreement**. Scheduling of hours of work is subject to operational requirements and the collective agreement. The terms and conditions of employment are determined by Article 38 of the collective agreement and Appendix E. Seasonal certified indeterminate employees are subject to be struck-off strength at any time.*

B. Article 24 Hours of Work and Overtime

[22] Three clauses in article 24 remain in dispute. The first, clause 24.04, reads as follows:

24.04 *The Employer will make every reasonable effort:*

(a) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift,

and

(b) to avoid excessive fluctuation in hours of work.

[23] The bargaining agent proposed to increase the minimum time between shifts to 12 hours from 8 hours, to require 14-day advance posting of schedules covering a minimum of 7 days and to require a minimum 5-days' notice of a change in a scheduled shift. In the event that the employer failed to provide that notice, compensation at the rate of time and one-half would be required for the first shift worked under the revised shift schedule.

[24] The award of the Board is as follows:

24.04 **(a)** *The Employer will make every reasonable effort:*

*(i) not to schedule the commencement of a shift within **ten (10)** hours of the completion of the employee's previous shift,*

*(ii) to avoid excessive fluctuation in hours of work,
and*

(iii) not to change an employee's scheduled shifts without providing the employee at least two (2) days' notice in advance of the starting time of the change in shifts.

(b) Where the Employer has not provided an employee notice of a change in scheduled shifts in accordance with clause 24.04(a)(iii), the employee shall be paid for the first shift worked on the revised schedule at the rate of time and one-half (1½). Subsequent shifts worked on a revised schedule shall be paid at the straight-time rate, subject to the overtime provisions of this Agreement.

[25] Clause 24.16 currently reads as follows:

24.16 Assignment of Overtime Work

- (a) Subject to the operational requirements of the House of Commons, the Employer shall make every reasonable effort to avoid excessive overtime and to allocate overtime work on an equitable basis among readily available qualified employees who normally perform those duties.*
- (b) The Employer will keep records of overtime opportunities for each employee and these records will be made available to employees upon request.*

[26] The bargaining agent proposed substantial modifications to clause 24.16:

24.16 Assignment of Overtime Work

- (a) The Employer shall offer overtime work on an equitable basis among readily available qualified employees who normally perform those duties. To that end, overtime shall be offered by rotation in the following preference order:
 - (i) Qualified employees in the department in which the overtime hours are to be worked.*
 - (ii) All other qualified employees in the bargaining unit.**
- (b) For the purposes of this clause, departments and the job classifications associated with each department shall be defined as outlined in Appendix _ Departments.*
- (c) Notwithstanding the above, where the anticipated overtime can be done in four (4) hours or less and there are employees working who are willing to pick up the additional hours, such hours shall be offered by the above preference order to said employees where more than one (1) qualified employee working desires to pick up the overtime.*
- (d) The Employer will keep records of overtime opportunities for each employee and these records will be made available to employees upon request.*

- (e) *The Employer shall make every reasonable effort to avoid excessive overtime. In the absence of volunteers when an occasion to perform overtime work has come up, the Employer will assign overtime to readily available (or on site) qualified employees on a rotational basis using a reverse order of seniority.*

[27] The award of the Board is that the existing clause 24.16 be renewed.

[28] The final change proposed by the bargaining agent increases the existing overtime meal allowances under clause 24.19 from \$11 to \$12.50.

[29] The award of the Board is as follows:

24.19 *Overtime Meal Allowance*

- (a) *An employee who works three (3) or more hours of overtime,*

- (i) *immediately before the employee's scheduled hours of work and who has not been notified of the requirement prior to the end of the employee's last scheduled work period,*

or

- (ii) *immediately following the employee's scheduled hours of work,*

*shall be reimbursed for one (1) meal in the amount of **eleven dollars and fifty cents (\$11.50)** except where free meals are provided or when the employee is being compensated on some other basis. Reasonable time with pay, (to a maximum of thirty (30) minutes), shall be allowed the employee in order that the employee may take a meal break either at or adjacent to their place of work.*

- (b) *When an employee works overtime continuously beyond the period provided in (a) above, the employee shall be reimbursed for one (1) additional meal in the amount of **eleven dollars and fifty cents (\$11.50)** for each four (4)-hour period of overtime worked thereafter, except where free meals are provided or when the employee is being*

compensated on some other basis. Reasonable time with pay (to a maximum of thirty (30) minutes), shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.

- (c) *This clause shall not apply to an employee who is in travel status which entitles the employee to claim expenses for lodging and/or meals.*

C. Article 28 Shift Premiums

[30] The remaining issue in dispute is the effective date for the increases to the shift premiums already agreed by the parties (see Schedule A). The bargaining agent proposed that those increases be implemented retroactive to April 21, 2006. The employer proposed that the increases take effect on the date of the arbitral award.

[31] Consistent with the approach taken regarding Article 44, Duration, the award of the Board is that the increases to the shift premiums in both clauses 28.01 and 28.02 will take effect on the date of the arbitral award:

28.01 Shift Premium

*Effective the date of the arbitral award, an employee will receive a shift premium of **two dollars and twenty five cents (\$2.25)** per hour for all hours worked, including overtime hours worked, on shifts where four (4) or more hours are regularly scheduled between 6:30 p.m. and 6:00 a.m.*

28.02 Weekend Premium

*Effective the date of the arbitral award, employees shall receive an additional premium of **two dollars and twenty five cents (\$2.25)** per hour for all regularly scheduled hours worked at straight-time rates on a Saturday and/or Sunday.*

D. Article 40 Seniority

[32] The existing clause 40.01 reads as follows:

40.01 Seniority is defined as length of employee's continuous service within the House of Commons.

[33] The bargaining agent proposed that seniority be limited to service "within the bargaining unit." The employer proposed renewal of the existing provision.

[34] The award of the Board is that clause 40.01 be renewed.

E. Article 43 Pay Adjustment Administration

[35] The only outstanding matter is the status of the list of positions that appears as part of Article 43 Pay Adjustment Administration. The employer proposed that the list be deleted. The bargaining agent advocated that it remain a part of Article 43.

[36] The award of the Board is that the list of positions be retained for information purposes in article 43, updated as required by the parties.

F. Appendix A-1 Rates of Pay/Universal Scale

[37] The bargaining agent proposed two increases of 3.0 percent to all rates of pay in Appendix A-1 with the first increase applied retroactively to April 21, 2006, and the second increase applied retroactively to April 21, 2007.

[38] The employer proposed increases of 2.5 percent to all rates of pay in Appendix A-1 applied retroactively on the same dates proposed by the bargaining agent.

[39] As of the writing of this arbitral award, the economic increases applied to rates of pay for 2006 and 2007 have been established for most of the six other bargaining units in the House of Commons. The evident trend has been of annual increases of 2.5 percent. With some exceptions, the same trend has applied among other parliamentary employers. In the public service, the typical increase for 2007 is not yet apparent, but the trend for 2006 also clustered about the 2.5 percent value.

[40] On balance, the Board has concluded, based on the submissions made by the parties, that pay rates for the Operational Group should be increased in line with the experience of other House of Commons bargaining units. The award of the Board is, therefore, as follows:

Effective April 21, 2006, increase all rates of pay by 2.5 percent.

Effective April 21, 2007, increase all rates of pay by 2.5 percent.

G. Appendix B Uniform Entitlement

[41] During the hearing, the parties resolved all of the outstanding issues regarding Appendix B, Uniform Entitlement (see Schedule A), other than a proposal by the bargaining agent to revise paragraph 6 of Appendix B-5, Transportation Services. The provision of the expired collective agreement read as follows:

6. *Employees will be allowed an amount of up to \$50.00 per year for the purchase of sunglasses. Employees will assume the entire responsibility for replacement of their glasses should they be lost, damaged or stolen during the year.*

[42] The bargaining agent proposed an increase in the entitlement for the purchase of sunglasses from \$50 to \$100 per year. The employer argued that the expired provision should be renewed.

[43] The award of the Board is as follows:

6. ***Effective January 1, 2008, employees will be allowed an amount of up to \$120.00 in each subsequent period of two calendar years for the purchase of sunglasses. Employees will assume the entire responsibility for replacement of their glasses should they be lost, damaged or stolen during the year.***

H. Appendix E Memorandum of Agreement

[44] Appendix E provides certain terms and conditions of employment for SCI employees. The existing provisions read as follows:

APPENDIX "E"

MEMORANDUM OF AGREEMENT

SEASONAL CERTIFIED INDETERMINATE (SCI) EMPLOYEES

The conditions listed below are to be applied/followed to obtain or lose the status of Seasonal Certified Indeterminate Employee.

1. *A person who works seven hundred (700) hours in two (2) consecutive calendar years will obtain the status of seasonal certified indeterminate employee effective January 1st of the year following these two (2) consecutive years in which the seven hundred (700) hour threshold was surpassed. The collective*

agreement and the terms and conditions of employment for SCI employees will begin on the first (1st) day that employment resumes in that year.

- 2. A SCI employee who works less than seven hundred (700) hours in two (2) consecutive years will no longer be recognized as a SCI employee effective December 31 st of the second (2nd) year in which the SCI employee did not reach the threshold of seven hundred (700) hours for those two (2) consecutive years.*
- 3. Due to the irregularity of work available during election years, if a SCI employee works less than seven hundred (700) hours during an election year and therefore the threshold of seven hundred (700) has not been met for that year, this discrepancy will not be used to lose the status of a SCI employee.*
- 4. Notwithstanding clauses 1 and 2 above, when a person works less than seven hundred (700) hours in an election year, and works more than seven hundred (700) hours in the year preceding the election year and in the year following this election year, SCI employee status is granted on January 1 st following this three (3) year period.*
- 5. Notwithstanding clauses 1 and 2 above, when a SCI employee works less than seven hundred (700) hours in the year preceding the election year and in the year following this election year, SCI employee status is lost on January 1 st following this three (3) year period.*
- 6. Local Joint Consultation Committee*

The Employer will provide twice a year, statistical information to the Local Union concerning the hours worked by uncertified and by seasonal certified indeterminate employees. The data will be provided in July and January of each year for the period covering the previous six (6) months. Persons who believe that they should have been included in the bargaining unit, under the terms of this Memorandum of Agreement, or that their hours of work were incorrectly recorded, may refer the matter to the Local Joint Consultation Committee for correction.

- 7. Vacant SCI positions will be filled through the normal staffing process of the House of Commons. The successful candidate will be covered by the collective agreement and this MOU on the first day of work. The Employer may appoint persons with the status of SCI employee at any time.*

[45] The bargaining agent indicated that addressing the concerns of SCI employees comprised one of its two highest priorities. It proposed revisions and extensive additions to Appendix E with the following effects: a reduction of the status qualifying period in paragraph 1 from two years to one year; an increase to the SCI continuing status period in paragraph 2 from two years to three years; a consolidation and strengthening of paragraphs 3 through 5; a new qualification that paragraph 7 applies “[u]nless otherwise stipulated in the Agreement”, new provisions permitting employees to take earned overtime compensation in the form of leave; a seniority-based protocol for scheduling hours of work in Restaurant Services and Printing Services; a requirement that the employer make every reasonable effort not to strike-off strength SCI employees and to investigate alternate employment opportunities among parliamentary employers; and the introduction of a Supplementary Unemployment Benefits (SUB) Plan for SCI employees who are struck-off strength.

[46] The employer proposed renewing the existing Memorandum of Agreement, although it indicated qualified support for the bargaining agent’s position in respect of leave for earned overtime.

[47] The award of the Board is as follows:

APPENDIX "E"

SEASONAL CERTIFIED INDETERMINATE (SCI) EMPLOYEES

The conditions listed below are to be applied/followed to obtain or lose the status of Seasonal Certified Indeterminate Employee.

1. *A person who works seven hundred (700) hours in **one calendar year** will obtain the status of seasonal certified indeterminate employee effective January 1st of the **year following the year** in which the seven hundred (700) hour threshold was surpassed. The collective agreement and the terms and conditions of employment for SCI employees will begin on the first (1st) day that employment resumes in that year.*
2. *A SCI employee who works less than seven hundred (700) hours in two (2) consecutive years will no longer be recognized as a SCI employee effective December 31 st of the second (2nd) year in which the SCI employee did not reach the threshold of*

seven hundred (700) hours for those two (2) consecutive years.

3. *Due to the irregularity of work available during election years, if a SCI employee works less than seven hundred (700) hours during an election year and therefore the threshold of seven hundred (700) has not been met for that year, this discrepancy will not be used to lose the status of a SCI employee.*
4. *Notwithstanding clauses 1 and 2 above, when a person works less than seven hundred (700) hours in an election year, and works more than seven hundred (700) hours in the year preceding the election year and in the year following this election year, SCI employee status is granted on January 1st following this three (3) year period.*
5. *Notwithstanding clauses 1 and 2 above, when a SCI employee works less than seven hundred (700) hours in the year preceding the election year and in the year following this election year, SCI employee status is lost on January 1st following this three (3) year period.*
6. *Local Joint Consultation Committee*

The Employer will provide twice a year, statistical information to the Local Union concerning the hours worked by uncertified and by seasonal certified indeterminate employees. The data will be provided in July and January of each year for the period covering the previous six (6) months. Persons who believe that they should have been included in the bargaining unit, under the terms of this Memorandum of Agreement, or that their hours of work were incorrectly recorded, may refer the matter to the Local Joint Consultation Committee for correction.

7. *Vacant SCI positions will be filled through the normal staffing process of the House of Commons. The successful candidate will be covered by the collective agreement and this **Appendix** on the first day of work. The Employer may appoint persons with the status of SCI employee at any time.*

8. Overtime Compensation

Seasonal Certified Indeterminate (SCI) employees shall be paid for overtime hours worked except where, at the request of an employee and with the approval of the

Employer, overtime may be compensated in equivalent time off in the following manner:

- (a) Overtime can only be compensated in equivalent time off during periods of Parliamentary inactivity or reduced activity;***
- (b) Compensatory leave earned in a calendar year and outstanding on December 15th of the year in which it is earned, will be either paid in cash or scheduled by the Employer during the next Parliamentary recess;***
- (c) Overtime compensation worked between December 15th and 31st shall either be carried over into the following year or taken in equivalent time off during the end of the year recess period subject to (a) above.***
- (d) Overtime compensated in equivalent time off shall not be considered in the calculation of:***
 - (i) continuous employment;***
 - (ii) accumulation of sick leave credits;***
 - (iii) the hours worked to obtain and to maintain the status of SCI;***
 - (iv) any other benefits under this Agreement.***

Subject to this Agreement, an employee's request for compensatory leave shall not be unreasonably denied.

I. Appendix XX

[48] The second of the two highest priority issues identified by the bargaining agent concerned the existing practice of rotational shift work. It proposed a new Appendix XX as follows:

Appendix XX

**MEMORANDUM OF AGREEMENT IN RESPECT OF EMPLOYEES
IN THE OPERATIONS SUB-GROUP**

SUBJECT: SHIFT ASSIGNMENT FOR OPERATIONS WORKERS

There shall be no rotating shifts that start or end between 19:00 and 5:00 in Maintenance and Materiel Handling, or between 18:30 and 6:00 in Transportation Services, except by

written mutual agreement between the PSAC and the Employer.

1. Maintenance and Material Handling

Every six (6) months, the Employer shall solicit volunteers for all shifts that start or end between 19:00 and 5:00. In the event that there are more volunteers than required, the Employer shall award these shifts in order of seniority. In the event that there are fewer volunteers than required, the Employer shall assign these shifts in reverse order of seniority.

2. Transportation Services

On a monthly basis the Employer shall solicit volunteers for all shifts that start or end between 18:30 and 6:00. In the event that there are more volunteers than required, the Employer shall award these shifts in order of seniority. In the event that there are fewer volunteers than required, the Employer shall assign these shifts in reverse order of seniority.

3. The Employer shall provide volunteer lists and awarded shift assignments to the Union upon request.

[49] The employer opposed the bargaining agent's proposal.

[50] The most fundamental departure from existing practice for this bargaining unit proposed by the bargaining agent is the use of seniority as the organizing principle for scheduling shift work. For many of the specific occupations found in the bargaining unit, the Board understands that seniority-based systems are very common in the wider unionized labour market, although less prevalent among the largest employers in the proximate federal public administration. The Board also understands that seniority is sometimes used for shift scheduling elsewhere in the parliamentary precincts, though the parties clearly disagree as to whether the trend in those precincts favours such an arrangement.

[51] It was abundantly apparent from the parties' submissions that their views on the merits and feasibility of seniority for the purposes proposed by the bargaining unit are very far apart. The bargaining agent believed that it placed before the Board modest revisions to the current system that carefully took the employer's expressed operational concerns into account. The employer, for its part, argued that the introduction of seniority posed very serious challenges to its ability to provide the

services that Parliament requires and might well have adverse effects on some or many employees. In the Board's view, this is not a situation where an arbitration board can easily identify a compromise award that accommodates the interests and concerns expressed by both parties to some satisfactory degree.

[52] The Board has decided at this time not to revise the collective agreement to incorporate the seniority-based proposals made by the bargaining agent. It believes, nonetheless, that those proposals have merit. It urges the parties to undertake a serious joint effort, in good faith, to examine how seniority might be integrated more formally into the allocation of work hours and shifts for those parts of the bargaining unit where the bargaining agent has identified concerns. Should such efforts prove unsuccessful, it may be appropriate for a future arbitration board to intervene.

J. New Article: Social Justice Fund

[53] The bargaining agent proposed that the collective agreement include a new article as follows:

XX.01 The Employer shall contribute one cent (1¢) per hour worked to the PSAC Social Justice Fund and such contribution will be made for all hours worked by each employee in the bargaining unit, commencing on the date that the PSAC Social Justice Fund receives charitable status from the Canada Customs and Revenue Agency. Contributions to the Fund will be made quarterly, in the middle of the month immediately following completion of each fiscal quarter year, and such contributions remitted to the PSAC National Office. Contributions to the Fund are to be utilized strictly for the purposes specified in the Letters Patent of the PSAC Social Justice Fund.

[54] The employer opposed the inclusion of any such provision in the collective agreement.

[55] In the absence of persuasive comparators in the federal public administration, the Board takes the view that the bargaining agent's proposal should not be included in the collective agreement.

III. General

[56] The Board will remain seized of this matter for a period of two (2) months in the event that the parties encounter any difficulties in implementing the arbitral award.

March 27, 2008.

Dan Butler
Member
Chairperson of the Arbitration Board

Schedule A: Matters agreed by the parties at the arbitration hearing

(Note revisions and new provisions indicated by **bolded** text)

Article 13

No Discrimination

13.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national origin, religious affiliation, **disability**, sex, sexual orientation, membership or activity in PSAC.

13.02 PSAC and the Employer recognize the right of employees to work in an environment free from any form of harassment. The parties agree that harassment will not be tolerated in the work place. For purposes of this Agreement, harassment, sexual harassment and abuse of authority shall have the same meanings as the terms are given in the House of Commons Harassment Prevention Policy.

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

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

13.04 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with discrimination. The selection of the mediator will be by mutual agreement.

Article 20 Other Leave With or Without Pay

Renew except as follows:

Clauses 20.03 through 20.08 - revise to reflect clauses 18.03 to 18.08 of collective agreement for Scanner group

20.10 Leave Without Pay for the Long-term Care of a Parent **or Spouse**

Both parties recognize the importance of access to leave for the purpose of long-term care of a parent **or spouse**. An employee shall be granted leave without pay for the long-term personal care of the employee's parents **or spouse**, including step-parents, or foster parents, in accordance with the following conditions:

20.14 Injury-on-duty Leave

An employee shall be granted injury-on-duty leave with pay when a claim has been made pursuant to a *Government Employee's Compensation Act* and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

(a) personal injury accidentally received in the performance of the employee's duties and not caused by the employee's wilful misconduct,

or

(b) an industrial illness or a disease arising out of and in the course of the employee's employment,

if the employee agrees to remit to the Receiver General of Canada any amount received by the employee in compensation for loss of pay resulting from or in respect of such injury, illness or disease providing, however, that such amount does not stem from a personal disability policy for which the employee or their agent has paid the premium.

20.20 Volunteer leave

(a) Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, a single period of up to seven (7) hours of leave with pay to work as a volunteer for a charitable or community organization or activity, other than for activities related to the Government of Canada Workplace Charitable Campaign.

(b) The leave will be scheduled at times convenient both to the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leave at such times as the employee may request.

Article 24 Hours of Work and Overtime

Only the following elements were agreed:

24.09 The employer shall provide two (2) rest periods of fifteen minutes each per full working day. The assigned break times shall be subject to operational requirements.

24.20 The employer shall provide a rest period of fifteen minutes for every three (3) hours of overtime worked. The assigned break time shall be subject to operational requirements.

Article 27 Call-Back Pay

27.01 If an employee is called back to work

(a) on the employee's day of rest,

or

(b) after the employee has completed their work for the day and has left their place of work, and returns to work, the employee shall be paid the greater of:

(i) **effective (the date of the arbitral award)** the minimum of **three (3)** hours' pay at the **rate of time and one half (1 ½)** pay for each call-back to a maximum of eight (8) hours' pay in an eight (8)-hour period.

or

(ii) compensation at the applicable rate of overtime compensation for time worked, provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

Article 28 Shift Premiums

28.01 Shift Premium

Effective (date outstanding), an employee will receive a shift premium of **two dollars and twenty five cents (\$2.25)** per hour for all hours worked, including overtime hours worked, on shifts where four (4) or more hours are regularly scheduled between 6:30 p.m. and 6:00 a.m.

28.02 Weekend Premium

Effective (date outstanding), employees shall receive an additional premium of **two dollars and twenty five cents (\$2.25)** per hour for all regularly scheduled hours worked at straight-time rates on a Saturday and/or Sunday.

Article 43 Pay Adjustment Administration

delete 43.01 through 43.08 and replace with:

43.01 Employees who are on "Salary Protection Status" refer to Appendix "A".

**43.02 Employees who are not on "Salary Protection Status" refer to Appendix "A-1".
Status of list of positions outstanding**

Article 44 Duration

44.01 Unless otherwise expressly stipulated in this Agreement, the provisions of this Agreement shall become effective on **(date outstanding)** and shall remain in force until **April 20, 2008**.

Appendix A Rates of Pay

Maintain only those scales in which there are employees on salary protected status. The parties will identify such scales and the Board of Arbitration shall remain seized.

Pay scales to be modified on the same dates and by the same percentage as agreed or awarded for Appendix A-1 Rates of Pay / Universal Scale

Appendix B Uniforms

Renew except as follows:

Appendix B-2 Maintenance and Materiel Handling Services

- in 1. add **(i) 1 winter hat (for all employees required to work outdoors)**
- In 3. add **(i)** to list

Appendix B-3 Messenger Services

- in 2. add **(f) 1 winter hat (for all employees required to work outdoors)**

Appendix B-5 Transportation Services

- in 1. add **(l) 1 winter hat**
- in 3. add **(l)** to list
- 6. outstanding

Appendix B-8 Accommodation Services

- in 1. add **(j) safety glasses and safety glasses with prescription if required where locksmiths perform welding duties**
- in 2. add (f) Item (j) shall be issued as required.

Articles to be renewed

Article 7 Employee Representatives

Article 11 Use of Employer Facilities

Article 12 Leave With or Without Pay for PSAC Business

Article 35 Health and Safety

Appendix C Memorandum of Agreement

Appendix H Letter of Agreement

Proposals withdrawn

New Article Bilingual Bonus

New Article Departments