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*Public Service
Labour Relations Act*

Before the Chairperson
Public Service Labour Relations Board

IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a dispute affecting
the Federal Government Dockyards, Trades and Labour Council (Esquimalt, B.C.), as
bargaining agent,
and the Treasury Board, as employer,
in respect of the Ship Repair-West Group bargaining unit

Indexed as
*Federal Government Dockyards, Trades and Labour Council (Esquimalt, B.C.)
v. Treasury Board*

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: Ken Norman, chairperson of the arbitration board;
James Hayes and Frank Jamieson, arbitration board members

Before: Michele A. Pineau, Vice-Chairperson

For the Bargaining Agent: Ronald A. Pink, Q.C., counsel

For the Employer: Georges Hupé, Treasury Board Secretariat

Issued on the basis of written submissions
dated March 25, April 10 and 25, May 16 and 28, and June 13 and 27, 2008.

TERMS OF REFERENCE OF THE ARBITRATION BOARD

[1] By letter of March 25, 2008, the Federal Government Dockyards, Trades and Labour Council (Esquimalt, B.C.) (“the bargaining agent”) requested arbitration in respect of the Ship Repair-West Group bargaining unit. Along with its request, the bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration. Those terms and conditions of employment and supporting material are attached as schedule 1.

[2] By letter of April 10, 2008, the Treasury Board (“the employer”) provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer objected to the following proposal by the bargaining agent:

Effective July 1, 2007, adjust the rates of pay for all pay groups, including those represented at CFAD Rocky Point and CF METR, by 15% (broader employability).

The employer alleged that “broader employability” was an initiative involving a reorganization of the workplace, the assignment of new duties and classification. The employer added that this initiative had not been implemented and that therefore the bargaining agent’s proposal was moot. The employer also provided a list of additional terms and conditions of employment that it wished to refer to arbitration. That letter and supporting material are attached as schedule 2.

[3] By letter of April 25, 2008, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration. That letter is attached as schedule 3.

[4] By letter of May 2, 2008, the Chairperson of the Public Service Labour Relations Board requested that the parties address the employer’s objection by way of written submissions.

[5] By letter of May 16, 2008, the bargaining agent submitted that its request for arbitration regarding the broader-employability initiative strictly concerned compensation and had no impact on the initiative itself. The bargaining agent added that its proposal for the effective date of the broader-employability wage increase was based on the employer’s representation that July 1, 2007, was the start date of the initiative.

[6] The employer restated, by letter of May 28, 2008, that an arbitration board has no jurisdiction over the broader-employability initiative since it relates to the organization of the workplace, to the assignment of duties and to classification. The employer also relied on section 7 of the *Public Service Labour Relations Act* (“the Act”), which protects the employer’s rights in that regard. Section 7 provides as follows:

7. Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board . . . to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

The employer added that the bargaining agent’s proposal is moot until the employer proceeds with the implementation of the broader-employability initiative. The employer specified that it had decided not to implement the initiative.

[7] By letter of June 13, 2008, the bargaining agent reiterated that its request for arbitration regarding the broader-employability initiative related strictly to compensation. While maintaining that the initiative was being implemented, the bargaining agent, in response to the employer’s mootness argument, offered to amend its proposal to read as follows:

Effective the implementation date of the “Broader Employment” initiative, adjust the rates of all pay groups, including those represented at CFAD Rocky Point and CF METR, by 15%.

[8] The employer repeated, by letter of June 27, 2008, that the broader-employment initiative would not be implemented.

[9] Pursuant to section 45 of the *Act*, the Chairperson of the Public Service Labour Relations Board has authorized me, in my capacity as Vice-Chairperson, to issue the present terms of reference of the arbitration board.

[10] I agree with the employer that the arbitration board cannot deal with a term or condition of employment that may affect the organization of the public service, the assignment of duties or classification. Paragraph 150(1)(e) of the *Act* clearly provides so:

150. (1) The arbitral award may not, directly or indirectly, alter or eliminate any existing term or condition of employment, or establish any new term or condition of employment, if

...

(e) doing so would affect the organization of the public service or the assignment of duties to, and the classification of, positions and persons employed in the public service.

I do not agree, however, that paragraph 150(1)(e) prevents the arbitration board from dealing with the bargaining agent's request with respect to the broader-employability initiative.

[11] The bargaining agent's proposal relating to the broader-employability initiative exclusively addresses pay rates, which are squarely within the realm of the arbitration board and can form part of an arbitral award. I find nothing in the bargaining agent's request or in its proposal about the broader-employability initiative that relates to the employer's exclusive powers to organize the public service, assign duties to positions and classify positions.

[12] That the proposed July 1, 2007, effective date may have been of concern to the employer is understandable, given the employer's insistence that the broader-employability initiative will not be implemented. However, the bargaining agent's offer to amend its proposal to remove the reference to that date should put any such concern to rest.

[13] The employer has stated, contrary to the bargaining agent's belief, that the broader-employability initiative has been abandoned and that the issue has become moot. However, my task is not to determine whether the bargaining agent's proposal should form part of the arbitral award to be made by the arbitration board but whether the term or condition of employment for which the bargaining agent is requesting arbitration may be included in an arbitral award. I have answered the question before me in the affirmative. Having done so, I am referring that term or condition of employment to the arbitration board, which will decide whether the bargaining agent's proposal should form part of the arbitral award and, if so, how. It is before the arbitration board that the employer should raise the issue of the broader-employability initiative's mootness.

[14] Accordingly, pursuant to section 144 of the *Act*, the matters in dispute on which the arbitration board shall render an arbitral award are those set out in schedules 1 to 3 inclusive, which are attached to this decision. However, the bargaining agent's proposal with respect to the broader-employability initiative is amended to read as follows:

Effective the implementation date of the "Broader Employment" initiative, adjust the rates of all pay groups, including those represented at CFAD Rocky Point and CF METR, by 15%.

[15] Should any jurisdictional question arise during the course of the hearing as to the inclusion of a matter in these terms of reference, that question must be submitted without delay to the Chairperson of the Public Service Labour Relations Board who is, according to subsection 144(1) of the *Act*, the only person authorized to make such a determination.

August 08, 2008.

**Michele A. Pineau,
Vice-Chairperson
Public Service Labour Relations Board**