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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 Public Service Alliance of Canada, as bargaining agent,
and the Staff of the Non-Public Funds, Canadian Forces, as employer,
in respect of the bargaining unit composed of all employees of the employer in the
Administrative Support Category employed at the Canadian Forces Base, Gaagetown,
New Brunswick

Indexed as
Public Service Alliance of Canada v. Staff of the Non-Public Funds, Canadian Forces

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: Richard Brown, chairperson of the arbitration board;
Dale Clark and Lynn Harnden, arbitration board members

Before: Casper M. Bloom, Q.C., Ad. E., Chairperson

For the Bargaining Agent: Edith Bramwell, counsel and Larry Gagnon, Public
Service Alliance of Canada

For the Employer: Adrian Scales and Sonja Gonsalves, Staff of the Non-Public
Funds, Canadian Forces

Issued on the basis of written submissions,
dated July 22 and August 6, 12 and 20, 2009.

TERMS OF REFERENCE OF THE ARBITRATION BOARD

[1] By letter of July 22, 2009, the Staff of the Non-Public Funds, Canadian Forces (“the employer”) requested arbitration in respect of the bargaining unit composed of all employees of the employer in the Administrative Support Category employed at the Canadian Forces Base, Gagetown, New Brunswick. Along with its request, the employer 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 August 6, 2009, the Public Service Alliance of Canada (“the bargaining agent”) provided its position on the terms and conditions of employment that the employer wished to refer to arbitration. The bargaining agent also provided a list of additional terms and conditions of employment it wished to refer to arbitration. That letter and supporting material are attached as schedule 2.

[3] By letter of August 12, 2009, the employer objected that the bargaining agent’s request for arbitration in respect of additional terms and conditions of employment was filed one day late. The employer nevertheless provided its position on the additional terms and conditions of employment that the bargaining agent wished to refer to arbitration. That letter is attached as schedule 3.

[4] By letter of August 20, 2009, the bargaining agent requested an extension of time to file its request for arbitration in respect of additional terms and conditions of employment. However, neither the *Public Service Labour Relations Act* (“the new Act”), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, nor the *Public Service Labour Relations Board Regulations* contain any provisions expressly authorizing the Chairperson to extend the statutory time limit in subsection 136(5) of the new *Act* for requesting arbitration in respect of additional terms and conditions of employment.

[5] Nevertheless, in *Public Service Alliance of Canada v. House of Commons*, PSSRB File No. 485-H-4 (19890419), the former Public Service Staff Relations Board (“the former Board”), under similar provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35, relieved a party of its failure to submit, in a timely manner, proposals on terms and conditions of employment for which arbitration had been requested. Also, in *Canada (Attorney General) v. P.S.A.C.*, [1989] 3 F.C. 585 (C.A.), the Federal Court of Appeal found that, although the former Board had no express jurisdiction to extend a

specific statutory time limit, it had an implied, but limited, jurisdiction to relieve a party of its failure to comply with that time limit.

[6] Further, the preamble to the new *Act* fosters effective labour-management relations, encourages employers' and bargaining agents' collaborative efforts, affirms the Government of Canada's commitment to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment, and recognizes that the commitment from employers and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service. The new *Act* also provides at section 241 that proceedings are not invalid because of a mere technical irregularity.

[7] Taking into account the precedents above and the legislator's intent specifically expressed in the new *Act*, I find that the Chairperson has, in exceptional circumstances, the jurisdiction to relieve a party from its failure to meet the time limit set out in subsection 136(5) of the new *Act*.

[8] The record shows that, in relation to the employer's request for arbitration, there were administrative errors with the dates, the contents and the transmittal of correspondence by staff of the Public Service Labour Relations Board to the bargaining agent, which contributed to the bargaining agent missing its time limit by one day. Given the length of the delay, and the fact that the employer is not alleging any prejudice as a result, relieving the bargaining agent from this failure is consistent with both section 241 and the stated objectives of the new *Act*.

[9] Accordingly, pursuant to section 144 of the new *Act*, the matters in dispute on which the arbitration board shall make an arbitral award are those set out in schedules 1 to 3 inclusive, which are attached to this decision.

[10] 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 new *Act*, the only person authorized to make such a determination.

October 07, 2009.

**Casper M. Bloom, Q.C., Ad. E.,
Chairperson
Public Service Labour Relations Board**