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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 Scanner 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 Shawn Vincent, Public Service Alliance of Canada

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
September 29, 2009.

REASONS FOR DECISION

I. Application before the Board

[1] On March 27, 2008, the Public Service Alliance of Canada (“the bargaining agent”) served notice to bargain on the House of Commons (“the employer”), on behalf of the Scanner Group (SCA), under section 37 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c.33 (2nd Supp.)(*PESRA*). The last collective agreement for the Scanner Group expired on March 31, 2008.

[2] The Scanner Group is composed of 44 employees of the Security Services Directorate of the House of Commons working as scanners. The primary duties of scanners are to operate metal detectors and X-ray machines, to inspect bags and belongings, to process packages and mail addressed to members of Parliament or parliamentary employees, to conduct manual searches of persons entering parliamentary buildings, to inspect and test electronic screening equipment, and to complete incident reports as needed.

[3] The parties met for five negotiation sessions between January 15 and April 15, 2009. On April 15, 2009, the bargaining agent filed for arbitration under section 50 of the *PESRA*. The employer submitted its additional matters in dispute on April 27, 2009 and revised its submission on May 5, 2009.

[4] The bargaining agent selected Joe Herbert from the panel of persons representative of the interests of the employees to be a member of the Board. The employer selected Ron Leblanc from the panel of persons representative of the interests of the employer. The Chairperson of the Public Service Labour Relations Board appointed me as chairperson for these proceedings.

[5] The Chairperson of the Public Service Labour Relations Board established the mandate for these proceedings in *Public Service Alliance of Canada v. House of Commons*, 2009 PSLRB 79, consisting of the parties’ proposals for 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 15</i>	<i>Leave — General</i>
<i>Article 16</i>	<i>Vacation Leave with Pay</i>
<i>Article 17</i>	<i>Designated Paid Holidays</i>
<i>Article 18</i>	<i>Other Leave with or without Pay</i>
<i>Article 19</i>	<i>Sick Leave with Pay</i>

Article 21	Hours of Work and Overtime
Article 23	Clothing
Article 28	Discipline
Article 31	Health and Insurance Benefits
Article 36	Training
Article 40	Duration
Appendix A	Rates of Pay
Appendix X	Memorandum of Agreement — Hours of Work
New Article	Social Justice Fund

[6] The bargaining agent did not advance proposals for article 16 of the collective agreement (“Vacation Leave with Pay”) at the hearing.

II. Reasons

[7] The *PESRA* sets out as follows 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.

...

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

[9] These reasons also take into consideration the applicable provisions of the *Expenditure Restraint Act*, S.C. 2009, c.2, s. 393 (*ERA*). After the bargaining agent changed its position at the hearing about an aspect of article 21 of the collective agreement, the parties agreed that there were no issues in dispute before the Board concerning the application of the *ERA*. The Board itself is satisfied that the award that it is rendering on the duration of the collective agreement and the increases to rates of pay in Appendix “A” is consistent with the *ERA*.

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

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.

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

56. (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.

[12] For a number of the issues in dispute, the Chairperson’s decision constitutes the Board’s arbitral award.

[13] In what follows, revised or new language for the collective agreement is indicated in **bold**. A revision that removes existing language from the collective agreement without replacement is signified by “(-).”

A. Article 2 - Interpretation and Definitions

[14] The bargaining agent proposes the inclusion of a definition of the term “shift work” as follows:

(s) “shift work” means all scheduled work performed after 1800 hours or before 0700 hours.

[15] The award of the Board is to renew article 2 of the collective agreement.

B. Article 7 - Employee Representatives

[16] The bargaining agent proposes the deletion of the following clause of the collective agreement:

7.02 The PSAC and the Employer shall endeavour in consultation to determine the jurisdiction of each representative, having regard to the plan of organization, the number and distribution of employees at the work place and the administrative structure implied by the grievance procedure. Where the parties are unable to agree in consultation, then any dispute shall be resolved by the grievance/adjudication procedure.

[17] The award of the Board is to renew article 7 of the collective agreement.

C. Article 11 - Use of Employer Facilities

[18] The bargaining agent proposes the addition of a new clause to the collective agreement as follows:

11.05 The employer shall make a break room available in each building where employees perform their duties. Each break room will contain minimally one computer for employees' use.

[19] The award of the Board is to add a new clause 11.05 to the collective agreement as follows:

11.05 The employer shall make a break room available in each building where employees perform their duties.

D. Article 15 -Leave — General

[20] The employer proposes to delete the words “or monetary remuneration in lieu of leave” from clause 15.03 of the collective agreement which reads as follows:

15.03 An employee shall not be granted two (2) different types of leave with pay or monetary remuneration in lieu of leave in respect of the same period of time.

[21] The award of the Board is to renew article 15 of the collective agreement.

E. Article 17 - Designated Paid Holidays

[22] The bargaining agent proposes the addition of “**Family Day**” as a designated paid holiday.

[23] The award of the Board is to renew article 17 of the collective agreement.

F. Article 18 - Other Leave with or without Pay

(a) Bereavement Leave With Pay

[24] The bargaining agent proposes to increase the basic bereavement leave entitlement from “five (5) consecutive calendar days” to “**five (5) working days**” in the case of a death of a member of the immediate family and from “one (1) day” to “**two (2) days**” in the case of the death of a grandchild, son-in-law, daughter-in-law, brother-in-law or sister-in-law (clauses 18.02(a) and (c) of the collective agreement).

[25] The award of the Board is to modify clause 18.02 of the collective agreement as follows while renewing clauses 18.02(a) through (d):

18.02 Bereavement Leave With Pay

*For the purpose of this clause, immediate family is defined as father, mother, (or alternatively stepfather, stepmother or foster parent), brother, sister, spouse (including common-law spouse resident with the employee), child (including child of common-law spouse), step-child or ward of the employee, **grandchild**, father-in-law, mother-in-law, grandparent, legal ward and relative permanently residing in the employee's household or with whom the employee permanently resides.*

(b) Leave With Pay for Family-Related Responsibilities

[26] The bargaining agent proposes to remove the current provisions limiting the duration of leave for family-related responsibilities in clauses 18.12(b)(i) and (ii) of the collective agreement, stated respectively as “one (1) day” or “two (2) consecutive days” and to remove the restriction limiting leave for the birth or adoption of an employee’s child under clause 18.12(b)(iii) to “one (1) day.” In clause 18.12(c), it also proposes to

increase the maximum leave with pay available to an employee in a calendar year from “five (5) days” to “**eight (8) days.**”

[27] In clause 18.12(c) of the collective agreement, the employer proposes to restate the total available leave for family-related responsibilities as “**thirty-five (35) hours**” instead of “five (5) days.”

[28] The award of the Board is to renew clause 18.12 of the collective agreement with the exception of the following changes to clause 18.12(b):

18.12(b) The Employer shall grant leave with pay under the following circumstances:

*(i) while an employee is expected to make reasonable effort to schedule medical or dental appointments for dependent family members to minimize or preclude their absence from work, however, when alternate arrangements are not possible an employee shall be granted **leave** for a medical or dental appointment when the dependent family member is incapable of attending the appointments alone, or for appointments with appropriate authorities in schools or adoption agencies. An employee requesting leave under this provision must notify their supervisor of the appointment as far in advance as possible;*

*(ii) **to provide for** the immediate and temporary care of a member of the employee's family and to provide an employee with the time to make alternate care arrangements where the illness is of a longer duration;*

(iii) (-) for needs directly related to the birth or to the adoption of the employee's child. (-)

(c) Leave With Pay for Marriage

[29] The bargaining agent proposes to eliminate the current provision for marriage leave with pay under clauses 18.16(a) and (b) of the collective agreement and to replace it with the following provision:

18.16 Employees shall be credited a one-time entitlement of thirty-five (35) hours of vacation leave with pay.

[30] The award of the Board is to renew clauses 18.16(a) and (b) of the collective agreement.

(d) Volunteer Leave

[31] The bargaining agent proposes to rename clause 18.17 of the collective agreement to “Volunteer **and Personal Leave**” and to add the following new provision:

18.17(c) Subject to operational requirements 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 for reasons of a personal nature.

[32] The award of the Board is to renew clause 18.17 of the collective agreement.

G. Article 19 - Sick Leave with Pay

[33] The bargaining agent proposes to increase in clause 19.01 of the collective agreement the amount of sick leave credits earned by an employee each month from “eight decimal seven five (8.75) hours” to “**nine decimal ninety-two (9.92) hours.**” It also seeks to modify the provision governing the production of a medical certificate in clause 19.07 as follows:

19.07(a) Where, in respect of any period of compensatory leave, an employee is granted sick leave with pay on the production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period if requested by the employee and approved by the Employer or reinstated for use at a later date. An employee may be asked to produce a medical certificate only for periods of absence in excess of three (3) consecutive days except where the employee has demonstrated a clear pattern of abuse.

(b) Employees shall be reimbursed by the Employer for medical certificates required above.

[34] The employer proposes to modify clause 19.04 of the collective agreement as follows:

19.04 When an employee has insufficient or no credits to cover the granting of sick leave with pay under the provisions of clause 19.02, sick leave with pay may, at the discretion of the Employer, be granted to an employee:

*(a) for a period of up to **one hundred and seventy-five (175) hours** if a decision on an application for injury-on-duty leave is being awaited,*

or

- (b) *for a period of up to **one hundred and five (105) hours** in all other cases, subject to the deduction of such advanced leave from any sick leave credits subsequently earned.*

[35] The award of the Board is to amend article 19 of the collective agreement by incorporating the change to clause 19.04 proposed by the employer.

H. Article 21 - Hours of Work and Overtime

[36] The bargaining agent identifies “notice of scheduling changes, the assigning of relief shifts and lack of serious consultation with the Union about how shifts are designed” as the issues at the heart of its dispute with the employer about the hours-of-work provisions of article 21 of the collective agreement. “[N]otice of overtime assignment and the duration of overtime” are the primary issues identified in the area of overtime. To address its concerns, the bargaining agent proposes changes to 12 clauses in the article. The principal effects of the proposed changes are as follows: (i) require the employer to post a 70-day master schedule 15 calendar days in advance; (ii) require that the scheduled workday for day workers be 7 hours rather than average 7 hours; (iii) require that the shift-work schedule consist of 5 workdays of 7 hours per day, with a defined meal break, and 2 consecutive days of rest each week; (iv) require scheduling of weekend work on an equitable basis; (v) mandate a process for allocating employees to shifts when a line on the shift schedule becomes vacant using seniority as the determining factor; (vi) subject the implementation of non-standard shift schedules to the mutual agreement of the parties; (vii) administer relief assignments by reverse order of seniority; (viii) introduce new advance-notice provisions for shift schedules and for changes to shift schedules with payments at premium rates when shifts are changed at shorter notice; and (ix) include a 4-hour advance notice for overtime with a 2-hour minimum overtime payment when the required notice is not given.

[37] For its part, the employer proposes a new memorandum of agreement that would provide for the discussion of issues related to hours of work by a union-management consultation committee.

[38] The Board understands that the parties are adamantly opposed in their views concerning the role of seniority in the administration of work schedules. Their conflict

over seniority lies at the heart of the bargaining dispute, not only regarding article 21 of the collective agreement, but also more generally. Members of the Board discussed at length how an arbitration panel should proceed when faced with such a pronounced conflict — one that draws the Board into the most detailed operational language of the collective agreement. The discussions did not produce a consensus, although there was a shared sense among the members of the Board that a more productive dialogue between the parties on the issues that currently divide them is very unlikely to occur unless the Board does intervene in some manner.

[39] It is vital that the parties move beyond their current impasse about seniority. The Board has decided to take a limited step in this award to require the parties to work together and — hopefully — to begin to overcome their disagreements over scheduling matters.

[40] The award of the Board is to renew article 21 of the collective agreement except as follows:

21.24 Seniority – Relief Assignments

Effective no later than three (3) months after the date of the arbitral award, the Employer shall schedule relief assignments during periods when the House of Commons is not scheduled to be in session using “reverse order of seniority” as the determining criterion. The Employer may take into account requirements for gender balance and the appropriate number of certified personnel when scheduling relief assignments, but will do so adjusting the operation of the “reverse order of seniority” criterion to the minimum necessary extent.

The representatives of the parties will consult without delay regarding the implementation of this provision.

As stated later in this award, the Board will remain seized for a period of three (3) months to resolve any disagreements between the parties about implementation. As part of their implementation consultations, the parties may agree to alternate language for the collective agreement that achieves the same purpose as the foregoing clause and may use article 39 (“Agreement Reopener”) to incorporate that language in the collective agreement. They may also choose to alter the existing numbering of clauses in article 21 to place the provision closer to other clauses dealing with shift work and scheduling.

I. Article 23 - Clothing

[41] The bargaining agent proposes three changes to article 23 of the collective agreement as follows:

- (i) add “**1 pair of searching gloves**” to the list of items provided by the employer to employees on commencing employment under clause 23.03 of the collective agreement;
- (ii) increase the maximum number of shirts issued annually, as specified in clause 23.05(b), from “two (2)” to “**five (5)**”; and
- (iii) in clause 23.05(c), provide that the employer will replace “**as required**” all items of clothing listed in clause 23.03 other than shirts and socks.

[42] The employer also proposes changes to article 23 of the collective agreement as follows:

- (i) eliminate the exchange option for female employees in clauses 23.03(b) and (d) of the collective agreement;
- (ii) add a new clause 23.04 (b):
Items 23.03 (b), (c), (d), (j) and (m) may be retained by the employee upon termination of employment. Other items must be returned to the Employer upon termination.
- (iii) add a new clause 23.XX:

Employees will be responsible for the replacement of clothing that is lost while in their custody when it is demonstrated that the loss was only within the employee's control.

[43] The award of the Board is to add “**1 pair of searching gloves**” to the list of items provided on commencing employment under clause 23.03 of the collective agreement and to revise the maximum number of shirts replaced annually under clause 23.05(b) from “two (2)” to “**four (4)**.” Clause 23.04 will be modified as follows:

23.04(a) Initial issue of items in 23.03 will be timed in keeping with seasonal requirements.

(b) Items 23.03(b), (c), (d), (j) and (m) may be retained by the employee upon termination of employment. Other

items must be returned to the Employer upon termination of employment.

The remaining elements of article 23 shall be renewed.

J. Article 28 - Discipline

[44] The employer proposes to revise clause 28.04 of the collective agreement as follows:

28.04 Any document or written statement related to disciplinary action, which may have been placed on the personnel file of an employee shall be destroyed after two (2) years have elapsed since the disciplinary action was taken, provided that no further disciplinary action has been recorded during this period. This period will automatically be extended by the length of any period of leave without pay.

[45] The award of the Board is to renew article 28 of the collective agreement.

K. Article 31 - Health and Insurance Benefits

[46] The bargaining agent proposes the addition of a new clause to the collective agreement, as follows:

31.03 Employees that schedule vaccinations during work hours shall suffer no loss of pay or benefits provided under this Agreement for time spent getting vaccinated. The Employer shall reimburse for all employee vaccinations.

[47] The award of the Board is to renew article 31 of the collective agreement.

L. Article 36 - Training

[48] The bargaining agent proposes to modify clause 36.04 of the collective agreement, essentially by eliminating the first sentence of the existing provision. The revised clause would read as follows:

36.04 Employees are encouraged to identify their specific interest in career development and training to the employer.

[49] The bargaining agent also proposes the inclusion of eight new clauses to the collective agreement as follows:

36.05 The employer shall provide each employee with at least one (1) day of profiling training.

36.06 Employees that have not received profiling training referenced in 36.05 shall be provided the opportunity to undergo the training within six months of the signing of this Agreement. New hires shall receive the training within six (6) months of date of hire.

Certification Training

36.07 The Employer shall ensure that the thirty-five (35) hours' on-site training after the initial testing required of uncertified employees shall be conducted within four (4) months of the date of hire.

36.08 Should uncertified employees be unsuccessful in testing following thirty-five (35) hours' on-site training, an addition twenty (20) hours of on-site training shall be provided.

36.09 The additional twenty (20) hours of on-site training referenced in 36.07 shall be conducted within two (2) months of unsuccessful training.

36.10 All certified employees shall receive documentation from House of Commons' Security Services indicating that they have successfully completed certification training. Said documentation shall be provided within thirty (30) days of certification.

36.11 Certified employees shall receive documentation referred to in 36.09 within thirty (30) days of the signing of this Agreement.

36.12 The Employer shall engage in meaningful consultation with local PSAC representatives when contemplating changes to the current training program or when considering new training initiatives.

[50] The award of the Board is to renew article 36 of the collective agreement.

M. Article 40 - Duration

[51] The bargaining agent proposes that the award should operate for a period of two years, from April 1, 2008 to March 31, 2010.

[52] The employer proposes that, “[u]nless otherwise stipulated” in the collective agreement, the award should operate for a period of three years, from “**the date it is signed**” to March 31, 2011.

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

*40.01 Unless otherwise expressly stipulated in this Agreement, the provisions of this Agreement shall become effective on **the date of the award** and shall remain in force until March 31, 2011.*

N. Appendix "A" - Rates of Pay

[54] The bargaining agent and the employer agree that all rates of pay should be increased by 1.5 percent effective April 1, 2008 and by 1.5 percent effective April 1, 2009.

[55] Consistent with its proposal on the duration of the award, the employer proposes to increase rates of pay by a further 1.5 percent effective April 1, 2010.

[56] The award of the Board is that all rates of pay will be increased by 1.5 percent effective April 1, 2008, by 1.5 percent effective April 1, 2009 and by 1.5 percent effective April 1, 2010.

O. New Article - Social Justice Fund

[57] 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.

[58] The award of the Board is that the collective agreement shall not include the proposed new article.

III. General

[59] The Board will remain seized of this matter for a period of three (3) months in the event that the parties encounter any difficulties in implementing the arbitral award.

December 7, 2009

**Dan Butler
Board Member
Chairperson of the panel**