Date: 20101109

File: 485-HC-45

Citation: 2010 PSLRB 121

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

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

HOUSE OF COMMONS

Employer

In respect of the employees in the Postal Services Sub-Group

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

ARBITRAL AWARD

Before: Ian R. Mackenzie, 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, Public Service Alliance of Canada

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
September 28, 2010.

I. Application before the Board

[1] On May 1, 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 Postal Services Sub-Group under section 37 of the *Parliamentary Employment and Staff Relations Act* (*PESRA*). The last collective agreement for the bargaining unit expired on June 30, 2008.

[2] There are approximately 45 employees in the Postal Services Sub-Group bargaining unit. Their primary duties are processing and delivering external mail and providing postal services to the House of Commons.

[3] The parties met for seven negotiation sessions, commencing on February 17, 2009 and ending on May 13, 2010. On February 18, 2010, the bargaining agent filed for arbitration under section 50 of the *PESRA*. The employer submitted its response on March 2, 2010 and submitted a revised response on May 17, 2010. The revised response contained an amended proposal under article 24 of the collective agreement. The bargaining agent raised no objection to the revised proposal.

[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 Public Service Labour Relations Board ("the Board") for the purpose of this arbitration. 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 arbitration proceedings.

[5] The terms of reference were forwarded by the Chairperson of the Public Service Labour Relations Board on March 31, 2010 (see 2010 PSLRB 48). The following matters were in dispute:

Article 2: Interpretation and Definitions
Article 10: Information
Article 19: Designated Paid Holidays
Article 20: Other Leave With or Without Pay
Article 21: Sick Leave with Pay
Article 24: Hours of Work and Overtime
Article 26: Uniform and Clothing
Article 29: Job Descriptions
Article 37: Duration
Appendix A: Rates of Pay
New Article: Social Justice Fund

New Article: Shift Premium
New Appendix: Memorandum of Agreement in Respect of Bulletin Boards

[6] On March 12, 2009, the *Expenditure Restraint Act* (*ERA*), enacted by section 393 of the *Budget Implementation Act, 2009*, S.C. 2009, c.2, came into force.

[7] In its brief, the bargaining agent accepted the employer's proposal for Centre Block shifts (part of article 24 of the collective agreement, Hours of Work and Overtime). The bargaining agent is also in agreement with a duration of the collective agreement of three years, as proposed by the employer. In its brief, the employer accepted the bargaining agent's proposal under clause 2.01 (definition of overtime). The employer also accepted the bargaining agent's proposals under article 10 (Information). For ease of reference, those agreed-upon proposals are included in the award.

II. The Award

[8] Section 53 of 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.*
>
> . . .

[9] In addition to those factors, the Board must comply with the provisions of the *ERA*. The following provisions of the *ERA* are relevant to this arbitration:

. . .

> ***2****. The following definitions apply in this Act.*
>
> *"additional remuneration" means any allowance, bonus, differential or premium or any payment to employees that is similar to any of those payments.*
>
> . . .
>
> *"restraint period" means the period that begins on April 1, 2006 and ends on March 31, 2011.*
>
> . . .
>
> ***16****. Despite any collective agreement, arbitral award or terms and conditions of employment to the contrary, but subject to the other provisions of this Act, the rates of pay for employees are to be increased, as the case may be, by the following percentages for any 12-month period that begins during any of the following fiscal years:*
>
> *(*a*) the 2006-2007 fiscal year, 2.5%;*
>
> *(*b*) the 2007-2008 fiscal year, 2.3%;*
>
> *(*c*) the 2008-2009 fiscal year, 1.5%;*
>
> *(*d*) the 2009-2010 fiscal year, 1.5%; and*
>
> *(*e*) the 2010-2011 fiscal year, 1.5%.*
>
> . . .
>
> ***17****.(1) The provisions of any collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may not provide for increases to rates of pay that are greater that those set out in section 16, but they may provide for increases that are lower.*
>
> *(2) For greater certainty, any collective agreement that is entered into, or any arbitral award that is made, after the day on which this Act comes into force and that provides for increases to rates of pay for any period that begins during the restraint period must do so on the basis of a 12-month period.*
>
> . . .

> ***24.*** *No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement, or the arbitral award, as the case may be, becomes effective.*
>
> . . .
>
> ***27.*** *No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement or the arbitral award, as the case may be, becomes effective.*
>
> . . .

[10] In rendering this award, the Board considered the provisions of the *PESRA* and the *ERA*.

[11] Under subsection 56(1) of the *PESRA*, the Chairperson of the panel is the only signatory of this arbitral award:

> ***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.*

[12] Subsections 56(2) and (3) of the *PESRA* governed as follows 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.*

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

A. Article 2, clause 2.01 - Interpretation and Definitions (definition of overtime)

[14] The bargaining agent proposed the following amended definition of "overtime":

> *(o) "overtime" means authorized work performed in excess of an employee's scheduled hours of work on a regular work day and all hours worked on a day of rest or designated holiday.*

[15] The employer agreed with the bargaining agent proposal. Accordingly, the award shall contain the above definition of "overtime."

B. Article 10 - Information

[16] The bargaining agent proposed to add the following two new clauses to the collective agreement:

> *10.03 As part of their orientation, a new employee will be granted a 15-minute period with pay, during normal working hours, within their first two (2) weeks of employment, to meet with their shop steward or the local PSAC representative.*
>
> *10.04 The Employer will notify PSAC Local on a monthly basis of the name, classification and work location as who have been hired, retired, dismissed, transferred in or out of the bargaining unit, resigned or deceased.*

[17] The employer agreed with the proposed clause 10.03. Accordingly, the new clause, 10.03, will form part of the award. At the hearing, the employer agreed with the language proposed by the bargaining agent for clause 10.04. Accordingly, the new clause, 10.04, will form part of this award.

C. Article 19 - Designated Paid Holidays

[18] The bargaining agent proposed the addition of Family Day to the list of designated paid holidays. The employer opposed the proposal on the basis that employees already receive 13 statutory holidays and that there are no groups under either the *PESRA* or in the public service that have this entitlement.

[19] The award of the Board is to renew article 19 of the collective agreement.

D. Article 20 - Other Leave With or Without Pay

[20] The bargaining agent proposed a change to the leave provision for bereavement leave (clause 20.02 of the collective agreement) from five calendar days to five working days. The bargaining agent submitted that the procedural clerks of the House of Commons came to a voluntary agreement for five working days of bereavement leave. Two bargaining units at the Library of Parliament also have the same entitlement. The employer stated that its agreement with the procedural clerks was reached voluntarily and that no arbitral awards had awarded this proposal. It proposed the status quo.

[21] The award of the Board is to change the number of days of bereavement leave in clause 20.02 of the collective agreement to five working days.

[22] The bargaining agent proposed eliminating marriage leave (clause 20.15 of the collective agreement) and replacing it with one week of vacation leave for all employees. It submitted that this was comparable to the core public administration. The employer proposed the status quo.

[23] The award of the Board is to renew clause 20.15 of the collective agreement.

[24] The bargaining agent proposed the addition of one day of personal leave in clause 20.16 of the collective agreement (Volunteer Leave). The employer submitted that no other *PESRA* units had this leave provision and proposed the status quo.

[25] The award of the Board is to renew clause 20.16 of the collective agreement.

E. Article 21 - Sick Leave With Pay

[26] The bargaining agent proposed adding the following new clause to the collective agreement for medical certificates:

> *21.09 Medical Certificates*
>
> *NEW*
>
> *An employee may be asked to produce a medical certificate only for periods of absence in excess of three (3) consecutive days.*
>
> *Employees shall be reimbursed by the Employer for medical certificates required above.*

[27] The bargaining agent submitted that the Technical Group with the House of Commons had this provision. The employer stated that it retained the authority to determine the granting of sick leave credits and proposed the status quo.

[28] The Board has determined that reimbursement for employer-requested medical certificates by the employer shall form part of this award. The new article of the collective agreement shall read as follows:

> *21.09 Medical Certificates*
>
> *When an employee is asked to provide a medical certificate by the employer, the employee shall be reimbursed by the employer for the cost of the certificate.*

F. Article 24 - Hours of Work and Overtime

[29] The employer proposed the elimination of the current hours-of-work provision, which limits hours to between 6:00 a.m. and 6:00 p.m. It proposed the following changes and additions to clauses 24.02 and 24.03 of the collective agreement:

> *24.02 The employer shall normally schedule the hours of work so that employees work five (5) consecutive days per week Monday to Friday, thirty-five (35) hours per week, seven (7) hours per day* ***~~between the hours of 6:00 a.m. and 6:00 p.m.~~, exclusive of the meal period, that shall be no less than one-half (1/2) hour and no longer than (1) hour per day****. Saturday and Sunday shall be days of rest.*
>
> *24.03 Notwithstanding 24.02 above,* ***where operational requirements dictate a necessity for a continuous operation (beyond Monday to Friday), the Employer shall schedule the hours of work so that employees***
>
> ***(i) work a thirty-five (35) hour work week, consisting of five (5) days;***
>
> ***(ii) work seven (7) hours per day, exclusive of meal period that shall be a minimum of one half (1/2) hour and a maximum of one (1) hour in duration;***
>
> ***(iii) obtain two (2) consecutive days of rest per week***
>
> [Emphasis in the original]

[30] The employer also proposed adding the following new article of the collective agreement:

. . .

> ***Once the new Mail Production Facility is in operations, shifts that will start or end between 18:30 and 6:00 will be subject to seniority. The shifts will first be assigned on a volunteer basis. 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 theses shifts in reverse order of seniority. Only those employees having worked for at least twelve (12) month as a [***Mail Processing Clerk***] will be considered for these shifts.***
>
> . . .
>
> [Emphasis in the original]

[31] The employer stated that, in light of a new integrated printing and mail operation, it required flexibility to implement a continuous operation. The new facility was recently made operational (September 2010) and will be fully operational by December 2011. The employer submitted that scheduling work is a management prerogative. In addition, seniority would be respected when scheduling shifts.

[32] The bargaining agent characterized this proposal as a significant concession without any demonstrated need. The volume of mail at the House of Commons has reduced significantly since the Board of Internal Economy ordered a restriction in the number of "householders" to which Members of Parliament could distribute. The move to the new off-site location will not be complete until the end of 2011, while the agreement will end in June 2011. In the union-management consultation meeting on June 21, 2010, management stated that it did not foresee a need for two shifts. The employer submitted that political decisions that reduced workload could easily be reversed.

[33] The employer also proposed adding a new article to the collective agreement for a shift premium. To comply with the *ERA*, the employer proposed that the article come into effect only on April 1, 2011. It submitted that this proposal was conditional on its acceptance of the hours of work proposal. The proposal is as follows:

> *New*
>
> *Effective April 1, 2011, 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.*

[34] The proposals of the employer relating to the introduction of shift work for this bargaining unit are premature. The collective agreement will expire in June 2011, before the implementation of any changes to the operation of the mail processing operation. The Board also notes that the proposals are not comprehensive enough to address the range of issues that would arise in a change to a shift-work operation. For example, there are no proposed provisions relating to weekend schedules and weekend premiums. In light of the employer's stated desire to proceed to an integrated operation, including shift work, the parties will need to address the full range of issues in the next round of collective bargaining. For these reasons, the Board declines to award the proposal of the employer.

[35] The employer proposed adding the following new clause to the collective agreement:

> *Should a Centre Block shift become vacant after the signing of this Agreement, the Employer shall offer the Centre Block to all employees. Should there be more volunteers than required, seniority shall be the determining factor for assigning the shift. Should there be no volunteer, or should insufficient employees volunteer, the Centre Block shift shall be assigned to employees in reverse order of merit. Only those employees having worked for at least twelve (12) months as a counter clerk will be considered for the Centre Block shift.*

[36] The bargaining agent agreed with this proposal. After a question from the panel, the parties agreed that the phrase ". . . after the signing of this Agreement . . ." was not necessary. Clause 24.02 of the collective agreement deals with the Centre Block counters. Accordingly, the award of the Board is to revise clause 24.03 as follows:

> *Should a Centre Block shift become vacant, the Employer shall offer the Centre Block to all employees. Should there be more volunteers than required, seniority shall be the determining factor for assigning the shift. Should there be no volunteer, or should insufficient employees volunteer, the Centre Block shift shall be assigned to employees in reverse order of merit. Only those employees having worked for at least twelve (12) months as a counter clerk will be considered for the Centre Block shift.*

[37] The bargaining agent proposed that clause 24.15 of the collective agreement be amended to remove the requirement of working four hours of overtime before being entitled to taxi fare after 10 p.m. The bargaining agent submitted the proposal

conformed with the purpose of the clause — safety. Whether or not an employee has worked four hours of overtime is not relevant. The employer submitted that the proposed amendment was not permitted by the *ERA*. The bargaining agent disagreed with the employer's position but stated that it would be willing to have the amendment take effect on April 1, 2011. The employer submitted that the arbitration board for the Operations Group declined to award this proposal.

[38] In view of the parties' submissions on current operational requirements, the Board has determined that there is no demonstrated need for this amendment. Accordingly, the award of the Board is to renew clause 24.15 of the collective agreement.

G. Article 26 - Uniform and Clothing

[39] The bargaining agent proposed adding one parka for each employee required to work outdoors to clause 26.01 of the collective agreement. It alleged that the current shared parka has raised hygiene concerns. The bargaining agent also proposed an increase from four to five trousers or skirts for each employee to reflect the provision for the Operations Group. The employer submitted that there was no demonstrated need for those changes.

[40] The Board has determined that there is no demonstrated need for a change to the current shared-parka provision. The employer had no explanation for the different treatment of employees in this bargaining unit with respect to the number of trousers or skirts provided compared to those in the Operations Group. Accordingly, the award of the Board is to increase the number of trousers or skirts provided in clause 26.01 of the collective agreement to five.

H. Article 29 - Job Descriptions

[41] The bargaining agent proposed adding a new clause to this article of the collective agreement, as follows:

> *29.02 When a job description is going to be rewritten, the employer shall provide reasonable notice of their intention to consult and seek the employee's input. Employees shall be granted a minimum of five (5) working days notice to develop and provide their input. The employees' input shall be taken into consideration when finalizing the job description. The employee shall receive a copy of the revised*

> *job description at least five (5) working days prior to its implementation.*

[42] The bargaining agent submitted that the employer agreed to this language for the Text Processing bargaining unit. The bargaining agent clarified that it was seeking input from employees for the description of duties and not input on point rating and classification. The employer submitted that management has the inherent right to develop, revise and implement job descriptions. The employer also submitted that the Board had no jurisdiction to award such a provision in light of subsection 5(3) of the *PESRA*, which reads as follows:

> *Nothing in this Part shall be construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment.*

[43] The current article (at clause 29.01) of the collective agreement provides an employee with a right to a "complete and current" job description. By necessary implication, this means that an employee has a right to grieve if his or her job description is not current or complete, which gives employees sufficient input on their job descriptions. The bargaining agent did not show a demonstrated need for consultation before changes are made to a job description. Accordingly, the Board declines to award the bargaining agent proposal.

I. Article 37 - Duration

[44] The parties are in agreement that the duration shall be for three years, with an expiry date of June 30, 2011.

J. Appendix A - Rates of Pay

[45] Given the parties' agreement on the duration, and in accordance with the *ERA*, the award of the Board is that all rates of pay will be increased by 1.5% effective July 1, 2008, 1.5% effective July 1, 2009 and 1.5% effective July 1, 2010.

K. New Article - Social Justice Fund

[46] 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.*

[47] The employer opposed the addition of this new article.

[48] The Board has determined that the proposal shall not be awarded.

L. <u>New - Memorandum of Agreement in Respect of Bulletin Boards</u>

[49] The bargaining agent proposed the following:

> *Within thirty (30) days of the signing of this agreement, the employer agrees to provide reasonable space on bulletin boards in convenient locations in each facility where Postal bargaining unit employees regularly perform their duties.*

[50] The employer opposed the proposal. The employer stated that the existing article 11 of the collective agreement already contains provisions for bulletin boards. The bargaining agent submitted that bulletin boards were not in every work location. At the hearing, the employer advised that there were now bulletin boards in each work location. The Board has determined that it will not award this proposal.

III. <u>General</u>

[51] The Board will remain seized of this matter for a period of 30 days in the event that the parties encounter any difficulties in implementing the arbitral award.

November 9, 2010.

Ian R. Mackenzie
Vice-Chairperson
Chairperson of the panel