

**Date:** 2011-02-09

**File:** 585-18-35

**Citation:** 2011 PSLRB 17



*Public Service  
Labour Relations Act*

Before the Chairperson  
Public Service Labour Relations Board

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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 all employees of the employer in the Administrative Support Category  
employed at Canadian Forces Base Trenton

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

**TERMS OF REFERENCE OF THE ARBITRATION BOARD**

**To:** Felicity D. Briggs, Chairperson of the arbitration board;  
Lynn Harnden and Joe Herbert, Members of arbitration board

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

**For the Bargaining Agent:** Joan-Ann Gravesande, Public Service Alliance of  
Canada

**For the Employer:** Christine Greenlaw, Staff of the Non-Public Funds,  
Canadian Forces

Issued on the basis of written submissions,  
dated October 25, 2010, November 5, 2010, November 15, 2010, November 23, 2010,  
November 29, 2010, December 6, 2010, December 15, 2010, and December 24, 2010.

## TERMS OF REFERENCE OF THE ARBITRATION BOARD

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[1] By letter of October 25, 2010 the Staff of the Non-Public Funds (“the employer”) requested arbitration in respect of all employees of the employer in the Administrative Support Category employed at Canadian Forces Base Trenton. Along with its Form 8 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 November 5, 2010 the Public Service Alliance of Canada (“the bargaining agent”) provided its Form 9 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 November 15, 2010 the employer provided its Form 10 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. In its letter of November 15, 2010, the employer also raised objections regarding three of the additional terms and conditions (clause 20.02, clause 28.06 and Pay) that the bargaining agent wished to refer to arbitration. The employer stated, with respect to clause 20.02, that the union’s proposal had been withdrawn in the course of negotiations while clause 28.06 reflected a typographical error. With respect to the issue of pay, the employer objected to the union proposal, stating that it reflected a position substantially higher than its (the bargaining agent’s) last position expressed at the bargaining table.

[4] In an unsolicited letter of November 15, 2010 the bargaining agent provided an amendment to its Form 9 position on the terms and conditions of employment that it wished to refer to arbitration. That letter corrected a typographical error and in doing so resolved the employer’s concern regarding clause 28.06. That letter and supporting material are attached as Schedule 4.

[5] By letter of November 23, 2010 the bargaining agent responded to the two other issues raised by the employer in its November 15, 2010 correspondence. That letter and supporting material are attached as Schedule 5.

[6] By letter of November 29, 2010 the PSLRB requested that the parties provide formal written submissions on the issues raised by the employer in relation to clause 20.02 and Pay.

[7] By letter of December 6, 2010 the employer provided its submission on the two issues. That letter and supporting material are attached as Schedule 6.

[8] By letter of December 15, 2010 the bargaining agent provided its submission on the two issues. That letter and supporting material are attached as Schedule 7.

[9] By letter of December 24, 2010 the employer provided its rebuttal response. That letter and supporting material are attached as Schedule 8.

[10] These matters were placed before me for my review and I have concluded the following. With respect to clause 20.02, having reviewed the documentation received from both parties, I conclude that the employer's contention that the union's proposal on clause 20.02 was no longer an outstanding issue in dispute is founded.

[11] Information provided by the employer illustrates, in considerable detail, the treatment of clause 20.02 during the course of bargaining. The union proposal was introduced on April 27, 2010. The union position was modified on April 28<sup>th</sup> and twice on April 29<sup>th</sup>, including, the Employer claims, its ultimate withdrawal as part of a package of resolved items. Also among the evidence provided by the Employer was a jointly-signed document prepared at the conclusion of the April 29<sup>th</sup> session listing the outstanding non-monetary proposals. Clause 20.02 did not appear on that list, nor was it identified as outstanding, according to the Employer and supported by their submitted notes, at the parties' subsequent July 2010 bargaining session. Although the union argued that it had never withdrawn its proposal the only document it submitted in support of that position, an internal union bargaining report prepared after the April 27-29 session, does not include any reference to clause 20.02 in its listing of outstanding proposals. Accordingly, clause 20.02 shall be excluded from these Terms of Reference.

[12] On the issue of pay, it is clear that the union first communicated its position on pay during the morning of July 15, 2010. This is reflected in a document submitted by the Employer and titled "Union response to the employer proposals on monetary issues". That document is also clearly labelled at the top of the first page as "without prejudice". The parties both acknowledge that further "without prejudice" discussions on the subject of pay occurred between the negotiators on that same day. It is also evident from the information provided that the union's pay proposal formally submitted as part of this Request for Arbitration is different both in style and

substance from that discussed at the bargaining table. I conclude that, although different proposals may have been advanced during the course of formal and informal discussions, pay remains a matter in dispute between the parties. As such, the issue of pay is hereby included in the list of items to be determined by the arbitration board.

[13] Accordingly, pursuant to section 144 of the *Public Service Labour Relations Act* (the “*Act*”), the matters in dispute on which the arbitration board shall make an arbitral award are those set out in Schedules 1 to 8 inclusive, which are attached to this decision with the exception of clause 20.02 and clause 28.06.

[14] 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.

February 9, 2011.

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