Date: 20120614

File: 485-HC-46

Citation: 2012 PSLRB 68

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 Communications, Energy and Paperworkers Union of Canada, as bargaining agent,
and the House of Commons, as employer,
in respect of the Technical Group bargaining unit

Indexed as
Communications, Energy and Paperworkers Union of Canada v. House of Commons

ARBITRAL AWARD

Before: Linda Gobeil, Dale Clark and Roch Paquin, deemed to form the Public Service Labour Relations Board

For the Bargaining Agent: David Migicovsky, counsel

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
April 16 and 17, 2012

I. Application before the Board

[1] On January 13, 2011, the Communications, Energy and Paperworkers Union (CEP or "the bargaining agent") served notice to bargain on the House of Commons ("the employer") on behalf of the Technical Group bargaining unit under section 37 of the *Parliamentary Employment and Staff Relations Act (PESRA)*. The last collective agreement for the bargaining unit expired on March 31, 2011.

[2] The bargaining unit is composed of approximately 85 to 90 employees in the Information Services area of the employer namely the IT Service Desk and the Multimedia Services.

[3] Negotiations sessions between the parties took place on April 11, 12 and 14 and June 2, 2011.

[4] By letter dated August 4, 2011, pursuant to section 50 of the *PESRA*, the bargaining agent requested arbitration for the bargaining unit consisting of all employees of the employer in the Technical Group. The CEP's letter also included a list of the terms and conditions of employment it wished to have referred to arbitration.

[5] On August 24, 2011, the employer responded to the CEP's proposals and listed the terms and conditions that it wished to have referred to arbitration.

[6] The terms of reference for the arbitration board ("the Board") were forwarded by the Chairperson of the Public Service Labour Relations Board on October 14, 2011 to the board members.

[7] The board members met on March 29, 2012.

[8] On April 5, 2012, the parties provided the Board with their respective submissions.

[9] At the start of the hearing on April 16, 2012, the parties informed the Board that the proposals about the following collective agreement provisions were either agreed to and signed off or withdrawn:

Article 3.1
Article 4.1
Article 4.3
Article 11.1.4

Article 11.1.5
Article 11.1.8
Article 11.1.9
Article 11.4.1
Article 13.1
Article 13.3.3
Article 16.9
Article 16.9.1
Article 22.4
Appendix “B”
Appendix “C”

[10] The Board was informed that the following bargaining agent proposals remain in dispute:

Article 2.3:	Recognition
Article 11.1.2(b):	Employee Benefits
Article 11.12:	Personal Leave
Article 12.2(a):	Transportation
Article 13.2.1:	Annual Leave
Articles 16.6.1 and 16.6.2:	Overtime
Article 16.8.1:	Time Off in Lieu
Article 16.12:	Shift Premium
Article 16.15:	Weekend Premium
Article 17.3:	Second Meal Period
Article 17.4:	Subsequent Meal Period
Article 20.1:	Effective date and Duration
Articles 21.3 and 21.3.1(b):	Rate of pay on Appointment
Article 21.7:	Temporary Premium
Appendix “A”:	Rates of Pay

[11] As for the employer’s proposals, the Board was informed that the following remain in dispute:

Article 1.2:	Continuous Employment
Article 11.2(a), (b) and (c):	Health and Insurance Benefits
Article 14.4:	Severance Pay
Article 20.1:	Effective date and duration
Appendix “A”:	Rates of Pay

II. The award

[12] The bargaining agent and the employer framed their submissions in light of the considerations to be applied by an arbitration board set out as follows in section 53 of the *PESRA*:

. . .

> ***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.*

. . .

In rendering this award, the Board considered the provisions of the *PESRA*.

A. <u>Article 1.2: Continuous employment</u>

[13] The employer proposed to modify the definition of "continuous employment" as a result of the coming into force of the *Public Service Modernization Act* s.c. 2003, c. 22, on April 1, 2005. The bargaining agent opposed the proposal, among other reasons, on the basis that members of the bargaining unit may lose their seniority rights when it comes to scheduling annual leave. The Board has determined that the employer's proposal is not to be included in the arbitral award and that article 1.2 of the collective agreement is renewed.

B. <u>Article 2.3: Recognition</u>

[14] The bargaining agent proposed that term employees become indeterminate after three years. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal is not to be included in the arbitral award.

C. <u>Article 11.1.2(b)(iv): Employee benefits</u>

[15] The bargaining agent proposed that article 11.1.2(b) be amended to include two hours with pay to be granted to employees to attend medical appointments. The employer opposed the proposal. The Board has determined that the proposal will be included in the arbitral award as follows:

> *11.1.2(b)(iv) an employee shall be granted 2 hours per visit with pay to attend medical appointments. Any hours spent at a medical appointment beyond the 2 hours may, at the employee's discretion, be deducted from the employee's sick time.*

D. <u>Article 11.2: Health and insurance benefits</u>

[16] The employer proposed to make the calculation of insurance benefits less time consuming and wishes to standardize this article with others in the collective agreement. The bargaining agent opposed the proposal. The Board has determined that the employer's proposal is not to be included in the arbitral award and that article 11.2 is renewed.

E. <u>Article 11.12: Personal leave</u>

[17] The bargaining agent proposed one day of leave for personal needs to be taken for family emergencies. The bargaining agent submitted that this is a trend in the core public service and that the terms and conditions for the management group at the employer provide for a personal leave day. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal is not to be included in the arbitral award.

F. <u>Article 12.2(a)(ii): Transportation</u>

[18] The bargaining agent proposed that the current article, which provides employees with taxi fare when they work overtime after 22:00 be modified to allow for taxi fare after working four hours of overtime and leaving work after 21:00. The bargaining agent submitted that it is a safety issue. The employer opposed the proposal. The Board has determined that article 12.2(a)(ii) will be amended as follows:

> *12.2(a)(ii) works four (4) hours of overtime and leaves work after 21:00 hours.*

G. Article 13.2.1: Annual leave

[19] The bargaining agent proposed that the number of years of service required for earning two and one-half days of annual leave per month be reduced from 28 years to 25 years. The bargaining agent also proposed that employees receive 3 days of annual leave credits per month when they have more than 30 years of service. The employer opposed the proposals. The Board has determined that the bargaining agent's proposals will not be included in the arbitral award.

H. Article 14.4: Severance pay

[20] The employer proposed to amend the severance pay article by enhancing severance pay in a situation of a first layoff and to offer pro-rated severance pay for partial years of continuous employment for indeterminate employees.

[21] The employer also proposed that severance pay, for retirements or resignations, will cease to accumulate on the date following the arbitral award. Under that proposal, employees would then have the option of maintaining their current severance entitlements, cashing them out in part or in total, or keeping them until their last day of employment with the employer.

[22] The employer's proposal is essentially based on an argument of economic restraint and on the fact that important recent voluntary settlements in the federal public administration involving different bargaining agents, including the CEP and the Treasury Board, included the same modifications to collective agreement severance pay provisions. The employer argued that its proposal would only continue the trend already established with recent settlements and that, therefore, the Board should maintain comparability with the federal public administration. The employer submitted that the principle of "replication" is of paramount importance and that an arbitral award should replicate the results which would have been reached had the parties been successful at negotiating a settlement. It submitted that it would never have agreed at the bargaining table to anything else than what it proposes; a proposal which other unions have agreed to voluntarily with the Treasury Board or the Canada Revenue Agency (CRA) in recent settlements. The employer also submitted that approximately 1000 of its unrepresented employees have language in their terms and conditions of employment similar to the employer's severance pay proposal.

[23] As for improvements included in the settlements reached by other bargaining agents with the Treasury Board or the CRA in conjunction with an agreement on the employer's proposal on severance, the employer argued that those improvements were agreed to in order to address recruitment or retention issues or internal relativity problems. The employer maintained that no evidence has been presented to support that this award must address recruitment or retention issues, internal relativity problems, or any other issues.

[24] The bargaining agent strongly opposed the employer's proposal and submitted that the employer's proposal to amend the severance pay article, which has been part of the collective agreement for 25 years, is fundamental and that it constitutes a major breakthrough. Therefore, the bargaining agent argued that the Board should refrain from making a determination on such an important issue because it should be dealt with at the bargaining table. The bargaining agent also submitted that the federal government's statement about the country's economic situation is irrelevant to this Board's determination and that the employer has not demonstrated a need for the proposed change.

[25] The bargaining agent argued that the replication principle should apply in the present case. The bargaining agent submitted that, although some negotiated collective agreements have included language similar to the severance pay proposal of the employer, other collective agreements have been reached without such a modification. In addition, other negotiations continue where the issue of severance pay has yet to be resolved. Therefore, this Board cannot conclude that a trend exists. Furthermore, the bargaining agent argued that, for comparability, the employer is not the Treasury Board and that, although the work performed by the Computer Science Group (CS) in the federal public administration is similar to that of the employees in the CEP bargaining unit, it is not quite the same.

[26] As for the improvement proposed by the employer about the first layoff of employees, the bargaining agent made it clear that it rejects that proposal since there are no layoffs in the bargaining unit. Moreover, the bargaining agent did not see the employer's proposal as an improvement.

[27] As for the employer's argument that no retention or recruitment problems exist within the bargaining unit, the bargaining agent argued that no evidence supports that allegation and that that argument is not a reason to offer less to the bargaining unit

employees. The bargaining agent also argued that the employer's proposal is radical, that it represents a serious financial loss over the years for the bargaining unit employees and that, although other settlements have included a provision similar to the employer's severance pay proposal, those agreements included other improvements. In this case, the employer did not offer other improvements.

[28] The Board has determined since 2010, collective agreements which cover a very large number of employees in similar employment in the federal public administration have been concluded with the employer's proposed severance pay changes.

[29] In addition, the Board noted that over 1000 of non -represented employees of the House of Common are now subject to the same term and condition on severance pay as the one proposed by the employer.

[30] The Board concluded that including the employer's proposal would not constitute a major breakthrough since recent collective agreements have been signed in the federal public administration, including one signed recently on February 14, 2012 between the CEP and the Treasury Board for the Non-Supervisory Printing Services, containing a provision similar to the employer's severance pay proposal.

[31] In addition, the Board noted that the collective agreements signed by other bargaining agents and other employers in the federal public administration included groups with comparable terms and conditions of employment as the employees in the Technical Group. For instance, in March 2012, the CRA and the PIPSC reached for its AFS Group, which includes members of the CS Group, a collective agreement that included a proposal similar to that of the proposed by the employer in the present case.

[32] Finally, as for the bargaining agent's argument that four other collective agreements have been reached since 2010 without the employer's severance pay proposal, the Board noted that only one of the collective agreement, namely that between the CRA and the PSAC, covered employees in the federal public administration. The other three covered Crown corporations or private sector organizations.

[33] Therefore, the Board has determined that article 14.4 will be amended as follows:

14.4– Severance Pay

Effective the day following the arbitral award article 14.4 (b) and (c) are deleted from the collective agreement.

Under the following circumstances and subject to clause 14.4.1, an employee shall receive severance benefits calculated on the basis of the employee's weekly rate of pay:

(a) Lay-off

(i) On the first (1st) lay-off, for the first (1st) complete year of continuous employment, two (2) weeks' pay, or three (3) weeks' pay for employees with ten (10) or more and less than twenty (20) years of continuous employment, or four (4) weeks' pay for employees with twenty or more years of continuous employment, plus one (1) week's pay for each additional complete year of continuous employment, and in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365).

(ii) On the second (2nd) or subsequent lay-off, one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), less any period in respect of which the employee was granted severance pay under subparagraph (a)(i).

(b) Resignation

On resignation, subject to Article 14.4 (c) and with ten (10) or more years of continuous employment, one-half (1/2) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) weeks' pay. Notwithstanding the above, for employees hired prior to July 8, 1985 the amount of severance pay shall be one (1) week's pay for each completed year of continuous employment with a maximum benefit of twenty-eight (28) weeks' pay.

(c) Retirement

On retirement, when an employee is entitled to an immediate annuity or to an immediate annual allowance under the Public Service Superannuation Act, one (1) week's pay for

each complete year of continuous employment with a maximum benefit of thirty (30) weeks.

(d) Death

If an employee dies, there shall be paid to the employee's estate, one (1) week's pay for each complete year of continuous employment to a maximum of thirty (30) weeks' pay, regardless of any other benefit payable.

(e) Rejection on Probation

On rejection on probation, when an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of rejection during a probationary period, one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-seven (27) weeks.

f) Termination for Incapacity or Incompetence

When an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of termination for incapacity or incompetence, one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-eight (28) weeks.

14.4.1

14.4.1 Severance benefits payable to an employee under this Article shall be reduced by any period of continuous employment in respect of which the employee was already granted severance pay, retiring leave or a cash gratuity in lieu of retiring leave. Under no circumstances can the maximum severance pay under this Article 14.4 be pyramided.

For greater certainty, payments made pursuant to 14.4.3-14.4.6 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause.

14.4.2

14.4.2 An employee who resigns to accept an appointment with another organization listed under article 1.2 shall be paid all severance payments resulting from the application of 14.4 b) and 14.4.3 – 14.4.6.

14.4.3 Severance Termination

(a) Subject to 14.4.1 above, indeterminate employees on the day following the arbitral award shall be entitled to a

severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred sixty-five (365), to a maximum of thirty (30) weeks.

(b) Subject to 14.4.1 above, term employees on (day following the arbitral award) shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks.

Terms of Payment

14.4.4. Options

The amount to which an employee is entitled shall be paid, at the employee's discretion, either:

(a) as a single payment at the rate of pay of the employee's substantive position as of day following the arbitral award, or

(b) as a single payment at the time of the employee's termination of employment, based on the rate of pay of the employee's substantive position at the date of termination of employment, or

(c) as a combination of (a) and (b), pursuant to 14.4.5 (c).

14.4.5 Selection of Option

(a) The Employer will advise the employee of his or her years of continuous employment no later than three (3) months following the official date of the arbitral award.

(b) The employee shall advise the Employer of the term of payment option selected within six (6) months from the official date of the arbitral award.

(c) The employee who opts for the option described in 14.4.4 (c) must specify the number of complete weeks to be paid out pursuant to 14.4.4 (a) and the remainder to be paid out pursuant to 14.4.4 (b).

(d) An employee who does not make a selection under 14.4.5 (b) will be deemed to have chosen option 14.4.4 (b).

14.4.6 Appointment from a Different Bargaining Unit

This clause applies in a situation where an employee is appointed into a position in the Technical Group bargaining

unit from a position outside the Technical Group bargaining unit where, at the date of appointment, provisions similar to those in 14.4 (b) and (c) are still force, unless the appointment is only on an acting basis.

(a) Subject to 14.4.1 above, on the date an indeterminate employee becomes subject to this Agreement after the day following the arbitral award, he or she shall be entitled to severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred sixty-five (365), to a maximum of thirty (30) weeks, based on the employee's rate of pay of his substantive position on the day preceding the appointment.

(b) Subject to 14.4.1 above, on the date a term employee becomes subject to this Agreement after the day following the arbitral award, he or she shall be entitled to severance payment payable under 14.4.4. (b), equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks, based on the employee's rate of pay of his substantive position on the day preceding the appointment.

(c) An employee entitled to a severance payment under subparagraph (a) or (b) shall have the same choice of options outlined in 14.4.4, however the selection of which option must be made within three (3) months of being appointed to the bargaining unit.

I. Articles 16.6.1 and 16.6.2: Overtime

[34] The bargaining agent proposed that employees be compensated at double time after working two hours of overtime instead of after three hours.

[35] The bargaining agent also proposed that employees be entitled to overtime to the end of the last half-hour in which work is performed instead of to the last 15 minutes. The employer opposed the proposals. The Board has determined that the bargaining agent's proposals will not be included in the arbitral award and that the articles 16.6.1 and 16.6.2 of the collective agreement will be renewed.

J. Article 16.8.1: Time off in lieu

[36] The bargaining agent proposed a change to the article dealing with time off in lieu, to allow compensatory leave in lieu to be taken before September 30 of the next

year. The employer opposed the proposal. The Board has determined that article 16.8.1 will be amended as follows:

> *16.8.1 Compensatory leave in lieu not used by the end of the year or not authorized to be carried over, will be paid for in cash. Compensatory leave in lieu authorized to be carried over, shall be taken prior to September 30th of the next year.*

K. <u>Article 16.12(a): Shift premium</u>

[37] The bargaining agent proposed that article 16.12(a) be amended to increase the shift premium to $2.50. The employer is prepared to increase the shift premium to $2.25. The Board has determined that article 16.12(a) will be amended as follows:

> *16.12 (a) An employee will receive a shift premium of two dollars and twenty-five cents ($2.25) per hour for all hours worked between 1800hrs and 0600hrs. The premium will be paid following the first hour and for all subsequent hours between 1800hrs and 0600hrs.*
>
> . . .

L. <u>Article 16.15: Weekend premium</u>

[38] The bargaining agent proposed that article 16.15 be amended to increase the weekend premium to $2.50. The employer is prepared to increase the weekend premium to $2.25. The Board has determined that article 16.15 will be amended as follows:

> *16.15 Employees shall receive an additional premium of two dollars and twenty-five cents ($2.25) per hour for all regularly scheduled hours worked at straight-time rates on a Saturday and/or Sunday.*

M. <u>Article 17.3: Second meal period</u>

[39] The bargaining agent proposed that article 17.3 be amended to increase the second meal period amount to $15.00. The employer is prepared to increase the second meal amount to $11.50. The Board has determined that article 17.3 will be amended as follows:

> *17.3 An employee who works three (3) or more hours of overtime immediately following their regular scheduled hours of work shall be reimbursed their expenses for one (1) meal in the amount of eleven dollars and fifty cent ($11.50) except where free meals are provided. Reasonable time with pay [minimum thirty (30) minutes] to be determined by*

> *management, shall be allowed the employee in order that the employee may take a meal period at their place of work.*

N. Article 17.4: Subsequent meal periods

[40] The bargaining agent proposed that article 17.4 be amended to increase the subsequent meal periods amount to $15.00. The employer is prepared to increase the subsequent meal periods amount to $11.50. The Board has determined that article 17.4 will be amended as follows:

> *17.4 When an employee works overtime continuously extending four (4) hours or more beyond the period provided in 17.3, the employee shall be reimbursed for one (1) additional meal in the amount of eleven dollars and fifty cents ($11.50), except where free meals are provided. Reasonable time with pay [minimum thirty (30) minutes] to be determined by management shall be allowed the employee in order that the employee may take a meal period at their place of work.*

O. Article 20.01: Effective date and duration

[41] The bargaining agent proposed that, unless expressly stipulated, the provisions of the arbitral award should become effective on April 1, 2011 and that they should remain in force until March 31, 2014. The employer proposed that, unless expressly stipulated, the provisions of the arbitral award should become effective on the date of the award and that they should remain in force until March 31, 2014. The Board has determined that article 20.1 will be amended as follows:

> *20.1 Unless otherwise expressly stipulated, the provisions of this agreement shall become effective on the date of the arbitral award and shall remain in force until March 31, 2014.*

P. Articles 21.3 and 21.3.1(b): Rate of pay on appointment

[42] The bargaining agent proposed that an employee appointed to a position with a classification that has a maximum rate of pay be paid 10% or more for one level of advancement and an additional 15% or more for each subsequent level of advancement. The bargaining agent also proposed the elimination of article 21.3.1(b). The employer opposed the proposal. The Board has determined that this proposal will not be included in the arbitral award and that article 21.3 of the collective agreement is renewed.

Q. <u>Article 21.7: Temporary premium</u>

[43] The bargaining agent proposed to increase the temporary premium flat amount from $25 per day to $50 per day. The employer opposed the proposal. The Board has determined that article 21.7 will amended as follows:

> *21.7 Employees temporarily assigned by management to perform the duties of a higher classification shall receive in addition to their normal pay and other premiums a flat amount of thirty dollars ($30) per day of work or portion thereof. It is agreed that an employee shall not be entitled to receive this flat amount when the employee is assigned to provide relief during meal and break periods for up to two (2) hours per day. Where the temporary assignment exceeds five (5) working days, effective on the 6th day of the assignment, the employee shall receive acting pay for the duration of the period which the employee is assigned to perform the duties of a higher classification. Such pay is to be determined in accordance with clauses 21.3 and 21.3.1.*

R. <u>Appendix “A”: Rates of pay</u>

[44] The employer proposed economic increases of 1.5% on April 1, 2011, 1.5% on April 1, 2012 and 1.5% on April 1, 2013. However, the employer is prepared to offer 1.75% on April 1, 2011, 1.5% on April 1, 2012 and 2% on April 1, 2013 if its severance pay proposal is included in the arbitral award. The employer submits that would be similar to the economic increases agreed to in other settlements with the PIPSC and the PSAC that modified the severance pay article in a manner similar to the employer’s proposal. The employer maintained that no recruitment or retention problems exist within the bargaining unit and that no internal relativity issues justify any other improvements.

[45] The bargaining agent proposed economic increases of 4% on April 1, 2011, 4% on April 1, 2012 and 5% on April 1, 2013. The bargaining agent’s position is based on the Consumer Price Index as well as other factors, including labour market trends and wage settlements in the quasi-public sector and the federal public sector. Moreover, as for the employer’s proposal to increase its offer to 1.75%, 1.5% and 2% if its severance pay proposal is accepted, the bargaining agent maintained that this should be disregarded since it is based on the false premise that 1.5%, 1.5% and 1.5% is the norm.

[46] As was awarded above, the Board has accepted the employer's proposal on severance pay. The Board does not find that there are demonstrated recruitment and retention issues that require other improvements to the rates of pay.

[47] Therefore, the Board has determined that, the economic increase should be consistent with that negotiated by other bargaining units in the federal public administration. The Board awards economic increases of 1.75% effective April 1, 2011, 1.5 % effective April 1, 2012, and 2% effective April 1, 2013.

III. <u>General</u>

[48] The Board will remain seized of this matter for a period of three months from the date of this award in the event that the parties encounter any difficulties in its implementation.

June 14, 2012.

Linda Gobeil,
for the Public Service
Labour Relations Board