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Parliamentary Employment and Staff Relations Act

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 Senate of Canada, as employer,
in respect of the Operational Group of the Senate, except for employees in the Protective Services Sub-Group bargaining unit

Indexed as
Public Service Alliance of Canada v. Senate of Canada

ARBITRAL AWARD

Before: Michael Bendel, Kathryn Butler-Malette and Joe Herbert, deemed to form the Public Service Labour Relations Board

For the bargaining agent: Morgan Gay, Public Service Alliance of Canada

For the employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
July 19, 2013.

I. Introduction

1. By decisions dated September 27 and December 18, 2012, the Public Service Labour Relations Board ("the Board") established this arbitration board to resolve a dispute between the Public Service Alliance of Canada ("the bargaining agent") and the Senate of Canada ("the employer") in respect of all employees in the Operational Group of the Senate, except employees in the Protective Services Sub-Group. The bargaining agent had requested arbitration on July 6, 2012.

2. The arbitration board held a hearing in Ottawa on July 19, 2013, after conducting mediation between the parties on June 27. The parties were given full opportunity to present evidence and make submissions at the hearing. Written presentations by each party had been exchanged and communicated to the arbitration board a few days before the mediation, and were supplemented by further written materials and oral presentations at the hearing. Following the hearing, the arbitration board met to consider its award. In arriving at its award, the board examined the evidence and submissions of the parties in light of the factors listed in section 53 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2d Supp.) ("the *Act*").

3. The bargaining unit consists of approximately 96 employees. Most are engaged in Maintenance, with others working in Committee Support, Mail Services, Installations, Transport, Printing Services, and Trades. Most work shifts. About 20 are part-time employees.

4. The dispute relates to the terms of a new collective agreement for the period from October 1, 2011, to September 30, 2014. The parties were able to agree on the vast majority of the terms of the new collective agreement. However, six items remain outstanding:

    New article – Contracting Out
    Article 22.04 (b) – Sick Leave
    Article 27.04 (a) – Overtime
    Article 29.08 – Travelling Time
    Article 38.02 – Insurance Plans
    Appendix "A" – Pay Notes

New Article – Contracting Out

5. The bargaining agent proposed the following new provision:

   No employee shall be laid off as a result of contracting out of a function in whole or in part.

   The employer objected to this board's jurisdiction to grant the bargaining agent's request.

6. The employer's objection is based on subsections 5(3) and 55(2) of the *Act*, which read as follows:

   > ***5(3)*** *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.*
   >
   > …
   >
   > ***55(2)*** *No arbitral award shall deal with the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.*

7. According to the employer, the bargaining agent's proposal was barred by these two provisions since it would interfere with "the organization of the employer" and would establish "standards of lay-off". In support of its submissions on the jurisdictional issue, the employer referred to *National Association of Broadcast Employees and Technicians v. House of Commons*, [1988] C.P.S.S.R.B. No. 77, and to *Professional Institute of the Public Service of Canada v. Canadian Nuclear Safety Commission*, 2012 PSLRB 71. Reference was also made to the definition of the word "standard" in *Black's Law Dictionary* (5th edition, 1979).

8. The bargaining agent urged the board to read subsection 55(2) restrictively, in keeping with the decision of the Supreme Court of Canada in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007]

2 S.C.R. 391, which held that the *Canadian Charter of Rights and Freedoms* contained a procedural right to collective bargaining.

9. In our view, the *National Association of Broadcast Employees and Technicians* case is distinguishable. The bargaining proposal considered by the Board in that case would have prevented the employer from engaging in contracting out or using outside facilities or personnel to do bargaining unit work. The bargaining agent's proposal in the present case, on the other hand, would not deprive the employer of the power to contract out, but would merely prevent it from laying off employees as a result of contracting out. In practical terms, there is perhaps little or no distinction between the proposal in the earlier case and the one in the present case, since, if the employer were prevented from laying off employees who were surplus to its needs, the contracting out would likely be of no interest to it. However, subsection 5(3) of the *Act* has the effect of removing from our jurisdiction only proposals that would "affect the right or authority of an employer to determine the organization of the employer", and under the bargaining agent's proposal the employer's "right or authority" in this regard would be wholly unaffected.

10. Subsection 55(2), on the other hand, does preclude us from including the bargaining agent's proposal in the award, in our view. The term "standards…governing the…lay-off…of employees" is certainly broad enough to cover a proposed prohibition on lay-offs, even a limited prohibition as in this case. If the definition of the term "lay-off" is a "standard" governing lay-off, as was held in *Professional Institute of the Public Service of Canada v. Canadian Nuclear Safety Commission*, it is impossible to conclude that a prohibition on lay-offs would not constitute a "standard" within the meaning of subsection 55(2). We do not disagree with the bargaining agent's submission that we should read subsection 55(2) restrictively in light of the Supreme Court of Canada decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*. However, to find that we have jurisdiction over the bargaining agent's proposal would require us to ignore the plain language of subsection 55(2), something we are not authorized to do in the absence of a constitutional challenge.

11. We are therefore satisfied that we have no jurisdiction to include the bargaining agent's proposal in the award.

Article 22.04 (b) – Sick Leave

12. The bargaining agent has proposed a new Article 22.04 (b) to read as follows:

> *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.*

The employer opposes this change.

13. We have decided to accept the bargaining agent's proposal.

Article 27.04 – Overtime

14. The bargaining agent has proposed that Article 27.04 (a) be amended to read as follows (with the underlined words being added and the struck out words being deleted):

> *An employee who works two (2) or more hours of overtime,*
>
> *(i) immediately before his scheduled hours of work and who has not been notified of the requirement prior to the end of his last scheduled work period,*
>
> *or*
>
> *(ii) immediately following his scheduled hours of work,*
>
> *or*
>
> *(iii) on a day of rest or designated paid holiday, and when the hours of overtime on the day of rest or holiday are not predetermined, shall be reimbursed for one (1) meal in the amount of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00), except where free meals are provided or when he is being compensated on some other basis. Reasonable time with pay, to be determined by management, shall be allowed the employee in order that he may take a meal break either at or adjacent to his place of work.*

It has also proposed that the meal allowance in Article 27.04 (b) be increased from $10.00 to $15.00.

15. The employer opposes these changes, but suggests that the meal allowance be raised to $11.00.

16. We have decided to increase the meal allowance, in Article 27.04 (a) and (b), to $11.50 and to reject the other proposed changes.

Article 29.08 – Travelling Time

17. The employer has proposed an amendment to Article 29.08 so that it reads as follows:

> *Employees required to work unscheduled overtime beyond 20:00 hours when no other means of transportation are available are entitled to receive free transportation back to their residence providing they have not reported to work using their privately owned vehicle.*

The bargaining agent has opposed the change.

18. We have decided to reject the employer's proposal.

Article 38.02 – Insurance Plans

19. The employer has proposed that Article 38.02 be amended as follows:

> *Notwithstanding clause 38.01, the Employer shall extend any improvements made in respect of ~~provincial health insurance,~~ the public service health care plan and Disability Insurance as well as the dental plan during the term of this Agreement to employees in the bargaining unit.*

The bargaining agent objects to this proposal.

20. We accept the employer's proposed amendment.

Appendix "A" – Pay Notes

21. The employer has proposed the deletion of Pay Notes A.1, A.2, A.3, A.4 and A.5, which read as follows:

A.1 Rates of Pay

Rates of pay applicable to jobs evaluated under the new classification structure are found in Appendix "A" of the collective agreement.

A.2 Rates of Pay on Conversion to a Level with an Equal or a Higher Maximum Rate of Pay

On conversion to a level under the new classification structure having an equal or a higher maximum rate of pay, the employee shall be paid at the same rate of pay as the rate of pay previously received.

If the employee's salary on the day prior to the classification conversion is less than the minimum of the salary range established for his new classification level, the employee's salary shall be adjusted upward to the minimum of that new salary range.

A.3 Pay Increment Date

On conversion, the employee will retain the pre-conversion increment date (anniversary date) unless the employee receives an increase on conversion equal to or greater than the amount that would have been received on promotion. In this instance, the new increment date shall be established from the date of conversion.

When an employee's pre-conversion increment date is the same date as the date of the conversion, the increment shall be applied to the employee's salary prior to conversion taking place.

A.4 Incremental Increases

On the employee's increment date (anniversary date) an employee shall be entitled to receive an incremental increase of four percent (4%), or such percentage increase as would bring the employee's salary to the maximum of his job level, whichever is the lesser.

The salary increment date for an employee upon promotion, demotion or from an external appointment, shall be the anniversary date of such action.

A.5 Acting Positions

Employees who occupy acting positions on the date of conversion will have their rate of pay recalculated as follows:

- *Where the substantive position and the acting position are converted to a different job level in the new classification structure, employee salaries are converted on the basis of the substantive position and a new salary rate for the substantive position is determined. Using this new salary rate, the acting salary will be determined by applying the rules for calculating pay upon promotion. Should this converted acting salary be less than*

the previous acting salary, the employee will maintain the former higher acting salary for the duration of the acting assignment.

- *Where the substantive position and the acting position are converted to the same job level in the new classification structure, the employee no longer meets the definition of an acting appointment. However, should the acting salary of the former classification be higher than the employee's substantive salary at the point of conversion, the employee will continue to receive the higher acting salary for the duration of the acting assignment.*

The bargaining agent opposes its deletion.

22. We have decided to accept the employer's proposal.

October 10, 2013

Michael Bendel,
for the Board