

**Date:** 20130415

**File:** 485-HC-50

**Citation:** 2013 PSLRB 41



*Parliamentary Employment  
and Staff Relations Act*

Before the Public Service  
Labour Relations Board

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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 the Operational Group bargaining unit

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

**ARBITRAL AWARD**

***Before:*** Steven B. Katkin, Jacques Sabourin and Joe Herbert, deemed to form the  
Public Service Labour Relations Board

***For the Bargaining Agent:*** Morgan Gay and David Alexandre Leblanc, Public  
Service Alliance of Canada

***For the Employer:*** Carole Piette, counsel

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Heard at Ottawa, Ontario,  
February 6, 2013.

**I. Application before the Board**

[1] On April 12, 2011, the Public Service Alliance of Canada (“the bargaining agent”) served notice to bargain on the House of Commons (“the employer”), on behalf of the Operational Group bargaining unit (“the bargaining unit”), 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 bargaining unit expired on April 20, 2011.

[2] The bargaining unit comprises approximately 334 employees. The bargaining unit certificate was issued by the Public Service Staff Relations Board on May 8, 1987.

[3] The bargaining unit is composed of three subgroups: Restaurant Services, Printing Services and Operational Services. Functions performed by bargaining unit members include food preparation, distribution and serving; dishwashing; procurement; cashier duties; bartending; waiting; press operations; electronic printing; bindery operations; technical support; cleaning; repairs and maintenance; shipper-receiver duties; messenger duties; transportation services; trades; and material handling.

[4] The parties met for eight negotiation sessions between September 19, 2011 and April 30, 2012. On June 26, 2012, the bargaining agent filed for arbitration under section 50 of the *PESRA*. The employer submitted its additional matters in dispute on July 6, 2012. On August 15, 2012, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration. On August 27, 2012, the employer submitted its comments to the bargaining agent’s position of August 15, 2012 and raised an objection with respect to the bargaining agent’s proposal “Appendix xx - Gratuities - Catering.” In its objection, the employer relied on subsection 55(2) of the *PESRA*, stating that this matter was never the subject of negotiations between the parties and therefore could not be dealt with by the arbitration board. On August 30, 2012, the bargaining agent provided its position on the employer’s comments of August 27, 2012. The bargaining agent stated that the proposal “Appendix xx - Gratuities - Catering” was identical to the proposal that was tabled with the employer the morning of April 30, 2012.

[5] The terms of reference for the arbitration board deemed to form the Public Service Labour Relations Board (“the Board”) were forwarded to the Board members by the

Chairperson of the Public Service Labour Relations Board on November 7, 2012. The parties' respective submissions were received on January 25, 2013.

[6] At the outset of the hearing on February 6, 2013, the parties informed the Board that the proposals concerning the following collective agreement provisions were either agreed to and signed off or withdrawn:

Article 18	
Article 38.01(k)	
Article 41.02:	Layoff order (new)
Article 44:	Duration
Article XX:	Training (new)
Appendix B-7	
Appendix E:	Direct Deposit (new)
Appendix F	

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

Article 7.02:	Employee Representatives
Article 7.04:	24-Hour Notice to Supervisor for Union Business
Article 7.05:	Time off with Pay for Local President (new)
Article 19.01:	Designated Paid Holidays
Article 20.12:	Leave with Pay for Family-Related Responsibilities
Article 20.16:	Marriage Leave with Pay
Article 21.01:	Sick Leave Credits
Article 21.09:	Medical Certificates (new)
Article 24.21:	Transportation
Article 35:	Health and Safety
Article 37.02:	Trade Services Wash-up Time (new)
Article 38.01:	Part-time Employees
Article 40:	Seniority
Article XX.01:	Social Justice Fund (new)
Appendix B:	Uniform Entitlements
Appendix E:	Seasonal Certified Indeterminate Employees
Appendix J:	Assignment for Operations Workers in the Operations Subgroup
Appendix A:	Wage Grid Adjustments and Economic Increases
Appendix XX:	Parking (new)
Appendix XX:	Bilingual Bonus (new)
Appendix XX:	Licensing in Transportation Services (new)
Appendix XX:	Gratuities - Catering (new)

[8] The Board was informed that the following employer proposals remain in dispute:

Article 19.05(b):	Rate of Pay for Designated Paid Holidays
Article 23:	Severance Pay
Article 31.04:	Suspension and Discipline
Appendix E:	Seasonal Certified Indeterminate Employees

## Appendix A: Wage Grid Adjustments and Economic Increases

**II. The Award**

[9] In rendering this award, the Board considered the factors required by section 53 of the *PESRA*, which reads as follows:

*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.*

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

*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 as follows:

*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, my decision constitutes the Board's arbitral award.

**A. Article 7.02: Employee Representatives**

[13] The bargaining agent proposed that the current article, which provides for mutual consultation between the employer and the bargaining agent for the purposes of determining the jurisdiction of employee representatives, be amended to grant the bargaining agent sole responsibility to determine the jurisdiction of employee representatives. The employer opposed the proposal. The Board has determined that the current article shall remain unchanged.

**B. Article 7.04: 24-hour Notice to Supervisor for Union Business**

[14] The bargaining agent proposed that the current article be amended to eliminate the requirement that employee representatives obtain the permission of their immediate supervisors 24 hours before leaving work to carry out their responsibilities. The employer opposed the proposal. The Board has determined that article 7.04 will be amended as follows:

*7.04 Except for cases of an urgent nature, a representative shall obtain the permission of their immediate supervisor before leaving their work to investigate employee complaints, to meet with local Management for the purpose of dealing with grievances and to attend meetings called by Management and for any other meetings or hearings specified in Article 12. Permissions provided in this clause shall not be unreasonably withheld. Where practicable, the representative shall report back to their supervisor before resuming their normal duties.*

**C. Article 7.05: Time off with Pay for Local President (new)**

[15] The bargaining agent proposed that the president of its local be granted paid time off to carry out his or her duties. The employer objected to the proposal. The Board has determined that the proposal should not be included in the arbitral award.

**D. Article 19.01: Designated Paid Holidays**

[16] The bargaining agent proposed that article 19.01 be amended to add Family Day to the enumerated designated paid holidays. The employer opposed the proposal. The Board has determined that the existing article shall remain unchanged.

**E. Article 19.05(b): Rate of Pay for Designated Paid Holidays**

[17] Among other things, the current article provides that an employee working on a holiday is paid double time when the holiday is contiguous to a day of rest. The employer proposed that the article be amended to require that the day of rest be the employee's second day of rest. The bargaining agent opposed this proposal. The Board has determined that the current article shall remain unchanged.

**F. Article 20.12: Leave with Pay for Family-Related Responsibilities**

[18] The bargaining agent proposed to increase the total leave with pay that may be granted under article 20.12 from the current five to eight days. The employer opposed the proposal. The Board has determined that the current article shall remain unchanged.

**G. Article 20.16: Marriage Leave with Pay**

[19] The bargaining agent proposed to delete the existing marriage leave with pay provision and replace it with a one-time entitlement of 35 hours of vacation leave with pay. The employer opposed this proposal.

[20] The Board has noted that the proposed amendment is consistent with the language the Library of Parliament agreed to in negotiations with the bargaining agent for all three bargaining units that it represents. In addition, the Senate of Canada agreed to the same language in negotiations with the Professional Institute of the Public Service of Canada. Furthermore, in a recent arbitral award concerning the Library of Parliament and the Canadian Association of Professional Employees,

2013 PSLRB 10, the employer informed the Board that it replaced the marriage leave provisions of the collective agreement with its other bargaining units by a one-time 35-hour paid vacation leave for all employees, married or not, whether or not they already received marriage leave in the past. Moreover, bargaining agents negotiated the same language with the Treasury Board for the core public service. The Board has determined that, in the circumstances, the current wording of article 20.16 will be deleted (shown with strike-through) and that a new provision, article 18.14, will be added to article 18 (Vacation Leave with Pay) as follows:

~~20.16 Marriage Leave with Pay~~

~~(a) — After the completion of one (1) year's continuous employment at the House of Commons, and providing an employee gives the Employer at least five (5) working days' notice, the employee shall be granted five (5) consecutive working days' leave with pay for the purpose of getting married.~~

~~(b) — For an employee with less than two (2) years of continuous employment, in the event of termination of employment for reasons other than death or lay-off within six (6) months after the granting of marriage leave, an amount equal to the amount paid the employee during the period of leave will be recovered by the Employer from any monies owed the employee.~~

18.14 One-time Vacation Leave Credit

(a) Employees with less than two (2) years of continuous service and all new employees shall be credited a one-time entitlement of thirty-five (35) hours of vacation leave with pay upon reaching two years of continuous House of Commons service.

(b) Transitional Provisions

Employees with more than two years of continuous House of Commons service shall be credited a one-time entitlement of thirty-five (35) hours of vacation leave with pay.

(c) The vacation leave credits provided in clauses 18.14 (a) and (b) above shall be excluded from the carry-over of vacation leave provisions stipulated in clause 18.08.

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**H. Article 21.01: Sick Leave Credits**

[21] The bargaining agent proposed to amend article 21.01 by increasing the monthly sick leave credits from the current 8.75 hours to 9.92 hours. The employer proposed to maintain the status quo. The Board has determined that the current article shall remain unchanged.

**I. Article 21.09: Medical Certificates (new)**

[22] The bargaining agent proposed to introduce a clause providing that an employee may be asked to produce a medical certificate only for periods of absence in excess of three consecutive days. The employer opposed this proposal. The Board has determined that the proposal should not be included in the arbitral award.

**J. Article 23: Severance Pay**

[23] The employer proposed to amend the severance pay provisions by, among other things, enhancing severance pay in situations of a first layoff and the deletion of severance pay for retirements and resignations. Severance pay would continue to accumulate for reasons of layoff, rejection on probation, death, layoff and termination for incapacity or incompetence. In exchange for the elimination of severance pay for retirement and resignation, the employer offered additional increases of 0.25% in year 1 and 0.5% in year 3 of a 3-year agreement. The employer's offer is part of a broad trend in other negotiated settlements or arbitral awards in the federal public service. The bargaining agent opposed the employer's proposal. The Board has determined that the employer's proposal will be included in the arbitral award and that article 23 will be amended as follows:

*ARTICLE 23: SEVERANCE PAY*

*Effective [day following the arbitral award] Article 23.01 (b) & (d) are deleted from the collective agreement.*

*23.01 Under the following circumstances and subject to clauses 23.02, 20.09 (d), 20.11 (e) and 20.10 (e), an employee shall receive severance benefits calculated on the basis of their weekly rate of pay:*

*(a) Lay-off*

*(i) ~~On the first lay-off two (2) weeks' pay for the first complete year of continuous employment and one (1) week's~~*



~~pay for each additional complete year of continuous employment.~~

(i) On the first (1<sup>st</sup>) lay-off, for the first (1<sup>st</sup>) 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 (20) 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 second or subsequent lay-off one (1) week's pay for each complete year of continuous employment less any period in respect of which the employee was granted severance pay under 23.01(a)(i) above.~~

(ii) On the second (2<sup>nd</sup>) 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 paragraph (a)(i).

~~(b) — Resignation~~

~~On resignation, subject to clause 23.01(d) and with ten (10) or more years of continuous employment, one (1) week's pay for each complete year of continuous employment with a maximum of twenty-eight (28) weeks' pay.~~

(c) 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' pay.

~~(d) — Retirement~~

~~On retirement, when an employee is entitled to an immediate annuity under the Public Service Superannuation Act or when the employee is entitled 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' pay.~~

(e) *Death*

*In the event of an employee's death, 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.*

(f) *Termination for Incapacity*

*The Employer agrees that an employee terminated from employment for incapacity shall, on termination of their employment, be entitled to severance pay on the basis of one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-eight (28) weeks' pay.*

*23.02 (a) For the purpose of this Article, all continuous employment shall count for the purpose of calculating severance pay.*

*(b) The amount of severance pay shall be reduced by any period in respect of which the employee was already granted severance pay, retirement leave, or a cash gratuity in lieu thereof.*

*23.03 The weekly rate of pay referred to in the above clauses shall be the weekly rate of pay to which the employee is entitled for the classification prescribed in the employee's certificate of appointment on the date of the termination of the employee's employment.*

*For greater certainty, payments made pursuant to 23.04 to 23.08 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause.*

*23.04 An employee who resigns to accept an appointment with an organization listed in Schedule V of the Financial Administration Act shall be paid all severance payments resulting from the application of 23.01 (b) or 23.04 to 23.08.*

*23.05 Severance Termination*

*(a) Subject to 23.01(b) 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 and sixty-five (365), to a maximum of thirty (30) weeks.*

*(b) Subject to 23.01 (b) above, term 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, to a maximum of thirty (30) weeks.*

#### *Terms of Payment*

##### *23.06 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 [the 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 23.07 (c).*

##### *23.07 Selection of Option*

*(a) The Employer will advise the employee of his or her years of continuous employment no later than four (4) months following the 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 date of the arbitral award.*

*(c) The employee who opts for the option described in 23.06 (c) must specify the number of complete weeks to be paid pursuant to 23.06 (a) and the remainder to be paid out pursuant to 23.06 (b).*

*(d) An employee who does not make a selection under 23.07 (b) will be deemed to have chosen option 23.06 (b).*

##### *23.08 Appointment from a Different Bargaining Unit*

*This clause applies in a situation where an employee is appointed into a position in the Operational Group bargaining unit from a position outside the Operational Group bargaining unit where, at the date of appointment, provisions similar to those in 23.01 (b) and (d) are still in force, unless the appointment is only on an acting basis.*

(a) *Subject to 23.02 above, on the date an indeterminate employee becomes subject to this agreement after [the date of the arbitral award], he or she 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 and 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 23.02 above, on the date a term employee becomes subject to this agreement after [the date of the arbitral award], he or she shall be entitled to a severance payment payable under 23.06 (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 sub-paragraph (a) or (b) shall have the same choice of options outlined in 23.06, however the selection of option must be made within three (3) months of being appointed to the bargaining unit.*

#### **K. Article 24.21: Transportation**

[24] Currently, employees who have not been issued a House of Commons parking permit are entitled, subject to the employer's approval, to a taxi voucher or taxi fare if they either work overtime after public transportation is no longer available or work four hours of overtime and leave after 22:00.

[25] The bargaining agent's proposal seeks to remove the requirement for the employer's approval and to provide a taxi voucher or taxi fare to employees who have been issued a parking permit but do not have a vehicle on site. The bargaining agent further proposed to delete the requirement that an employee work four hours of contiguous overtime to be entitled to a taxi voucher or taxi fare. The bargaining agent also proposed to delete the wording giving the employer discretion to make exceptions depending on individual circumstances. The employer opposed the bargaining agent's proposals.

[26] In the Board's view, it is evident that this provision deals with the safety of employees working past 22:00. The Board has determined that the article shall remain unchanged, except that article 24.21(b) shall be amended as follows:

*(b) works overtime and leaves work after 2200 hours.*

**L. Article 31.04: Suspension and Discipline**

[27] The current provision provides that disciplinary documents on an employee's file are destroyed after two years providing that no further disciplinary action was recorded during that period. The employer proposed to amend article 31.04 by extending the two-year period by the length of any period of leave without pay greater than three months. The bargaining agent opposed the proposal. The Board has determined that the current article 31.04 shall remain unchanged.

**M. Article 35: Health and Safety**

[28] The bargaining agent proposed to delete the "reasonable" qualifier from the procedures the employer is required to carry out to protect the safety and health of its employees under the current article 35.01. The bargaining agent further proposed to change the Joint Occupational Safety and Health Committee's participation in safety and health investigations and inquiries systematic by removing the "within reason" qualifier from article 35.07. The Board has determined that the current article shall remain unchanged.

**N. Article 37.02: Trade Services Wash-up Time (new)**

[29] The bargaining agent sought to introduce a new clause in which a wash-up time of up to a maximum of 30 minutes would be provided to Trade Services employees before the end of their working day. The current provision provides for a wash-up time of up to a maximum of 10 minutes before the end of the working day for all bargaining unit employees. The employer opposed this proposal. The Board has determined that the proposal should not be included in the arbitral award.

**O. Article 38.01: Part-time Employees**

[30] The bargaining agent proposed the introduction of a new clause setting out that the following leave entitlements not be pro-rated for part-time employees:

bereavement leave with pay; leave with pay for family related responsibilities; court leave; personnel selection leave; marriage leave with pay; leave with or without pay for other reasons; election leave; and volunteer leave. The employer opposed this proposal.

[31] The Board has determined that article 38.01 will be amended by adding the following clause:

*(j) Notwithstanding clause (h) of this Article, there shall be no prorating of a "day" in Article 20.02, Bereavement Leave with Pay.*

The remaining elements of article 38.01 shall remain unchanged. As stated later in this award, the Board will remain seized for a period of three 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.

**P. Article 40: Seniority**

[32] Article 40.01 currently defines seniority as the length of an employee's continuous employment with the employer. The bargaining agent proposed that article 40.01 be amended so that the basis for calculating seniority is changed to the employee's date of hire with the employer and that seniority be calculated on a continuous basis. The bargaining agent also proposed that article 40.02 be amended such that seniority already accumulated by employees before the proposed change would not be lost.

[33] The bargaining agent submitted that clarification is required with respect to the date from which an employee's seniority is to be calculated, particularly concerning employees working shifts and those that are seasonal part-time employees. The bargaining agent stated that the employer has taken the date upon which an individual becomes an employee under the *PESRA* as the seniority date, rather than the latest date of hire. This has resulted in employees with different dates of hire having the same seniority date.

[34] The employer opposed the bargaining agent's proposal, especially with respect to eliminating breaks in periods of employment for the purposes of calculating seniority.

[35] Article 2.01 (d) of the current collective agreement defines "continuous employment" as the continuous service of an employee with the employer from their latest date of hire. Article 18 (Vacation Leave With Pay) states that seniority with the employer for scheduling vacation leave is deemed to have commenced on the date of hiring.

[36] The Board has determined that the bargaining agent's proposal shall not be included in the arbitral award. However, it has also determined that, for clarification, article 40.04 shall be amended as follows:

*40.04 When two (2) or more employees have the same seniority, the employee whose original date of hire is earliest shall be first on the seniority list. When two (2) or more of these employees have the same original date of hire, the employee whose surname is first alphabetically will be shown as such on the seniority list.*

[37] Articles 40.01, 40.02, 40.03 and 40.05 shall remain unchanged. As previously stated, the Board will remain seized for a period of three 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.

**Q. Article 44: Duration**

[38] The parties informed the Board that they agreed that the new collective agreement would expire on April 20, 2014. The Board has determined that article 44.01 will be amended as follows:

*44.01 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 April 20, 2014.*

**R. Parking (new)**

[39] The bargaining agent proposed that the employer provide a parking pass to employees free of charge and that the employer reimburse employees a premium equivalent to the taxes to be paid for the parking space. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.

**S. Bilingual Bonus (new)**

[40] The bargaining agent proposed an annual bonus of \$800 for all employees who occupy a position that has been designated as bilingual. The employer opposed the proposal.

[41] The bargaining agent also proposed that translation by employees not occupying a position identified as bilingual be done on a voluntary basis. At the hearing, the bargaining agent withdrew this element of its proposal.

[42] The Board has noted that none of the employer's bargaining units, nor any of the groups in the Senate of Canada, have been granted a bilingual bonus. A previous arbitral award denied the bargaining agent's proposal: *Public Service Alliance of Canada v. House of Commons (Operations Group)*, PSSRB File No. 485-H-10 (19900828). The Board has determined that the proposal should not be included in the arbitral award.

**T. Social Justice Fund (new)**

[43] The bargaining agent proposed that the employer contribute to the bargaining agent's Social Justice Fund. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.

**U. Licensing in Transportation Services (new)**

[44] The bargaining agent proposed to introduce language requiring the employer to pay the costs of licenses required of employees in Transportation Services. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.



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**V. Gratuities – Catering (new)**

[45] As mentioned earlier in this award, the employer raised an objection to the inclusion of this proposal by the bargaining agent based on subsection 55(2) of the *PESRA* on the ground that the matter was never the subject of negotiations between the parties. Section 55 of the *PESRA* reads as follows:

*55. (1) Subsection 43(2) applies, with such modifications as the circumstances require, in relation to an arbitral award.*

*(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.*

*(3) An arbitral award shall deal only with terms and conditions of employment of employees in the bargaining unit in respect of which the request for arbitration was made.*

On August 30, 2012, the bargaining agent responded to the employer's objection, stating that, "The proposal submitted to the Board is identical to the proposal that was tabled with the employer the morning of April 30." It is in evidence that the parties did meet on April 30, 2012 for negotiations. During the hearing, the employer did not challenge the bargaining agent's assertions with respect to the tabling of the proposal as part of negotiations.

[46] Therefore, the Board finds that the bargaining agent's proposal "Appendix xx – Gratuities – Catering" was the subject of negotiations between the parties during the period before arbitration was requested. As such, the proposal meets the requirements of subsections 55(2) and (3) of the *PESRA* and can accordingly be dealt with in this arbitral award.

[47] The bargaining agent proposed new language that gratuities collected during a catered function be equally distributed among all employees who worked the function. The employer opposed the proposal, stating that existing policies governed such practices. The Board has determined that the proposal should not be included in the arbitral award.

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**W. Appendix B: Uniform Entitlements**

[48] The bargaining agent proposed to add language that requires providing a voucher to employees for the purchase of boots or shoes of a minimum value of \$200. The bargaining agent also proposed amendments to the uniform entitlements of the different services.

[49] At the hearing, the employer agreed with the bargaining agent to amend Appendix B-8 (Accommodation Services) for the position of Locksmith to add one cap, one winter hat and one pair of winter gloves to be issued upon commencement of employment and annually after that. The Board has determined that Appendix B-8 will be amended by adding the following to its section 1:

*(k) 1 cap*

*(l) 1 winter hat*

*(m) 1 pair of winter gloves*

[50] The Board has further determined that section 2(c) of Appendix B-8 will be amended as follows:

*(c) Items 1(b), (d), (k), (l) and (m) will be issued annually in the same quantity.*

[51] The Board has determined that none of the bargaining agent's other proposals concerning Appendix B should be included in the arbitral award.

**X. Appendix E: Seasonal Certified Indeterminate Employees**

[52] Both parties proposed changes to the language respecting Seasonal Certified Indeterminate (SCI) employees as follows.

**1. Overtime Hours**

[53] The employer proposed to exclude overtime hours from the calculation of the 700-hour threshold for obtaining SCI status. At the hearing, the employer stated that it did not include overtime hours in calculating the 700-hour threshold. The bargaining agent opposed the proposal.

[54] The Board has determined that the employer's proposal should not be included in the arbitral award and the current language shall remain unchanged.

## **2. Sitting Days**

[55] Currently, SCI status is maintained when employees work less than 700 hours in election and prorogation years, as well as years in which there are less than 110 sitting days in the House of Commons. The bargaining agent proposed to increase the threshold to 120 sitting days.

[56] At the hearing, the employer stated that, if the Board was inclined to increase the threshold of sitting days, it should be increased to 115.

[57] The Board has determined that section 3 of Appendix E will be amended as follows:

*3. Due to the irregularity of work available during election and prorogation years, years with less than one hundred and fifteen (115) sitting days will be excluded for the purpose of losing status. Consequently, if a SCI employee works less than seven hundred (700) hours during a year with less than one hundred and fifteen (115) sitting days, this discrepancy will not be used to lose the status of a SCI employee.*

## **3. Compensatory Leave Carry-over**

[58] The bargaining agent proposed to amend section 10(b) of Appendix E by extending the period during which an employee can use compensatory leave before it is paid out from December 31 of the year in which it is earned to December 31 of the following year. The employer stated that, in respect of all other employees covered by the collective agreement, the carry-over period extended to March 31 of the following year and was prepared to agree to the same for SCI employees.

[59] The Board has determined that section 10 of Appendix E shall be amended to read as follows:

### *10. Overtime compensation*

*Seasonal Certified Indeterminate (SCI) employees shall be paid for overtime hours worked except where, at the request of an employee and with the approval of the Employer, overtime may be compensated in equivalent time off in the following manner:*

(a) Overtime can only be compensated in equivalent time off during periods of Parliamentary inactivity or reduced activity.

(b) Compensatory leave earned in a calendar year and outstanding on March 31 of the next following calendar year shall be paid at the employee's daily rate of pay on December 31.

(c) Overtime compensated in equivalent time off shall not be considered in the calculation of:

- (i) Continuous employment;
- (ii) Accumulation of sick leave credits;
- (iii) The hours worked to obtain and to maintain the status of SCI;
- (iv) Any other benefits under this Agreement.

Subject to this Agreement, an employee's request for compensatory leave shall not be unreasonably denied.

#### **4. Hours of Work: Restaurant Services and Printing Services**

[60] The bargaining agent proposed that SCI employees in Restaurant Services and Printing Services not be scheduled to work fewer hours than less-senior employees regularly performing the same duties. Under the current collective agreement, employees shall not be scheduled to work fewer hours than less-senior employees in the same job title. The employer opposed the proposal.

[61] The Board has determined that article 11(a) and (b) of Appendix E will be amended as follows:

##### *11(a) Restaurant Services*

(i) *With the exception of Catering Services, the following shall apply to SCI employees in Restaurant Services when the House of Common is in session:*

*Employees shall not be scheduled to work fewer hours than less senior employees in the same job title or that regularly perform the same duties. Unscheduled straight-time hours shall be offered in order of seniority.*

(ii) *The following shall apply to SCI employees at all times in Catering Services, and to all other SCI employees in*

*Restaurant Services when the House of Commons is not in session:*

*Provided they are available to work the hours required, employees shall not be scheduled to work fewer hours than less senior employees on the same job title or that regularly perform the same duties. Unscheduled straight-time hours shall be offered in order of seniority.*

(b) *Printing Services*

(i) *The following shall apply to SCI employees in Printing Services:*

*Employees shall not be scheduled to work fewer hours than less senior employees in the same job title or that regularly perform the same duties. Unscheduled straight-time hours shall be offered in order of seniority.*

The current Article 11(c) of Appendix E is renewed without changes.

#### **5. Order of Hours of Work**

[62] The bargaining agent proposed to introduce new language that hours of work be offered in the following order: seniority, operational needs and employee preference. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal should not be included in the arbitral award.

#### **6. Employment Opportunities**

[63] The bargaining agent proposed to introduce new language requiring the employer to make every reasonable effort to maximize employment opportunities for SCI employees who are struck off strength. This would include the investigation and identification of possible temporary employment opportunities at the employer or other PESRA employers. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.

#### **7. SUB Plan**

[64] The bargaining agent proposed to introduce a Supplemental Unemployment Benefits plan for SCI employees. The proposal was opposed by the employer. The Board has determined that the proposal should not be included in the arbitral award.

**8. Assigned Work Week**

[65] The bargaining agent proposed to introduce new language that, upon an employee's request, would require the employer to review and correct, as necessary, the employee's assigned workweek for the purpose of superannuation when the employee believes it to be inconsistent with the hours that he or she worked. The bargaining agent also proposed to include leave with pay and compensatory time in the calculation of hours worked for purposes of calculating the assigned workweek. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.

**9. Written Notice Regarding Health Benefits Premiums**

[66] The bargaining agent proposed to introduce a clause to provide SCI employees with two weeks' written notice should they be required to pay premiums associated with benefits plans. The employer opposed the proposal. The Board has determined that the proposal should not be included in the arbitral award.

**Y. Appendix J: Shift Assignment for Operations Workers in the Operations Subgroup**

[67] The bargaining agent proposed to amend clause (ii) of Appendix J, concerning the shift bidding process. Currently, employees in Transportation Services bid on all shifts within Transportation Services when a shift becomes vacant. The bargaining agent proposes to add the ability to bid on all schedules as well as shifts and that the bidding process occur twice per year, namely, the first full weeks of January and June. The employer opposed the proposal.

[68] In 2011, the parties concluded a memorandum of agreement that provided for bids to take place twice per year, in the first full weeks of January and June. The memorandum of agreement was included in the bargaining agent's submissions as Exhibit 8. Its terms provided that it would be in effect until either party served notice to bargain. As the parties entered into negotiations for a new collective agreement soon after the conclusion of the memorandum of agreement, its terms were never implemented.

[69] The Board has determined that the memorandum of agreement is to be implemented and that clause (ii) of Appendix J will be amended to add the ability to

bid on all schedules as well as shifts and that the bidding process occur twice per year. The parties will agree on language consistent with what they had agreed to in the memorandum of agreement, set out at Exhibit 8 of the bargaining agent's submissions. That language will be included in Appendix J.

[70] The bargaining agent also proposed to introduce new language that would allow transportation employees working on the same shift to exchange duties on a weekly basis, provided that employee seniority is respected. The employer opposed the proposal. The Board has determined that this proposal should not be included in the arbitral award.

## **Z. Appendix A: Wage Grid Adjustments and Economic Increases**

### **1. Wage grid adjustments**

[71] The bargaining agent proposed to reduce the number of increments in the wage grid from 7 to 4 while maintaining the current minimum and maximum rates of pay at each of the 10 classification levels. Under the current collective agreement, it takes an employee six years to reach the maximum rate of pay on the seven-increment grid. The primary argument of the bargaining agent in support of its proposal is that becoming fully proficient in any position in the OPG bargaining unit does not require six years. The employer opposed the proposal.

[72] As is well known, in 2004, the employer implemented a single job evaluation plan and a universal pay scale which included the wage grid with seven (7) increments. At the hearing, no evidence of substantial change in the duties and responsibilities of employees in the OPG was presented that would justify the bargaining agent's proposal. The Board is aware of the necessity of maintaining internal equity within the bargaining unit and within the employer as an entity. The Board has determined that the proposal should not be included in the arbitral award.

### **2. Economic increases**

[73] The bargaining agent proposed economic increases of 3% on April 21, 2011, 3% on April 21, 2012, and 3% on April 21, 2013. The bargaining agent based its proposal on several factors, including the Consumer Price Index, labour market trends, and wage settlements in the federal public sector and the private sector under federal jurisdiction.

[74] The employer proposed economic increases of 1.5% on April 21, 2011, 1.5% on April 21, 2012, and 1.5% on April 21, 2013. However, the employer submitted that, were its severance pay proposal awarded by the Board, its economic increase offer would be as follows: 1.75% on April 21, 2011, 1.5% on April 21, 2012, and 2% on April 21, 2013. This would mean a 0.25% increase on April 21, 2011 and 0.50% increase on April 21, 2013 as additional compensation for the amendments to severance pay over and above the economic increase of 1.5% for each year of the collective agreement. The employer submitted that its proposal reflects the wage pattern established in the federal public service by agreement or arbitral award. The employer demonstrated that there are no recruitment or retention issues concerning the OPG bargaining unit.

[75] As stated earlier in this award, the Board has accepted the employer's proposal concerning severance pay. The Board is of the view that the economic increases should be commensurate with that of other bargaining units in the federal public administration. Accordingly, the Board awards total economic increases of 1.75% effective April 21, 2011; 1.5% effective April 21, 2012; and 2% effective April 21, 2013.

### **III. General**

[76] 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.

April 15, 2013.

**Steven B. Katkin,  
for the Public Service  
Labour Relations Board**