**Date:** 20150123
**File:** 569-02-128
**Citation:** **2015 PSLREB 09**

*Public Service Labour Relations Act* Before an adjudicator

BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**
Bargaining Agent
and

**TREASURY BOARD**
Employer

Indexed as
*Public Service Alliance of Canada v. Treasury Board*

In the matter of a policy grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** Margaret T.A. Shannon, adjudicator

***For the Bargaining Agent:*** James Cameron and Dayna Steinfeld, counsel

***For the Employer:*** Ketia Calix, counsel

Heard at Ottawa, Ontario,
October 27, 2014.

## I. Policy grievance referred to adjudication

[1] The Public Service Alliance of Canada ("the bargaining agent") filed a policy grievance alleging that the Treasury Board ("the employer") failed to meet its obligations under Appendices J and L of the agreement between the Treasury Board and the Public Service Alliance of Canada for the Education and Library Science Group ("all employees"); expiry date, June 30, 2014 ("the collective agreement"). The grievance alleges that the employer failed to meet its contractual obligations under Appendix L of the collective agreement by failing to meet with the bargaining agent to develop recommendations to propose modifications to the collective agreement based on the results of a pay study conducted pursuant to Appendix J of the collective agreement.

[2] This matter was to be heard on April 14, 2014, but was adjourned to allow the parties time to meet, as agreed in Appendix L of the collective agreement, to discuss the pay study conducted by the parties pursuant to Appendix J. This did not resolve the matter, and the hearing was held on October 27, 2014.

[3] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board ("the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act*, No. 2 (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act*, No. 2, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) as that *Act* read immediately before that day.

## II. Summary of the evidence

[4] At the outset of the hearing the parties entered an agreed statement of facts as exhibit 1.

[5] Mr. Byron Duguay, Ms. Julie Chiasson and Mr. Holmann Richard testified on behalf of the bargaining agent. At the time the collective agreement was signed, there was a difference in how teachers who worked a 10-month schedule and those who

worked a 12-month schedule were paid. To resolve this issue, the parties agreed to conduct a pay study in accordance with Appendix J. The parties agreed to use the Hay Group, which submitted its final report, *Treasury Board of Canada Secretariat/Public Service Alliance of Canada ED-EST Wage Compatibility Study* in September 2011 (the Hay study) (Exhibit 1, tab 3). The employer advised the bargaining agent by email on February 9, 2012, that it intended to seek additional information by way of a comparison with teachers in provincial penal institutions (Exhibit 1, tab 4). This review was anticipated to be completed by March 2012.

[6] On October 3, 2012, the employer informed the bargaining agent that it was waiting for its Expenditure Management Sector to provide it with some salary data and analysis related to the study conducted pursuant to Appendix J of the collective agreement (Exhibit 1, tab 5). Despite a number of requests, the employer failed to engage in any further discussions, or provide its official position, on the Hay study. As a result, there was no meeting to develop joint recommendations, as anticipated in Appendix L.

[7] Following the April 2014 adjournment of this hearing by the former Board, the bargaining agent provided the employer with a list of its recommendations concerning the implementation of the study on June 11, 2014 (Exhibit 1, tab 9). The parties met on June 25, 2014, and the employer submitted its proposals (Exhibit 1, tab 10). On June 26, 2014, the employer confirmed via email that it could not accept the bargaining agent's proposals because, in its view, the recommendations did not respect the compensation setting principles (preponderant factors) in sections 148 and 175 of the *PSLRA* (Exhibit 1, tab 11), which require that compensation levels and other terms and conditions of employment of members of the public service must consider Canada's fiscal circumstances related to budgetary policies (Exhibit 1, tab 11). As recruitment and retention was not an issue, according to the employer, no recommendations were required to address pay differences between the two groups.

[8] The bargaining agent saw this approach to Appendices J and L of the collective agreement as an act of bad faith on the part of the employer. This was the first time that the issue of recruitment and retention was raised. The collective agreement expired on June 30, 2014, without the preparation of joint proposals. The employer was not willing to discuss joint proposals further. Any discussion of the Hay study was

to be under the auspices of collective bargaining, which began in July 2014. There was no discussion of the Hay study included in the employer's first set of bargaining proposals.

[9] John Park, Negotiator, Compensation and Labour Relations Section, Treasury Board Secretariat testified on behalf of the employer and stated that he had no mandate to negotiate increased rates of pay for the ED group as a result of the study. The joint proposals anticipated were to be developed and communicated up his chain of command for information and directions. The employer reviewed the Hay study and was concerned with the discrepancy between the hourly rate of pay and the annual salary. The conclusions of the Hay Group were that there was a noticeable difference in the minimum and maximum salaries between the two groups studied depending on whether the salaries were displayed on an hourly or on an annual basis (Exhibit 1, tab 3). Other considerations that caused the employer concern were recruitment and retention, external market situations, internal relativity, performance pay, and affordability. While Mr. Park was authorized to discuss the study with the bargaining agent, he was not authorized to commit to joint recommendations.

[10] Mr. Park met with the bargaining agent's representatives in May 2014 to discuss how they could move forward. At this meeting, he raised the employer's concerns with recruitment and retention and the principles contained in the *PSLRA.* The employer received the bargaining agent's recommendations on June 12, 2014. The parties met on June 25, 2014, to discuss them and to provide the bargaining agent with the employer's recommendations. Since it was clear that the parties could not agree, Mr. Park undertook to send both sets of recommendations to the executive levels of the bargaining agent and the employer. The employer proposed that the results of the study be used to assist the parties in preparing their pay proposals for the upcoming round of collective bargaining.

## III. Summary of the arguments

### A. For the bargaining agent

[11] According to Appendix L of the collective agreement, joint recommendations were to be developed and implemented. Sections 148 and 175 of the *PSLRA* do not apply to Appendix L. Their intended use and the issue of recruitment and retention are matters for interest arbitration and conciliation. Applying them to the interpretation of

Appendix L is foreign to the application of the existing collective agreement. The employer is not entitled to import them into the application of the collective agreement.

[12] Appendix L of the collective agreement was negotiated to deal with a known pay problem. Notions extraneous to Appendix L cannot factor into the creation of the joint recommendations. To propose that the parties deal with the known pay issue at negotiations is unresponsive to the obligations under Appendix L. If the joint recommendations were made and not accepted, so be it, but to refuse to meet and develop joint recommendations is an act of bad faith. The employer wants to circumvent the process and go directly to bargaining.

[13] This grievance concerns the employer's refusal to meet its obligations under Appendix L of the collective agreement. Any impossibility to develop joint recommendations is as a direct result of the employer's refusal to engage meaningfully in the process agreed to in Appendix L. The bargaining agent seeks an order directing the employer to engage in meaningful discussions with it and, through the assistance of a mediator, to develop joint recommendations, as envisioned in Appendix L.

**B. <u>For the employer</u>**

[14] The collective agreement expired in June 2014. The parties tried to develop joint recommendations but were unable to, as there were no common interests. The employer is obligated to consider the factors set out in sections 148 and 175 of the *PSLRA*. The employer must also consider whether recruitment and retention is an issue relative to this category of employee. The new Board cannot order the employer to develop joint recommendations. The obligation to meet to discuss the Hay study and prepare recommendations was met. The impasse is a result of the parties' inability to develop joint recommendations.

[15] Appendix L of the collective agreement does not contain a dispute resolution mechanism, without which there is no ability to resolve the impasse. Nothing in Appendix L limits the employer from introducing new factors into its considerations. The parties tried to come to a meeting of the minds but were unable to. Neither party has violated the collective agreement.

## IV. Reasons

[16] The bargaining agent seeks an order that the employer be compelled to engage in meaningful discussions and develop joint recommendations, which are to be implemented in a situation in which it is evident that the parties are unable or unwilling to. Appendix L of the collective agreement required the parties to meet within 120 days, once the study conducted under Appendix J was completed, to develop joint recommendations, including proposed modifications to the collective agreement. These joint recommendations were to be referred to the employer and the bargaining agent for consideration and action, including the possible reopening of the collective agreement. The employer was correct in noting that there is no dispute resolution mechanism that would assist the parties in resolving an impasse.

[17] While the parties did meet, even though it was not within the required 120 days, joint recommendations were not forthcoming. The reason was the employer's insistence on relying on extraneous factors, which are not directly applicable to the situation under consideration, such as sections 148 and 175 of the *PSLRA* and the absence of a recruitment and retention issue for the ED group. Appendix L of the collective agreement does not set out what factors were to be considered in developing the joint recommendations, other than they were to be based on the study conducted pursuant to Appendix J. Insisting that joint recommendations form part of the considerations of the report issued pursuant to Appendix J requires an amendment to the language of the collective agreement, which I am prohibited from doing pursuant to section 229 of the *PSLRA*.

[18] Similarly, for me to rule in favour of the bargaining agent and order the parties to develop joint recommendations through the intervention of a third party, in the absence of any dispute resolution language, also requires an amendment to the language of the collective agreement. The parties are faced with a poorly worded appendix, which has left it open as to what the outcome would be if the parties are unable to develop joint recommendations.

[19] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

## V. Order

[20] The grievance is denied.

January 23, 2015.

**Margaret T.A. Shannon,**
**adjudicator**