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*Parliamentary Employment
and Staff Relations Act
and Federal Public Sector Labour
Relations and Employment Board Act*

*Before the
Federal Public Sector Labour
Relations and Employment Board*

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 and Postal Services Group bargaining units

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

Before: John G. Jaworski, Joe Herbert and Kathryn Butler Malette, deemed to form
the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Morgan Gay, Public Service Alliance of Canada

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario
April 6, 2017

ARBITRAL AWARD

[1] On April 17, 2014, The Public Service Alliance of Canada (“the bargaining agent”) served notice to bargain on the House of Commons (“the employer”) on behalf of the bargaining unit composed of all employees of the employer in the Operational Group (“the Operational bargaining unit”) under s. 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, 2014.

[2] On June 16, 2014, the bargaining agent served notice to bargain on the employer on behalf of the bargaining unit composed of all employees of the employer in the Postal Services Group (“the Postal bargaining unit”) under s. 37 of the *PESRA*. The last collective agreement for the bargaining unit expired on June 30, 2014.

[3] The breakdown of the bargaining units in terms of employee status is in contention with respect to both bargaining units. The employer contends that the Operational bargaining unit is composed of 282 employees, whereas the bargaining agent contends that there are roughly 320, of which 35 are Seasonal Certified Indeterminate (“SCI”). With respect to the Postal bargaining unit the employer contends that the bargaining unit is composed of 16 employees, whereas the bargaining agent contends that there are roughly 20.

[4] Negotiation sessions for the Operational bargaining unit took place between the parties on October 31, 2014, December 8, 2014, February 19, 2015, April 20, 2015, April 28, 2015, April 30, 2015, June 8-9, 2015, September 21, 2015, October 26, 2015, November 4, 2015 and December 10, 2015. The parties signed off on fourteen clauses during these negotiation sessions.

[5] Negotiation sessions for the Postal bargaining unit took place between the parties on December 15, 2014, February 28, 2015, April 28, 2015, April 30, 2015, June 9, 2015, September 21, 2015, October 26, 2015, November 4, 2015, and December 10, 2015. The parties signed off on seven clauses during these negotiation sessions.

[6] By letter dated January 28, 2016, pursuant to s. 50 of the *PESRA*, the bargaining agent requested arbitration for the Operational bargaining unit. Its letter also included a list of the terms and conditions of employment it wished to have referred to arbitration.

[7] On February 5, 2016, the employer provided its position on the terms and conditions of employment for the Operational bargaining unit that the bargaining agent wished to refer to arbitration, pursuant to s. 51 of the *PESRA*. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

[8] By letter dated February 11, 2016, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration for the Operational bargaining unit.

[9] By letter dated March 2, 2016, pursuant to s. 50 of the *PESRA*, the bargaining agent requested arbitration for the Postal bargaining unit. Its letter also included a list of the terms and conditions of employment it wished to have referred to arbitration.

[10] On March 10, 2016, the employer provided its position on the terms and conditions of employment for the Postal bargaining unit that the bargaining agent wished to refer to arbitration, pursuant to s. 51 of the *PESRA*. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

[11] By letter dated March 14, 2016, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration for the Postal bargaining unit.

[12] The terms of reference for the arbitration board deemed to form the Public Service Labour Relations and Employment Board (“the Board”) were forwarded to the Board members on March 17, 2016, by the Chairperson of the Public Service Labour Relations and Employment Board. The Board’s name has since been changed to the Federal Public Sector Labour Relations and Employment Board (see *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9), which received Royal Assent on June 19, 2017).

[13] At the hearing, the Board was informed that the following bargaining agent proposals remained in dispute with respect to both the bargaining units:

Clause 7.02: Employee Representatives – Jurisdiction

Clause 11.03:	Use of Employer Facilities
Clause 18.02 :	Accumulation of Vacation Leave Credits
Clause 19.01(b):	Designated Paid Holidays - Family Day (NEW)
Clauses 20.11 (Postal) and 20.12 (Operational):	Leave with Pay for Family-Related Responsibilities
Clauses 20.16 (Postal) and 20.19 (Operational):	Personal Leave
Clause 21.09:	Sick Leave with Pay - Medical Certificates
Clauses 24.15 (Postal) and 24.21 (Operational):	Transportation
Clauses 33 (Postal) and 35 (Operational):	Health and Safety
Clauses 35 (Postal) 41 (Operational):	Employment Security - Job Security
Clauses 38 (Postal) and 44 (Operational):	Duration
New article:	Bilingual Bonus
New article:	Social Justice Fund
Appendix A:	Rates of Pay

[14] The Board was informed that the following bargaining agent proposals remained in dispute with respect to the Operational bargaining unit only:

Clause 22.01:	Education Leave without Pay
Clause 22.02:	Education Allowance
Clause 22.06:	Examination Leave without Pay
Clause 22.07:	Training (NEW)
Clause 24.04:	Change in Shift
Clause 24.16:	Assignment of Overtime work
Clause 37:	Wash-up Time
Clause 38.02(j):	Part-Time Employees
Clause 40.01:	Seniority - Definition and Determination
New article:	Licensing and Certificates
Appendix B:	Uniform Entitlements - B-7 Food Services
Appendix D:	Memorandum of Agreement re Seasonal Certified Indeterminate (SCI) employees
New Appendix:	Gratuities - Catering

[15] The Board was informed that the following bargaining agent proposals remained in dispute with respect to the Postal bargaining unit only:

Clause 20.02:	Bereavement Leave
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Clause 24: Shift Premium – Centre Block Shift (NEW)

[16] The Board was informed that the following employer’s proposals, remained in dispute for both bargaining units:

Clause 22: Continuous Employment (NEW)
 Clauses 24.12 (Postal) and 24.17 (Operational):
 Overtime Compensation
 Clauses 31.05 (Postal) and 31.04 (Operational):
 Suspension and Discipline – Sunset Clause
 Clauses 33 (Postal) and 35 (Operations):
 Health and Safety
 Clauses 38 (Postal) and 44 (Operations):
 Duration

Appendix A: Rates of Pay

[17] The Board was informed that the following employer’s proposals, remained in dispute for the Operational bargaining unit:

Clause 24.17(g): Overtime Compensation
 Clause 25.05(c): Pay Administration
 New Article: Stand-by Pay
 Appendix D: Memorandum of Agreement re SCI employees.

[18] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9), received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board to the Federal Public Sector Labour Relations and Employment Board (the “Board”).

II. The award

[19] The bargaining agent and the employer both submitted that s. 53 of the *PESRA* sets out the considerations to be applied by an arbitration board. That section 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.

[20] The Board considered the relevant provisions of the *PESRA* when it rendered this award.

A. Clause 7.02 (both bargaining units): Employee Representatives - Jurisdiction

[21] The bargaining agent proposed to remove the reference to consultation with the employer in clause 7.02 with respect to the bargaining agent's representatives, giving it the sole responsibility for determining the jurisdiction of employee representatives. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

B. Clause 11.03 (both bargaining units): Use of Employer Facilities

[22] The bargaining agent proposed changes (additions in bold and strikethrough to remove) to clause 11.03. At the hearing the parties agreed to the following wording:

11.03 *An accredited representative of the PSAC shall have reasonable access to the Employer's premises to assist in the resolution of a complaint or grievance, to attend meetings called by management. Permission to enter the premises shall, in each case be obtained from the Employer. Such permission shall not be unreasonably denied.*

C. Clause 18.02 (both bargaining units): Accumulation of Vacation Leave Credits

[23] The bargaining agent proposed to reduce the amount of time an employee was required to serve before receiving increases in the accumulation of vacation leave credits at various stages of service, and additional language for increased accumulation of vacation leave credits after employees have more than twenty-seven (27) years of continuous service. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

D. Clause 19.01(b) (both bargaining units): Designated paid holidays – Family Day (NEW)

[24] The bargaining agent proposed to increase the number of designated paid holidays from the current 12 with the addition of Family Day, which was recognized as a statutory holiday in Ontario in 2008. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

E. Clause 20.02 (Postal bargaining unit): Bereavement Leave with Pay

[25] The bargaining agent proposed new language for Clause 20.02, to expand the definition of immediate family, for the purpose of the clause, to include aunt and uncle. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing definition as set out in clause 20.02 will remain unchanged.

[26] The bargaining agent proposed that the length and timing of the bereavement leave in clause 20.02(a) be amended. Under the current language, that clause provides that an employee is entitled to a bereavement leave of five (5) consecutive working days for the death of a member of the employee's immediate family, and the leave is

not to extend beyond the day following the day of the funeral. The proposed language provides for the employee to determine the leave period but must include the day of the memorial commemorating the deceased or must begin within two (2) days following death. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will be included in the arbitral award and clause 20.02 (a) shall be as follows:

20.02

(a) When a member of the employee's immediate family dies, an employee shall be entitled to a bereavement period of five (5) working days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period the employee shall be paid for those days which are not regularly scheduled days of rest for that employee. In addition, the employee may be granted up to two (2) days' leave with pay for the purpose of travel related to the death.

[27] The bargaining agent proposed that the length of the bereavement leave in clause 20.02(c) be amended, increasing the leave from one (1) day to two (2) days for bereavement leave for the death of a son-in-law, daughter-in-law, brother-in-law and sister-in-law. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause (22.02(c)) will remain unchanged.

F. Clauses 20.11 (Postal) and 20.12 (Operational): Leave with Pay for Family-Related Responsibilities

[28] The bargaining agent proposed to amend clause 20.11(c) in the Postal bargaining unit collective agreement and clause 20.12(c) in the Operational bargaining unit collective agreement to increase the number of days that leave with pay may be granted under sub-clauses 20.12 (b)(i), (ii), and (iii) from five (5) days to eight (8) days. The bargaining agent also proposed to add the following sub-clause, as a sub-clause to clause 20.11 of the Postal bargaining unit collective agreement and clause 20.12 of the Operational bargaining unit collective agreement:

...

(d) it is recognized by the parties that the circumstances which call for leave for family-related responsibilities are based on individual circumstances. On request, the Employer may, at its discretion after considering the circumstances, grant leave with pay for a period greater than that provided for in paragraph c) above.

[29] The employer opposed both proposals. The Board has determined that the bargaining agent's proposal with respect to the amendment of clause 20.11(c) of the Postal bargaining unit collective agreement and 20.12(c) of the Operational bargaining unit collective agreement will not be included in the arbitral award; however the bargaining agent's proposal with respect to the addition of clause 20.11(d) Postal bargaining unit collective agreement and 20.12(d) Operational bargaining unit collective agreement will be included.

G. Clauses 20.17 (Postal) and 20.19 (Operational): Personal Leave

[30] The bargaining agent proposed to increase an employee's entitlement to personal leave from one (1) to two (2) periods of seven (7) hours. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award and the existing clauses will remain unchanged.

H. Clause 21.09 (both bargaining units): Sick leave with Pay - Medical Certificates

[31] The bargaining agent proposed to replace the current provision with language that would restrict the employer to requesting employees to produce medical certificates for periods of absence in excess of three (3) consecutive days, unless the employer had reasonable cause to believe that the employee has abused his or her sick leave entitlement. The current provision imposes no restriction on the employer in terms of when it can ask an employee to substantiate an absence. The employer had opposed this proposal. During the course of the arbitration the parties resolved this issue and the clause 21.09 shall now read as follows:

21.09 Medical Certificates

(a) Unless the Employer has reasonable cause to believe that the employee has abused his or her sick leave entitlement, an employee may be asked to produce a medical certificate only for periods of absence in excess of three (3) consecutive days.

(b) 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.

I. Clause 22.01 (Operational bargaining unit): Education Leave without Pay

[32] The bargaining agent proposed the following deletions (in strikethrough) and additions (in bold) to clause 22.01:

*The Employer recognizes the usefulness of education leave. Upon written application by the employee ~~and with the approval of the Employer,~~ **whenever operationally feasible** an employee ~~may~~ **shall** be granted education leave without pay for varying periods of up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for studies in some field of education in which preparation is needed to fill the employee's present role more adequately or to undertake studies in some field in order to provide a service which the Employer **may** requires or is planning to provide.*

[33] The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

J. Clause 22.02 (Operational bargaining unit): Education Allowance

[34] The bargaining agent proposed the following deletions (in strikethrough) and additions (in bold) to clause 22.02:

*~~At the Employer's discretion,~~ an employee on education leave without pay under this Article ~~may~~ **shall** receive an allowance in lieu of salary of up to 100% (one hundred per cent) of the employee's annual rate of pay, ~~depending on the degree to which the education leave is deemed, by the~~*

~~Employer, to be~~ **provided that the leave is relevant to organizational requirements consistent with 22.01.** Where the employee receives a grant, bursary or scholarship, the education leave allowance may be reduced. In such cases, the amount of the reduction shall not exceed the amount of the grant, bursary or scholarship.

[35] The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

K. Clause 22.06 (Operational bargaining unit): Examination Leave with Pay

[36] The bargaining agent proposed the following deletions (in strikethrough) and additions (in bold) to clause 22.06:

~~At the Employer's discretion,~~ **Where operationally feasible,** examination leave with pay ~~may~~ **shall** be granted to an employee for the purpose of writing an examination which takes place during the employee's scheduled hours of work. Such leave will only be granted where, ~~in the opinion of the Employer,~~ the course of study is directly related to the employee's duties or will improve the employee's qualifications.

[37] The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the existing clause will remain unchanged.

L. Clause 22.07 (Operational bargaining unit): Training (NEW)

[38] The bargaining agent proposed to add a new clause to address training, of which the collective agreement says very little. The employer opposed this proposal. There have been issues raised by the bargaining agent in terms of both lack of training and training opportunities at the House of Commons. The Board has determined that the bargaining agent's proposal will be included in the arbitral award and clause 22.07 shall read as follows:

(a) *The parties recognize the benefits derived from training and agree that training shall be afforded to bargaining unit employees first. The*

parties agree that employees shall be given equal opportunity when the priorities and objectives should be aligned with:

- (i) The need to provide direct training to employees to ensure they are able to perform their function(s) in accordance with operational requirements;*
- (ii) The need to provide training to employees whose jobs are undergoing change due to changing priorities of the organization;*
- (iii) The need to provide employees with training which addresses career development and assists employees in reaching their fullest potential. Where access to training opportunities under this clause is limited, the most senior employee(s) shall be trained first.*

(b) Management shall meet with employees and the PSAC to communicate the general business priorities and plans, strategies, directions, as well as associated training plans for individual services.

(c) The PSAC recognizes the responsibility of employees to take ownership of their development with a view to reaching their fullest potential. To this extent, employees are encouraged to identify their specific interest and demonstrate their personal commitment in career development and training to the Employer.

(d) The Employer will endeavor, subject to operational and service requirements and funding, that senior employees will be given first opportunity to training.

(e) The Employer will, at its expense, continue to provide training for employees when new equipment or procedures required for the performance of their duties are introduced.

(f) Where the Employer assigns employees, not at the employees' request, to participate in training courses or seminars, etc., such will be considered as regular working time.

(g) Details concerning current courses shall be provided on request of an employee by the Employer. In addition, the Employer shall communicate information to employees on those training courses, which are open to general participation by employees and for which employees may apply, indicating the following:

(a) Type of course; date and location; prerequisite, if any;
and

(b) Location where applications should be sent.

M. Clause 22 (both bargaining units): Continuous Employment (NEW)

[39] The employer proposed to add a new clause at Article 22, to deduct leave without pay granted under Article 22 from the calculation of continuous employment for the purpose of calculating severance pay, annual leave, and increment dates for periods of leave in excess of three (3) months. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award. The existing clause will remain unchanged.

N. Clause 24.04 (Operational bargaining unit): Hours of Work and Overtime - Change in Shift

[40] The bargaining agent proposed to amend clause 24.04 (a)(iii) by changing the notice period of the change of an employee's scheduled shift from two (2) days to seven (7) days, in advance of the starting time of the change in shifts. The employer opposed this proposal. In several other collective agreements between the employer and bargaining agent, and most notably the collective agreement between the employer and bargaining agent regarding the reporting Sub-group and Text Processing Sub-group in the Parliamentary Programs Group, the parties agreed that the notice period would be five (5) days. The Board has determined that clause 24.04(a)(iii) shall be amended by removing the reference to two (2) days' notice and replacing it with five (5) days' notice.

[41] The bargaining agent further proposed to amend clause 24.04 by adding an additional sub-clause, 24.04(c), which sub-clause would require the employer to pay any part-time or SCI employee without providing that employee with at least seven (7) days' notice. The employer opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award. The existing clause will remain unchanged.

O. Clauses 24.12(e) (Postal) and 24.17(e) (Operational): Overtime Compensation

[42] The employer proposed to amend clause 24.12(e) of the Postal bargaining unit collective agreement and 24.17(e) of the Operational bargaining unit collective agreement by adding wording to the clause to clarify the rate of pay used to pay out accumulated compensatory leave still outstanding at the end of the calendar year following the year in which it was earned. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award. The existing clauses will remain unchanged.

P. Clauses 24.15 (Postal) and 24.21 (Operational) - Transportation

[43] The current provision provides that 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 when the employee works overtime after public transportation is no longer available or when he or she leaves work after 10:00 p.m., when doing so is not part of his or her regular scheduled hours of work. The bargaining agent proposed to extend the entitlement to taxi vouchers or fares to employees who might have been issued a parking permit but who do not have a vehicle onsite. The employer opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award. The existing clauses will remain unchanged.

Q. Clause 24.16 (Operational bargaining unit): Hours of Work and Overtime - Assignment of Overtime

[44] The bargaining agent proposed to amend clause 24.16 by:

- removing the qualifier of "operational requirements" for the employer in making reasonable efforts to avoid excessive overtime;

- adding the term “or on site” to modify “readily available”;
- mandating the employer to produce a quarterly register on a quarterly basis to demonstrate that overtime is distributed equitably;
- including language that in the absence of volunteers for overtime, overtime will be assigned to readily available qualified employees in reverse order of seniority.

[45] The employer opposed this proposal stating that the new language ignored operational requirements and that the Board does not have jurisdiction to consider this proposal by virtue of s. 5(3) of *PESRA*.

[46] The Board has jurisdiction to consider this proposal as it is not determining the organization of the employer nor assigning duties or classifying positions. The Board has determined that the bargaining agent’s proposal with the amendments added by the Board shall be added and the clause shall read as follows:

Assignment of Overtime

- (a) *The Employer shall make every reasonable effort, in view of operational requirements to avoid excessive overtime. The Employer will offer overtime to qualified employees readily available (or on site). The Employer will produce a record on a quarterly basis to demonstrate that the overtime allocation is equitable.*
- (b) *In the absence of volunteers when an occasion to perform overtime work has come up, the Employer will assign overtime to readily available (or on site) qualified employees in reverse order of seniority.*

R. Clause 24.17(g) (Operational bargaining unit); Hours of Work and Overtime – Overtime Compensation

[47] The employer proposed to add language in paragraph (g) of clause 24.17 to modify when it shall pay cash overtime compensation to employees. The current provision specifies that the employer shall pay cash overtime compensation by the twenty-first (21st) day of the month following the month in which it is earned. The employer proposes that the words “endeavor to” be added to the clause, modifying the

*Parliamentary Employment and Staff Relations Act and
Federal Public Sector Labour Relations and Employment Board Act*

time frame within which the employer is required to pay. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award.

S. Clause 24 (Postal bargaining unit): Hours of Work - Premium - Centre Block Shift (NEW)

[48] The bargaining agent proposed a new clause that provides a shift premium of 14.3 % of the employee's basic hourly rate for all hours worked between 6:00 p.m. and 8:00 a.m. The employer opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award.

T. Clause 25.05(c) (Operational bargaining unit): Pay Administration - Acting Pay

[49] The employer proposed to add language in paragraph (c) of clause 25.05 to modify when it shall pay compensation of acting pay to employees. The current provision specifies that the employer shall pay compensation of acting pay by the twenty-first (21st) day of the month following the month in which it is earned. The employer proposes that the words "endeavor to" be added to the clause, modifying the time frame within which the employer is required to pay. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award.

U. Clauses 31.04 (Operational) and 31.05 (Postal): Suspension and Discipline - Sunset Clause

[50] The existing provisions provide that documents placed on an employees' personnel file, with respect to disciplinary action imposed on that employee, shall be removed and destroyed after two (2) years have elapsed since the disciplinary action was taken, with the proviso that no other disciplinary action has been taken in the interim. The employer proposed to extend the two (2) year period, by the length of any period of leave without pay for more than three (3) months. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award and the existing clauses will remain unchanged.

V. Clauses 33 (Postal) and 35 (Operational): Health and Safety

[51] Both parties have proposed a much shorter version of this article in each collective agreement. While both the employer's proposed version and that of the bargaining agent bear some resemblance, they offer different language on a number of issues. The Board has determined that neither the employer's proposal nor the bargaining agent's will be included in the arbitral award. The existing articles will remain unchanged.

W. Clauses 35 (Postal) and 41 (Operational): Employment Security – Job Security

[52] The bargaining agent proposed to add new language to this clause in each collective agreement to create a process in which Employees are laid off and recalled based on seniority and qualifications. The employer opposed this provision. The Board has determined that it does not have the jurisdiction to address this proposal under s. 55(2) of *PESRA*, and as such this proposal will not be included in the arbitral award and the existing articles will remain unchanged.

X. Clause 37 (Operational Bargaining Unit): Wash-up Time

[53] The bargaining agent proposed to amend clause 37.01 by removing the ability of the employer to determine where there is a need for wash-up time, and add an additional clause (clause 37.02) granting up to thirty (30) minutes of wash-up time each working day for employees in the Trade and Restaurant Services. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal amending Clause 37.01 for the Operations bargaining unit will be included in the arbitral award. Article 37.01 shall read as follows:

Where due to the nature of work there is a clear cut need, wash-up time up to a maximum of ten (10) minutes will be permitted before the end of the working day.

[54] The Board has determined that the bargaining agent's proposal to amend Clause 37 by adding clause 37.02 will not be included in the arbitral award.

Y. Clause 38 (Operational bargaining unit): Part-time and Seasonal Certified Indeterminate (SCI) Employees

[55] This clause addresses SCI and part-time employees in the Operations bargaining unit. The bargaining agent proposed introducing new language to paragraph (j) setting out that certain leave entitlements included in article 20 not be prorated for part-time and SCI employees, specifically leave with pay for family-related responsibilities (clause 20.12), court leave (clause 20.13), personal selection leave (clause 20.15), leave with or without pay for other reasons (clause 20.16), and election leave (clause 20.17). The employer opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award. The existing clause will remain unchanged.

Z. Clauses 38 (Postal) and 44 (Operational): Duration

[56] The parties informed the Board that they agreed that the new collective agreements would be in effect on April 20, 2014 and expire on April 20, 2018. The Board has determined that clauses 38.01 for the Postal bargaining unit and 44.01 for the Operations bargaining unit will be amended as follows:

Unless otherwise expressly stipulated in this Agreement, the provisions of this Agreement shall become effective on April 20, 2014, and shall remain in force until April 20, 2018.

AA. Clause 40 (Operational bargaining unit): Seniority – Definition and Determination

[57] “Seniority” is currently defined in clause 40 as the length of an employee’s continuous service with the employer. The bargaining agent proposed that this clause be amended so that seniority be deemed to commence on the employee’s date of hire with the employer. The employer opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award and that clause 40 shall remain unchanged.

BB. New Article (Operational bargaining unit): Stand-by

[58] The employer proposed a new clause that provides a system for stand-by pay. The bargaining agent opposed this proposal. The Board has determined that this proposal will not be included in the arbitral award.

CC. New Article (both bargaining units): Bilingual Bonus

[59] 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 this provision.

[60] The Board has noted that none of the employer's bargaining units, or any of the groups in the Senate of Canada, has been granted a bilingual bonus. Previous arbitral awards denied the bargaining agent's proposal: *Public Service Alliance of Canada v. House of Commons (Operations Group)*, PSSRB File No. 485-HC-10 (19900828) and *Public Service Alliance of Canada v. House of Commons (Operations Group)*, 2013 PSLRB 41. The Board has determined that this proposal will not be included in the arbitral award.

DD. New Article (both bargaining units): Social Justice Fund

[61] 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 this proposal will not be included in the arbitral award.

EE. New Article (Operational bargaining unit): Licencing and Certificates

[62] The bargaining agent proposed to introduce language requiring the employer to pay the costs associated with the maintenance of licences and/or certificates required of employees to perform their duties. The employer originally opposed this proposal, however at the hearing submitted their own proposal, which bears some resemblance to that of the bargaining agent's proposal. The Board has determined that the bargaining agent's proposal will be included in the arbitral award. The new clause shall read as follows:

Licencing and Certificates

XX.01 Costs associated with the maintenance of licences and/or certificates required of employees to perform their duties shall be paid by the Employer.

FF. Appendix A (both bargaining units): Rates of Pay**1. Wage grid adjustments**

[63] The bargaining agent proposed to reduce the current wage grid, which consists of a seven (7)-step grid, to a four (4)-step grid. Under its proposal, the current minimum and maximum rates of pay at each of the ten (10) classification levels would be maintained but would be spread over only four (4) increments rather than the current seven (7). The bargaining agent's main argument for the reduction from seven (7) to four (4) increments is that six years is too long to reach the maximum rate of pay, and that it does not take the employees that period of time to become fully efficient in any of the work that they do. The employer opposed the proposal.

[64] The employer submitted that the bargaining agent submitted to arbitration a similar restructuring of the wage grids in all of its collective agreements with the employer and with the Senate of Canada in the last round of bargaining and it has been refused three times in arbitration with the employer (most recently in 2016 PSLREB 120) and withdrawn from its proposal with the employer for the Postal service sub-group and the Senate of Canada's Operations group. The Board is mindful of the internal relativity with other groups and of the larger impact that a decision to amend the wage grids without sufficient evidence may have on other bargaining units. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award, and the number of increments in the current wage grid will remain unchanged.

2. Economic Increases

[65] The bargaining agent proposed a general economic increase of three percent (3%) in each year of the four (4)-year term it proposed. Its proposal was based on the Consumer Price Index, labour market trends, wage settlements in the federal public sector and the private sector under federal jurisdiction as well as the strong Canadian economy.

[66] The employer proposed a general economic increase of one and one half percent (1.5%) in the first year of the renewal of the agreement; three quarters of one percent (.75%) in each of the second and third years of the renewal of the agreement;

and one and one quarter percent (1.25%) in the final year of the renewal of the agreement. The employer submitted that its proposal would be similar to the economic increases that were negotiated by it with other bargaining agents for other bargaining units, and as well for the Senate of Canada. It also submits that its proposal is similar to those increases in the larger federal public sector. The employer maintained that no recruitment or retention problems exist within the bargaining unit.

[67] The bargaining agent's wage proposal is influenced by the Operational Services SV Group settlement which occurred on February 4, 2017. The Board recognizes that the level of wage settlements between the employer and the bargaining agent is normally linked to settlements that occur throughout the Treasury Board groups. We also recognize however, that the level of wage settlements between these parties is also normally linked to the pattern that has emerged between these parties themselves; in this case, the Board's decision in the Reporting and Text Processing Sub-Group issued on December 22, 2016 (2016 PSLREB 120). That award provided annual wage increases of 1.5%, 1.25% and 1.5% for the period April 1, 2014 to March 31, 2017.

[68] It is apparent from only a brief review of the Operational Services SV Tentative Settlement that it followed upon a Compensation Survey, referred to in the Settlement as the "2014 Compensation Survey". We were not provided with that survey, or with information and submissions on how the survey was undertaken, the survey methods used or the results obtained. We were provided with the bargaining agent's written analysis of the survey in the bargaining agent's exhibits, though neither party made extensive submissions in respect of that analysis.

[69] The tentative settlement for the Operational Services Group was reached very late in the bargaining cycle, only a short period before the hearing in this matter and after an award had already issued between these parties in respect of another bargaining unit. It may or may not be the case that the compensation adjustments that arose in that settlement could bear upon the compensation received by similar classifications with the employer. However in our view, that is a matter that the parties would normally address in a more fulsome way than has been able to occur here.

[70] In our view, the appropriate course for the Board is to follow the wage pattern for these parties in the December 2016 award (2016 PSLREB 120) for this collective

agreement round, and leave it to the parties in their next round of bargaining to determine the extent, if any, that the adjustments negotiated in the Operational Services Group might affect wage increases for this bargaining unit. We further note in this regard that, for certain of the years covered by this collective agreement, the level of increase for this bargaining unit will already exceed the 'base' percentage increase negotiated in the Operational Services tentative settlement.

[71] Accordingly, for the four year period covered by the collective agreements the Board awards increases of 1.5% effective April 20, 2014; 1.25% effective April 20, 2015; 1.5% effective April 20, 2016; and, 1.5% effective April 20 2017.

GG. Appendix B (Operational bargaining unit): Uniform Entitlements

[72] The bargaining agent proposed to add language to amend Appendix B-7 that requires the employer to provide to each employee who is a cook or part of the kitchen staff (at the Food Production Facility only), 1 pair of insulated pants (as required); 1 pair of winter gloves (as required); and 1 winter hat (as required); and, for other food services staff, 1 pair of shoes or safety shoes (where required). The board has determined that Appendix B-7 will be amended accordingly by adding the following to its section 1 (a):

(vi) *1 pair of insulated pants (as required) (Food Production Facility only)*

(vii) *1 pair of winter gloves (as required) (Food Production Facility only)*

(viii) *1 winter hat (as required) (Food Production Facility only)*

HH. Appendix D (Operational bargaining unit): Memorandum of Agreement - Seasonal Certified Indeterminate (SCI) Employees

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

1. Item 3: Sitting Days

[74] Currently, SCI status is maintained when employees work less than seven hundred (700) hours in election and prorogation years, and during years in which the House of Commons sits less than one hundred and fifteen (115) days. The bargaining

agent proposed to increase the sitting days threshold to one hundred and twenty (120). The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award and that item 3 will remain unchanged.

2. Item 4: Excluding Certain Leaves from Losing SCI status

[75] Currently, a calendar year in which an SCI employee is granted maternity leave without pay, parental leave without pay, leave without pay for the care and nurturing of pre-school aged children, leave without pay for the long-term care of immediate family or leave without pay for other reasons, for more than twenty (20) sitting days; accesses disability benefits for more than twenty (20) sitting days; or is certified sick for more than twenty (20) sitting days, is excluded for the purpose of losing SCI status in accordance with item 3. The bargaining agent proposed to reduce this threshold to ten (10) sitting days. The employer opposed this proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award. However, the Board has further determined that a new paragraph (4.1) will be added, which shall read as follows:

4.1 Notwithstanding 4(a), an employee who is absent on maternity leave without pay, parental leave without pay, or injury on duty leave for twenty (20) sitting days or less in a calendar year, and who but for the employee's absence on said leave would otherwise have worked seven hundred (700) hours, shall not be considered to have worked less than seven hundred (700) hours in that calendar year for the purpose of losing SCI status.

3. Item 11: Hours of Work - Restaurant Services and Printing Services (NEW)

[76] The bargaining agent proposed to add a new paragraph that would provide that hours of work for SCI employees in Restaurant and Printing Services be established taking into account: employee seniority; operational needs; and, preferences expressed by employees covered by the schedule. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award.

4. Item 12: Employment Opportunities (NEW)

[77] The bargaining agent proposed to introduce new language that would require the employer to make every reasonable effort to maximize employment opportunities for SCI employees who are struck off strength, which would include investigating and identifying possible temporary employment opportunities at the employer or other PESRA employers. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award.

5. Item 13: Supplemental Unemployment Benefits (SUB) Plan (NEW)

[78] The bargaining agent proposed to introduce a "Supplement Unemployment Benefits" plan for SCI employees who are struck off strength. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal will not be included in the arbitral award.

6. Item 14: Assigned Work Week (NEW)

[79] The bargaining agent proposed to introduce new language that, upon an employee's request, would require the employer to: notify an employee of his or her assigned work week as reported for superannuation purposes; and, if the employee believed that the assigned work week as reported is inconsistent with the hours stated that he or she had worked, correct the inconsistencies accordingly. The employer opposed the proposal. The Board has determined that the bargaining agent's proposal will be included in the arbitral award, subject to additional language that the Board has inserted. The new article will read as follows:

12. Assigned Work Week

(a) Upon request, the Employer shall notify an employee of his or her assigned work week as reported for superannuation purposes.

(b) In the event that an employee believes that his or her assigned work week as reported for superannuation purposes is inconsistent with his or her actual hours, the employee may request a review by the Employer. In the event that there are inconsistencies, the Employer will correct such inconsistencies accordingly, subject to any applicable statutory limitations.

7. Item 15: Written Notice Regarding Health Benefits Premiums (NEW)

[80] The bargaining agent proposed to introduce new language requiring the employer to provide SCI employees with two (2) 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 bargaining agent's proposal will not be included in the arbitral award.

8. Item 16: Loss of SCI status (NEW)

[81] The employer proposed to introduce new language that, in the event that an SCI employee refuses ten (10) consecutive shifts in a calendar year, the employee would lose SCI status, provided that the ten (10) consecutive shifts are assigned when the House of Commons is sitting. The bargaining agent opposed the proposal. The Board has determined that the employer's proposal will not be included in the arbitral award.

II. New Appendix (Operational bargaining unit): Gratuities - Catering

[82] 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.

III. General

[83] The Board will remain seized of this matter for a period of three (3) months from the date of this award in the event that the parties encounter any difficulties in its implementation. As part of their implementation consultations, the parties may agree to alternate language for the collective agreements that achieves the same purpose as that contained in this arbitral award and may use article 37 (Postal) and 39 (Operations) ("Agreement Reopener") to incorporate that language in the collective agreements.

April 16, 2018.

**John G. Jaworski,
for the Federal Public Sector Labour
Relations and Employment Board**