

Date: 20061005
File: 585-02-3

**Public Service Labour
Relations Act**

Before an Arbitration Board

BETWEEN

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA
Bargaining Agent**

and

**TREASURY BOARD
Employer**

**RE: Request for Arbitration
Applied Science and Patent Examination (SP) Group**

***Before:* Yvon Tarte, Chairperson and
Gray Gillespie and Robert McIntosh, members**

***For the Bargaining Agent:* Michel Gingras and Denise Doherty-Delorme**

***For the Employer:* Georges Hupé**

**Heard at Ottawa, Ontario
September 27 and 28, 2006**

- (1) By letter dated June 21, 2006, the Professional Institute of the Public Service of Canada (PIPSC) requested the establishment of an arbitration board in respect of a dispute concerning the employees of the employer in the Applied Science and Patent Examination (SP) bargaining unit pursuant to section 136 of the *Public Service Labour Relations Act* (the *Act*).
- (2) With its letter of June 21, 2006, the PIPSC provided a list of the terms and conditions of employment that it wished to have referred to the arbitration board.
- (3) By letter dated June 30, 2006, the Treasury Board (employer) provided its position on the terms and conditions of employment that the employer wished to have referred to the arbitration board.
- (4) The PIPSC indicated by letter of July 10, 2006, that it had no further proposals to submit.
- (5) The PIPSC gave notice to bargain in this matter on August 25, 2005. The collective agreement for which notice to bargain was given expired on September 30, 2005.
- (6) The parties held bargaining sessions in October, November and December 2005 as well as in January 2006.
- (7) The Chairperson of the Public Service Labour Relations Board appointed Gilles Grenier as mediator to confer with the parties and assist them in settling their dispute. Mediation sessions held in May 2006 were

productive and resulted in agreement on several issues. The remaining outstanding issues were referred to this arbitration board in August, 2006 (2006 PSLRB94)

(8) Prior to the hearing, the parties exchanged briefs which were submitted to the arbitration board.

(9) The arbitration board met with the parties on September 27, 2006 at which time attempts were made to assist the parties in reaching a settlement. Given that a final settlement was not reached with the assistance of this arbitration board, the parties were given a full opportunity to present evidence and make representations on the 28th.

(10) Following the hearing, the arbitration board met to discuss and consider its award. In doing so, it considered the evidence and submissions of the parties as well as the factors enumerated in section 148 of the Public Service Labour Relations Act.

The issues in dispute and the award

(11) **8:16 HOURS OF WORK** – The bargaining agent proposed that the period of advance notice given to employees of a change in the employee's shift schedule be increased from 72 hours to 168 hours.

(12) The employer argued that a 72 hours' notice period is required for operational reasons. The employer suggested that the clause be renewed as is.

- (13) The arbitration board determines that clause 8:16 shall be amended to contain an advance notice of a shift change in an employee's shift schedule that will not be less than 120 hours.
- (14) **8:20/8:21 WEEKEND PREMIUM** – The employer proposed to standardize the language in these clauses by deleting clause 8:20 and making clause 8:21 apply to all employees in the bargaining unit.
- (15) The bargaining agent opposed this proposal.
- (16) The arbitration board determines that clauses 8:20 and 8:21 shall be renewed without changes.
- (17) **9:08 OVERTIME (MEAL ALLOWANCE)** – The bargaining agent proposed that the meal allowance contained in clause 9:08 be set by reference to the National Joint Council "all provinces" lunch meal allowance as modified from time to time.
- (18) The employer opposed this proposal.
- (19) The arbitration board determines that clause 9:08 shall be renewed without change.
- (20) **10:02 CALL-BACK** – The employer proposed new language to deal with situations where an employee on call-back may perform his or her work from home without the inconvenience of returning to the workplace.

- (21) The bargaining agent opposed the new language.
- (22) The arbitration board determines that the employer's proposal concerning call-back shall not be included in the collective agreement.
- (23) **13:01 TRAVELLING TIME (beyond North America)** - The bargaining agent proposed that the maximum traveling time to be compensated for when an employee travels outside of the employee's headquarters area be increased from a maximum of 12 hours pay at the straight-time rate in any day to a maximum of 15 hours pay at the straight-time rate when travelling beyond North America.
- (24) The employer opposed the proposed change.
- (25) The arbitration board determines that clause 13:01 shall now read:

13.01 Travelling Time

When the Employer requires an employee to travel outside the employee's headquarters area for the purpose of performing duties, the employee shall be compensated in the following manner:

- (a) *on a normal working day on which the employee travels but does not work, the employee shall receive the employee's regular pay for the day;*
- (b) *on a normal working day on which the employee*

travels and works, the employee shall be paid:

- (i) the employee's regular pay for the day for a combined period of travel and work not exceeding seven and one-half (7 ½) hours and*
- (ii) at the applicable overtime rate for additional travel time in excess of a seven and one-half (7 ½) hour period of work and travel, with a maximum payment for such additional travel time not to exceed twelve (12) hours pay at the straight-time rate in any day, or fifteen (15) hours pay at the straight- time rate when travelling beyond North America;*
- (c) on a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours traveled to a maximum of twelve (12) hours at the straight-time rate, or fifteen (15) hours pay at the straight-time rate when travelling beyond North America.*

(26) 13:09 TRAVEL STATUS LEAVE – The bargaining agent proposed that travel status kick in when an employee is away from his or her permanent residence for 20 nights during a fiscal year as opposed to the present 40 nights contained in the collective agreement.

(27) The employer opposed the proposal.

- (28) The arbitration board determines that clause 13:09 shall be renewed without change.
- (29) **14:11 LIEU DAYS** – The employer proposed that employees who earn lieu days for working on designated paid holidays be required to use up such lieu days before being allowed to take vacation leave.
- (30) The bargaining agent opposed this change to the collective agreement.
- (31) The arbitration board determines that the employer's proposal concerning the use of lieu days shall not be included in the collective agreement.
- (32) **15:02 VACATION LEAVE** –The bargaining agent proposed that the formula by which vacation leave is earned be changed from the standard milestone approach to a graduated one.
- (33) The employer opposed the proposal.
- (34) The arbitration board determines that clause 15:02 of the collective agreement dealing with the accumulation of vacation leave credits shall be renewed without change.
- (35) **15:08 CARRY OVER OF VACATION LEAVE CREDITS** – The bargaining agent proposed that the payout date for vacation leave credits in excess of 262.5 hours be moved from the last day of the vacation year (March 31st) to September 30th.

(36) The employer opposed the proposed change.

(37) The arbitration board recognizes the importance of allowing employees, whenever possible, to take their vacation leave in the year in which it is earned and during periods chosen by the employees. Having said that, the arbitration board determines that clause 15:08 shall be renewed without change.

(38) **15:19 VACATION LEAVE – MARRIAGE LEAVE** – The bargaining agent proposed that the existing marriage leave provisions found in clause 17:13 of the collective agreement be deleted and replaced by a one time entitlement of 37.5 hours of vacation leave available to all employees on the 1st day of the month following the employee's second anniversary of service.

(39) The employer opposed the proposal and suggested that the existing marriage leave provisions be renewed.

(40) The arbitration board determines that the marriage leave provisions contained in clause 17:13 of the collective agreement shall be renewed without change. For greater certainty, the change proposed by the bargaining agent to clause 15:19 of the collective agreement shall not be included in the collective agreement.

(41) **17:10 LEAVE WITH PAY FOR PERSONAL NEEDS** – The employer proposed that this clause be amended to provide that it could

not be used by an employee for the purpose of securing or taking alternate employment.

(42) The bargaining agent opposed the proposed change.

(43) The arbitration board determines that 17:10 shall be renewed without change.

(44) **17:13 LEAVE WITH PAY FOR FAMILY-RELATED**

RESPONSIBILITIES – The bargaining agent proposed that individual caps found in clause 17:13 be removed to provide only for a single all inclusive cap of 37.5 hours. Furthermore, the bargaining agent proposed the removal of certain provisions of the clause that are specific to employees in the MT (Meteorology) group of the bargaining unit.

(45) The employer opposed the proposed changes.

(46) The arbitration board determines that clause 17:13 shall read:

*17:13 LEAVE WITH PAY FOR FAMILY-RELATED
RESPONSIBILITIES*

(a) For the purpose of this clause, family is defined as spouse (or common-law partner resident with the employee), children (including children of legal or common-law partner), parents (including step-parents or foster parents), or any relative

permanently residing in the employee's household or with whom the employee permanently resides.

(b) The Employer shall grant leave with pay under the following circumstances:

- i. an employee is expected to make every reasonable effort to schedule medical or dental appointments for family members to minimize or preclude the employee's absence from work; however, when alternate arrangements are not possible an employee shall be granted leave with pay for a medical or dental appointment when the family member is incapable of attending the appointment without accompaniment, or for appointments with appropriate authorities in schools or adoption agencies. An employee requesting leave under this provision must notify the employee's supervisor of the appointment as far in advance as possible;*
- ii. to provide for the immediate and temporary care of a sick or elderly member of the employee's family and to provide an employee with time to make alternate care arrangements where illness is of a longer duration;*
- iii. leave with pay for needs directly related to the birth or to the adoption of the employee's child.*

(c) The total leave with pay which may be granted under sub-paragraphs 17.13(b) shall not exceed thirty-seven decimal five (37.5) hours in a fiscal year.

(47) **17:23 RELIGIOUS OBSERVANCE** – The bargaining agent proposed the inclusion in the collective agreement of a clause that would require the employer to make every reasonable effort to accommodate an employee who requests time off to fulfill his or her religious obligations.

(48) The employer opposed the proposed addition of clause 17:23.

(49) The arbitration board determines that a clause dealing with religious observances shall be included in the collective agreement as follows:

17.23 Religious Observance

(a) *The Employer shall make every reasonable effort to accommodate an employee who requests time off to fulfill his or her religious obligations.*

(b) *Employees may, in accordance with the provisions of this Agreement, request annual leave, compensatory leave, leave without pay for other reasons or a shift exchange (in the case of a shift worker) in order to fulfill their religious obligations.*

- (c) *Notwithstanding clause 17.23(a), at the request of the employee and at the discretion of the Employer, time off with pay may be granted to the employee in order to fulfill his or her religious obligations. The number of hours with pay so granted must be made up hour for hour within a period of six (6) months, at times agreed to by the Employer. Hours worked as a result of time off granted under this clause shall not be compensated nor should they result in any additional payments by the Employer.*
- (d) *An employee who intends to request leave or time off under this clause must give notice to the Employer as far in advance as possible but no later than four (4) weeks before the requested period of absence.*

(50) 48:01 DURATION OF THE COLLECTIVE AGREEMENT –

During the hearing, the bargaining agent argued for a 3 year collective agreement ending in September, 2008. The economic increase sought by the bargaining agent for that third year is 3.5%. The employer also argued for a 3 year agreement, with a proposed economic increase of 1.75% in the third year. When the arbitration board floated a possible 2% increase for the third year, both parties expressed a desire for a 2 year agreement. Some discussion took place concerning the possibility of a collective agreement whose duration would be more than 2 years but less than 3 years.

- (51) The arbitration board determines that the duration of the collective agreement shall be from the date it is signed to September 30, 2007.
- (52) **MOU DEALING WITH MT ISSUES** – The bargaining agent proposed the inclusion in the collective agreement of a memorandum of understanding that would require the parties to undertake, during the life of the agreement, meaningful consultations to deal with issues of particular interest to employees in the MT group. Such consultations could deal inter alia with issues such as: shift cycles and schedules, workload, shift premiums, notice periods, staffing levels and the impact of automation.
- (53) The employer opposed the inclusion of the MOU in the collective agreement.
- (54) The arbitration board wishes to encourage the parties to discuss in a constructive manner, MT workplace issues. Division 3 of the Act deals with the establishment of consultative committees and co-development. Commitment to mutual respect and harmonious labour-management relations, as is now required by law, obliges the parties to deal constructively with all workplace issues. Given the presence of these statutory obligations, the arbitration board determines that the proposed MOU dealing with MT issues is not necessary and shall not be included in the collective agreement.

(55) **APPENDIX G – PATENT EXAMINER ALLOWANCE** – The bargaining agent proposed that SG-PAT terminable allowance be rolled into the base salaries for all patent examiners.

(56) The employer proposed to renew the allowance with the necessary adjustments for economic increases awarded by the arbitration board.

(57) The arbitration board determines that the patent examiner terminable allowance shall be renewed and adjusted to reflect the economic increases awarded in paragraph 69 of this decision.

(58) **APPENDIX H – BI HEALTH CANADA REVIEWERS’ ALLOWANCE** – The bargaining agent proposed that the existing permanent allowance paid to certain biologists working at Health Canada be increased to establish parity with other employees in the MD-MOF 2 and 3 classifications.

(59) The employer proposed to continue the current allowance with the necessary adjustment for economic increases awarded by the arbitration board.

(60) The arbitration board determines that the BI reviewers’ allowance shall be renewed and adjusted to reflect the economic increases awarded in paragraph 69 of this decision.

(61) **MT 5 INCREMENTS** – The bargaining agent proposed to modify the MT 5 pay scale to correct an anomaly which may occur because the

steps in the mid range of the scale are smaller than the steps at the bottom or top of that scale.

(62) The employer opposed the proposed changes.

(63) The arbitration board determines that, subject to the economic increases awarded in paragraph 69 of this decision, the value of the increments in the MT 5 pay scale will not be changed.

(64) **AG-BI-CH 3 PARTIAL STEPS** – The bargaining agent proposed to correct the AG-BI-CH 3 pay scales to remove partial steps at the last two levels.

(65) The employer opposed the proposed changes.

(66) The arbitration board determines that the AG-BI-CH 3 pay scale shall be modified as of October 1, 2005, and prior to the addition of the economic increase awarded by this decision as follows:

58,618 61,367, 64,119, 66,864 69,616 72,363 75,113 77,863

(67) **ECONOMIC INCREASES** – The bargaining agent proposed economic increases of 3% effective October 1, 2005 and 3% effective October 1, 2006.

(68) The employer proposed economic increases of 2% effective October 1, 2005 and 2% effective October 1, 2006.

(69) The arbitration board determines that economic increases to the SP pay scales shall be as follows:

2.4% effective October 1, 2005

2.5% effective October 1, 2006

(70) The arbitration board shall remain seized of this matter for a period of two (2) weeks from the date of this award in the event that the parties encounter difficulties in its implementation.

Ottawa, October 5, 2006

Yvon Tarte

For the arbitration board