

Date: May 1, 2013
File: 585-02-43

**IN THE MATTER OF
THE PUBLIC SERVICE LABOUR RELATIONS ACT
and a Request for Arbitration affecting
the Canadian Merchant Service Guild, as bargaining agent,
and the Treasury Board, as employer,
in respect of the Ships' Officers (SO) Group bargaining unit**

BEFORE: Ian R. Mackenzie, Chairperson
Joe Herbert and Anthony Boettger, arbitration board members

For the bargaining agent: David Jewitt and Rebecca Aleem
For the employer: Ted Leindecker, Allan Pollock, Steve Peck and Lise Richard

Heard at Ottawa, Ontario, December 20, 2012

Introduction

[1] The Terms of Reference of this Arbitration Board were established by the Chair of the Public Service Labour Relations Board (the "PSLRB") on May 28, 2012 (2012 PSLRB 61). The hearing of the submissions was completed on December 20, 2012. An executive session of the Arbitration Board was completed on February 16, 2013.

Bargaining History

[2] The Ships' Officers (SO) Collective Agreement expired on March 31, 2011.

[3] The parties agreed to have exploratory discussions on February 28, 2011. The bargaining agent served Notice to Bargain on March 15, 2011. The parties exchanged proposals on May 12, 2011. The parties had negotiation sessions on July 6 to 8 and September 20 to 22, 2011. The bargaining agent requested mediation from the Public Service Labour Relations Board on September 30, 2011 and a mediator was appointed on November 22, 2011. The mediation session was conducted on February 7 to 9, 2012.

[4] The parties renewed a number of provisions in the collective agreement. They agreed to changes to two provisions (Article 23 and Appendix I, article 20).

[5] The bargaining agent filed for arbitration on March 26, 2012.

[6] The following individuals were on the bargaining agent bargaining team: Mark Boucher, Tom Spindler, Joy Thomson, Geoff Legge, Dwayne Symes, Duncan Moffatt, Martin Tardif, Bernard Talbot and Rick McGarvey.

[7] The following individuals were on the employer bargaining team: Ted Leindecker, Martine Sigouin, Steve Peck, Marie-Christine Demers, Doug Kimmett, Lise Roberge, Lise Richard and Nadia Bing.

The Ships' Officers (SO) Bargaining Unit

[8] There are approximately 1,118 employees in the SO bargaining unit. The SO Group includes positions that are primarily involved in the onboard command and control of the operation of civilian vessels requiring a certificate of competency; the operation of floating plants; the operation and maintenance of radio equipment installed on vessels engaged in marine operations; and the instruction of Nautical Sciences and Marine Engineering at the Canadian Coast Guard College.

Issues in Dispute

[9] Both parties withdrew some of their proposals after the terms of reference were established. The employer withdrew its proposals under 23.18(b)(iv) and Appendix E. The bargaining agent withdrew its proposals under Articles 10 and 13.

[10] In reaching a determination on the issues in dispute, the Arbitration Board is governed by section 148 of the *Public Service Labour Relations Act*:

148. In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

(b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;

(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;

(d) the need to establish compensation and other 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

(e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

[11] The Arbitration Board has considered all of these factors in reaching its determination on the matters at issue.

Article 10 – Check Off

[12] The employer proposed that the bargaining agent be responsible for determining religious exemptions for the payment of dues. The employer stated that it had been successful in changing this provision in the majority of its collective agreements. The bargaining agent objected to this proposal on the basis that this would impose an administrative burden on it and that there was no demonstrated need for the change.

[13] Although it is now the norm within the core public service to require the bargaining agent to determine religious exemptions for dues check off, the employer has not identified a demonstrated need for this change. In the absence of a demonstrated need, the Arbitration Board declines to award this proposal.

Article 14.01 Information for Officers

[14] The employer proposed that electronic access to the collective agreement be the norm under the collective agreement, with the provision of a hard copy only where its access is not available. The bargaining agent objected on the basis that there is minimal or no internet access while at sea.

[15] The Arbitration Board declines to award the employer's proposal.

Article 20 Vacation Leave with Pay

[16] The employer proposed a change to the language in Article 20.02 from "continuous employment" to "service" in the calculation of vacation leave credits. The employer stated that this would address the

calculation of vacation leave credits for those employees with discontinuous service. The bargaining agent objected to this proposal on the basis that there was no demonstrated need for the change.

[17] The Arbitration Board declines to award this proposal.

[18] The employer also proposed a change to this Article related to its severance pay proposal. We have addressed that issue below.

Article 29 Severance Pay

[19] The employer has proposed the elimination of severance paid on resignation and retirement. It has also proposed provisions for the cash-out of entitlements earned to the date of the signing of the collective agreement. The employer's proposal also contains improvements to the amount of severance to be paid on lay-off. In exchange for the removal of severance on resignation and retirement, the employer is proposing a .25 percent increase in pay in 2011 and a .5 percent increase in pay in 2013.

[20] The bargaining agent objected to this proposal on the basis of no demonstrated need and the recruitment and retention issues within the bargaining unit. In the alternative, the bargaining agent noted that other bargaining units had achieved gains in pay in exchange for the loss of severance.

[21] The Arbitration Board has concluded that the employer's proposal is consistent with the pattern of collective bargaining in the core public service. Accordingly, the Arbitration Board has determined that the employer proposal shall be included in the award.

[22] For greater certainty, the Arbitration Board has determined that the calculation of the value of the severance payout for each officer shall be made after the application of all salary increases pursuant to this award.

[23] The proposed increase in pay as a consequence of the removal of these severance provisions will be addressed in the pay section below.

[24] The employer proposal under article 20.03 (Vacation Leave) is related to the severance pay changes to the collective agreement and the Arbitration Board awards the change.

Article 30 Hours of Work and Overtime

[25] The employer proposed that Article 30.05 be removed. This article allows for the application of Appendix I upon mutual agreement of the parties to the collective agreement. The employer submitted that the article was no longer pertinent and that deletion would provide the employer with further flexibility to change crewing systems to meet operational requirements.

[26] The bargaining agent submitted that there was no demonstrated need for this change.

[27] In the absence of any demonstrated need, the Arbitration Board declines to award this proposal.

Article 40 Dirty Work Allowance

[28] The bargaining agent proposed an increase in the dirty work allowance to an additional one-half of straight time pay for each 15 minute period or part thereof. This is the rate for the employees that Ships' Officers supervise (Ships' Crews).

[29] The employer submitted that the current language is consistent with the majority of collective agreements in the core public service. It also submitted that payment for periods of less than 15 minutes is not practical for employees in a supervisory capacity where an instruction can count as work.

[30] The Arbitration Board awards the bargaining agent proposal. The last paragraph of the article (referring to pro-rated compensation for each completed 15 minute period worked) is therefore redundant, and is deleted from the collective agreement.

Appendix H Lay Day Operational Crewing System

[31] The majority of Ships' Officers work on a "lay-day" system as set out in this Appendix, while approximately 20% of Ships' Officers work under a scheduling system set out in Appendix J of the collective agreement. Under Appendix H, Ships' Officers generally work on a 28-day cycle. During the on-duty portion of the work cycle, an officer works 12 hours each day but only receives pay for 6 hours, while the remaining 6 hours pay is put in a "lay-day" bank to be used during the off-duty cycle. Under Appendix J, Ships' Officers work on a 14-day on-call cycle with a 46.6 hours per week averaging formula. Active "on-duty" time under Appendix J is 8 hours each day along with 5.33 hours of "on-call" pay each night during the 14-day "on-duty" cycle. The collective agreement provides for a common hourly rate of pay for all Officers.

[32] The bargaining agent submitted that when the regular on-call compensation paid to officers under Appendix J is considered, these Officers receive 11% more pay for their “on-duty” hours during the 14-day cycle than those officers under Appendix H receive for their “on-duty” hours during their 28-day cycle.

[33] The Ships’ Crews have a similar 28-day lay-day schedule. Ships’ Crews receive a lay-day factor of 1.17 per day worked which is then placed in a lay-day bank. Ships’ Officers had a 1.17 lay-day factor until it was reduced to 1.0 in bargaining of the 1991-1994 collective agreement, in exchange for a 12.75% salary increase for Officers on the lay-day system.

[34] The bargaining agent proposed an increase in the lay-day factor under Appendix H to 1.17, consistent with the lay-day factor for Ships’ Crews. The bargaining agent also submitted that this would address the internal inconsistency in pay between those Officers under Appendix H and those under Appendix J.

[35] The employer objected to this proposal on the basis that the bargaining agent had bargained the 1.17 lay-day factor away in exchange for a significant salary increase. In addition, there was no demonstrated need for the proposed change.

[36] The Arbitration Board could reach no consensus on this proposal. In accordance with section 151 of the Public Service Labour Relations Act, “a decision of a majority of the members in respect of the matters in dispute is a decision of the board on those matters and is the arbitral award in respect of those matters.” The Arbitration Board declines to award the bargaining agent’s proposal. The bargaining agent freely negotiated a significant salary increase in exchange for the elimination of the 1.17 lay-day factor in the 1994 collective agreement. The fact that the overall compensation is different between the two Appendices (H and J) is a reflection of the different scheduling systems – compensation under both systems is based on a common hourly rate of pay. In addition, a return to the 1.17 lay-day factor would be a significant gain for the bargaining agent. To the extent that interest arbitration is designed to replicate the outcome of free collective bargaining, significant gains or “breakthroughs” in collective agreements are best achieved through the give and take of bargaining between the parties rather than through an award.

Appendix I Article 22 Sick Leave with Pay

[37] The employer proposed the elimination of the 1.47 factor for calculation of sick leave under this Appendix. It was the employer’s position that an officer should be earning sick leave credits at the rate prescribed in Article 22 of the Collective Agreement (10 hours for each calendar month in which at least 80 hours of pay is received). The employer submitted that the arbitral award of 2008 eliminated this factor

for vacation leave and this proposed change is consistent with the approach in that award. In the employer's view there should be consistency in treatment of credit-based benefits. The employer also submitted that because officers work alternating shifts of 12 and 8 hours, this article is confusing to administer.

[38] The bargaining agent submitted that the contract language has not posed any problems, there are few boats remaining under this Appendix and there is no demonstrated need for the change.

[39] The Arbitration Board declines to award the employer's proposal.

Appendix J On-Call System (46.6 hours)

[40] The employer proposed the removal of the provision that states that Class 400 vessels are covered under this Appendix and cannot be placed under another work system except by mutual agreement with the bargaining agent. The employer submitted that this was removing obsolete language as the Class 400 vessels were being phased out. In addition, the employer submitted that the type of constraint imposed by the provision was an inappropriate interference in determining how a vessel could be used.

[41] The bargaining agent submitted that the current language has not resulted in any problems and the system has worked well. The bargaining agent submitted that there was no demonstrated need for the proposed change.

[42] The Arbitration Board declines to award the employer's proposal.

Appendix K 40 Hour Work Week System

[43] The employer proposed that the reference in this Appendix to normal daily hours of work between 6 a.m. and 6 p.m. be eliminated. It also proposed the elimination of the requirement for 48 hours' notice of any change to start times. The bargaining agent objected to the proposal on the basis that there was no demonstrated need for the change.

[44] The Arbitration Board declines to award this proposal.

[45] The bargaining agent proposed that overtime under this Appendix be paid at double time on the second day of rest, whether or not the Officer had worked on the first day of rest. The bargaining agent submitted that Ships Crews receive double time on the second day of rest and this change would ensure

that officers and crews were treated equally. The employer objected to the proposal on the basis that this would give the second day of rest a greater value than the first day of rest.

[46] The Arbitration Board awards the bargaining agent proposal.

Wages and Economic Increases

[47] The bargaining agent proposed economic increases to wages of 2.9% in each year of the collective agreement. The employer proposed economic increases of 1.5% in each year of the collective agreement (with an additional .25% in year one and .5% in year three, as compensation for the loss of severance on resignation and retirement).

[48] The pattern of economic increases in the federal public service has been 1.5%. The Arbitration Board does not see a demonstrated need to deviate from this pattern. Accordingly, the Arbitration Board awards economic increases of 1.5% in each year of the collective agreement. In addition, the Arbitration Board awards a further increase of .25% in the first year and .5% in the third year (as proposed by the employer in its proposal to remove severance entitlements from the collective agreement):

April 1, 2011: 1.75%

April 1, 2012: 1.5%

April 1, 2013: 2.0%

Economic Increase for Multiple Allowances

[49] The bargaining agent proposed an increase of 2.9% to all allowances in each of the three years of the collective agreement. In its brief, the bargaining agent provided a list of the relevant allowances:

Article 25: Meals and Quarters Allowance

Appendix E: Canadian Coast Guard Officer Cadets: Monthly Allowances

Appendix G: Extra Responsibility Allowance

Appendix F: Rescue Specialist Allowances; Fisheries Enforcement Allowance; Armed Boarding Allowance; Diving Duty Allowance; and Nuclear Emergency Response Team Allowance.

[50] The employer objected to the proposal on the basis that this does not reflect current established settlement patterns in the federal public service.

[51] The employer also stated that the allowances at issue should be limited to those that fall within the definition of "allowance" contained in Article 2.01 of the collective agreement. It stated that it raised this objection in its submissions on the Terms of Reference for the interest arbitration and the bargaining agent did not respond to the employer's position.

[52] The Terms of Reference for this Arbitration Board included this proposal of the bargaining agent. As noted in the Terms of Reference (at para. 5), if any jurisdictional questions arise with regards to "the inclusion of a matter in these terms of reference, that question must be submitted without delay to the Chairperson of the *Public Service Labour Relations Board*, who is, according to subsection 144(1) of the *Act*, the only person authorized to make such a determination". The employer made no such application to the Chairperson. Accordingly, the bargaining agent proposal is properly before us.

[53] The Arbitration Board finds it appropriate to award an increase in allowances that reflect the economic increase for wages, not including the increases for the loss of severance. Accordingly, the Arbitration Board awards an increase in the above-listed allowances of 1.5% in each year of the collective agreement.

Article 43.01 Duration and Renewal

[54] The parties are in agreement that the duration of the collective agreement shall be three years (expiry: March 31, 2014).

[55] The bargaining agent has proposed that all benefits and monetary items, including all allowances, shall be retroactive to April 1, 2011. The employer objected to this proposal on the basis that the current language in the collective agreement is consistent across all collective agreements in the core public service.

[56] The Arbitration Board declines to award the bargaining agent's proposal.

[57] The employer proposed an implementation period for provisions in the collective agreement of one hundred and fifty (150) days. The bargaining agent opposed this proposal. The Arbitration Board declines to award the employer's proposal.

[58] Unless otherwise stated, the Agreement shall become effective on April 1, 2013.

Implementation of Award

[59] The Arbitration Board shall remain seized of this matter for a period of two months from the date of this award, in the event that the parties encounter any difficulties in its implementation.

Ian R. Mackenzie

For the Arbitration Board

May 1, 2013