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File: 585-18-13

Public Service Labour Relations Board

Before an Arbitration Board

BETWEEN:

THE PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

And

THE STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES BASE SUFFIELD, ALBERTA

Employer

**RESPECTING THE TERMS AND CONDITIONS OF EMPLOYMENT FOR A FIRST
COLLECTIVE AGREEMENT AFFECTING EMPLOYEES OF THE EMPLOYER, EXCEPT
FOR THOSE ABOVE THE RANK OF SUPERVISOR**

**Before: Brian Foley, Chairperson and
Trisha Gain and Dale Clark, members**

REPRESENTING THE UNION: Maggie Armstrong and the Bargaining Committee

REPRESENTING THE EMPLOYER: Sonya Gonsalves and the Bargaining Committee

Heard at Calgary, Alberta

June 24 to 26, 2008

1. BACKGROUND

On December 15, 2006, the Union was certified by the Public Service Labour Relations Board (the "Board") as bargaining agent for a bargaining unit of employees employed by the Employer at Canadian Forces Base, Suffield, Alberta, located near Medicine Hat, Alberta. The bargaining unit has approximately 107 employees, comprising 28 full-time employees, 60 part-time employees, 14 seasonal employees and 5 casual employees. The employees work in a variety of service outlets at the military base. Some of these outlets are Canex SuperMart; various Messes for Junior Rank Personnel, Warrant Officers, Sergeants and Officers; Fitness and Recreation Centre; Library; and Pre-School.

Bargaining committees of the Employer and the Union met on a number of occasions in 2007 and were successful in agreeing upon numerous provisions to be incorporated into their first collective agreement.

However, an impasse was reached on the matter of wages/wage increases and some ten other provisions.

In late 2007, the Union applied to the Board for the appointment of an interest arbitration board to deal with the issues still in dispute.

In February 2008, the Board appointed Brian Foley, Trisha Gain and Dale Clark as the arbitration board and arbitration board hearing dates were then established for June 24, June 25, and June 26, 2008 in Calgary, Alberta.

The arbitration board convened in Calgary on June 24, 2008 and, with the agreement of the Employer and the Union, a mediation process was utilized to determine if some, if not all of the issues in dispute could be resolved without the formality of an arbitration board hearing.

Mediation ensued on June 24 and June 25, 2008 and the Employer and the Union came to agreement on most of the outstanding terms and conditions for a first collective agreement, including the term of the collective agreement, from April 1, 2007 to March 31, 2010.

However, the Employer and the Union were not able to reach agreement on the wage rates and wage increases that would apply over the three-year term of their first collective agreement.

Before the arbitration board convened in Calgary, Alberta, the Employer and the Union had provided the arbitration board members with comprehensive written submissions on all the issues in dispute, including wage rates and wage increases. At the arbitration hearing, representatives of the Employer and the Union then presented verbal arguments on the wage rate and wage increase issues.

2. PROVISIONS OF THE PUBLIC SERVICE LABOUR RELATIONS ACT AND RELEVANT ARBITRAL JURISPRUDENCE

Section 148 of the Public Service Labour Relations Act states as follows:

"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."

In its 1993 decision respecting Yarrow Lodge Ltd., (BCLRB NO B444/93) the British Columbia Labour Relations Board emphasized that interest arbitrators utilize two principles; the replication theory and a determination of what is fair and reasonable in the circumstances. These two principles were described by the British Columbia Labour Relations Board as follows:

"In applying the replication principle, an arbitrator's objective is to replicate or construct a collective agreement which reflects as nearly as possible the collective agreement that conventional bargaining between the parties would have produced had they themselves been successful in concluding a collective agreement. This approach seeks to put both parties in the same position they would have been in had there been no breakdown in negotiations. However, arbitrators try to overcome one serious flaw in this approach; that is, they do not simply want to mirror any great imbalances of power between parties in drafting the terms and conditions of employment. They will attempt to look at other objective criteria -- -- for example, the terms and conditions of employment of other employees performing similar work. They therefore, in addition to employing the replication principle, impose what they consider to be fair and reasonable terms and conditions."

The process involved in determining what is fair and reasonable in all the circumstances of a particular case involves "...an analysis of objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for similar work as the work in issue." (Beacon Hill Lodges of Canada, (1985) 19 LAC (3d) 288 (Hope).

As stated by arbitrator Stan Lanyon in his April 1996 unreported decision respecting the Electrical Contractors Association of Alberta, "...an arbitrator will take into account such factors as the parties' respective positions in negotiations; settlements reached by other parties; the significance of the issues, both in collective bargaining terms and to the parties themselves; and the likely trade-offs that would have been made during negotiations, both in regard to particular items and in regard to the collective agreement as a whole."

As the Supreme Court of B.C. stated in The Bay V. Labour Relations Board et al, Docket C962861, the Honourable Mr. Justice Henderson, December 15, 1996:

“ ... the interest arbitrator is to be guided, not only by the present circumstances of the parties, but also by such broader concerns as the general economic climate and the prevailing labour market conditions for similar work. Collective agreements negotiated by other similarly situated parties in the recent past constitute an important source of objective information”.

In applying these interest arbitration principles, an arbitrator must make an objective judgement in determining what is the prevailing standard in relationships in which similar work is performed under similar working conditions. The terms and conditions of employment, the wage increases and wage rates established in negotiations for similar occupations in the same geographic areas represent comparables which should be replicated under interest arbitration.

Interest arbitration awards must be based on standards that are prevailing for the particular classifications in the same geographic areas. Interest arbitration is not a proper forum for establishing breakthroughs or innovations. Interest arbitrators must attempt to replicate the collective bargaining process and what has been agreed to by the parties in a free collective bargaining environment. Therefore, interest arbitrators will generally follow bargaining trends, not establish them.

3 . WAGE INCREASES – SUBMISSIONS OF THE EMPLOYER AND THE UNION

The 107 employees of the Employer are classified in ten pay bands, depending on the relative complexity of the duties they perform. The wage scales for these pay bands and the hourly pay rates as of April 1, 2006 (the date of the last wage increase) are as follows:

BAND	START	12 MONTHS	24 MONTHS	36 MONTHS
1	\$8.35	\$8.63	\$8.88	\$9.16
2	\$8.67	\$8.93	\$9.22	\$9.50
3	\$8.92	\$9.25	\$9.49	\$9.81
4	\$9.61	\$9.88	\$10.22	\$10.53
5	\$10.85	\$11.17	\$11.54	\$11.86
6	\$11.29	\$11.65	\$12.02	\$12.38
7	\$13.56	\$14.60	\$15.66	\$16.71
8	\$15.81	\$16.28	\$16.82	\$17.33
9	\$17.55	\$17.67	\$17.97	\$18.27
10	\$18.74	\$19.30	\$19.88	\$20.47

The Employer has proposed to the arbitration board that the April 1, 2006 hourly wage rates be increased as follows over the term of the first collective agreement:

- April 1, 2007 – Average hourly wage increases of approximately 5%
- April 2, 2008 – 3.25% increase to all wage rates
- April 1, 2009 – 3.25% increase to all wage rates.

The Union has proposed the following wage increases over the term of the first collective agreement:

- April 1, 2007 - \$1.65 per hour across-the-board market adjustment to all wage rates
- October 1, 2007 – 3.25% increase to all wage rates
- April 1, 2008 – 3.5% increase to all wage rates
- April 1, 2009 – 3.5% increase to all wage rates.

The Union also requested that the pay bands be modified to provide for a wage rate in each pay band after three months and that the retroactive wage increases apply to any person who worked for the Employer at any time in the period from April 1, 2007, even if they are not currently employed by the Employer.

The Employer argued that the 5% wage increase it proposed as of April 1, 2007 was in keeping with, if not in excess of, percentage wage increases that prevailed generally in Alberta and specifically at other armed forces bases across Canada. The Employer submitted that the benefits it provides to its employees are superior to the benefits provided by many other employers in Alberta and, in a total compensation context, the Employer's wage rates and its overall compensation package will be very competitive in the Alberta marketplace once the 2007 and 2008 wage increases are implemented.

The Employer acknowledged that it had encountered recruiting and retention problems in the past, and was still experiencing these problems. However, the Employer argued that the wage increases it was proposing over the term of the collective agreement should place the Employer in a favourable position to be able to successfully recruit and retain employees.

The Employer emphasized that the Union's wage increase proposal in the first year of the collective agreement of approximately 20% over the April 2006 wage rates and the other wage increases the Union proposed would place the Employer in an untenable and unsustainable financial and economic situation, resulting in the possible curtailment or discontinuation of some of the services at the Suffield armed forces base.

The Employer requested that the arbitration board award wage increases in line with the Employer's proposals. The Employer also requested that the arbitration board limit the payment of any wage rate retroactivity to employees who are still working for the Employer. Finally, the Employer requested that the arbitration board not grant the Union's request that a three month hourly wage rate be incorporated into the pay bands.

In making its verbal arguments at the arbitration hearing with respect to the issue of wage rate retroactivity, the Union referred to a number of arbitration awards that provided full wage rate retroactivity to all persons who worked during the retroactive pay period. With respect to the introduction of a three month hourly wage rate into the pay bands, the Union provided documentation that showed that a broad cross-section of collective agreements in the Medicine Hat area contain a three month wage rate in their wage scales.

As to the \$1.65 per hour across-the-board market adjustment wage increase proposed by the Union effective April 1, 2007 and the other proposed wage increases after that date, the Union made reference to its written submission, emphasizing that the documentation showed that:

- The hourly pay rates for the Employer's employees were far below the hourly pay rates for comparable/similar occupations in the Medicine Hat area, and far below the pay rates for the City of Medicine Hat;

- Because of the strong Alberta economy and the tight labour market, the wage increases prevailing in Alberta in 2007 and 2008 were much higher than elsewhere in Canada;
- The Employer faces continuing significant recruiting and retention problems and, unless the wage increases proposed by the Union are implemented, those recruiting and retention problems will only get worse; and
- There was no objective evidence presented by the Employer to refute the Union's arguments that the Employer is in a favourable economic position, with financial stability and a strong fiscal capacity, and its services would not be adversely affected by implementing the wage increases proposed by the Union.

4. ARBITRATION BOARD DECISION – WAGE RATES AND WAGE INCREASES

The arbitration board has given detailed consideration to the verbal and written submissions of the Employer and the Union and to all the supporting documentation in their written submissions. The arbitration board has also considered the wage rates and wage increases for job classifications in the Medicine Hat and Southern Alberta areas that are comparable to the job classifications of the Employer.

To reach a conclusion on what wage rates and increases should prevail over the term of the collective agreement, the arbitration board has placed paramount emphasis on the contents of Section 148 of the PSLRA and on the arbitral jurisprudence respecting interest arbitration generally and first collective agreement interest arbitration in particular.

Having done so, the arbitration board has determined that the following wage rates and wage increases will apply over the term of the three year collective agreement:

(A) WAGE RATES AND WAGE INCREASE EFFECTIVE APRIL 1, 2007

Effective April 1, 2007, the hourly rates of pay for pay bands 1 to 4 inclusive will be increased by \$1.25 per hour and the hourly rates of pay for pay bands 5 to 10 inclusive will be increased by \$1.00 per hour.

In addition, a three month wage rate will be added to the wage scales. The resulting hourly wage rates, effective April 1, 2007, will be as follows:

BAND	START	3 MONTHS	12 MONTHS	24 MONTHS	36 MONTHS
1	\$9.60	\$9.74	\$9.88	\$10.13	\$10.41
2	\$9.92	\$10.05	\$10.18	\$10.47	\$10.75
3	\$10.17	\$10.34	\$10.50	\$10.74	\$11.06
4	\$10.86	\$11.00	\$11.13	\$11.47	\$11.78
5	\$11.85	\$12.01	\$12.17	\$12.54	\$12.86
6	\$12.29	\$12.47	\$12.65	\$13.02	\$13.38
7	\$14.56	\$15.08	\$15.60	\$16.66	\$17.71
8	\$16.81	\$17.05	\$17.28	\$17.82	\$18.33
9	\$18.55	\$18.61	\$18.67	\$18.97	\$19.27
10	\$19.74	\$20.02	\$20.30	\$20.88	\$21.47

- 1) The wage increases retroactive to April 1, 2007 will be paid to any persons employed by the Employer in the retroactive period, even if they are no longer employed by the Employer.

- 2) Any employee whose rate of pay is above the top step increment will not have their current pay reduced but will retain their current rate of pay until the top step increment on the pay grid for their job level exceeds their rate of pay; at this point, the rate of pay for those employees will increase to the closest rate on the grid.

(B) WAGE RATES AND WAGE INCREASE EFFECTIVE APRIL 1, 2008

Effective April 1, 2008, the hourly rates of pay for pay bands 1 to 10 inclusive will be increased by \$0.80 per hour. The resulting hourly wage rates, effective April 1, 2008, will be as follows:

BAND	START	3 MONTHS	12 MONTHS	24 MONTHS	36 MONTHS
1	\$10.40	\$10.54	\$10.68	\$10.93	\$11.21
2	\$10.72	\$10.85	\$10.98	\$11.27	\$11.55
3	\$10.97	\$11.14	\$11.30	\$11.54	\$11.86
4	\$11.66	\$11.80	\$11.93	\$12.27	\$12.58
5	\$12.65	\$12.81	\$12.97	\$13.34	\$13.66
6	\$13.09	\$13.27	\$13.45	\$13.82	\$14.18
7	\$15.36	\$15.88	\$16.40	\$17.46	\$18.51
8	\$17.61	\$17.85	\$18.08	\$18.62	\$19.13
9	\$19.35	\$19.41	\$19.47	\$19.77	\$20.07
10	\$20.54	\$20.82	\$21.10	\$21.68	\$22.27

- 1) The wage increases retroactive to April 1, 2008 will be paid to any persons employed by the Employer in the retroactive period, even if they are no longer employed by the Employer.
- 2) Any employee whose rate of pay is above the top step increment will not have their current pay reduced but will retain their current rate of pay until the top step increment on the pay grid for their job level exceeds their rate of pay; at this point, the rate of pay for those employees will increase to the closest rate on the grid.

(C) WAGE INCREASE EFFECTIVE APRIL 1, 2009

The hourly wage rates for pay bands 1 to 10 inclusive will be increased by 3.5%, effective April 1, 2009.

Brian Foley
Chairperson
Arbitration Board