

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES

Employer

Request for Arbitration - Administrative Support Group

Before: Joseph W. Potter, Chairperson, and Dale Clark, Bargaining Agent
Nominee, and Lynn Harnden, Employer Nominee

For the Bargaining Agent: Larry Gagnon, Negotiator, and Shawn Vincent,
Research Officer

For the Employer: Christopher Smith, Labour Relations Officer, and
Adrian Scales, Acting Director, Labour Relations

Heard at Fredericton, N.B.,
December 18 and 19, 2006.

By way of a letter dated July 11, 2006, from the Public Service Labour Relations Board (PSLRB), I was appointed as Chairperson of the Arbitration Board with respect to a dispute in the above-cited group. The terms of reference for the Arbitration Board were signed on July 13, 2006, by Sylvie Matteau, the Acting Chairperson of the PSLRB.

The parties agreed that the hearing in this matter would take place from December 18 to 21, 2006, inclusive, and this was confirmed by the PSLRB in its letter of August 15, 2006, to all parties concerned.

At that time there were a large number of issues in dispute between the two parties. A subsequent meeting between the two parties in December 2006 resulted in significant progress on the outstanding issues. In the end, however, the parties were unable to agree on four issues. This arbitral award will, therefore, deal with the four issues that remained outstanding when the Arbitration Board convened its hearings.

It became apparent to the Arbitration Board that the main stumbling block to an agreement between the parties themselves was the issue of pay. To quote from the submissions of the bargaining agent to this Arbitration Board, the bargaining unit members feel they are “underpaid in comparison to employees working in similar positions within the New Brunswick job market, relative to other support staff working at other Non-Public Funds (NPF) Units and in comparison to other federal employees doing similar work”. (PSAC submissions - Tab 2 C. (ii) - Appendix B - Rates of Pay)

The Arbitration Board encouraged both sides to further pursue this issue in direct negotiations and although attempts were made to bridge this difference, ultimately the parties remained divided on the issue. The Arbitration Board sincerely appreciates the efforts that both sides made to attempt to resolve the matter. However, in the end, a ruling will have to be made on this issue, and I will have more to say about it later in this award.

Issues in dispute

1. The first issue in dispute between the parties is a proposal put forward by the bargaining agent entitled “PSAC Social Justice Fund”. The proposal reads as follows:

XX.01 The Employer shall contribute one cent (\$0.01) per hour worked to the PSAC Social Justice Fund and such contribution will be made for all hours worked by each employee in the bargaining unit. Contributions to the Fund shall be made quarterly, in the month immediately following completion of each fiscal quarter in each year. This contribution shall be remitted to the PSAC National Office.

The employer's response to this proposal is that it should be denied.

The Arbitration Board has carefully considered this proposal and determined that it should not be included in the arbitral award.

2. The second issue in dispute between the parties relates to the issue of entitlement to retroactive pay for all employees who worked during the retroactive period, whether or not they are currently on strength. The proposal of the bargaining agent reads as follows:

It is expressly stipulated, in accordance with Article 29.01, that any person who was an employee at any time during the period beginning 1 March 2004 until the effective date of any arbitral award or negotiated collective agreement shall receive a monetary payment, in full, retroactive to 1 March 2004, of all pay adjustments, progressive movement within the pay grid, as well as any economic increase as calculated on the amounts paid, in accordance with Appendix B, as applicable to their circumstances as an employee.

In the case of a deceased employee that amount shall be paid to the estate of that former employee.

In the case of all other former employees or retired employees that amount shall be paid to that person and mailed to their last known address.

The employer's position at the hearing was that, historically, employees who have left the bargaining unit during the retroactive period have not been entitled to retroactive increases. There was no objection to maintaining the practice of applying any retroactive increase to employees currently on strength, but the employer maintained it was not an industry practice to provide retroactive monies to individuals no longer in the bargaining unit.

The Arbitration Board has carefully considered this issue and finds that in these particular circumstances the bargaining agent's proposal has merit. The parties have been without a collective agreement since the previously negotiated collective agreement expired on February 28, 2004. This is a lengthy retroactive period by any standard.

In light of this, the Arbitration Board determines that the proposal of the bargaining agent shall be included in this arbitral award.

3. The third issue in dispute is the duration, and the fourth issue in dispute is pay. In the interests of providing a succinct award, I will combine the two issues.

As stated earlier in this award, the bargaining agent sought wage increases that would address what it felt were growing disparities "in their wages with comparable groups, especially those employees of DND doing similar work". (PSAC submissions - Tab 1 B - Negotiating History - (ii) Current Round)

In order to address this issue, the bargaining agent's pay position is as follows:

The PSAC proposed a 3 year collective agreement that would adjust the pay grid in order to allow this group to "catch up" relative to other federal employees and raise up the rates on the very low end. On March 31, 2004, the 48 month rate would become the new 24 month rate, and a new 36 month rate would be created. Also on this date, an across the board \$6 per hour increase would be applied to the grid. With this new grid in place, there would immediately be a 3% economic increase, a further 3% economic increase in 2005 and an economic increase of 3.5% in 2006. The starting and ending rates are found in the tables below.

Starting Rates (31 March 2003)

BAND	START	2MOS	12MOS	18MOS	48MOS
5	8.74	9.00	9.26	9.82	10.61
6	9.88	10.30	10.72	11.46	12.38
7	13.30	13.70	14.13	14.57	15.28
8	13.81	14.21	14.64	15.08	16.91

Ending Rates (31 March 2006)

BAND	START	2MOS	12MOS	18MOS	24MOS	36MOS
5	16.19	16.47	16.76	17.37	18.24	19.11
6	17.44	17.90	18.36	19.17	20.18	21.19
7	21.20	21.63	22.10	22.59	23.37	24.15
8	21.75	22.19	22.67	23.14	25.16	27.18

The employer's pay proposal is as follows:

- 5% - March 1, 2004
- 3% - March 1, 2005
- 3% - March 1, 2006
- 3% - March 1, 2007
- 3% - March 1, 2008

This Arbitration Board is bound by the provisions of the *Public Service Labour Relations Act (PSLRA)*. Section 148 of the *PSLRA* states the following:

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

One of the underpinnings of the bargaining agent's proposal is that there are employees of the DND doing similar work at a higher level of compensation and therefore the compensation gap should be narrowed. One difficulty this Arbitration Board has with this position is that no evidence was presented as to what the employees of the DND actually do in their work. Even if they did comparable work, perhaps their terms and conditions of employment warrant this higher compensation. For example, perhaps they could be deployed overseas and, perhaps, this warrants a higher pay level.

In consideration of all the factors presented by both sides to this dispute, the Arbitration Board resolves the pay matter as follows:

Economic Increases:

- *Effective March 1, 2004: 5.0%*
- *Effective March 1, 2005: 3.0%*
- *Effective March 1, 2006: 3.0%*
- *Effective March 1, 2007: 3.0%*

Duration

This arbitral award will expire on February 28, 2008.

February 9, 2007.

**Joseph W. Potter,
Chairperson**