

Date: 2013-03-01

File: 585-23-45

IN THE MATTER OF
THE PUBLIC SERVICE LABOUR RELATIONS ACT

and a Request for Arbitration affecting

The Professional Institute of the Public Service of Canada,
as bargaining agent,

and

Office of the Superintendent of Financial Institutions,
as employer,

in respect of the Professional Employees Group bargaining unit

Before: Philip Chodos, Arbitration Board

For the bargaining agent: Michael Urminsky and Ryan Campbell, PIPSC

For the employer: Jock Climie, Counsel

Heard at Ottawa, Ontario,

January 28, February 5 and 8, 2013

ARBITRAL AWARD

I. Introduction

[1] By letter dated July 19, 2012 the bargaining agent requested arbitration in respect of the employees in this bargaining unit. The bargaining agent also requested the establishment of an arbitration board consisting of a single member.

[2] On August 1, 2012, the employer provided its position with respect to the terms and conditions of employment that the bargaining agent indicated it wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment that it wished to refer to arbitration. The bargaining agent responded to the employer's submissions on August 10, 2012.

[3] On the recommendation of the bargaining agent and the employer, the undersigned was appointed by the Chairperson of the Public Service Labour Relations Board to be an arbitration board consisting of a single member, in accordance with section 139 of the *Public Service Labour Relations Act (PSLRA)*. The Chairperson also set out the Terms of Reference based on the submissions of the parties. The parties duly exchanged briefs prior to the scheduled hearing; copies of these briefs were also provided to the Arbitration Board.

[4] Following consultations with the parties, it had been agreed that the Arbitration Board hearings would proceed on January 28, 2013. At the outset of the scheduled hearing, the representatives of the parties indicated that they wished to enter into further discussions with a view to attempting to resolve the issues in dispute. As a result of their efforts, a number of the disputed matters were resolved. The parties requested that the agreed-to provisions be incorporated in this arbitral award, and accordingly those provisions are addressed below. Several items in dispute remained unresolved, and consequently were the subject of further hearings on February 5 and 8, 2013.

II. Background

[5] The Office of the Superintendent of Financial Institutions (OSFI) is an independent agency established under the *Office of the Superintendent of Financial Institutions Act*. Its mandate is described as follows:

- *Supervise federally-regulated financial institutions and private pension plans to determine whether they are in sound financial condition and meeting minimum plan funding requirements*

- respectively, and complying with their governing law and supervisory requirements;*
- *Promptly advise institutions and plans in the event there are material deficiencies and take or require management, boards or plan administrators to take necessary corrective measures expeditiously;*
 - *Advance and administer a regulatory framework that promotes the adoption of policies and procedures designed to control and manage risk;*
 - *Monitor and evaluate system-wide or sectoral issues that may impact institutions negatively.*

[6] The OSFI has approximately 683 employees, of which about 476 are found in this bargaining unit represented by The Professional Institute of the Public Service of Canada. These employees are classified at the RE-03 to RE-07 levels. The largest number of employees of the bargaining unit are found at the RE-05 level; the second largest group is at the RE-06 level.

[7] The initial terms and conditions of employment that were referred to arbitration by the bargaining agent were the following:

Article 7.05(d) – Compressed Work Week
Article 11.01 – Designated Paid Holidays
Article 12.04 – Travelling Time
Article 14.02 – Accumulation of vacation leave credits
Article 15 – Sick Leave
Article 16.02 – Bereavement Leave
Article 17.10 – Leave with Pay for Family Related Responsibilities
Article 18.05 – Selection criteria
Article 21.03 – Wellness gift
Article 43.04 – Pay Administration
Article 43.05 – Performance Pay
Article 43.06 – Pay Administration
Appendix E – MOU Performance Pay

[8] The employer had proposed the following provisions for inclusion in a new collective agreement:

Article 8 – Overtime [specifically subclause 8.01(c) and clause 8.07]
Article 9 – Call[-Back [specifically clause 9.02]
Article 13 – Leave - General [a new provision – clause 13.08]
Article 19 – Severance Pay
Article 47 – Duration of Agreement
Appendix A – Rates of Pay
Appendix E – Memorandum of Agreement [which addresses performance pay]

III. Agreement of the Parties on Issues in Dispute

[9] As noted above, during the course of these arbitration proceedings the parties reached agreement on a number of matters in dispute. At the request of the parties, these provisions, noted below, are included as part of this arbitral award.

- Article 8 – Overtime

[10] The employer has proposed, with respect to compensatory leave under clause 8.07, that the reference in the final paragraph of this provision to December 31 be deleted, and replaced by the date of March 31.

[11] The bargaining agent has agreed to this proposal.

- Article 9 – Call-Back

[12] This provision also deals in part with compensatory leave. Consistent with the proposed change to clause 8.07, the employer has proposed deleting the reference to December 31 and replacing that date with March 31.

[13] The bargaining agent has agreed to this proposal.

- Article 11 – Designated Paid Holidays

[14] The bargaining agent had proposed the addition of a new designated paid holiday: “Family Day, as observed in the Province of Ontario or in the Province where the employee is stationed” (proposed subclause 11.01(b)).

[15] The bargaining agent has withdrawn this proposal.

- Article 12 – Travelling Time

[16] The bargaining agent has withdrawn its proposal with respect to clause 12.04.

- Article 13 – Leave – General

[17] The employer has proposed a new provision – clause 13.08 – that would provide as follows:

13.08 Where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other

than illness, the total period of leave granted shall be deducted from “continuous employment” for the purpose of calculating severance pay and “service” for the purpose of calculating vacation leave. This clause does not apply to leave granted to an employee to work on external assignments where such assignments are deemed by the employer to be a direct benefit to OSFI.

[18] The bargaining agent has agreed to this proposal.

- Article 14 – Vacation Leave With Pay

[19] This proposal deals with the accumulation of vacation leave credits (clause 14.02); the bargaining agent has withdrawn this proposal.

- Article 15 – Sick Leave With Pay

[20] The bargaining agent had proposed provisions that would provide for the cash payment for unused sick leave credits upon retirement (new clause 15.11) and upon resignation (new clause 15.12).

[21] The bargaining agent has withdrawn this proposal.

- Article 16 – Bereavement Leave

[22] The bargaining agent has proposed an amendment to subclause 16.02(a) by deleting the reference to “five (5) consecutive calendar days” and substituting therefor “seven (7) calendar days.”

[23] The parties agreed to amend subclause 16.02(a) so that it would read as follows:

- Where a member of an employee’s immediate family dies, an employee shall be granted bereavement leave with pay for a period of up to seven (7) consecutive calendar 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. In addition, the employee may be granted up to three (3) days’ special leave with pay for the purpose of travel to and from the place of the funeral or service.*

The parties also agreed that the rest of the clause shall remain unchanged.

- Article 47 – Duration of Agreement

[24] The parties agreed to a three-year duration; that is, the new collective agreement shall be in force from April 1, 2011, to March 31, 2014.

IV. Issues Remaining in Dispute

[25] In reaching a determination on the issues in dispute, the Arbitration Board was governed by section 148 of the *PSLRA*, which states as follows:

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.*

[26] The Arbitration Board has considered all of these factors in reaching its determination respecting the matters in dispute.

- Article 17 – Other Leave With or Without Pay

[27] The bargaining agent proposes an amendment to clause 17.10 – “Leave with Pay for Family-Related Responsibilities” – by adding “or parents of legal or common-law spouse” to the definition of “family” as found in subclause 17.10(a).

[28] The employer opposes the expansion of this definition.

[29] The Arbitration Board determines that this provision shall be renewed without change.

- Article 18 – Career Development

[30] The bargaining agent proposes adding the following language to subclause 18.05(a) –“Selection Criteria”:

The Selection Criteria should ensure that time and financial support will be provided to any employee needing continuing training in order to maintain a professional designation which is required for the position.

[31] The employer opposes the addition of this language.

[32] The Arbitration Board determines that subclause 18.05(a) shall be renewed without change.

- Article 21 – Safety and Health

[33] The bargaining agent proposes a new provision (proposed clause 21.03), which would provide a “Wellness Gift” of up to \$500.00 once per year, subject to certain conditions as set out in the proposal.

[34] The employer opposes this proposal.

[35] The Arbitration Board determines that this proposal shall not be included in this arbitral award.

- Article 43 – Pay Administration

[36] The bargaining proposes an amendment to clause 43.04, which addresses the qualifying period required for an employee to receive acting pay upon performing the duties of a higher classification level. Currently, the qualifying period is “five (5) consecutive working days.” The bargaining agent proposes reducing the qualifying period to “three (3) consecutive working days.”

[37] The employer opposes this amendment.

[38] The Arbitration Board determines that this provision shall be amended in accordance with the bargaining agent's proposal; that is, the qualifying period shall be reduced to "three (3) consecutive working days."

- Article 19 – Severance Pay

[39] The employer proposes wide—ranging and comprehensive amendments to this provision. In essence, its proposal would eliminate the payment of severance pay for employees who resign or retire. Severance pay would continue to accumulate upon death, layoff and termination for incapacity or incompetence. The employer also proposes enhancing severance pay for employees who are laid off. Under this proposal, employees would have a number of options to cash-out accumulated severance benefits. As a *quid pro quo* for these changes the employer proposes additional salary increases of 0.25% in year 1 and 0.5% in year 3 of a three year agreement.

[40] In its brief, the employer described its proposal as follows:

...

The Employer proposes to enhance severance pay in situations of a first layoff that improves with seniority, as follows:

- *1st complete year of continuous employment:*
 - *two (2) weeks' pay, or*
 - *three (3) weeks' pay for employees with ten (10) or more and less than twenty (20) years of continuous employment, or*
 - *four (4) weeks' pay for employees with twenty (20) or more years of continuous employment,*
- *plus one (1) week's pay for each additional complete year of continuous employment, prorated in the case of partial years*

Additionally, the Employer proposes to delete the provisions regarding severance pay on resignation or retirement, in line with the Treasury Board settlements and recent PSLRB decisions, and offers severance terminations as follows:

- *one (1) week's pay for each complete year of continuous employment, to a maximum benefit of thirty (30) weeks*
- *payment is prorated for partial years for indeterminate employees only*
- *three (3) options for cash out:*
 - 1. Immediate cash out of severance*
 - 2. Retain severance accumulated benefit for a payout on termination at exit rate of pay*

3. *Partial cash out of severance while retaining balance for a payout on termination*
- *Selection of payment options:*
 - *Time lines run from official date of signing the collective agreement(s)*
 - *Employer*
 - *Advise employees of years of continuous service*
 - *Within three (3) months*
 - *Employee*
 - *Advise employer of payment option*
 - *Within six (6) months*
 - *Combine option – specify number of weeks to be paid out*
 - *No selection – deemed to have chosen option (b) (on termination)*

. . .

[41] In the course of these arbitration proceedings, the bargaining agent acknowledged that the current collective bargaining trend in the broad Public Service supports this change. The bargaining agent's representative noted that the fundamental issue between the parties in respect of severance pay is the appropriate compensation that employees in the bargaining unit should receive in response to the employer's proposal.

[42] The Arbitration Board determines that the employer's proposed amendments to the severance pay provision shall be incorporated into the new collective agreement.

- Article 43 – Pay Administration
- Appendix E – Memorandum of Agreement Respecting Performance Pay

[43] The current collective agreement provides for performance pay for employees below the 100% job rate; the in-range increases are based on performance ratings that range from "Needs Improvement (0%)" to "Consistently Exceeds Expectations (3.0%)." There are currently five (5) performance rating categories. The collective agreement also provided for the same five (5) categories for cash bonuses, with differing percentage increases, both in respect of employees whose salaries are not at the maximum and those that are at the maximum.

[44] The employer proposes the amendment of Appendix E by reducing the number of performance rating categories from five (5) to three (3), as follows:

<i>Rating</i>	<i>In-Range Increases</i>
<i>Did Not Meet Expectations</i>	0%
<i>Met Expectations</i>	3%
<i>Surpassed Expectations</i>	4%

<i>Rating</i>	<i>Cash Bonus</i>
<i>Did not meet expectations</i>	0%
<i>Met expectations</i>	1-7%
<i>Surpassed Expectations</i>	7-16%

[45] The employer's proposal notes that these changes are in respect of the 2013-2014 performance pay cycles.

[46] The bargaining agent endorses the employer's proposal to reduce the number of categories from five (5) to three (3); it also agrees that the three (3) categories would be as proposed by the employer. However, the bargaining agent proposes the following increases in respect of the performance ratings:

In-range Increase:

<i>Did Not Meet Expectations</i>	0%
<i>Met Expectations</i>	4%
<i>Surpassed Expectations</i>	4%

Cash Bonuses:

<i>Rating</i>	<i>Cash Bonus</i>
<i>Did Not Meet Expectations</i>	0-4%
<i>Met Expectations</i>	5-7%
<i>Surpassed Expectations</i>	8-16%

[47] The Arbitration Board determines that the employer's proposals respecting performance pay shall be incorporated into the new collective agreement.

- Appendix A – Rates of Pay

[48] The employer proposes the following economic increases in respect of all rates of pay:

- April 1, 2011 – 1.75%
- April 1, 2012 – 1.5%
- April 1, 2013 – 2.0%

[49] These economic increases incorporate the employer's proposed increases to provide compensation in respect of the employer's submissions for amendments to the severance pay provisions.

[50] The bargaining agent accepts the employer's proposal with respect to the economic increases. However, in addition to these increases the bargaining agent proposes an increase at the maximum of the RE-05 salary range of 1.5%, effective April 1, 2013; an increase of 2.0% to the maximum salary range of the RE-06 level, effective April 1, 2013; and an increase of 2.5% to the maximum salary range of the RE-07 level, April 1, 2013.

[51] The Arbitration Board determines that the economic increases shall be as proposed by the employer, and accepted by the bargaining agent.

[52] The Arbitration Board also determines that effective April 1, 2013, the maximum salary range for the RE-05 level shall be increased by 1.5%; effective the same date, the maximum salary range for the RE-06 level shall be increased by 1.75%; and again effective April 1, 2013, the maximum salary range for the RE-07 level shall be increased by 1.5%.

V. Implementation

[53] The Arbitration Board will remain seized of this matter for a period of three (3) months from the date of this arbitral award in the event that the parties encounter any difficulties in its implementation.

OTTAWA, March 1, 2013.

**Philip Chodos,
Chairperson of the Arbitration Board**