

**IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a dispute affecting
the Federal Government Dockyards, Trades and Labour Council
(Esquimalt, B.C.),
as bargaining agent,
and the Treasury Board, as employer,
in respect of the Ship Repair-West Group bargaining unit**

AWARD OF THE ARBITRATION BOARD

Before:

Ken Norman, Chairperson,
James Hayes, Bargaining Agent Nominee,
Frank Jamieson, Employer Nominee

For the Bargaining Agent:

Ronald A. Pink, Q.C., counsel
Heather L. Totton, counsel

For the Employer:

Georges Hupé, Treasury Board Secretariat
Shaun Peddie, economist

1 The parties began the bargaining process with regard to this matter on June 16, 2006. Proposals were exchanged in July. The collective agreement expired on September 30, 2006. Bargaining resulted in a tentative agreement. However, this was soundly rejected by a ratification vote held at the end of April, 2007.

2 Consequently, by letter of March 25, 2008, the bargaining agent requested arbitration. As part of this request, the bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration.

3 By letter of April 10, 2008, the employer provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer objected to the following proposal by the bargaining agent:

Effective July 1, 2007, adjust the rates of pay for all pay groups, including those represented at CFAD Rocky Point and CFMETR, by 15% (broader employability).

The employer alleged that "broader-employability" was an initiative involving a reorganization of the workplace, the assignment of new duties and classification. The employer added that this initiative had not been implemented and that therefore the bargaining agent's proposal was moot. The employer also provided a list of additional terms and conditions of employment that it wished to refer to arbitration.

4 By letter of April 25, 2008, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration.

5 By letter of May 2, 2008, the Chairperson of the Public Service Labour Relations Board [PSLRB] requested that the parties address the employer's objection by way of written submissions.

6 By letter of May 16, 2008, the bargaining agent submitted that its request for arbitration regarding the broader-employability initiative strictly concerned compensation and had no impact on the initiative itself. The bargaining agent added that its proposal for the effective date of the broader-employability wage increase was based on the employer's representation that July 1, 2007, was the start date of the initiative.

7 The employer restated, by letter of May 28, 2008, that an arbitration board has no jurisdiction over the broader-employability initiative since it relates to the organization of the workplace, to the assignment of duties and to classification pursuant to s. 7 of the *Public Service Labour Relations Act [PSLRA]*. The employer added that the bargaining agent's proposal is moot until the employer proceeds with the implementation of the broader-employability initiative. The employer specified that it had decided not to implement the initiative.

8 By letter of June 13, 2008, the bargaining agent reiterated that its request for arbitration regarding the broader-employability initiative related strictly to compensation. While maintaining that the initiative was being implemented, the bargaining agent, in response to the employer's mootness argument, offered to amend its proposal to read as follows:

Effective the implementation date of the "Broader Employment" initiative, adjust the rates of all pay groups, including those represented at CFAD Rocky Point and CFMETR, by 15%.

9 The employer repeated, by letter of June 27, 2008, that the broader-employability initiative would not be implemented.

10 On August 8, 2008, Michele A. Pineau, Vice-Chairperson, PSLRB, ruled on these arguments by including in this board of arbitration's terms of reference the question of whether the bargaining agent's broader-employability proposal was moot. In paragraph 14 of the Vice-Chairperson's decision, the initial proposal was amended to match the bargaining agent's second draft of proposed broader-employability compensation language as above in paragraph 8. With terms of reference thus set, Casper M. Bloom, Q.C., Ad. E., Chairperson, PSLRB, promptly appointed the chairperson of this board and, then, by separate order, formally established this board of arbitration.

11 Following an exchange of correspondence with the parties, this board called for written arguments on a demand by the bargaining agent for an oral hearing, by way of a conference call, concerning its application for a preliminary order of disclosure of certain employment data from the employer. Briefs of August 18, September 26 and October 2 were filed. On October 20, this board ruled that s.147 of the *PSLRA* did not confer on an arbitration board the PSLRB's power to order pre-hearing conferences as per s.40 (1) (b) & (c). Accordingly, the board stated that, come the hearing into the merits of this reference, it stood prepared to bifurcate the hearing, if need be, should we be persuaded that the bargaining agent was not afforded a full hearing due to the lack of the data sought by its preliminary motion.

12 In light of the time that had gone by since this bargaining round was initiated, this board pressed the parties for an early set of dates for the hearing. Three sets of dates in November were offered as well as a set of three days in December. In the end, all

concerned settled on December 13, 14 and 15, 2008, for the hearing to be convened in Victoria.

13 At the outset of the hearing, the board invited the parties to consider whether they wished to have our assistance in resolving the issues in dispute. Immediate positive responses were forthcoming. Over the course of the following hours the board was impressed by the well of mutual respect that existed between the bargaining agent and Captain (N) Alex Rueben, Commanding Officer, Fleet Maintenance Facility Cape Breton. This was striking as one might reasonably assume that strained working relationships would ensue from the overwhelming failure of the ratification vote in April of 2007. That said, in the end, the gulf that separated the Treasury Board and the bargaining agent on the money issue proved to be a deal-breaker. The board then reverted to hearing mode on December 14.

14 Recent developments loomed large in the board's consideration of the key money issue. To begin with the elephant in the room, the board was advised of the Treasury Board's fiscal restraint news release of November 18, 2008, wherein it presented final offers to all bargaining agents of economic increases of 2.5% in the first year, 2.3% in year two, 1.5% in year three, 1.5% in year four and 1.5% in year five, beginning in 2006-07. Reference was also made to the Speech from the Throne of November 19, 2008, and to the Minister of Finance's Economic Update of November 27, 2008, promising legislation imposing the above economic increases. On November 30, 2008, the Government recoiled from this stance. However, this board must still consider the factors listed in s.148 (e) "the state of the Canadian economy and the Government of Canada's fiscal circumstances".

15 For the bargaining agent there were also vital recent developments. On May 9, 2008, a *Ship Repair (East)* arbitration award set the terms for a collective agreement running from January 1, 2007 to December 31, 2009, providing for a pay adjustment of 5.6%; a Self Directed Team pay differential of 8.4% and economic increases of 2%, 2% and 2%. On October 6, 2008, Victoria Shipyards concluded a five-year collective agreement with its trades unions providing for economic increases of 4.5% in each of the five years on top of an \$0.82 wage increase for all tradespersons.

16 On the central money issue, this board has turned its attention to all of the factors in s. 148. In the end, the board's main concern is to balance its statutory duties under s. 148 (b) and (e). With regard to the comparability factor in s.148 (b), the board is persuaded of the necessity of taking into account, as asserted in a press release of September 10, 2008, by the newly-constituted *Shipbuilding and Repair Human Resources Steering Committee*, the demand for qualified tradespersons and ongoing recruitment problems resulting from several major shipbuilding and repair contracts being awarded to British Columbia suppliers. The press release asserts that "the shipbuilding and repair industry faces the challenge of attracting new recruits to replace a skilled and aging workforce". The press release quotes Captain (N) Alex Rueben, CO, FMF Cape Breton, as stating, "With the demand for the repair and refit and construction of new ships increasing we must develop a strategy to encourage, promote and recruit new young talent".

17 With regard to s. 148 (e), it came to the attention of this board on the second day of its hearing, December 14, 2008, that Defence Minister Peter MacKay, in an interview that same day with The Canadian Press, announced that he would convene a "shipbuilding summit" early in the new year; that billions of dollars would ensue to "keep that sector of the economy going full-tilt". We take this to signal that, whatever else may be going sideways in the Canadian economy, the shipbuilding and ship repair sector will be stimulated to the "full-tilt" level with the consequence that the recruitment worries of the

Shipbuilding and Repair Human Resources Steering Committee likely will not abate. In this interview, Defence Minister MacKay noted that his stimulus plan "hinges on the country's shipbuilders and trade unions setting aside their differences and sharing the billions of dollars worth of work". It would not be wild speculation to guess that the substantial Victoria Shipyards five-year deal of October 6, 2008, was alive to this sort of governmental pre-condition to a fiscal stimulus package.

18 For the foregoing reasons, an initial 5.2% pay adjustment is awarded as of October 1, 2006, with a view to the necessity of offering comparable compensation under s.148 (b). The term of the collective agreement will be from October 1, 2006, to January 30, 2010, in compliance with the strictures of s.156. With regard to the Government of Canada's fiscal circumstances going forward, as per s.148 (e), economic increases that happen to do a bit better than keep pace with inflation, will be as follows: October 1, 2006, 2.5%; October 1, 2007, 2.3%; October 1, 2008, 1.5%; October 1, 2009, .5% [i.e., 1.5% annualized].

19 With regard to the broader- employability issue, given the employer's assertion that it had decided not to implement this initiative (See above paragraph 9) this issue is moot before this board.

20 With regard to the other scheduled issues listed in this board's terms of reference, as the parties agreed, on the second day of our hearing, not to argue these points before the board, it only remains for the board to stipulate that all provisions of the expired collective agreement are renewed save for the monetary and term amendments ordered above in paragraph 18.

21 Finally, some thanks are due. To the parties, I extend my compliments for their willingness before us to try one last time to resolve their differences and for providing thorough briefs addressing in depth the wealth of information that came before this board; amounting to four large ring binders of materials. To my experienced colleagues on the board, though I am charged, by s. 149 (2) of the *PSLRA* with the singular responsibility of signing the award (the decision is mine alone) I am grateful for their contributions to my struggle to grasp and to understand the data; the arguments and the required analysis in this matter. And, for the record, I want to note that I was persuaded by each of them not to take a step or two that I was inclined to take.

Dated January 20, 2009

Ken Norman, Chairperson