Public Service Labour Relations Board
Before a Public Interest Commission

Date: June 5, 2013
File: 590-02-10

Between

THE PUBLIC SERVICE ALLIANCE OF CANADA
(BARGAINING AGENT)

AND

THE TREASURY BOARD OF CANADA
(EMPLOYER)

RE: **Report of a Public Interest Commission**

BEFORE: Ian R. Mackenzie, Chairperson
Joe Herbert and Jean-François Munn, members

For the bargaining agent: Morgan Gay and David-Alexandre Leblanc
For the employer: Ted Leindecker, Martine Sigouin and Allan Pollock

Heard at Ottawa, Ontario, December 10, 2012

Introduction

[1] The FB bargaining group consists of approximately 8,600 employees working for the Canada Border Services Agency (CBSA). The employees are represented by the Public Service Alliance of Canada ("PSAC" or the "bargaining agent"). The employer is the Treasury Board of Canada ("TB" or the "employer").

[2] A request for conciliation by the bargaining agent was received by the Public Service Labour Relations Board (PSLRB) on April 19, 2012. A Public Interest Commission ("PIC" or the "Commission") was established on July 27, 2012.

[3] The parties requested two days of mediation with the PIC on December 8 and 9, 2012. Only one mediation day was used, and mediation efforts were unsuccessful. The

hearing of submissions occurred on December 10, 2012. The PIC conducted its executive sessions on January 23 and February 21, 2013.

[4] In accordance with section 176 of the *Public Service Labour Relations Act*, the parties agreed to an extension of the 30-day time limit for the issuance of this Report.

Bargaining History

[5] The FB Group was certified in 2007 and its first collective agreement expired on June 20, 2011. The bargaining agent provided its notice to bargain on February 21, 2011 and the parties exchanged proposals on March 8 to 9, 2011. The parties met in bargaining for a total of approximately 36 days over the period of April 12, 2011 until March 28, 2012. After filing for conciliation, the parties met for a further three days of negotiations from June 18 to 20, 2012.

[6] In their negotiations, the parties agreed to the renewal of a number of articles and Memoranda of Understanding. The parties agreed to and signed off on the deletion of subparagraph 25.26(b)(iii) under the Hours of Work article. During negotiations, the employer withdrew three of its proposals and the bargaining agent withdrew two of its proposals.

[7] On July 19, 2012, the parties agreed by way of a Memorandum of Agreement that, effective April 1, 2012, any service in the Canadian Forces for a continuous period of six months or more shall be included in the calculation of vacation leave credits. The parties agreed that these amendments to the vacation leave article would also be included in the new collective agreement.

Issues No Longer in Dispute

[8] In their submissions to the PIC, the parties were in agreement that the duration of the collective agreement should be three years. The parties also agreed that Appendix G (Firearm Training Strategy) should be deleted from the collective agreement.

[9] During the hearing, the employer indicated its willingness to accept, as part of an overall settlement, the bargaining agent's proposals for changes to leave with pay for family-related responsibilities (article 43) and bereavement leave (article 46) that were in keeping with changes agreed to between the same parties in other negotiated agreements. In light of the parties' agreement, the Commission does not need to make any recommendations with regard to these proposals.

[10] The negotiated PA collective agreement (expiry date: June 20, 2014) contains an amended Appendix that refers to the agreement reached on the Joint Learning Program between the employer and employees in a number of bargaining units, including the FB Group. Since the parties have already agreed to changes to the Appendix, the Commission does not need to make any recommendation with respect to this proposal.

Issues in Dispute

[11] At the commencement of the hearing, the bargaining agent tabled a new proposal relating to leave for Alliance Business (Article 14). The bargaining agent stated that a similar proposal was withdrawn in good faith by the bargaining agent during the negotiations. In April of 2012, the employer announced its intention to end a longstanding practice of providing leave with pay for certain bargaining agent representatives. This action of the employer is the subject of an unfair labour practice complaint before the PSLRB. The employer objected to the introduction of the proposal because it had not been submitted within the time requirements set out in the *PSLRA*.

[12] Section 161 of the *PSLRA* requires each party to submit the proposals it wishes to be considered in the Commission's Report. In addition, subsection 177(2) states that the Commission's Report "may not deal with a term or condition of employment that was not the subject of negotiation between the parties during the period before conciliation was requested". It is the Chairperson of the PLSRB who refers the proposals to the Commission. The new proposal is therefore not properly before the Commission.

[13] The bargaining agent made submissions on pension entitlements. Pensions cannot be the subject of collective bargaining under the *PSLRA* (section 113). The PIC has therefore not made any recommendations on changes to the pension entitlements.

[14] In reaching a determination on the issues in dispute, the PIC is governed by section 175 of the *Public Service Labour Relations Act*:

> 175. In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:
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> (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
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> (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 public interest commission considers relevant;
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> (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;
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> (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
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> (e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

[15] The PIC has considered all of these factors in reaching its recommendations on the matters at issue.

Overview

[16] The CBSA is under the department of Public Safety (Public Safety Canada). The Public Safety Canada website describes the role of the CBSA as follows:

> The Canada Border Services Agency (CBSA) manages the nation's borders by enforcing Canadian laws governing trade and travel, as well as international agreements and conventions. CBSA facilitates legitimate cross-border traffic and supports economic development while stopping people and goods that pose a potential threat to Canada.

[17] The FB Group definition describes the positions under the definition as those "primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada". The FB Group includes positions with responsibility for one or more of the following activities:

- determining the admissibility of people or goods entering Canada;
- post-entry verification of people or goods that have entered Canada;
- arresting, detaining or removing those people who may be in violation of Canada's laws;
- investigating the illegal entry of people or goods;
- conducting intelligence activities related to the monitoring, inspection or control of people or goods entering Canada;
- developing Canada Border Services Agency operational directives to be followed in carrying out the above activities; and
- the leadership of any of the above activities.

[18] The majority of the employees in the bargaining unit are Border Services Officers (BSO) who work at airports, land border and marine ports of entry, as well as at CBSA postal operations.

[19] Most of the employees in the bargaining unit are peace officers under the *Criminal Code*. In 2006, the Government of Canada announced that BSOs working at land border and marine ports of entry would be equipped with firearms (Inland Enforcement Officers, Intelligence Officers and Investigators are also now included).

Approximately 2,000 employees have received firearms training and have been assigned a firearm. Others are awaiting training.

[20] Despite numerous negotiation sessions, the parties did not make significant progress in bargaining. One of the possible reasons for the challenging negotiations is that the parties do not agree on the appropriate comparator groups for the FB Group. The bargaining agent relies on the law enforcement functions of the group, as well as the fact that the CBSA falls under the Public Safety Canada department, to support its comparison to Correctional Officers (CX Group) and police forces, such as the Royal Canadian Mounted Police. The employer has compared the FB Group to Parks Canada enforcement officers, airport security personnel, constables on Parliament Hill and Military Police officers. In the view of the PIC, the positions in the FB Group do not fit easily into either of these two comparator groups. However, the law enforcement role of these employees, as well as their critical role in defense of Canada's borders, means that these employees are more akin to law enforcement occupations than those in security-type roles.

[21] Given the value and the public importance of the services provided to all Canadians by employees in the bargaining unit, it is critical that the parties find a way to address their differences and reach a collective agreement.

[22] The role of the PIC is to make recommendations that will "assist the parties in reaching an agreement" (section 163 of the *PSLRA*). The recommendations of the PIC have therefore focused on areas of potential agreement (e.g., where other bargaining units have reached agreement) and the central issues in dispute.

Wages and severance pay

[23] The bargaining agent proposed a "market adjustment" of 3.7% effective June 21, 2011. After this market adjustment it proposed increases of 3% in each year of the collective agreement. The employer has proposed economic increases of 1.5% in each year of a three-year agreement.

[24] The employer has also proposed the elimination of severance pay (article 61) for voluntary departures (resignation and retirement) from the collective agreement. In addition, it has proposed some enhancements of the remaining severance pay provisions. The employer proposed that in exchange for the removal of these severance pay provisions, there should be a 0.25% additional wage increase effective June 21, 2011 and an additional 0.5% wage increase effective June 21, 2013.

[25] The bargaining agent has not established that there are any problems with recruitment and retention. Current settlements and arbitral awards have established a pattern consistent with the employer's proposal for economic increases and the removal of severance pay for voluntary departures.

[26] The Commission recommends that the employer's proposals on wage increases and the removal of severance pay provisions be included in the collective agreement. The Commission recommends that all wage increases be calculated before calculating the amount of severance pay owing to those employees electing to cash-out their severance pay entitlement.

Definition of Service (Article 2)

[27] The bargaining agent has proposed to add a definition of service to the collective agreement. The employer has proposed the status quo for the definitions section.

[28] The Commission does not recommend that this proposal be included in the collective agreement.

Use of Employer Facilities (Article 12)

[29] The bargaining agent proposed changes to clause 12.03 that would allow a union representative access to employer facilities without the requirement of permission from the employer.

[30] The employer objected to the proposal on the basis that the proposal did not allow any discretion by the employer to deny access and that the wording implied that employees could leave assigned duties to attend meetings.

[31] The existing clause states that permission shall be obtained from the employer before access is granted. The reason for the bargaining agent proposal arises out of a successful unfair labour practice complaint filed by the bargaining agent against the employer (the employer did not seek a judicial review of that decision). In the decision (2012 PSLRB 58) the Board stated (at paragraphs 48 and 56-57):

> An employer should not unilaterally prevent a bargaining agent from meeting in the workplace employees that it represents to discuss bargaining issues during off-duty hours, unless it can justify such prohibition with reference to compelling business reasons and objective facts, such as a disruption of productivity, order, safety or security, or some other legitimate business interest.
>
> …
>
> While I do not purport to create an unrestricted right of the bargaining agent to use the employer's premises for the contemplated purpose of meeting with employees in the bargaining unit to discuss collective bargaining issues, I believe that the employer's discretion to refuse the bargaining agent the use of its facilities should not be absolute. It should be exercised in a manner that strikes a fair balance between the bargaining agent's ambition to advance the legitimate interests of the employees in the bargaining unit and any compelling and justifiable business reasons that the employer might have that such activities might undermine its legitimate workplace interests.
>
> In conclusion, my findings should not imply that any future access denial by the employer will automatically amount to a violation of paragraph 186(1)(a) of the *Act* or that the parties should not continue to strive, through collective bargaining, to agree on the use of the employer's premises that is tailored to their mutual legitimate interests.

[32] The bargaining agent also relied on the language in the CX collective agreement that does not require permission. The employer noted that the CX language allowed the employer to deny access at any time and to restrict access to certain areas. The CX clause states:

> Notwithstanding [the right of access] the Warden or his or her delegate retains the right to deny access at any time or restrict access to areas of the institution to protect the security of the institution or the safety of persons. Permission to enter the institution will not be unreasonably withheld.

[33] The Commission recommends an amended clause be included in the collective agreement that still requires permission of the employer for access to employer facilities, but that such permission shall not unreasonably be withheld. In addition, the amended clause should refer to the right of the employer to restrict access to areas to protect the security of the facility or the safety of persons.

Discipline (Article 17)

[34] The bargaining agent proposed a new clause in this article that would provide for pay while an employee is under an investigatory suspension. The bargaining agent submitted that this proposal was in line with provisions for other law enforcement bargaining units, such as correctional officers. The employer proposed renewal of the article without changes.

[35] The CX collective agreement provides for paid leave when an employee is removed from his regular duties “due to an incident involving an offender”. In the Commission’s view, such a provision is designed to protect an employee from unsubstantiated allegations by an offender. It does not apply to all suspensions for investigations. There was no evidence that employees were being suspended for investigations related to incidents with members of the public.

[36] The Commission does not recommend that this proposal be included in the collective agreement.

Health and Safety (Article 22)

[37] The bargaining agent proposed a new clause related to working alone. The employer proposed that the article be renewed without changes.

[38] The Government of Canada announced in August of 2006 that it would be taking steps to ensure that border officers were not required to work alone. In September of 2008, the CBSA introduced a Doubling Up policy. The bargaining agent submitted that there were still serious problems with the policy and that there are ports where employees are regularly required to work alone. The employer submitted that the policy was being monitored through the CBSA Policy Health and Safety Committee and that no issues had been raised by the bargaining agent through that forum.

[39] The Commission encourages the parties to discuss this important initiative through the Policy Health and Safety Committee. It does not recommend the inclusion of the bargaining agent's proposal in the collective agreement.

Hours of Work (Article 25)

[40] The bargaining agent proposed a number of changes to this article:

- A paid meal period of one-half hour;
- A clear differentiation of shift work from day work;
- Standardization of schedules, work hours and consecutive days of rest for those employees not covered by a Variable Shift Schedule Arrangement (VSSA);
- Years of service (seniority) to be used for scheduling of non-VSSA employees;
- Improvements to the scheduling provisions for part-time employees; and
- Minimum rest periods between shifts when working mandatory overtime.

[41] The employer proposed to change the notification period for shift changes from 7 days to 48 hours' notice.

[42] The Commission does not recommend the inclusion of the employer proposal in the collective agreement.

[43] The bargaining agent submitted that correctional officers and RCMP officers received a paid meal period. The employer submitted that when employees were not able to leave the work site for a meal period, they were paid. It also submitted that armed officers were now allowed to leave the work site for a meal period without removing and storing their weapons.

[44] The current collective agreement (Article 25.04) provides for payment at applicable overtime rates when employees are required “to stay on the job for a full scheduled work period, inclusive of their meal period”.

[45] The Commission could come to no consensus on this proposal. In accordance with subsection 178(2) of the *PSLRA*, the recommendation of the chairperson of the Commission is deemed to be that of the commission. The independent views of the respective nominees are found in the Annex located at the end of this report.

[46] The Commission recommends that a provision for a paid meal period when employees are prevented from leaving the worksite (because of the work location or other factors, but not required to “stay on the job”) be included in the collective agreement.

[47] The employer provided a counter proposal on clause 25.13 (shift work) that included in the definition of shift work, “or on a non-rotating basis where the employer requires employees to work hours later than 6 p.m. and/or earlier than 7 a.m.”.

[48] The Commission recommends that the employer’s counter proposal be included in the collective agreement.

[49] The bargaining agent proposed that part-time employees be scheduled at straight-time for hours of work after full-time employees are scheduled, on the basis of years of service. The bargaining agent noted that such a clear and transparent

mechanism for assigning of work hours would be a cost-savings for the employer because there are some locations where overtime has been offered to full-time employees prior to offering hours to part-time employees (paid at straight-time).

[50] The Commission recommends that the collective agreement include a provision for distribution of straight-time hours for part-timers based on years of service, subject to the number of hours set out in a letter of offer.

[51] The bargaining agent proposed that the employer be required to make every effort to ensure that employees required to work overtime (mandatory overtime) get a minimum of eight hours of rest before his or her next shift and suffer no economic consequence for taking the rest time.

[52] The employer submitted that it currently makes every reasonable effort to ensure a minimum rest period of eight hours. Where it is not operationally feasible and the employee misses all or part of the next shift, the employer states that it endeavours to provide the employee with opportunity to make up the missed time.

[53] The Commission declines to recommend the bargaining agent's proposal.

Overtime (Article 28)

[54] The bargaining agent proposed payment for all overtime (currently overtime is limited to each completed period of 15 minutes); a process for the equitable distribution of overtime; and inclusion of part-time employees in the minimum payment provisions for call-back pay. The employer proposed that the article be renewed without change.

[55] The Commission does not recommend the inclusion of this bargaining agent proposal in the collective agreement.

Designated Paid Holidays (Article 30)

[56] The employer proposed changes to clause 30.02 that clarified that the value of a designated paid holiday is 7.5 hours whether that day is worked or not. It stated that this

change would have no impact on entitlements. The bargaining agent proposed renewal of the article without change.

[57] In the absence of any demonstrated need or problem in administering the article, the Commission does not recommend that the employer proposal be included in the collective agreement.

Vacation Leave (Article 34)

[58] The bargaining agent proposed improvements to the vacation leave entitlements by reducing the years of continuous service required to reach each level of leave entitlement. The bargaining agent also proposed changes to the vacation scheduling provisions that would rely on years of service to determine vacation scheduling where there are more requests for leave than can be accommodated by the employer.

[59] In a counter-proposal, the employer proposed language in clause 34.05 for vacation scheduling that mirrors the provisions in the PA collective agreement that was negotiated between the same parties. The proposal includes the use of years of service as defined in clause 34.03 of the Agreement as a determining factor in scheduling, when there are more requests than can be approved due to operational requirements. The employer also proposed changes to the article related to its proposal on severance.

[60] The Commission recommends that the employer counter-proposal form part of a collective agreement.

Sick Leave (Article 35)

[61] The bargaining agent proposed that “in all cases, a medical certificate provided by a legally qualified practitioner shall be considered as meeting the requirements” of satisfying the employer that he or she is sick. The bargaining agent also proposed that the employer be responsible for payment for medical certificates that it requests from an employee. The employer proposed that the article be renewed without changes.

[62] The Commission recommends that reimbursement for the cost of a medical certificate when the employer requires such a certificate be included in the collective agreement.

Injury on Duty Leave (Article 37)

[63] The bargaining agent proposed the removal of the phrase “reasonable period” from the requirement for granting of injury on duty leave. The employer proposes the renewal of this article.

[64] The Commission does not recommend that this bargaining agent proposal be included in the collective agreement.

Maternity Related Reassignment or Leave (Article 39)

[65] The existing article requires modification of duties or reassignment of pregnant or nursing workers if they cannot safely perform their work. If reassignment is “not reasonably practicable”, the article provides for leave without pay. The bargaining agent proposed that such leave be with pay. The employer proposed that the article be renewed.

[66] The correctional officers collective agreement provides for leave with pay for a pregnant officer “where she is in direct and regular contact with offenders” and the employer concludes that a modification of duties or reassignment is not practicable. The paid leave ends when the employee proceeds on maternity leave without pay or the termination date of the pregnancy, whichever comes first. This provision is considerably narrower than the proposal of the bargaining agent.

[67] The bargaining agent did not identify any problems with the application of the existing article. The health and safety of pregnant employees is a serious concern, however. The Commission recommends that the parties explore this issue further in the appropriate health and safety committee. The focus should be on positions with “direct and regular (physical) contact” with members of the public.

[68] The Commission does not recommend the inclusion of the bargaining agent proposal in the collective agreement.

Other Leave with or Without Pay (Article 52)

[69] The bargaining agent proposed new language for medical or dental appointments. The employer proposed no change to the article.

[70] The Commission does not recommend any changes to this article.

Part-time Employees (Article 60)

[71] The bargaining agent noted an increase in the number of part-time positions at CBSA over the past several years and proposed the following changes to the article: part-time employees to receive the same compensation for both reporting and call-back pay; changes to the quantum of vacation leave (consistent with its proposal for full-time employees); and a reference to the bargaining agent's proposal for the scheduling of part-time employees (see Hours of Work (Article 25) above). The employer proposed that the article be renewed without change.

[72] The Commission has addressed the scheduling of hours for part-time employees above. There is therefore no need to refer to scheduling of part-time employees in this article. The Commission does not recommend the inclusion of the bargaining agent's proposals in the collective agreement.

Definition of a "day" changes (Multiple Articles)

[73] The bargaining agent proposed a change to the definition of a "day" in a number of articles. The employer was opposed to any change in the definition.

[74] The Commission declines to recommend the suggested changes to the definition of a "day".

Variable Shift Scheduling Arrangements (VSSA) (Appendix B)

[75] Appendix B was negotiated in the first round of collective bargaining for the FB Group. The bargaining agent has proposed a number of changes to the Appendix:

- Removal of language that is no longer necessary and ensuring that the Appendix applies to all VSSAs;
- VSSA agreements to be reached at the regional level, rather than the local level only;
- A requirement that the parties act in good faith when negotiating VSSAs;
- Information sharing requirements;
- Years of service as the criteria for populating lines; and
- Vacation scheduling in accordance with an amended article 34.

[76] The employer proposed that the time limits for discussion and consultation on potential VSSA agreements be reduced.

[77] At the hearing, it was clear that the parties intended the Appendix to apply to all VSSAs. Accordingly, it is appropriate to remove the reference to the appendix only applying to VSSAs “implemented following the signing of this collective agreement”. The Commission recommends that this paragraph be deleted from the collective agreement.

[78] The employer also identified changes in the language for article 3.2 to reflect the French version of the collective agreement and stated that the bargaining agent had agreed to such a change. In the absence of any dispute about the change in language, the Commission recommends that this editorial change be included in the collective agreement.

[79] The employer stated in its submissions that it would be willing to consider changes to the vacation leave scheduling article proposed by the bargaining agent in

light of similar language negotiated in other agreements. The Commission recommends that the vacation scheduling provision in the Appendix be removed and that vacation scheduling be in accordance with its recommendation under Article 34 of the collective agreement.

[80] The parties are in agreement that the parties can agree to conduct a re-population of schedules at any point over the life of the schedule, in accordance with clause 25.26 (c) of the collective agreement. The Commission recommends that the collective agreement include the new article 3.4 in Appendix B as proposed by the employer.

[81] The employer objected to the inclusion of a “good faith” requirement for negotiating VSSAs. In its submissions it stated that it was of the view that the obligation to bargain in good faith contained in the *PSLRA* “is extended to provisions agreed upon in the collective agreement” and it saw no need to restate the principle in the collective agreement.

[82] In light of the employer’s position that a good faith requirement is incorporated into the Appendix, the Commission declines to recommend the bargaining agent’s proposal.

[83] The Commission does not recommend any further changes to the Appendix.

Workforce Adjustment (Appendix C)

[84] The bargaining agent proposed changes to the Workforce Adjustment Directive (WFA) that would make reverse order of service as the criteria for declaration of surplus status and reasonable job offers. The employer proposed that the Appendix be renewed without changes.

[85] The Commission recommends that the Appendix be renewed without change.

Arming Initiative: Firearm Training Participant Selection (Appendix F)

[86] The Memorandum of Understanding on the arming initiative set out the process for the selection of participants for firearm training and expired on February 1, 2011.

[87] The bargaining agent proposed that the parties maintain the current practice on firearms training for the duration of the collective agreement and that the protections provided to employees in the context of initial training also be provided to employees upon recertification.

[88] The employer made a counter-proposal with the following changes:

> 1. the employer will **first** select participants from volunteers as well as employees hired with firearm training as a condition of employment;
>
> 2. the elimination of the existing second clause referring to the return to home port of those who do not qualify, up until September 30, 2009;
>
> 3. changes to the dates referenced in the Appendix to February 1, 2014; and
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> 4. an expiry date of February 1, 2014.

[89] In a letter to the bargaining agent dated October 29, 2012, the CBSA stated that it was maintaining the current practice of selecting firearm training participants from volunteers and from those hired with firearm training as a condition of employment. There was no evidence before the Commission of insufficient candidates for firearm training or that there would be a shortage of candidates before the expiry of the Appendix.

[90] In light of the current practice and the lack of any demonstrated shortage of employees to be trained, there is no need for the Appendix to suggest that non-volunteers or employees without training as a condition of employment might be selected for training. The Commission recommends that the employer proposal, without the use of the qualifier “first”, and with an expiry date of May 31, 2014, be included in the collective agreement.

Alternative Work Arrangements (Appendix H)

[91] The bargaining agent proposed changes to the Appendix to expand the use of telework. The employer proposed the deletion of the Appendix from the collective agreement.

[92] The Commission does not recommend any change to the Appendix.

New Articles

[93] The bargaining agent proposed a number of new articles in the collective agreement. We have already addressed the early retirement proposal, which is not subject to collective bargaining under the *PSLRA*. The bargaining agent proposed new articles establishing a plain clothes allowance; a dog handler allowance; an escorted removals premium and a social justice fund. The CBSA currently provides a jacket, pants, shirts and a baseball cap for non-uniformed officers. The needs analysis for non-uniformed officers was completed in consultation with the National Policy Occupational Health and Safety Committee. The Commission encourages the parties to discuss any deficiencies in clothing for plainclothes officers first at the National Policy Occupational Health and Safety Committee. The Commission recommends that these new articles not be included in the collective agreement.

Ian R. Mackenzie

For the Public Interest Commission

June 5, 2013

Annex

Bargaining Agent Nominee

With regards to the bargaining agent proposal for a paid meal period, the bargaining agent nominee made the following comments:

> The purpose of the Commission is to assist the parties in reaching a voluntary resolution to their collective bargaining dispute, and in my view the Chair has served the parties well in that regard. The Commission's recommendation does not have the final force of an arbitration award – instead it is to act as a guide in helping the parties reach their own resolution, and in my own view at least, members should be careful not to produce what might be viewed as partisan dissents which may not serve the parties in their goal of achieving a collective agreement. Reasonable people can often hold different views on what should be recommended to the parties for the purpose of their own bargaining.
>
> These parties have a somewhat unique bargaining history. What is now this bargaining unit was once but a part of a larger, diverse bargaining unit where the particular interests of this classification of employee were merged with the interests of very different classifications. In the expired collective agreement, the parties' first, the parties went a long way in bringing the salaries of these employees in line with their federal Correctional Officer comparator (the 'CX' group"). Left to be bargained in this agreement, was a significant component of compensation received by the CX group and by the law enforcement employees elsewhere, who are also an appropriate comparator, namely a paid lunch period.
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> The Chair has chosen to deal with this issue in a somewhat incremental fashion, making employees eligible for a paid lunch under certain circumstances, without necessarily entitling all employees to a paid lunch as they are with the comparator groups. Had I been deciding upon the recommendation alone, I would have chosen a more direct and universal approach and simply made the paid lunch a term of the recommendation without condition or qualification. In my own view at least, such a resolution would bring bargaining finality to a collective bargaining issue, which is a legitimate goal of the Commission in making its recommendations.
>
> Second, an issue concerning paid union leave was referred to the Commission directly by the union and over which the Commission has declined jurisdiction. The union sought to introduce the proposal on the grounds that circumstances had changed since the original submission of its bargaining agenda due to a violation in August 2012 of the statutory freeze by the employer. In the period

since the Commission's hearing in this matter, the PSLRB has upheld the union's freeze complaint, at least in respect of certain union officers identified in the Board's decision. The Chair has reasoned, likely correctly, that the Commission's home statute limits its jurisdiction to those issues referred to the Commission by the Board, which would presumably require a party with a permissible new proposal to seek leave of the Board to amend the referral. The Chair's reasoning in this regard closely parallels that of arbitrator K. Swan in *Re: Sheridan Villa and ONA,* a case decided under the Ontario *Hospital Labour Disputes Arbitration Act*, where arbitrator Swan ruled that a similarly worded statute restricted an arbitration board's jurisdiction to those issues referred to it by the Minister, in accordance with the wording of that statute.

The parties here of course, are able to continue their negotiation on their own, and continue in those negotiations to be bound by the statutory duty to bargain in good faith in respect of the issues between them.

Employer Nominee

In response, the employer nominee made the following comments:

I strongly disagree with the recommendation on the paid meal period where employees are prevented from leaving the work location because of geography or other factors.

I think it does not help the negotiation process at all. Worst, it would most likely increase the difficulties for the parties to reach a collective agreement.

This recommendation is not based on serious evidence; it is not documented nor justified. I do not understand that on "firearm training" we arrive to a conclusion because "there is a lack of evidence of a shortage of people to train", and on paid meal period evidence is not needed. This is a double standard on very important issues.

One of the problems is that the parties do not agree on a comparator. And the union wants a paid meal period mostly because it is a feature of their chosen comparator. The Commission did not conclude on the comparator and said that: "The FB group does not fit easily into either of these two comparator groups". So, we should not put the cart before the horse, and even if there was an agreement on a comparator, such a working condition should ensue from documented problems and be conclusive as a solution to these problems.

From the state of evidence right now, no reasonable persons will agree on such a clause.

More, vague and broad as it is this recommendation will only generate problems and litigations. It is unmanageable and will only worsen the relations between the parties.

This is the kind of recommendation that does not make sense in the process. It will be unacceptable for the employer as for millions of taxpaying Canadians that eat their lunch every working day at their worksite during an unpaid lunch period.