

IN THE MATTER OF AN INTEREST ARBITRATION
UNDER THE *PUBLIC SERVICE LABOUR RELATIONS ACT*

BETWEEN

THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

("the Institute")

and

THE TREASURY BOARD OF CANADA

("the Employer")

RE: Architecture, Engineering and Land Survey (NR) Group

BEFORE: Philip Chodos, Chairperson of the Arbitration Board,
Larry Robbins, Union Nominee, and Jean-Guy Fleury, Employer Nominee

APPEARANCES:

For the Institute: Walter Belyea, Lionel Dionne and Chris Roberts

For the Employer: Josée Lefebvre and John Park

ARBITRAL AWARD

[1] The collective agreement respecting the NR Group (which was formerly part of the much larger AP Group bargaining unit) expired on September 30, 2007. On August 9, 2007, the Institute filed Notice to Bargain. Following several bargaining sessions the Institute submitted a Request for Arbitration on May 9, 2008. Subsequently, the parties engaged in further negotiations, including some sessions with the assistance of a mediator. A significant number of issues were resolved at the bargaining table; however, the parties reached an impasse with respect to some of the matters in dispute, which were referred to this Arbitration Board (hereinafter referred to as “the Board”). The issues that were referred to the Board are the following:

Submitted by the Institute:

- 1) Article 13 (Travelling Time)
- 2) Article 15.05 (Vacation Leave)
- 3) Article 21 (Registration Fees)
- 4) Article 48 (Duration)
- 5) Appendix “A” (Annual Rates of Pay)
- 6) Appendix “D” (Recruitment and Retention Allowance, or Terminable Allowance, in respect of the Architecture and Town Planning Group)
- 7) Appendix “E” (Recruitment and Retention Allowance, or Terminable Allowance, in respect of the Engineering and Land Survey Group)

Submitted by the Employer:

- 1) Article 10.02 (Call-Back)
- 2) Article 15 (Vacation Leave)
- 3) Article 27.02 (Check-Off)
- 4) Article 31.01 (Leave for Labour Relations Matters)
- 5) Article 40 (Part-Time Employees)
- 6) Article 48 (Duration)
- 7) Appendix “A” (Annual Rates of Pay)

[2] The Board held hearings on February 16 and 18, 2009, at which time the parties were given full opportunity to present evidence and make submissions. Prior to these hearings, the parties exchanged briefs, which were also submitted to the Board. Following the hearings, the Board met to consider its award. In arriving at its award, the Board considered the evidence and submissions of the parties in light of the factors enumerated in section 148 of the *Public Service Labour Relations Act (PSLRA)*.

[3] It should be noted that at the outset of these hearings, Mr. Belyea, on behalf of the Institute, advised the Board that in light of the imminent coming into law of Bill C-10, and in particular the provisions referred to as the *Public Sector Equitable*

Compensation Act, the Institute was accepting the Employer's pay proposals as set out by the Employer on November 18, 2008, as well as the proposal for the duration of the renewed agreement. The Employer's proposal provides for a four-year agreement with economic increases as follows:

- *Effective October 1, 2007: 2.3%*
- *Effective October 1, 2008: 1.5%*
- *Effective October 1, 2009: 1.5%*
- *Effective October 1, 2010: 1.5%*

[4] The Institute also indicated that it was withdrawing its proposal to fold into the rates of pay the Recruitment and Retention Allowance ("Terminable Allowance"). However, it proposes that certain provisions of the collective agreement be amended to provide that the Terminable Allowances apply in respect of certain benefits accorded to members of the bargaining unit. These proposals are set out below.

[5] The Institute proposes that in the Vacation Carry-Over provision (Article 15.07), which provides for the cashing out of vacation leave credits, a new paragraph (c) be added:

- (c) *For further clarity, the daily rate of pay includes any Terminable Allowance.*

[6] The Institute proposes the addition of this language with respect to Article 15.12 (Leave when Employment Terminates), as well as with respect to Article 15.13 (Vacation Leave Credits for Severance Pay). The Institute also submits that the Overtime Payment provision (Article 9) should subsume the Terminable Allowance, and accordingly it is proposing an amendment to Article 9.04 to include the following sentence:

- In addition, any calculation of overtime shall include the Terminable Allowance.*

[7] In the same vein, the Institute proposes that for payments under the Long-Term Disability Plan, the Terminable Allowance should be included as part of salary. As well, the Institute proposes amendments to Article 13 (Travelling Time) to provide that "regular rate of pay" should include the Terminable Allowance. Also, the Institute proposes amending the Acting Pay provision (Article 46.08) by adding the following:

When employees are acting in positions excluded from the NR bargaining unit, such employees will continue to receive the Terminable Allowance of their substantive position.

[8] Finally, the Institute proposes amending Article 19 (Severance Pay), and in particular Article 19.03, which currently states:

The weekly rate of pay referred to in the above clauses shall be the weekly rate of pay to which the employee is entitled for the classification of the employee's substantive position on the date of termination of employment.

[9] The proposed amendment would add the following phrase:

For further clarity, the weekly rate of pay would include any Terminable Allowance.

[10] The Employer opposes the Institute's above-noted proposals with respect to the Terminable Allowance.

[11] The Board determines that the above-noted provisions should remain unchanged.

[12] With respect to Travelling Time (Article 13), the Institute proposes amending the existing provision so that it would read as follows:

[The proposed changes are in bold.]

13.01When the Employer requires an employee to travel outside the employee's headquarters area for the purpose of performing duties, the employee shall be compensated in the following manner:

(a) on a normal working day on which the employee travels but does not work, the employee shall receive the employee's regular pay for the day;

(b) on a normal working day on which the employee travels and works, the employee shall be paid:

(i) the employee's regular pay for the day for a combined period of travel and work not exceeding seven decimal five (7.5) hours,

and

*(ii) at the applicable overtime rate for additional travel time in excess of a seven decimal five (7.5) hour period of work and travel, with a maximum payment for such additional travel time not to exceed twelve (12) hours pay at the straight-time rate in any day, or **fifteen (15) hours pay at the straight-time rate when travelling beyond North America;***

*(c) on a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours travelled to a maximum of twelve (12) hours pay at the straight-time rate, or **fifteen (15) hours pay at the straight-time rate when travelling beyond North America.***

[13] The Employer opposes this proposal.

[14] The Board determines that this provision shall be amended as proposed by the Institute.

[15] Both parties made proposals to amend Article 15.05 (Vacation Leave). That provision currently reads as follows:

***15.05** In order to maintain operational requirements, the Employer reserves the right to schedule an employee's vacation leave but shall make every reasonable effort:*

(a) to provide an employee's vacation leave in an amount and at such time as the employee may request;

(b) not to recall an employee to duty after the employee has proceeded on vacation leave.

[16] The Institute proposes striking out part of the preamble to Article 15.05 (i.e. "In order to maintain operational requirements, the Employer reserves the right to schedule an employee's vacation leave but. . ."). The Institute also proposes adding to paragraph (a) the phrase:

. . . but shall not schedule vacation leave without the employee's consent.

[17] The Employer proposes the following changes to Article 15.05

[The proposed changes are in bold.]

- Replace paragraph (a) with the following:
 - (a) **Employees are expected to take all their vacation leave during the vacation time in which it is earned.**
- Amend the opening sentence to paragraph (b) to read as follows:

*In order to maintain operational requirements, the Employer reserves the right to schedule an employee's vacation leave **earned in the current or prior year(s)**, but shall make every reasonable effort:*

[18] The Board determines that the current provisions of Article 15.05 shall be renewed without change.

[19] The Institute proposes adding the following clauses to Article 21 (Registration Fees):

21.02 When the payment of the fees referred to in clause 21.01 is not a requirement for the continuation of the performance of the duties of an employee's position, but membership in one of the associations listed in clause 21.03 provides for an employee's professional and continuing development, the Employer shall reimburse the employee, upon receipt of proof of payment, for the employee's annual fees paid to one (1) of these associations.

21.03 The associations referred to in clause 21.02 are:

Professional Engineers of Ontario (or similar provincial/territorial associations in other provinces/territories);

Association of Canada Lands Surveyors (or similar provincial association);

Ontario Association of Architects (or similar provincial/territorial associations in other provinces/territories).

21.04 This clause is effective for membership year 2007 and beyond.

[20] The Board determines that the collective agreement shall contain a new provision (Article 21.02), which shall read as follows:

21.02 When the payment of such fees is not a requirement for the continuation of the performance of the duties of an employee's position, but eligibility for membership in an organization or governing body is a qualification specified in the Standards for Selection and Assessment for the NR Group, the Employer shall reimburse the employee, upon receipt of proof of payment, for the employee's annual membership fees paid to one organization or governing body. Reimbursement covered by this Article does not include arrears of previous years' dues.

[21] The Employer proposes amending the Call-Back provision (Article 10) by amending that provision to read as follows:

10.02 If an employee receives a call to duty and works a minimum period of fifteen (15) minutes at his or her residence or at another place to which the Employer agrees:

(a) on a designated paid holiday which is not the employee's scheduled day of work,

or

(b) on the employee's day of rest,

or

(c) after the employee has completed his or her work for the day and has left his or her place of work,

the employee shall be paid the greater of:

(i) compensation equivalent to one (1) hour's pay at the straight-time rate, which shall only apply once during a single period of eight (8) hours, starting when the employee first commences the work

or

(ii) compensation at the applicable overtime rate for actual overtime worked, provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

[22] The Institute opposes the Employer's proposal.

[23] The Board determines that the Call-Back provisions shall be renewed without change.

[24] In addition to the proposed change to Article 15.05, the Employer proposes other amendments to the Vacation Leave provisions. Article 15.04 reads as follows:

15.04 An employee is entitled to vacation leave with pay to the extent of earned credits but an employee who has completed six (6) months of continuous employment is entitled to receive an advance of credits equivalent to the anticipated credits for the vacation year.

[25] The Employer proposes adding the word “current” to modify the term “vacation year”.

[26] The Institute opposes this proposal.

[27] The Board determines that Article 15.04 shall be renewed without change.

[28] The Employer also proposes amending the French version of Article 15.12 by striking out certain words and adding others. The proposed language changes are noted below:

[The words that the Employer wishes to strike out are noted with a line through them. The additional words that the Employer wishes to add are in bold.]

Congé de cessation d'emploi

*15.12 Lorsque l'employé décède ou cesse d'occuper son emploi pour une autre raison, lui-même ou sa succession touche un montant égal au produit de la multiplication du nombre ~~de jours~~ **d'heures** de congé annuel acquis mais non utilisés portés à son crédit par le taux de rémunération ~~journalier~~ **horaire** calculé selon la classification indiquée dans son certificat de nomination **du poste d'attache** à la date de sa cessation d'emploi.*

[29] The Employer also proposes deleting the transitional provisions found at Article 15.18(b) and (c).

[30] The Board determines that Article 15.12 and Article 15.18 shall be renewed without change.

[31] The Employer has in effect proposed that, under Article 27.04, which addresses the question of exemption from the payment of dues on religious grounds, the Institute be substituted for the Employer as the party responsible for making the determination required under that clause.

[32] The Institute opposes this proposal.

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

[34] The Employer also proposes amendments to Article 31 (Leave for Labour Relations Matters) in order to bring this provision in line with amendments to what is now the *PSLRA*. Under the Employer's proposal, Article 31.01 would read as follows:

[The changes are in bold.]

31.01 Public Service Labour Relations Board Hearings

Complaints Made to the Public Service Labour Relations Board Pursuant to Section 190(1) of the Public Service Labour Relations Act

*Where operational requirements permit, **in cases of complaints made to the Public Service Labour Relations Board pursuant to Section 190(1) of the PSLRA alleging a breach of Sections 157, 186(1)(a), 186(1)(b), 186(2)(a)(i), 186(2)(b), 187, 188(a) or 189(1) of the PSLRA, the Employer will grant leave with pay:***

(a) *to an employee who makes a complaint before the Public Service Labour Relations Board,*

and

(b) *to an employee who acts on behalf of an employee making a complaint, or who acts on behalf of the Institute making a complaint.*

[35] The Institute opposes this proposal.

[36] The Board determines that Article 31.01 shall be amended as proposed by the Employer.

[37] The Employer proposes that Article 40 (Part-Time Employees) be amended to read as follows:

[The words that the Employer wishes to strike out are noted with a line through them. The additional words that the Employer wishes to add are in bold.]

Definition

40.01 *Part-time employee means a person whose normal scheduled hours of work **on average in the same position** are less than thirty-seven decimal five (37.5) hours per week, but not less than those prescribed in the Public Service Labour Relations Act.*

General

40.02 *Part-time employees shall be entitled to the benefits provided under this Agreement in the same proportion as their normal scheduled weekly hours of work **in the same position** compared with the normal weekly hours of work of full-time employees unless otherwise specified in this Agreement.*

40.03 *Part-time employees shall be paid ~~at the hourly rate of pay~~ for all work performed up to seven decimal five (7.5) hours in a day **at straight time in the same position** or thirty-seven decimal five (37.5) hours in a week **at straight time in the same position** unless the employee is working other daily or weekly hours of work as prescribed pursuant to Article 8, Hours of Work, or group specific Articles relating to Hours of Work.*

40.04 *The days of rest provisions of this Collective Agreement apply only in a week when a part-time employee has worked five (5) days **at straight time in the same position** and a minimum of thirty-seven decimal five (37.5) hours **at straight time in the same position** ~~the hourly rate of pay in a week.~~*

40.08 (a) “Overtime” means work required by the Employer, to be performed by the employee, in excess of those hours prescribed in clause 40.03 but does not include time worked on a holiday.

(b) **In the case of a part-time employee whose normal scheduled hours of work are in excess of seven decimal five (7.5) hours per day in accordance with Article 8.06, overtime means authorized work in excess of those normal scheduled daily hours at straight time in the same**

position or an average of thirty-seven decimal five (37.5) hours at straight time per week in the same position.

[38] The Institute opposes this proposal.

[39] The Board determines that Article 40 remain unchanged.

[40] With respect to Article 48 (Duration), as noted above, the parties agreed to the duration of the renewed collective agreement. However, the Employer had also proposed adding a provision (Article 48.03) that would extend the implementation period up to 150 days. The proposed provision would read as follows:

48.03 The provisions of this Collective Agreement shall be implemented by the parties within a period of one hundred and fifty (150) days from the date of signing.

[41] The Institute opposes this proposal.

[42] The Board determines that Article 48 shall be amended by adding Article 48.03 as follows:

[43] The provisions of this Collective Agreement shall be implemented by the parties within a period of one hundred and twenty (120) days from the date of the award.

[44] In light of the Union's agreement at the hearing, the wage increases and effective dates shall be as set out in paragraph 3 above, and the collective agreement shall expire on September 30, 2011.

[45] The Board shall remain seized of this matter in the event that the parties encounter any difficulties in the implementation of this award.

DATED AT OTTAWA, April 22, 2009.

**Philip Chodos,
Chairperson of the Board**
