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*Parliamentary Employment and
Staff Relations Act*



Before the Federal Public Sector
Labour Relations and Employment
Board

IN THE MATTER OF
THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*
and a dispute affecting
the House of Commons Security Services Employees Association, as Bargaining Agent,
and the Parliamentary Protective Service, as Employer,
in respect of the Protective Services Group bargaining unit

Indexed as
*House of Commons Security Services Employees Association v. Parliamentary Protective
Service*

Before: Marie-Claire Perrault, Joe Herbert, and Kathryn Butler Malette, deemed to form
the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Sylvain Beauchamp

For the Employer: Carole Piette

Heard at Ottawa, Ontario

July 29 and 30, 2019.

I. Application before the Board

[1] In a letter dated December 21, 2018, the House of Commons Security Services Employees Association (“the bargaining agent”) requested adjudication under s. 50 of the *Parliamentary Employment and Staff Relations Act (PESRA)* with respect to the Protective Services Group. In its request, the bargaining agent attached the list of terms and conditions of employment that it wished to refer to adjudication.

[2] In a letter dated January 10, 2019, the Parliamentary Protective Service (“the employer”) provided its position on the terms and conditions of employment that the bargaining agent wished to refer to adjudication. It also attached a list of additional terms and conditions of employment that it wished to refer to adjudication.

[3] In a letter dated January 21, 2019, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to adjudication.

[4] The terms of reference for the arbitration board deemed to form the Federal Public Sector Labour Relations and Employment Board (“the Board”) were forwarded to the Board members on February 19, 2019, by the Chairperson of the Federal Public Sector Labour relations and Employment Board.

[5] The bargaining agent called evidence at the hearing, to provide a context to some of its demands. Roch Lapensée, president of the bargaining agent, Vicky Wilcott and Eric LaCharity, both members of the bargaining unit, testified at the hearing.

[6] The parties have settled a number of issues at the bargaining table, and the bargaining agent withdrew some demands at the outset of the hearing. The following bargaining agent proposals remained in dispute:

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|-------------------------|--|
| Clause 2.01 u) and 6.02 | Peace Officer Designation (NEW) |
| | 40-Hour Workweek |
| | Double Overtime |
| Clause 15.02 a) | Accumulation of vacation leave credits |
| Clause 15.02 b) | Additional vacation leave (NEW) |

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| Clause 15.05e) | Vacation scheduling (NEW) |
| Clause 16.07 | Holiday duration |
| Clause 18.01 | Sick leave credits |
| Clause 35.04 | Union representation during administrative/investigation meetings |
| Clause 41.08 | Layoff |
| Clause 21.06 | Overtime payment |
| Clause 23.07 | Training travel |
| Clause 26.02 | Weekend premium |
| Appendix A | Rates of pay and economic increase |
| Appendix G | Physical standards (NEW) |
| Appendix H | 25-year retirement (NEW) |

[7] The following employer proposals remained in dispute:

| | |
|--------------|--------------------------|
| Clause 15.17 | One-time vacation credit |
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II. The award

[8] In rendering its decision, the Board is guided by the relevant provisions of the *PESRA*, and in particular by s. 53 that sets out what the Board must take into consideration and is worded as follows:

53 In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, the Board shall consider

- (a) the needs of the employer affected for qualified employees,*
- (b) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations of employees,*
- (c) the need to establish 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*
- (d) any other factor that to it appears to be relevant to the matter in dispute,*

and, so far as consistent with the requirements of the employer, the Board shall give due regard to maintaining comparability of conditions of employment of employees with those that are applicable to persons in similar employment in the federal public administration.

A. Clause 2.01 u) and 6.02 Peace Officer Designation (NEW)

[9] The bargaining agent suggested the following new wording (all new wording or amendments are in bold characters):

2.01 u) "Peace Officer" is, as defined in section 2 of the Criminal Code of Canada, a police officer, a police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace for the service or execution of civil process. The Employer recognises all the Employees described in the Certificate issued by the Public Service Labour Relations Board on March 24, 1987 covering employees in the House of Commons Protective Services Group qualify as "peace officers" within the afore-referenced meaning.

6.02 The Employer recognises that all the Employees described in the Certificate issued by the Public Service Labour Relations Board on March 24, 1987 covering employees in the House of Commons Protective Services Group qualify as "peace officers".

[10] The Board has no doubt that the protection officers perform important, responsible and demanding duties. However, the Board is of the opinion that including such a designation in the collective agreement would have no legal effect. It is not the Board's role to determine whether the protection officers are peace officers within the meaning of the *Criminal Code of Canada*. The Board has decided that the proposal will not be included in the arbitral award.

B. Forty-hour work week

[11] This would represent a major change for the bargaining unit. The regular work week is now defined as a 35-hour work week.

[12] The underlying rationale for this demand is the remuneration of the lunch hour. The bargaining agent submits that protection officers, given the new requirement to either remain in full uniform during their lunch hour or store their firearm, pepper spray and radio in a secure area and locker, cannot fully enjoy their lunch break as they did before.

[13] The employer argues that the issue was settled in *Volpi v. Parliamentary Protective Service*, 2018 FPSLRB 64, in which, according to the employer, the adjudicator ruled that employees were not working for the employer during the lunch break, and therefore were not entitled to remuneration. The *Volpi* decision can be read otherwise, and this was reinforced by the judgment on judicial review from the Federal Court (2019 FC 1061) that was issued subsequent to this hearing. The decision in *Volpi* stated that nothing in the previous collective agreement allowed for such remuneration, which is not to say that collective agreement language cannot change.

[14] The Board heard considerable evidence from Mr. Lapensée, that the requirement to either remain in full uniform or store securely weapons and radio has had a considerable impact on the quality of the lunch hour for the protection officers. For example, it was possible before to enjoy a run or gym session during the lunch hour; now, this is very much complicated by the need to securely lock certain items. This testimony is not contradicted by the factual findings of *Volpi*.

[15] The Board has come to the conclusion that the work week should remain at 35 hours. While we do not accept the bargaining agent's proposal for a fully paid lunch hour, in our view the evidence establishes that the lunch hour of Protection Officers is frequently disrupted thus the Board awards that for each day worked, Protection Officers are entitled to a paid half hour at lunch, the other half hour being unpaid and the payment being at the straight time rate.

C. Double Overtime

[16] The bargaining agent proposed that the rate for overtime should be double the straight time rate, as opposed to one-and-one-half that rate. The rationale for such a proposal is that the RCMP officers, who work alongside the protection officers in the Mobile Response Team, are paid double straight time for their overtime hours. Since both categories of officers do the same work, they should be entitled to the same remuneration.

[17] The RCMP officers have a different employer and different working conditions. Although they can be part of the Mobile Response Team alongside the protection officers, this work does not define their tasks and responsibilities.

[18] The Board has decided this proposal will not be included in the arbitral award.

D. Clause 15.02 a) Accumulation of vacation leave credits

[19] The bargaining agent proposes to increase the accumulation of vacation leave credits in the following manner:

- For employees who have less than 15 years of continuous employment, from 11.667 hours per month to **13.334 hours** per month;
- For employees who have more than 15 years of continuous employment, from 14.583 hours per month to **16.667 hours** per month;
- For employees who have more than ~~28 years~~ **24 years** of continuous employment, from 17.5 hours to **20 hours per month**;
- For employees who have more than 25 years of continuous employment, **20.667 hours per month.**
- For employees who have more than 26 years of continuous employment, **21.333 hours per month.**
- For employees who have more than 27 years of continuous employment, **22 hours per month.**
- For employees who have more than 28 years of continuous employment, **22.667 hours per month.**
- For employees who have more than 29 years of continuous employment, **23.333 hours per month.**

[20] The Board has decided this proposal will not be included in the arbitral award.

E. Clause 15.02 b) Additional vacation leave (NEW)

[21] The bargaining agent proposes to add a supplementary vacation of five working days to be granted in the 11th, 16th, 21st, 26th, and 31st years of employment.

[22] The Board has decided this proposal will not be included in the arbitral award.

F. Clause 15.05 e) Vacation scheduling (NEW)

[23] The bargaining agent proposes the following addition to article 15:

15.05 e) The employer agrees before each vacation period to establish the vacation schedule, that a consultation be held with

the union representatives to determine the minimum number of officers who are entitled to vacation at the same time.

[24] Ms. Wilcott testified to the fact that this consultation is already being done to a certain extent, albeit on an informal basis. The bargaining agent wishes the consultation to be included in the collective agreement, to better represent the interests of its members for the scheduling of vacations.

[25] The Board agrees that this new provision would be included in the arbitral award, but with the word “minimum” removed.

G. Clause 16.07 Holiday duration

[26] The bargaining agent proposes to modify the existent clause in the following manner to increase the maximum compensated duration from seven to 12 hours.

[27] In keeping with the practice throughout the public service, the clause will not be altered.

H. Clause 18.01 Sick leave credits

[28] The bargaining agent proposes to modify clause 18.01 and increase the number of hours of sick leave credits earned from 8.75 hours to 10 hours for each calendar month that the employee has worked 10 days. The union’s proposal also includes the change in the number of hours in a workday, 8 instead of 7, in keeping with their proposal for a 40-hour work week.

[29] The bargaining agent also proposes to increase the additional earned sick leave credits for shift workers, from 1.16 to 1.33 hours for each calendar month that the employee works shifts and receives pay for at least 10 days.

[30] The Board has decided this proposal will not be included in the arbitral award.

I. Clause 35.04 Union representation during disciplinary meetings

[31] The bargaining agent proposes the following change to clause 35.04:

*35.04 When an employee is required to attend a meeting, the purpose of which is to interview the employee for possible **administrative or investigation** disciplinary action or to render a disciplinary **administrative or investigation** decision concerning*

*the employee, the employee is entitled to have, at their request, a representative of the Association attend the meeting. The Employer shall normally provide **forty-eight (48)** ~~twenty-four (24)~~ hours' notice of such meeting.*

[32] The bargaining agent argues that there may be administrative meetings that have a severe impact on the employee, and union representation should be allowed. The employer submits that it would unnecessarily cumbersome to require the presence of a union representative each time an employer representative needs to discuss an administrative matter with an employee. Moreover, the 48-hour delay is unreasonable, especially if the matter is urgent.

[33] The Board recognizes that there may be administrative measures that have major consequences for employees, such as an administrative suspension. However, not every administrative meeting would have such an impact. The 48-hour notice is no doubt desirable, given the small number of people available to offer union representation, according to the evidence heard at the hearing; however, it may be unrealistic in some cases.

[34] The Board agrees to include the change in the arbitral award, but modified to read as follows:

*35.04 When a meeting that an employee is required to attend may result in an investigation or in an administrative or disciplinary measure or is held to render a disciplinary decision concerning the employee, the employee is entitled to have, at their request, a representative of the Association attend the meeting. The Employer shall provide **when possible forty-eight (48)** hours' notice of such meeting.*

J. Clause 41.08 Layoff

[35] The bargaining agent proposes the following change to clause 41.08:

41.08 The Employer will not contract out work that is performed by the employees in the Bargaining Unit ~~in such a manner as to cause layoffs or the continuation of layoffs.~~

[36] The Board has decided this proposal will not be included in the arbitral award.

K. Clause 21.06 Overtime payment

[37] The bargaining agent proposes the following change to clause 21.06:

21.06 (a) Overtime shall be compensated in cash except that, upon request of an employee and approval of the Employer, the compensation shall be in equivalent leave with pay.

[...]

(c) The Employer shall endeavour to pay cash overtime compensation by the twenty-first (21) day of the month following the month after which it is earned.

[38] The Board has decided this proposal will not be included in the arbitral award.

L. Clause 23.07 Training travel

[39] The bargaining agent proposes the following change to clause 23.07:

23.07 Additional compensation under this Article shall ~~not~~ be recognised for travel time to courses, training sessions, conferences and seminars.

[40] The Board has decided this proposal will not be included in the arbitral award.

M. Clause 26.02 Weekend premium

[41] The bargaining agent proposes to change the amount of the weekend premium, as well as the hours during which employees are entitled to the premium.

[42] The Board agrees with the increases to the premium, as proposed by the bargaining agent:

- 1. Effective April 1, 2017, the premium shall be two dollars and thirty cents (\$2.30) for all hours worked.**
- 2. Effective April 1, 2018, the premium shall be two dollars and thirty-five cents (\$2.35) for all hours worked.**
- 3. Effective April 1, 2019, the premium shall be two dollars and forty cents (\$2.40) for all hours worked.**

[43] However, the period of time during which the weekend premium is paid shall remain the same.

N. Appendix A Rates of pay and economic increase

[44] Having regard to all of the relevant considerations, including settlements throughout the federal public sector, the Board awards the following:

- Effective April 1, 2017, increase all salary rates by 1.5%.

Federal Public Sector Labour Relations and Employment Board Act and

Public Service Labour Relations Act

- Effective April 1, 2018, increase all salary rates by 2%.
- Effective April 1, 2018, add an eighth step to the salary grid that is 4% greater than the seventh step.
- Effective April 1, 2019, increase all salary rates by 2%.

O. Appendix G Physical standards (NEW)

[45] The bargaining agent proposed a new appendix to provide a monetary reward to employees who meet the annual physical requirements and standards.

[46] This proposal will not be included in the arbitral award.

P. Appendix H 25-year retirement (NEW)

[47] The bargaining agent proposed a new appendix to seek support from the employer for an amendment to the *Public Service Superannuation Regulations* that would allow protection officers to retire after 25 years without penalty, citing as examples of employees with such a term of employment RCMP members, correctional service officers and air traffic controllers.

[48] The Board has decided this proposal will not be included in the arbitral award.

Q. Clause 15.17 One-time vacation credit

[49] The employer proposed the following language to amend clause 15.17:

15.17 a) Employees with less than two (2) years of continuous employment and all new employees shall be credited a one-time entitlement of thirty-five (35) hours of vacation leave with pay upon reaching two years of continuous ~~House of Commons~~ service with the Parliamentary Protective Service.

b) Transitional Provisions

Employees of the bargaining unit transferred to PPS on June 23, 2015 who at that time had ~~with~~ more than two years of continuous House of Commons employment and who have been ~~shall be credited a~~ the one-time entitlement of thirty-five (35) hours of vacation leave with pay, will not receive an additional entitlement under this clause.

Employees of the bargaining unit transferred to the PPS on June 23, 2015, who at that time had not received the one-time entitlement, shall be so credited upon reaching two years of

combined continuous service within House of Commons and the Parliamentary Protective Service.

[50] This proposal will be included in the arbitral award.

III. General

[51] The Board will remain seized of this matter for a period of three (3) months from the date of this award in the event that the parties encounter any difficulties in its implementation. As part of their implementation consultations, the parties may agree to alternate language for the collective agreement that achieves the same purpose as that contained in this arbitral award and may use article 37 (“Agreement Reopener”) to incorporate that language in the collective agreement.

October 23, 2019.

Marie-Claire Perrault,
For the Federal Public Sector Labour Relations and Employment Board