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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 disputes affecting
the Public Service Alliance of Canada, as Bargaining Agent,
and the House of Commons, as Employer,
in respect of the bargaining unit composed of all employees of the employer in the Operational Group, except for part-time cleaners classified at the OP A level, and of the bargaining unit composed of all employees of the employer in the postal services sub-group in the Administrative Support Group

Indexed as
Public Service Alliance of Canada v. House of Commons

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

For the Bargaining Agent: Morgan Gay and Silja Freitag, Public Service Alliance of Canada

For the Employer: Carolyn Le Cheminant-Chandy and Aleksandra Pisarek, House of Commons

Heard in Ottawa, Ontario
September 12, 2019.

ARBITRAL AWARD

I. Application before the Board

[1] On April 19, 2018, the Public Service Alliance of Canada ("the bargaining agent") served notice to bargain on the House of Commons ("the employer") under section 37 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c.33 (2nd Supp.)("*PESRA*") on behalf of the Operational Group, except for part-time cleaners classified at the OP A level, and the Postal Services Sub-group in the Administrative Support Group.

[2] The Operational Group and the Postal Services Subgroup are two separately certified bargaining units covered by a single collective agreement. (Since the hearing in this matter, the Federal Public Sector Labour Relations and Employment Board ("the FPSLREB or the Board") has rendered a decision indicating that it will issue a new certificate consolidating the two bargaining units; *Public Service Alliance of Canada vs House of Commons*, 2019 FPSLREB 109.)

[3] The last collective agreement for the bargaining units expired on April 20, 2018.

[4] As of August 16, 2019, a total of 357 employees populated the combined bargaining units with an average annual salary of $49,239 and total annual payroll of just over $17.5 million.

[5] Employees perform a wide range of duties critical to the operations of the House of Commons: (1) Building Support Services – office cleaning, custodial services, material handling, room set-up services, heritage preservation, recycling and other special services, and tenant operations; and (2) Client Service Delivery – printing and mailing food services, postal and messenger services and trade services.

[6] The parties met for twelve (12) days of negotiations between October 2018 and May 2019. During those negotiations, the parties signed off on twenty-seven (27) clauses.

[7] By letter to the Board dated May 3, 2019, the bargaining agent requested arbitration pursuant to section 50 of the *PESRA.*

[8] The bargaining agent subsequently selected Joe Herbert from the panel of persons representative of the interests of employees and the employer selected

Kathryn Butler Malette from the panel of persons representative of the interests of the employer. The Chairperson of the FPSLREB appointed me as member of the FPSLREB. Pursuant to s. 48(1) of the *PESRA*, we are deemed to comprise the Board for purposes of these proceedings.

[9] The Chairperson of the FPSLREB established the mandate for these proceedings in *Public Service Alliance of Canada v. House of Commons*, 2019 FPSLREB 60, consisting of the parties' proposals for the following collective agreement articles and appendices:

> Article 11 – Use of Employer Facilities
>
> Article 18 – Vacation Leave with Pay
>
> Article 19 – Designated Paid Holidays
>
> Article 20 – Other Leave With or Without Pay
>
> Article 21 – Medical and Dental Appointments
>
> Article 24 – Hours of Work and Overtime
>
> Article 32 – Grievance Procedure (subsequently withdrawn by the bargaining agent)
>
> Article 40 – Seniority
>
> Article 43 – Pay Adjustment Administration
>
> Wages
>
> Appendix D – Seasonal Certified Indeterminate Employees
>
> Bilingual Bonus

II. Reasons

[10] The *PESRA* sets out as follows the factors that the Board must consider in rendering its award:

> …
>
> *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 with those that are applicable to persons in similar employment in the federal public administration.*

. . .

[11] The Board has taken those factors into consideration in weighing the proposals made by the parties.

[12] Under subsection 56(1) of the *PESRA*, I am the only signatory of this arbitral award:

> *56. (1) An arbitral award shall be signed by the member of the Board who is not a member selected from a panel appointed under section 47 and copies thereof shall be transmitted to the parties to the dispute and no report or observations thereon shall be made or given by either of the members selected from a panel appointed under section 47.*

[13] Subsections 56(2) and (3) of the PESRA governed the process by which members of the Board decided the arbitral award:

> *56. (2) Subject to subsection (3), a decision of the majority of the members of the Board in respect of the matters in dispute shall be the arbitral award in respect of the matters in dispute.*
>
> *(3) Where the majority of the members of the Board in respect of the matters in dispute cannot agree on the terms of the arbitral award to be rendered in respect thereof, the decision of the member of the Board who is not a member selected from a panel appointed under section 47 shall be the arbitral award in respect of the matters in dispute.*

[14] For a number of the issues in dispute, my decision constitutes the Board's arbitral award.

[15] In what follows, revised or new language of the collective agreement is indicated in **bold**. A revision that removes existing language of the collective agreement without replacement is signified by ~~strikethrough~~ "**(-)**".

A. Article 11 – Use of Employer Facilities

[16] The bargaining agent proposed the following revision to clause 11.03:

> *11.03 An accredited representative of the PSAC shall have reasonable access to the Employer's premises to assist in the resolution of a complaint or grievance, to attend meetings called by management and to meet with employees. Permission to enter the premises shall, in each case, be obtained from the Employer. Such permission shall not be unreasonably denied.*

[17] The employer proposed renewal of the existing provision.

[18] At the hearing, the bargaining agent proposed, as an alternative, that the Board award the language found as clause 4.4 in the collective agreement between the House of Commons and Unifor (formerly CEP):

> ***11.03 Representatives of the PSAC shall have access to the Employer's premises at reasonable notice to and free from unreasonable interference from the Employer, at reasonable hours and in a manner that will not interfere with the normal operations of the Employer.***

[19] The Board has determined that the bargaining agent's alternate proposal (as per clause 4.4) will be included in the collective agreement.

B. Article 18 – Vacation Leave with Pay

[20] The bargaining agent proposed, under clause 18.02, that employees earn vacation leave credits at the rate of one and two-thirds (1 2/3) days per month with less than 14 years of continuous employment (currently 15), two and one-twelfth (2 1/12) days per month with more than 14 years of continuous employment (currently 15), two and one-half (2 ½) days per month with more than 21 years of continuous employment (currently 28), and the introduction of a new entitlement to two and eleven-twelfth (2 11/12) days per month with more than 27 years of continuous employment.

[21] The employer proposed renewal of the existing vacation entitlements.

[22] The Board has determined that the bargaining agent's proposal will not be awarded and that the existing schedule of vacation leave entitlements in clause 18.02 will be renewed.

C. Article 19 - Designated Paid Holidays

[23] The bargaining agent proposed the addition of "Family Day" as a designated paid holiday under clause 19.01 and the consequential renumbering of its sub-clauses.

[24] The employer proposed renewal of the existing provision.

[25] The Board has determined that the bargaining agent's proposal will not be awarded and that the existing clause 19.01 will be renewed.

D. Article 20 – Other Leave With or Without Pay

[26] The bargaining agent proposed a series of revisions to Leave for Family-Related Responsibilities under clauses 20.12(b) and (c) in line with language that appears in collective agreements with Treasury Board as the employer. The bargaining agent also proposed under clause 20.12(d) that the total Leave for Family-Related Responsibilities in a calendar year be six (6) as opposed to the current five (5), and that unused credits be carried over into the following year. Finally, the bargaining agent proposed that employees shall be granted two (2) periods of up to seven (7) hours of leave with pay for reasons of a personal nature in each fiscal year (currently a single period) under clause 20.19, Personal Leave.

[27] The employer proposed renewal of the existing provisions.

[28] The Board has determined that the language proposed by the bargaining agent for clauses 20.12(b) and (c) shall be included in the collective agreement, as follows:

> *20.12(b)* ***The Employer shall grant the employee leave with pay under the following circumstances:***
>
> ***(i) to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;***
>
> ***(ii) to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;***

> ***(iii) to provide for the immediate and temporary care of an elderly member of the employee's family;***
>
> ***(iv) for needs directly related to the birth or the adoption of the employee's child;***
>
> ***(v) to attend school functions, if the supervisor was notified of the functions as far in advance as possible;***
>
> ***(vi) to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;***
>
> ***(vii) to attend an appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.***
>
> ***(c) Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under b) above, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.***

[29] The Board does not award the changes to clause 20.12(d) and 20.19 proposed by the bargaining agent.

E. Article 21 – Medical and Dental Appointments

[30] The employer proposed revisions to clause 21.10 as follows:

> *21.10 An employee shall be granted* ***up to*** *three (3) hours per visit with pay to attend* ***routine*** *medical or dental* ***or periodic check-up*** *appointments. Any hours spent ~~at the medical or dental appointments~~ beyond the three (3) hours may, at the employer's discretion, be deducted from the employee's sick leave.*
>
> ***An employee may be required to provide satisfactory validation of such appointment.***

[31] The Board has determined that the revisions proposed by the Employer shall not be included in the collective agreement and that clause 21.10 be renewed.

F. Article 24 – Hours of Work and Overtime

[32] For the Operational Group only, the bargaining agent proposed an increase from five (5) days to seven (7) days in the notice required for changing an employee's scheduled shifts.

[33] The employer proposed renewal of the existing provision.

[34] The employer proposed a new sub-clause 24.17(h) as follows:

> ***24.17 (h) An employee shall not be entitled to overtime compensation in respect of hours the employee attends a training session but shall be compensated at straight time for the hours spent over and above their regular scheduled hours of work.***

[35] The Board has decided that neither proposal shall be included in the collective agreement.

G. Article 40 - Seniority

[36] The bargaining agent proposed altering the definition of "seniority" for the Operational Group to specify that seniority commences on the date of hiring with the House of Commons. Currently, clause 40.01 defines seniority as the length of continuous service with the House of Commons.

[37] The bargaining agent also proposed the following revision to clause 40.04 for the Operational Group:

> *40.04 When two (2) or more employees ~~have the same seniority, the employee whose original date of hire is earliest shall be the first on the seniority list. When two (2) or more of these employees~~ have the same original date of hire, the employee whose surname is first alphabetically will be shown as such on the seniority list.*

[38] The employer proposed renewal of the existing provisions.

[39] The Board has determined that Article 40 shall be renewed without revision.

H. Article 43 – Pay Adjustment Administration

[40] The employer proposed the deletion of existing Article 43. The bargaining agent favoured its retention.

[41] The Board's award is that Article 43 be retained, with updated information as required.

I. Wages

[42] The bargaining agent proposed the following wage increases:

> **Effective April 20, 2018 market adjustment of 0.75% then 3.25%**
> **Effective April 20, 2019 3.25%**

[43] The employer proposed the following wage increases:

Effective April 21, 2018 1.5%

Effective April 21, 2019 1.5%

[44] The employer also proposed extension of the pay retroactivity implementation period from ninety (90) to **one hundred and fifty (150)** days from the date of the arbitral award.

[45] The Board appreciates the effort of the bargaining agent to provide more information about job matches to positions in the Public Service and elsewhere (notably Canada Post) using National Occupational Classification Codes (NOCCs) in order to analyze compensation requirements, at least, in part, in response to the findings in the previous arbitral award for the bargaining units (*Public Service Alliance v. House of Commons*, 2018 FPSLREB 30). The Board also appreciates the employer's rebuttal submissions that attempted to quantify the compensation differential between certain House of Commons roles (e.g., short order cook, painter and driver) and comparators identified by the bargaining agent via its NOCC-based approach, an effort that appeared to suggest higher compensation levels in the House of Commons taking into account different hours of work.

[46] Both parties also provided substantial amounts of useful information about the state of the Canadian economy, wage trends in the Canadian labour market and, in particular, patterns of recent wage settlements in the parliamentary precincts and among bargaining units in the proximate Federal Public Service.

[47] As mentioned earlier, the Board has assessed the information provided by the parties in the light of s. 53 of the *PESRA* quoted at paragraph 10 of this award.

[48] No amount of macroeconomic or compensation information answers conclusively and without controversy what should be the appropriate adjustments to rates of pay. Not unexpectedly, this is not a matter on which the representatives of the parties on the Board agree or that a majority of the Board agrees. The Board's award is thus my decision pursuant to s. 56(3) of the *PESRA*.

[49] In reaching a determination, I have been most influenced by the following considerations: (1) that the pattern of increases for parliamentary groups is not yet firmly established given the absence of outcomes for the other bargaining units represented by the Public Service Alliance of Canada; (2) that, nonetheless, there has been a recent arbitral award for a parliamentary group, Protective Services, represented

by a different bargaining agent that increased rates of pay by 2% in 2018 and added one extra 4.0% step to the salary grid, followed by a 2.0% increase in 2019 (*House of Commons Security Services Employees Association v. Parliamentary Protective Service*, 2019 FPSLREB 104); (3) that wage increases in the federal public sector seldom fell below 2.0% in 2018 and frequently included an additional wage adjustment, typically valued at 0.75% or 0.8%; (4) that 2019 wage increases in the federal public sector to date have seldom been less than 2.0% and, not infrequently, have also included additional wage adjustments, although involving smaller percentage increases; (5) that the 2018 and 2019 increases that will apply to the important comparator bargaining units under Treasury Board represented by the Public Service Alliance of Canada, including the GL and GS groups, are yet to be determined but that a reasonable observer would find it unlikely that those increases will fall short of the patterns outlined in points (3) and (4) and could possibly exceed them; (6) that wage settlements for major bargaining units assessed as part of the Labour Program at Employment and Social Development Canada increased by 1.6% in 2018 and, so far, by 2.5% in 2019; (7) that inflation in 2018 increased by more than 2.0% and is widely predicted to increase by a similar amount over the course of 2019; (8) that there is no compelling indication that the House of Commons faces recruitment and retention challenges with regard to the bargaining units; but (9) that some employees in the bargaining unit, particularly seasonal certified indeterminate ("SCI") employees, are among the lower paid workers on Parliament Hill.

[50] Considered on balance, those considerations lead me to the following determination:

Effective April 21, 2018; increase all rates of pay by 2.75%
Effective April 21, 2019: increase all rates of pay by 2.0%

[51] The Board has taken into account s. 58 of the *PESRA*, and determined that it should not intervene to award a term longer than 2 years and, by doing so, disregard the clear agreement of the parties regarding the expiry date.

[52] As to the employer's proposal to extend the pay retroactivity period to **one hundred and fifty (150) days**, the Board takes note of s. 59 of the PESRA which reads as follows:

Implementation of awards

> ***59*** *The terms and conditions of employment that are the subject of an arbitral award shall, subject to the appropriation by or under the authority of Parliament of any moneys that may be required therefor, be implemented by the parties within a period of ninety days from the date on and after which it becomes binding on the parties or within such longer period as, on application to the Board by either party, appears reasonable to the Board.*

[53] It may well be the case that the employer can face significant challenges in implementing pay increases within a ninety-day period, sometimes for reasons largely outside its immediate control. Nonetheless, the *PESRA* provides a clear mechanism for seeking an exception from the ninety-day requirement through application to the FPSLREB. The Board chooses not to alter the statutory direction of Parliament that the FPSLREB consider the merits of an application for an exception when more than 90 days may be needed. The change proposed by the employer is not awarded.

J. Appendix D – Seasonal Certified Indeterminate Employees

[54] The bargaining agent proposed revising paragraph 3 as follows:

> *3. Due to the irregularity of work available during election and prorogation years, years with less than one hundred and* ***twenty (120)*** *sitting days will be excluded for the purpose of losing status. Consequently, if a SCI employee works less than seven hundred (700) hours during a year with less than one hundred and* ***twenty (120)*** *sitting days, this discrepancy will not be used to lose the status of a SCI employee.*

[55] The existing paragraph 3 references “one hundred and fifteen (115) sitting days” in both instances. The employer proposes to renew the existing paragraph on that basis.

[56] Data provided by the employer indicate that the number of sitting days fell below the current threshold of 115 days on three out of ten occasions between 2009 and 2018. A higher threshold of 120 days would have captured one additional year (2010).

[57] Although its effect may be infrequent, the Board considers that paragraph 3 as proposed by the bargaining agent provides a reasonable enhancement of protection to SCI employees and awards the revision as proposed.

[58] An additional bargaining agent proposal also addresses the identification of calendar years which are excluded for the purpose of defining when an SCI employee loses status. In paragraph 4, the bargaining agent proposes that four references

currently to "twenty (20) sitting days" be changed to "**ten (10)** sitting days". The threshold has the effect of excluding from determinations about SCI employee's status years when an employee is granted more than the stated number of days (20 currently, **10** as proposed) for the following types of leave: maternity leave without pay, parental leave without pay, leave without pay for the care and nurturing of pre-school age children, leave without pay for the long-term care of immediate family, leave without pay for other reasons, disability benefits or sick leave.

[59] The employer submitted, uncontradicted by the bargaining agent, that ". . . no employee has ever lost his SCI status under the current language due to being on leave, accessing disability benefits or being on certified sick leave."

[60] The Board awards the modification to paragraph 4(b) proposed by the bargaining agent, revising the reference to "accesses disability benefits for more than twenty (20) sitting days" to "accesses disability benefits for more than **ten (10)** sitting days".

[61] The Board does not award the other changes to paragraph 4 proposed by the bargaining agent.

[62] The bargaining agent proposed changing paragraph 9 as follows (as modified at the hearing):

> ***9. Transition to full-time hours***
>
> ***(a) When full-time hours become available, and there is at least one SCI employee who has completed their probationary period, working in a position with the same job title, the employer agrees that first consideration shall be given to such employee or employees.***
>
> ***(i) When there is more than one SCI employee meeting the criteria in (a) above, the full-time hours shall be offered based on seniority.***
>
> ***(ii) Should no SCI employee meet the criteria contained in (a) above, the hours shall be*** *filled through the normal staffing process of the House of Commons. The successful candidate will be covered by the collective agreement and this MOU on the first day of work. The Employer may appoint persons with the status of SCI at any time.*

[63] The employer proposed renewal of the existing provisions. The employer also objected to the Board's jurisdiction to entertain the proposal on the grounds that it violates sections 5(3) and 55(2) of the *PESRA* which read as follows:

> ***Right of employer***
>
> ***5 (3)*** *Nothing in this Part shall be construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment.*
>
> ***Matters not to be dealt with by award***
>
> ***55 (2)*** *No arbitral award shall deal with the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.*

[64] The bargaining agent contended that the Board does have jurisdiction to entertain the proposed amendments as the essential subject matter is hours of work. The proposal is intended to provide SCI employees first consideration when opportunities arise to work full-time hours and to foreclose the type of situation that allegedly occurred in 2017 and 2018 in Restaurant Services when outside hires or more junior employees filled full-time positions passing over some SCI employees with seniority.

[65] Both parties canvassed the history of previous arbitral awards addressing the issues faced by SCI employees and other relevant arbitral decisions. Several of the awards cited considered objections advanced by the employer on grounds of jurisdiction. The case law offered by the parties has assisted the Board in assessing the bargaining agent's proposal although it is apparent that differing conclusions can be drawn from some of the arbitral determinations. (Note, for example, that an early decision with two opposite jurisdictional findings was cited by both parties: *Public Service Alliance of Canada v. House of Commons (Operations Group)*, [1990] C.P.S.S.R.B. No. 153, at para 26 and 29.)

[66] The argument advanced by the bargaining agent on the merits of the proposal is compelling. Acquiring access to full-time hours is understandably a major objective for some SCI employees and, if achieved, would accord them a crucial degree of financial security not previously enjoyed. When, for example, the employer overlooks an SCI employee who performs the same job in deciding who will work full-time hours and instead engages a new hire, the impact on workplace morale can be substantial. That situation should be addressed.

[67] The first-order issue for the Board, however, is whether it has jurisdiction to address the situation in light of the parameters established under the *PESRA* for arbitral decisions and, more generally, for collective bargaining. On their face, the proposed paragraphs 9(a) and (b) seek to regulate the distribution of available hours of work among members of the bargaining unit in a fashion similar to what is accomplished by other types of provisions not uncommonly found in collective agreements, such as clauses which govern access to overtime opportunities or to shifts. There is, however, a difference that distinguishes the bargaining agent's proposal in paragraphs 9(a) and (b). The employer has chosen to associate full-time hours with specific positions in the bargaining unit. It has the right to determine the organization of work and to assign duties, whether on a full-time basis or not, as protected by s. 5(3) of the *PESRA*. Within its chosen model for the delivery of services, providing for the performance of duties on a full-time basis involves the staffing of specific positions. Under the bargaining agent's proposal in paragraphs 9(a) and (b), a staffing decision would be replaced by an "offer" of hours based on seniority among SCI employees working in positions with the same job title. Apart from the possibility that the employer might chose to give full-time positions a different job title which could circumvent the intent of the bargaining agent's proposal, the proposal in its essence bears upon what, for this employer, is an appointment process. Under s. 55(2) of the *PESRA*, the award of this Board may not deal ". . . *with the standards, procedures or processes governing the appointment . . . of employees . . . .*"

[68] For that reason, the Board cannot award the bargaining agent's proposal as it concerns the employer's appointment authority and, as such, does not fall within the Board's jurisdiction. That said, the Board urges the employer to adopt as part of its staffing practices a protocol which would have an effect similar to what the bargaining agent has proposed for paragraph 9.

[69] The bargaining agent proposes a new paragraph for Appendix D as follows:

> ***Health Benefits Premiums***
>
> ***In the event that SCI employees are required to pay premiums associated with maintaining benefits plans consistent with both the Public Service Health Care Plan and Article 36 of this Agreement, such employees shall be notified by the Employer, in writing, a minimum of two (2) weeks in advance of the date on which the first employee payment is required.***

[70] Previous arbitral awards have consistently denied similar proposals. This Board follows in that pattern and does not award the proposed additional paragraph.

K. Bilingual Bonus

[71] The bargaining agent proposed a new article as follows:

> ***xx.01 Any employee occupying a position that has been identified as bilingual shall receive an annual payment of $800, calculated on a monthly basis and paid on the same basis as regular pay.***

[72] The employer proposed rejection of the new article.

[73] The Board has determined that the bargaining agent's proposal will not be included in the collective agreement.

L. Expiry

[74] The expiry date of the new collective agreement is not in dispute as the bargaining agent and the employer agree that the collective agreement should expire on **April 20, 2020**.

III. General

[75] The Board will remain seized of this matter for a period of three (3) months in the event that the parties encounter any difficulties in implementing the arbitral award.

December 10, 2019.

Dan Butler,
For the Federal Public Sector Labour Relations and Employment Board