

**Date:** 2019-12-18

**File:** 585-02-39309

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IN THE MATTER OF  
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*  
and a Request for Arbitration affecting  
the Canadian Pilots Association, as Bargaining Agent,  
and the Treasury Board, as Employer,  
in respect of the Aircraft Operations bargaining unit

**Before:** Ian R. McKenzie, Chairperson; Phillip Hunt and Anthony Boettger,  
arbitration board members

**For the Bargaining Agent:** G. Holbrook, CFPA

**For the Employer:** D. Duggan, Treasury Board

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Heard at Ottawa, Ontario,  
September 3 to 6 and 24 to 26, 2019.

## **ARBITRAL AWARD**

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### **Introduction**

[1] On October 30, 2018, the Canadian Federal Pilots Association (CFPA or “the bargaining agent”) requested arbitration with respect to the Aircraft Operations (AO) group bargaining unit. The AO group is composed of all the employees of the Treasury Board of Canada (“the employer”) in the AO group as described in the Canada Gazette, Part 1, of March 27, 1999, and in the certificate issued by the former Public Service Staff Relations Board on January 18, 2001.

[2] In its response to the request for arbitration, the employer also raised a number of jurisdictional objections.

[3] The Terms of Reference of this Arbitration Board (the “board”) were established by the Chair of the Federal Public Sector Labour Relations and Employment Board on April 11, 2019 (2019 FPSLREB 41). The Chair also ruled on the employer’s jurisdictional objections.

[4] At the commencement of scheduled hearing days for September 3-6, 2019, the parties worked diligently in resolving a number of outstanding issues. The Panel appreciated the good faith efforts of both parties in coming to agreements on a number of issues.

### **Bargaining History**

[5] Notice to Bargain was served by the employer on September 24, 2014. The parties met for a total of 11 negotiation sessions between January 16, 2015 and March 29, 2018. The parties agreed to and signed off on a number of articles of the collective agreement.

### **The Bargaining Unit**

[6] The AO Group includes positions that are primarily involved in aviation inspections, pilot flight testing, licencing, enforcement, certification of operators, aircraft certification flight testing, and developing operating standards. Other positions include Coast Guard helicopter operations, aviation accident investigation, safety analysis and developing aviation legislation, standards and information as well as ensuring compliance.

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[7] There are approximately 370 employees in the AO bargaining unit. The majority of the bargaining unit are Civil Aviation Inspectors (CAI) -- approximately 332. There are 30 Helicopter Pilots and Supervisors (HPS) and 8 Engineering Test Pilots (ETP). The majority of bargaining unit employees (95%) are employed with Transport Canada (TC). The remaining employees (19) are employed with the Transportation Safety Board (TSB).

### **Issues in Dispute**

[8] The parties reached agreement on a number of issues prior to the establishment of the board. Those signed off agreements are included in Annex 1 of this Award and form part of the Award.

[9] A number of proposals were withdrawn, resulting in the renewal of the following Articles:

Article 4 - Interpretation of Agreement

Article 23 - Vacation Leave

Article 24 - Sick Leave

Article 33 - Statement of Duties

Article 41 - Licence and Medical Fees

Article 43 - Call Back

Article 44 - Standby

Article 53 - Legal Assistance

[10] The parties agreed at the outset of the hearing to participate in a process of a facilitated discussion, led by the board. Approximately five of the seven days set aside for the hearing were used for this facilitated discussion. With the assistance of the board, considerable progress was made, in particular with respect to the following issues that were resolved: :

Article 20 - Travelling Time (20.04(a))

Article 21 - Pay Administration

Article 49 - Standards of Discipline

New MOA on vacation leave carryover

New MOA on Employee Wellness

New MOU on Implementation of the Collective Agreement

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[11] The collective agreement changes arrived at with the assistance of the board are included in this Award and set out in Annex 2.

[12] The following issues remain in dispute:

Article 10 - Rights of Employees

Article 18 - Hours of Work

Article 45 - Shipboard and Special Assignment Allowance

Article 46 - Extra Duty Allowance

Article 54 - Duration

Appendix A - Annual Rates of Pay

[13] In reaching a determination on the issues in dispute, the board is governed by section 148 of the *Federal Public Sector Labour Relations Act* (FPSLRA or the “Act”):

148. In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

(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 arbitration board considers relevant;

(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;

(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

(e) the state of the Canadian economy and the Government of Canada’s fiscal circumstances.

[14] The board has considered all of these factors in reaching its determination on the items in dispute. In reaching our conclusions on the outstanding items in dispute, the board has also been guided by the long-accepted principles of interest arbitration including replication/comparability, total compensation and demonstrated need. We have considered the proposals before us and made the trade-offs and compromises warranted in light of the parties’ positions as well as the factors noted above.

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**Award**

[15] We direct the parties to enter into a renewal collective agreement for the term of January 26, 2015 to January 25, 2023 (duration is discussed later in this award). The collective agreement shall consist of the unchanged items from the collective agreement that expired on January 25, 2015, the items agreed to and signed off by the parties themselves, and the board's award on only those items set out herein. Any proposal not explicitly dealt with in this Award is denied. All items, whether agreed to by the parties or awarded by the board are effective the date of the award unless specified otherwise.

**Article 10 – Rights of Employees**

[16] The bargaining agent proposed additional language in the Article that would provide the right of employees to conduct themselves in a manner consistent with the Values and Ethics Code, without fear of discipline or reprisal, as well as the right to carry out their duties according to legislation, policies and directives in a non-partisan and impartial manner. At the hearing, the bargaining agent proposed a modified version of the provision in the EC collective agreement.

[17] The employer stated that it could accept the language as it was set out in the EC collective agreement.

[18] The board has decided to award the following amendment to the Article:

10.01 Nothing in this agreement shall be construed as an abridgement or restriction of any employee's constitutional rights or of any right expressly conferred in an act of the Parliament of Canada.

**10.02 The parties recognize that providing objective, evidence-based, non-partisan analysis and advice is fundamental to the values and ethics of the public service, as reflected in the Values and Ethics Code for the Public Sector. No employee shall be expected to act in a manner that is inconsistent with the principle of providing objective, evidence-based, non-partisan analysis and advice.**

**Article 18 - Hours of Work**

[19] The normal scheduled hours of work are between 0700 and 1800 hours. The employer proposed a change in the normal scheduled hours of work to 0600 to 2000.

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The bargaining agent proposed a change in the normal scheduled hours of work to 0600 to 1800.

[20] The board has decided to award the change to the starting time for normally scheduled hours of work and the revised Article 18.01 is as follows:

18.01 The work week of employees shall be thirty-seven decimal five (37.5) hours consisting of five (5) consecutive days, Monday to Friday inclusive, and the normal scheduled hours of work each day shall be a continuous period of seven decimal five (7.5) hours between the hours of ~~0700~~ **0600** and 1800 exclusive of an unpaid meal break and shall be documented between every employee and their manager. Except as provided in paragraph (c) below, such hours shall not vary from day to day. Notwithstanding the above, for shipborne helicopter pilots, the provisions of Article 45 shall apply.

At the request of the employee, the Employer may vary the daily hours of work to make provision for a compressed work week.

The Employer may change an employee's normal scheduled hours of work within ~~0700~~ **0600** hours and 1800 hours and where less than eight (8) working days notice is given such changes shall only be made by mutual agreement between the employee and the Employer.

The Employer will endeavour to give at least two (2) weeks notice to helicopter pilots assigned to shipboard operations of sailing dates and times and anticipated crew change dates, and as much notice as possible of any revisions to such dates and times.

#### **Article 45 - Shipboard and Special Assignment Allowance**

[21] This applies to employees working as helicopter pilots (in the HPS category) on Canadian Coast Guard ships. The bargaining agent proposed that the current weekly allowance of 30 hours at time and one-half be increased to 60 hours.

[22] The employer proposed that the existing Article be renewed.

[23] The board has decided not to award the bargaining agent proposal.

#### **Article 46 - Extra Duty Allowance**

[24] The Extra Duty Allowance (EDA) is a non-salary, pensionable allowance for the maintenance of mandatory professional qualifications. It is currently set at \$7,480. It has not been adjusted since 2007.

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[25] The bargaining agent proposed that the EDA be adjusted by salary increases over the life of the collective agreement. The employer proposed that the allowance be increased by the compounded amount of the employer's pay proposal, effective date of signing of the Award.

[26] The board has determined that the EDA should reflect annual economic increases that are set out later in this Award, effective January 26, 2018. Effective January 26, 2018, the EDA will increase by the compounded rate of the economic increases up to and including January 26, 2018. As of January 26, 2019 and ongoing, the EDA will increase by the annual economic increase.

#### **Article 54 - Duration**

[27] The bargaining agent proposed that the duration of the collective agreement should be 8 years (until January 25, 2023). It noted that the parties were out of step with the bargaining cycle for the Core Public Administration (CPA).

[28] The employer objected to a duration of the collective agreement other than to January 25, 2019. It submitted that the board should not consider proposals that were not in the Terms of Reference for the board.

[29] Section 150(2) of the *FPSLRA* provides that an arbitral award may not deal with a term or condition of employment that was not the subject of negotiation between the parties during the period before arbitration was requested. The duration of the collective agreement was the subject of negotiations prior to the request for arbitration and was included in the Terms of Reference. There is no restriction on any party amending their bargaining proposals during the arbitration process. The restriction is on raising entirely new demands at the arbitration stage of the process.

[30] Section 156(3) of the *FPSLRA* states that "an arbitral award may not be for a term of less than one year or more than two years from the day on which it becomes binding on the parties, unless the arbitration board determines otherwise in any case where paragraph 2(a) or (b) applies". Paragraphs 2(a) and (b) read as follows:

(2) In determining the term of an arbitral award, the arbitration board must take the following into account:

(a) if a collective agreement applicable to the bargaining unit is in force or has been entered into but is not yet in force, the term of that collective agreement; or

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(b) if no collective agreement applying to the bargaining unit has been entered into,

(i) the term of any previous collective agreement that applied to the bargaining unit, or

(ii) the term of any other collective agreement that it considers relevant.

[31] In the circumstances, it is the board's opinion that an operative term outside the prescribed time periods is warranted and that the exception under section 156 paragraph 2(b)(ii) applies. Previous collective agreements applicable to this bargaining unit have traditionally corresponded with the prevailing bargaining cycles and collective agreements in the CPA. Complying with the time periods prescribed in section 156(3) would therefore place the collective agreement behind the current bargaining cycle and necessitate the immediate start of collective bargaining for these parties. In the board's opinion, this is an untenable situation. In light of the application of 156(2)(b)(ii) we hereby stipulate that the duration of the collective agreement will be from January 26, 2015 until January 25, 2023, inclusive.

## **Appendix A - Annual Rates of Pay**

### **Economic increases**

[32] The bargaining agent proposed the following economic increases:

January 26, 2015	1.25%
January 26, 2016	1.25%
January 26, 2017	1.25%
January 26, 2018	1.25%
January 26, 2019	2.00%
January 26, 2020	2.00%
January 26, 2021	1.50%
January 26, 2022	1.50%

[33] The employer proposed the following economic increases:

January 26, 2015	1.25%
January 26, 2016	1.25%
January 26, 2017	1.25%
January 26, 2018	1.25%

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[34] The employer reiterated its objection to a longer duration of the collective agreement and submitted that the second four-year period proposed by the bargaining agent was not before us. The employer submitted that if the board were to consider a longer duration, any increases would have to be consistent with the pattern already established in the CPA.

[35] The parties are in agreement on the economic increases for the first four years of the agreement. The board therefore awards the economic increases as set out for January 26, 2015 to January 26, 2018 in both parties' proposals. The bargaining agent has proposed the pattern of economic increases for the CPA for the years up to and including January 26, 2022. The board awards the bargaining agent's proposal for each of these years. The economic increases for the new collective agreement are as follows:

January 26, 2015	1.25%
January 26, 2016	1.25%
January 26, 2017	1.25%
January 26, 2018	1.25%
January 26, 2019	2.00%
January 26, 2020	2.00%
January 26, 2021	1.50%
January 26, 2022	1.50%

**Wage rate adjustments and grid adjustments**

[36] The board could not reach a consensus on wage rate adjustments and the dissenting comments of the employer-side member are included at the end of this section. The following is the decision of a majority of the board.

[37] The employer proposed a wage rate adjustment effective January 26, 2017 of 0.5%. The employer also proposed a signing bonus of \$650.

[38] The bargaining agent proposed market adjustments of 12% effective January 26, 2015 and a market adjustment of 1.5% effective January 26, 2018. The bargaining agent also proposed wage adjustments of 0.8% effective January 26, 2019 and 0.2% effective January 26, 2020, consistent with the pattern of settlements in the CPA.

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[39] The bargaining agent also proposed adding an additional step to the top of the CAI-1, CAI-2, ETP and HPS pay scales, effective January 26, 2016 and an additional step to the top of the CAI-1 and HPS pay scales effective January 26, 2017.

[40] The employer opposed a market adjustment and also the changes to the wage grid on the basis that there are no recruitment and retention issues in the AO bargaining unit. As earlier noted, the employer opposed an agreement beyond 2018. The employer also stated that market adjustments in other collective agreements had all been effective in the third year of the agreement because of an operating budget freeze.

[41] The board has relied on the factors in section 148 of the FPSLRA as set out in paragraph 14 of this Award and, in particular, the following criteria:

- the necessity of recruiting and retaining competent persons, in order to meet the needs of Canadians;
- the necessity of offering compensation and other terms and conditions of employment that are comparable to those of employees in similar occupations in the private and public sectors
- 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
- the state of the Canadian economy and the government's fiscal circumstances.

[42] We will address each of these criteria in the order set out in the Act.

### **Recruitment and retention**

[43] The employer recognized a high attrition-recruitment rate in a public presentation to the Air Transportation Association of Canada in 2016, when it was noted that the average age of Civil Aviation inspectors was over 50 and that the attrition-recruitment rate had been over 25% for the previous three years and was expected to be the same for several more years. The presentation noted that a “comprehensive review” was underway.

[44] The recruitment pool for employees in the AO group is the aviation industry, and in particular, those with piloting experience. Information was provided to the

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panel members about the shortages of pilots in the aviation industry and the overall trends that indicate that competition for experienced pilots is on the rise.

### **Comparable compensation**

[45] There are no similar occupations to those in the AO Group in the CPA.

[46] The bargaining agent and the employer provided information on comparable occupations in the private sector and para-public sectors. They disagreed on the relevance of that information to determining comparable compensation.

[47] The employer's pay study showed that some of the jobs within the AO bargaining unit are behind the market rate. The employer's view is that compensation plus or minus 10% is considered to be within competitive norms and "market-aligned". The employer's pay study indicated that Enforcement Investigator – Fight Operations and Fixed Wing Training Pilot were within competitive norms (-5.4% and -3.8%, respectively). However, Surveillance Pilot was at -17.9%; Helicopter Pilot was at -16.7% and Technical Team Lead – Flight Operations was at -13.1%. The employer "partly explained" the market differentials by noting that the comparison was between 2014 AO wage rates and 2019 rates among the participating organizations, and that the market positions have greater responsibilities in their job duties. In their original pay proposal, the employer calculated a cumulative salary increase of 5.6% over the period of 2014 to 2019. The panel did not have job descriptions for the market positions contained in the pay study and we did not have sufficient evidence to determine the relative level of responsibilities.

[48] The bargaining agent provided information on wages in a variety of pilot occupations. The most relevant comparators from the board's perspective are the positions at NAV CANADA which were formally CAI positions within Transport Canada. As of May 1, 2014, the NC SDP-3 classification at NAV CANADA was \$117,768 and the NC FIP-4 was \$131,423. Taking the lower rate at NAV CANADA, the top of the CAI-3 level (where most employees are) is approximately 9.3% lower. The ETP-1 rate is only slightly lower than the FIP-4 rate. The HPS-1 rate is lower, but there does not appear to be a good comparator for this occupation at NAV CANADA.

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[49] The board is of the view that the information provided by the parties demonstrates that the AO wage rates are off pace with employees in similar occupations in the private and para-public sectors.

**Fair and reasonable compensation in relation to qualifications required, work performed, responsibility and nature of the work**

[50] The AO Group consists of employees who are highly skilled and experienced. There are no entry-level positions for new pilots within the AO bargaining unit. The board is of the view that the current wages of employees in the AO bargaining unit are not fair and reasonable in relation to the skills and experience required, the nature of the work and the level of responsibility required of all employees in the bargaining unit.

**The Canadian economy and fiscal circumstances**

[51] The board first notes that the total number of employees affected by this Award is less than 400. We also note that the AO bargaining unit has no comparator groups within the CPA. We find that this criteria has little impact on our decision with regards to wages.

**Board's award on wage and grid adjustments**

[52] The bargaining agent has proposed a market adjustment of 12% in January 2015, relying on the market adjustment awarded to the Canadian Merchant Service Guild (CMSG) in 2018. The bargaining agent has proposed further market adjustments in 2017 and 2018, of 1.5% in each year.

[53] We find that the amount of the market adjustment granted in the CMSG award to be irrelevant to our determination. The CMSG bargaining unit is not an appropriate comparator for the AO bargaining unit.

[54] A majority of the board finds that an appropriate market adjustment is 9%, effective in the third year of the renewed agreement (January 26, 2017). This is based on the difference with positions that were formerly in the AO bargaining unit (now at NAV CANADA) and also the difference in wage rates identified in the employer's pay study.

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[55] In addition, the board awards the wage adjustments consistent with the trends in recent CPA collective agreements of 0.8% in 2019 and 0.2% in 2020.

[56] The board declines to award any changes to the wage grid.

[57] The wage adjustments awarded are as follows:

January 26, 2017	9%
January 26, 2019	0.8%
January 26, 2020	0.2%

[58] The wage adjustments are to be applied after the application of the economic increases earlier awarded.

### **Employer-side member dissent**

[59] I disagree with the Board's conclusion that an award of a general 9% wage adjustment is appropriate, as it is based primarily on wage comparisons with Nav Canada pilots and other pilot wage data presented.

[60] As the Award notes, information was presented that members of the AO Group are primarily involved in "aviation inspections, pilot flight licensing, licensing, enforcement, certification of operators, aircraft certification flight testing and developing operating standards. Other positions include Coast Guard helicopter operations, aviation accident investigation, safety analysis and developing aviation legislation, standards and information as well as ensuring compliance." (para 7) It must be noted that the primary duties do not include piloting. In other words, these are primarily regulatory based positions (except HTS and ETP) with some piloting requirement.

[61] There is a significant difference in actual work and working conditions as distinct from the entry qualification for employment in the AO Group. The Employer's brief clearly detailed the regulatory nature of the work of the majority of members of the AO Group and that this is their primary function. This in no way undervalues the significant responsibilities of the AO Group but does underscore that there is a difference between being a commercial pilot and being a regulator of the aviation system.

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[62] While the current recruitment for positions in this group is from the pool of active licensed commercial pilots, the actual day to day duties and responsibilities and indeed the lifestyle are considerably different than those of a primary commercial pilot. The AO Group generally enjoy a fixed place of employment with a generally routine work schedule that occurs as a daily operation and allows them to return home at the end of the day. Unlike airline pilots who will have variable work schedules requiring regular lay-overs away from home. Lifestyle turbulence for commercial pilots is very different from that of a stay at home regulatory official. These factors should have been given greater consideration in the determination of any wage adjustment.

[63] While it is noted that there is increasing competition for licensed commercial pilots this has not translated into any recruitment problems for the Employer. The Employer's brief clearly supported its position that it has no recruitment problems for this Group despite the fact that the Employer is still recruiting at 2014 rates of pay. In a competitive employment environment this is a significant factor when considering wage adjustments of this magnitude and should have mitigated the size of any additional wage adjustment for the CAI sub-group.

[64] The comparison with the NAV Canada pilots is not a sufficiently strong comparator upon which to base a wage adjustment of this magnitude. Although formerly part of this group, their primary duties as pilots is again distinctly different from those of the Aviation Inspector.

[65] These factors raise legitimate concerns about depending only upon salary/wage data for salary determination of this Group and greater consideration of these differences is warranted when comparing compensation packages.

[66] While applying a salary adjustment for the piloting sub-groups (HPS, ETP) groups has some merit, extending a 9% salary adjustment to the whole AO Group is not in my opinion appropriate in these circumstances particularly in an environment of 1-2% general increases.

### **Implementation date**

[67] The employer proposed an MOU with respect to the implementation of the collective agreement that mirrored the MOUs reached with other bargaining agents in

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this round of collective bargaining. The bargaining agent was in agreement with this approach.

[68] The board awards the employer's proposed MOU with Respect to Implementation of the Collective Agreement (contained in Annex 3 to this Award).

### **Conclusion**

[69] Any proposals that were before the board that have not been addressed in this Award are to be considered as dismissed.

[70] The board shall remain seized of this matter for a period of four weeks from the date of this award, in the event that the parties encounter any difficulties in its implementation.

December 18, 2019

**Ian R. Mackenzie,  
For the Arbitration Board**