Date: 2019-01-27

File: 590-02-39500

IN THE MATTER OF
THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS*ACT*
and a Request for Establishment of a Public Interest Commission affecting
the Public Service Alliance of Canada, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the all the employees of the Employer in the Education and Library Science (EB) Group

Indexed as
Public Service Alliance of Canada v. Treasury Board

Before: Dan Butler, Chairperson; Bob Kingston and Patti Bordeleau, members

For the Bargaining Agent: Mathieu Brûlé

For the Employer: Ted Leindecker

Heard at Ottawa, Ontario,
December 9 to 12, 2019.

Public Interest Commission

I. Introduction

[1] The Public Service Alliance of Canada ("the Bargaining Agent") and the Treasury Board ("the Employer) were unable to conclude a new collective agreement for the Education and Library Science bargaining unit ("the EB Group") after lengthy negotiations that began in May 2018 and concluded in May 2019.

[2] The previous collective agreement expired on June 30, 2018.

[3] Negotiations took place at two bargaining tables: one dealing with issues specific to the EB Group and a second that addressed common collective agreement provisions across four bargaining units (the "Common Issues Table") involving the same parties. The three other bargaining units at the Common Issues Table were Program and Administrative Services (PA), Operational Services (SV) and Technical Services (TC).

[4] Before our proceedings, the parties reached an agreement to deal with the provisions allocated to the Common Issues Table exclusively at the Public Interest Commission ("PIC" or "Commission") established for the PA Group. The agreement specifies that any outcome there on common issues will apply to the EB Group. As a result, our mandate as the separate Commission for the EB Group was limited to proposals specific to its collective agreement.

[5] The primary role of a PIC under Division 10 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s.2 ("the *Act*") is to ". . . *endeavour to assist the parties to the dispute in entering into or revising a collective agreement*" (s. 172). If a PIC fails to resolve the matters dividing the parties, its role turns to submitting a report to the Chairperson of the Federal Public Sector Labour Relations and Employment Board with recommendations for resolving the dispute (s. 176).

[6] As the Commission for the EB Group, we met with the parties for four days from December 9 to 12, 2019, heard their formal presentations and tried to engage them in discussions that aimed to resolve at least some of the outstanding issues. While we were able to identify possible solutions --- a "meeting of the minds" --- for a few of the issues in dispute, the parties did not formally "sign off" any matters. On major monetary issues, the positions of the parties remained far apart. The reality that

important bargaining priorities at the Common Issues Table were outstanding certainly complicated our discussions. It was also apparent that little progress could be made towards concluding a new collective agreement for the EB Group at the Commission stage in the absence of information about the likely course of negotiations for the "lead" PA Group.

[7] It is, therefore, a matter of some regret that the Commission turns to its role of submitting this report with our findings and recommendations on proposals for revising the EB Group collective agreement.

[8] As required by s. 175 of the *Act*, we have been guided in our report by the following factors:

> ***(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 public interest commission 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.*

[9] Our report also is limited by the requirements stated in ss. 177(1) and (2) of the *Act*:

> *Report not to require legislative implementation*
>
> ***177 (1)*** *The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if*
>
> ***(a)*** *the alteration, elimination or establishment would require the enactment or amendment of any legislation by Parliament, except*

> *for the purpose of appropriating money required for implementation;*
>
> ***(b)*** *the term or condition is one that has been or may be established under the Public Service Employment Act, the Public Service Superannuation Act or the Government Employees Compensation Act;*
>
> ***(c)*** *the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees; or*
>
> ***(d)*** *in the case of a separate agency, the term or condition relates to termination of employment, other than termination of employment for a breach of discipline or misconduct.*
>
> *Matters not negotiated*
>
> ***(2)*** *The report of the public interest commission may not deal with a term or condition of employment that was not the subject of negotiation between the parties during the period before conciliation was requested.*

[10] The *Act* stipulates the decision rule that applied in our deliberations: Under ss. 178(1) and (2), the findings and recommendations of a majority of the members of the Commission are deemed to be those of the Commission. In the absence of a majority, the findings and recommendations of the Chairperson are deemed to be those of the Commission.

[11] As might be expected when there are important differences between the parties, the parties' nominees did not always agree on the recommendations that should appear in this report, particularly, but not limited to, those addressing economic increases and wage adjustments. (Thus, where the report uses the words "[t]he Commission recommends", it should not be construed as indicating that either one or both nominees agree.) That said, I wish to acknowledge, and express my appreciation for, the collaborative spirit that both Mr. Kingston and Ms. Bordeleau brought to our work and for their significant efforts to assist the parties throughout our proceedings. Both have chosen to add comments to this report as found in Annex 1.

II. The Bargaining Unit

[12] As of March 31, 2018, a total of 971 employees populated the bargaining unit in three classifications or groups: 711 in Education (ED), 223 in Library Science (LS) and 37 in Educational Support (EU).

[13] The ED classification includes employees in three subgroups. Employees in Language Teaching (ED-LAT) supervise the teaching of an official or foreign language to public servants and others. Employees in Elementary and Secondary Teaching (ED-EST) teach and counsel students, both youths and adults, primarily in several indigenous communities in Ontario and Alberta and in correctional institutions. Employees in Education Services (ED-EDS) plan, develop, direct or evaluate education programs or conduct educational research.

[14] Employees in the LS classification apply a comprehensive knowledge of library and information science in providing and managing library and related information services.

[15] The EU classification covers instructors in school and out-of-school programs who act as teacher's aides, assist in teaching a second language or help deliver physical education programs.

[16] The bargaining unit payroll as of March 2018 was approximately $7.5 million.

III. Proposals and Recommendations

[17] The recommendations that follow address the substance of the parties' proposals in dispute. For the sake of brevity, we do not report the precise wording of the parties' proposals, other than in one case where it is necessary to illustrate intent. Unlike an arbitration board which awards specific contract language, we view it as the appropriate role for a Commission to identify in general terms the changes, or the renewals, that we believe would comprise an appropriate resolution of the bargaining impasse. We leave it to the parties to fashion the precise wording of agreed revisions to the collective agreement when this round of bargaining reaches its conclusion. In two instances, however, we identify specific clauses from other collective agreements that should be considered by the parties.

[18] In the event that the parties agree to other significant changes to collective agreement provisions at the PA, SV or TC bargaining tables by the time the current round of negotiations concludes, we expect that the Bargaining Agent and the Employer will carefully consider extending those changes to the EB Group, as appropriate.

Rates of Pay and Duration

[19] At the heart of the bargaining impasse is the dispute over new rates of pay for the EB Group and the duration of the new collective agreement.

[20] The Bargaining Agent proposes a three-year duration with 3.5% increases to all rates of pay effective July 1st of each year.

[21] In addition, on July 1, 2018 prior to application of the first 3.5% increase, the Bargaining Agent proposes the following wage adjustments:

> **ED-EST (10 month) INAC**
> Market increase of 10% to all Ontario rates
> Market increase of 20% to all Alberta rates
> **ED-EST Vice-Principal and Principal**
> Deletion of Level 1 rates
> Deletion of pay note regarding qualifications
> Level 2 wage grid to apply to Vice-Principals and Principals
> Market increase of 10% to Ontario rates
> Market increase of 20% to Alberta rates
> **EU**
> Market adjustment as per 10 Month teachers (10% if not in Alberta or Ontario)
> **ED-EST (12 month)**
> Move all employees to 12-month teacher rates
> **ED-LAT**
> Increase all rates by 10%
> **ED-EDS**
> Increase all rates by 10%
> **LS**
> Drop bottom step in LS-01 to LS-03
> Add 1 step to top of LS-01 (2.8%)
> Add 2 steps to top of LS-02 and LS-03 (3.2%)
> Drop 2 bottom steps at LS-04
> Add 2 steps to top of LS-04 (3.4%)
> Drop bottom steps at LS-05
> Add 1 step to top of LS-05
> Market increase of 12% to all rates after restructuring

12 Month Teachers

New National rates of pay

[changes to implementing pay notes as required throughout]

[22] The Employer proposes a four-year duration with 2.0% increases to all rates of pay on July 1, 2018 and 2019, followed by 1.5% increases to all rates of pay on July 1, 2020 and 2021. The Employer also indicates that it is prepared to consider "additional monetary measures totalling 1% of the EB wage base".

[23] The following recommendations on pay are mine only as Chairperson --- my use here of the first-person singular is intended to lend special emphasis to that point. I acknowledge with respect that Mr. Kingston and Ms. Bordeleau diligently represented the positions of their respective parties that differ in significant respects from my recommendations.

Annual Economic Increases and Duration

[24] The pattern of annual economic increases in the collective agreements negotiated to date with other bargaining agents in the core public administration is clear. For a contract term of four years, the economic increases would be as follows if applied to the EB Group:

Effective July 1, 2018	2.0%
Effective July 1, 2019	2.0%
Effective July 1, 2020	1.5%
Effective July 1, 2021	1.5%

[25] Wage patterns in the jurisdiction, however widely and firmly established, do not bind the parties in these negotiations. Nonetheless, it is understandable that the Employer takes a strong position arguing that a pattern which has secured agreement for most of its other bargaining units should also form the basis for a new agreement in this case. It is also understandable that the Bargaining Agent relies on its negotiating history to contend that it should be able to forge its own path and reach a different outcome as the largest union presence in the core public administration.

[26] While I respect the determination of the Bargaining Agent to achieve something different, I have not found in the body of economic and compensation data reviewed by the parties a clear and compelling case for departing from the established pattern of annual economic increases. Instead, I suggest that it is more likely that

opportunities for providing additional value to bargaining unit members will ultimately be found at the Common Issues Table and/or, for the EB Group specifically, in the negotiation of enhanced "wage adjustments".

[27] Accordingly, I recommend that the four-year pattern of economic increases of 2.0%, 2.0%, 1.5% and 1.5% effective July 1st of each year serve as the basis for a settlement for the EB Group in a collective agreement that expires June 30, 2022.

Wage Adjustments

[28] The Employer's position during our discussions was insistent: While the Bargaining Agent could have major input in determining how to use the money available for wage adjustments --- that is, where to target funds among the subpopulations of the bargaining unit --- the overall amount available for that exercise must be limited to 1.0% of the salary mass. Moreover, comments from the Employer suggested that its mandate envisages, and perhaps requires, that 0.8% be distributed in year 1 and 0.2% in year 2.

[29] How the issue of wage adjustments is addressed will probably remain the single most difficult issue as this round of negotiations goes forward. Unless external developments change the bargaining landscape (for example, through the package that emerges from the Common Issues Table), I believe that the Employer will have to increase the funds available for EB Group wage adjustments if there is to be a voluntary settlement for this bargaining unit. Equally, the Bargaining Agent will have to adjust its expectations substantially given that its full package of wage adjustments for the EB bargaining unit, estimated to cost approximately 12% (Employer's Brief, Table 4, p. 20), will not form the basis for an agreement.

[30] It is my view that wage adjustment funding in the order of **2% to 3%** of payroll, rather than 1%, will realistically be needed to achieve an agreement, especially if the cost of implementing a national pay grid for 12-month ED-EST positions (see below) is included in this amount. Were the parties to decide to implement some or all wage adjustments later during the term of the agreement rather than on July 1, 2018, the required funding might be somewhat less.

[31] With one exception, I am not in a position to recommend which of the wage adjustment proposals advanced by the Bargaining Agent should be favoured.

Understandably, I received no indication from the Bargaining Agent about priorities within the package nor did I find in the data-based justifications it offered for the various wage adjustments sufficient rationale to set one or some apart from the others. For that reason, I decline to identify "winners" and "losers".

[32] The exception is clearly the proposal to implement a national pay grid for 12-month ED-EST positions. On April 5, 2019, the parties signed an agreement detailing a new grid following a joint consultation process. It is imperative, in my view, that the parties carry through with their agreement, include the new grid in the collective agreement and apply to it the annual economic increases recommended above. By finally including the 12-month ED-EST pay grid in the collective agreement (from which it has unhelpfully been absent in the past), the parties will also be in a position to, and should, delete from the collective agreement the current "ghost" Annex "A1" which applies to no one in the bargaining unit but was used in the past as a base to construct 12-month ED-EST rates of pay.

[33] Given that available funds will be limited for wage adjustments, I suspect that deciding which proposals to target will be a difficult task for the Bargaining Agent. For that reason, I recommend that it consider alternate approaches that distribute available wage adjustment monies across the bargaining unit in a more standard fashion. Two uncomplicated options come to mind: (1) distribute the monies as standard additional across-the-board increases on one or more of the July 1st economic increase dates; or (2) increase the value of the top increment in each pay scale by such standard amount or percentage as the available funds allow. Under the latter approach, a substantial proportion of the bargaining unit population already paid at rate maxima will benefit on the effective date while those not benefiting at that time will secure the increase when they move to the top step.

Article 2 Interpretation and Definitions

[34] The Bargaining Agent proposes to extend the definition of "family" in clause 2.01 to include both "brother-in-law" and "sister-in-law".

[35] The Commission does not recommend inclusion of "brother-in-law" and "sister-in-law" in the definition of "family" at this time.

Article 20 Vacation Leave

[36] The Bargaining Agent seeks to establish a new clause 20.05(d) for employees in ED positions which would set two dates during the year by which the Employer must respond to vacation leave requests for leave falling within specified six-month periods. It also proposes to limit the Employer's right to schedule vacation leave under clause 20.05(b) for LS and EU positions.

[37] The Commission does not recommend revising clause 20.05(b). It does, however, believe that there is precedent for including in the collective agreement a provision that establishes dates for submitting and responding to leave requests, at least for the ED community. The parties may wish to consider clause 34.05(b) of the PA Group collective agreement part of which reads as follows:

> *Employees will submit their annual leave requests for the summer leave period on or before April 15th, and on or before September 15th for the winter leave period. The Employer will respond to such requests no later than May 1st, for the summer leave period and no later than October 1st, for the winter holiday season leave period.*

Article 22 Other Leave With or Without Pay

Clause 22.12 Leave With Pay for Family-Related Responsibilities

[38] The Bargaining Agent proposes three changes to this clause: (1) an increase from 37.5 hours to 75 hours in the maximum leave available in a fiscal year; (2) the addition of a "visit to a terminally ill family member" to the list of eligible circumstances; and (3) elimination of the 7.5 hour maximum that applies each fiscal year to leave for appointments with legal or paralegal representatives or with financial or other professional representatives (clause 22.12(vii)).

[39] The Bargaining Agent described family-related leave as a leading priority for the EB Group in this round of negotiations. Regarding its proposal to double the available leave to 75 hours from the existing 37.5 hours, the Commission notes that the average usage of such leave for the bargaining unit in 2017-18 was 2.51 hours, well within the existing maximum. That average usage was closely consistent with the pattern evident over the five previous years starting with 2012-13. Although there is an indication of different usage levels among the ED, EU and LS communities, with EUs exhibiting the greatest take-up of leave each year, the data overall do not suggest a strong rationale for changing the existing entitlement.

[40] That said, it is likely that a minority of the group finds in certain years that the 37.5 hours are not sufficient to cover pressing family-related responsibilities. As a partial measure of relief, the Commission recommends that the parties consider a limited carry-over provision that would allow use of unused family-related leave credits from one fiscal year during the following fiscal year, such credits to be lost if not used in the following year.

[41] The Commission also suggests that the parties consider rewording clause 22.12(c)(ii) to clarify that visiting a terminally ill family member constitutes "immediate and temporary care" within the meaning of 22.12(c)(ii), a reading of the provision that the Commission believes to be consistent with arbitral case law.

[42] The Commission otherwise recommends renewal of clause 22.12.

Clause 22.14 Injury-on-duty Leave

[43] The Bargaining Agent proposes to tie the amount of injury-on-duty leave granted to the "such period as certified by a Workers' Compensation authority" rather than "as may be reasonably determined by the Employer". It also proposes to expand coverage to include "vicarious trauma, or any other illness or injury" that arises in the course of employment.

[44] The Commission is not inclined to recommend the changes proposed by the Bargaining Agent which, at least with respect to the question of "vicarious trauma", might ultimately require modifications to the federal *Government Employees Compensation Act* and/or to provincial legislation. There appears to be a meeting of the mind of the parties, however, that consistency in granting injury-on-duty leave up to the available maximum of 130 days can be an issue in certain departments or regions. The Commission recommends that the parties use an appropriate consultation forum to develop educational material addressing consistency issues and any other questions that have arisen with the administration of the existing clause 22.14.

Article 23 Education Leave Without Pay and Career Development

Clause 23.05

[45] The Employer proposes to remove the 50% minimum applicable to the allowance that an employee in the ED or EU Group receives in lieu of salary while on education leave and to make the entitlement discretionary rather than mandatory.

Clause 23.10 Professional Development

[46] In the case of the ED and EU Groups, the Bargaining Agent proposes that employees should be reimbursed for all reasonable "expenses related to travel and attendance at the events" and that the qualifying words "which the Employer may deem appropriate" should be deleted. The Bargaining Agent also seeks an additional provision specifying that the primary use of professional development days is for "academic initiatives" rather than "departmental initiatives".

Clause 23.14 Attendance at Conference and Conventions
Clause 23.15 Professional Development

[47] In the case of the LS Group, the Bargaining Agent proposes to add clause 23.14 the words "in Canada or within North America" to define eligible conferences and conventions. It also proposes in sub-clauses (c) and (d), as well as in clause 23.15, to limit the Employer's discretion to grant leave with pay and reasonable expenses for such conferences and convention.

[48] The Commission is not prepared to recommend the changes to clauses 23.10, 23.14 and 23.15 proposed by the Bargaining Agent. However, the Commission believes that the importance of conference attendance and professional development could be better signalled by including in the EB Group collective agreement provisions such as appear as clauses 19.01 and 19.03 of the Research Group (RE) collective agreement:

> *19.01 The parties recognize that in order to promote professional expertise, employees, from time to time, need to have an opportunity to attend or participate in career development activities described in this article.*

> *19.03 The parties to this agreement recognize that attendance at professional or scientific conferences, symposia, workshops and other gatherings of a similar nature constitutes an integral part of an employee's professional activities and that attendance and participation in such gatherings is recognized as an important element in enhancing creativity in the conduct of scientific research or professional development. In this context, the parties also recognize the importance of research networking with national and international peers and active participation in the business and organization of relevant scientific and professional societies.*

[49] If the parties reach agreement on language such as the foregoing, the Commission recommends that a revision to clause 13.05 should be considered in line with clauses 49.02 in the PA collective agreement, 54.02 in the TC collective agreement and 53.02 in the SV collective agreement, all of which provide greater clarification of the entitlement than the Employer's proposal on clause 13.05.

Article 25 Correctional Service Specific Duty Allowance

[50] In addition to removing transitional language in the last collective agreement (which substituted the new Correctional Service Specific Duty Allowance (CSSDA) for the former Penological Factor Allowance), the Employer proposed precluding payment of the CSSDA allowance under clause 25.01 in locations that do not meet the definition of "penitentiary". It also proposed in clause 25.02 to limit payment of the allowance to months during which an employee performs duties for a minimum of ten days.

[51] The Employer withdrew its proposals at the hearing.

Article 27 Travelling Time

[52] The Bargaining Agent proposes that the travel time stop-over paid under clause 27.02 should no longer be limited to three hours. Instead, it maintains that all stop-over hours should qualify for compensation provided that they do not include an overnight stay.

[53] In clause 27.04, the Bargaining Agent proposes to treat all travelling time on a normal workday uniformly regardless of whether an employee has also worked on that day. It also seeks to remove the 15-hour limitation on the number of hours in excess of the normal workday for which overtime compensation is paid. The same 15-hour limitation that applies on a day of rest or on a designated paid holiday is also removed under the Bargaining Agent's proposal.

[54] The Commission recommends renewal of Article 27.

Article 31 Statement of Duties

[55] The Bargaining Agent seeks to ensure that employees are entitled to receive a statement of duties at the time of hiring and, upon request, at any subsequent time. It proposes to add "supervisor and reporting relationships" and "classification levels" to

the required content as well as the signature of both the employee and the supervisor. Further, the Bargaining Agent proposes that statement of duties must include a paragraph outlining the right to grieve the contents. Finally, the Bargaining Agent proposes to add new language that requires the Employer to review and update statements every five years.

[56] The Employer proposes that it should be required to provide "an official" statement of duties and responsibilities rather than "a complete and current" statement.

[57] The Commission recommends renewal of Article 31.

Article 33. Employee Performance Review and Employee Files

[58] The Bargaining Agent proposes modifications to strengthen the requirement that "all elements" of an employee's personnel file be made available on request, that the Employer ensure the privacy and confidentiality of such files, and that electronic monitoring systems not be used to evaluate performance or to gather evidence in support of disciplinary measures.

[59] The Commission recommends renewal of Article 33.

Article 43 Hours of Work for LS Group

[60] The Employer proposes that compensation at the time and one-half rate under clause 43.05 shall only apply when scheduled hours of work are changed with less than 48 hours' notice, as opposed to the existing five-day notice requirement.

[61] The Commission recommends renewal of Article 43.

Article 45 Work Year and Hours of Work for the ED-LAT Sub-group

[62] The Bargaining Agent proposes a new clause that authorizes employees to conduct preparation time away from the Employer's premises.

[63] As in Article 43, the Employer proposes that compensation at the time and one-half rate under clause 45.08 shall only apply when scheduled hours of work are changed with less than 48 hours' notice, as opposed to the existing five-day notice requirement. It also proposes to eliminate the stipulation in clause 45.10 that "[h]ours

of teaching must be in accordance with the November 30, 1989, Award of the Special Arbitration Panel chaired by M. Teplitsky".

[64] The Commission does not recommend inclusion of the new clause proposed by the Bargaining Agent in the collective agreement, nor the Employer's proposal to reduce the notice period for changing hours of work in clause 43.05. (Note that the parties should examine whether the words "scheduled shift" appropriately appear in this provision.)

[65] Regarding the Employer's proposal to delete the reference to the "Award of the Special Arbitration Panel chaired by M. Teplitsky", the Commission finds it most inappropriate that important provisions concerning hours of work for ED-LAT positions do not specifically appear in the collective agreement and can only be found by referring to the text of a 30-year old award that is not generally available to employees. That situation should be changed as a matter of priority. To that end, the Commission recommends that the parties enter into a memorandum of agreement committing them to consult with the objective of developing and incorporating language into the collective agreement that captures the key terms and conditions of employment set by Arbitrator Teplitsky, using Article 56, Agreement Re-opener.

[66] It is the Commission's understanding that the terms and conditions of employment awarded by Arbitrator Teplitsky include the following as outlined in the Employer's Brief (p. 70):

> *Hours of teaching consists of 5 periods of 54 minutes per day and breaks of 30 minutes duration per 5 hour period; this to totals 4.5 hours (270) minutes per day, and total of 22.5 hours per week.*
>
> *The Employer can schedule 30 hours of teaching per week for each teacher provided that over a 4-week period, there is a maximum of 100 hours scheduled.*
>
> *If there are 3 consecutive weeks of 30 hours during a 8-week period, the 4th week should not include teaching in the schedule.*
>
> *The minimum hours of teaching is fixed at 20 hours, notwithstanding the number of hours per week included in the Employer's schedule.*

Article 46 Pedagogical Break

[67] The Bargaining Agent proposes a new clause 46.04 granting eligible employees an additional summer pedagogical break from July 1 to 9, preserving their entitlement during that period to one designated paid holiday.

[68] The Commission does not recommend inclusion of the new clause in the collective agreement.

Article 48 Overtime

Clauses 48.01 to 48.03

[69] The Bargaining Agent proposes that all overtime should be compensated at the double time (2) rate and extends that entitlement to all members of the bargaining unit.

[70] The Commission recommends renewal of clauses 48.01 to 48.03.

Clause 48.11 Meals

[71] The Bargaining Agent proposes to increase the overtime meal allowances under clause 48.11 from $9.00 to $15.00 and to remove the condition that a meal allowance is not paid when free meals are provided or when the employee is in travel status.

[72] The Employer proposes the addition of a clause 48.11(e) to specify that payment of meal allowances will not occur when an employee works approved overtime at a location other than the designated workplace.

[73] The Commission recommends a new meal allowance value of $12.00 in both clauses 48.11(a) and (b). The Commission also recommends inclusion of the new clause 48.11(e) proposed by the Employer.

Article 49 Allowances

[74] The Bargaining Agent proposes extending the allowance for teachers of specialized subjects to include situations where a teacher is certified to have a specialization in a traditional First Nation language and that teaching the language forms part of the assigned curriculum. The Bargaining Agent also proposes to eliminate the restriction that only one $1015 allowance may be paid per employee.

[75] The Commission does not support removing the restriction that allows only one allowance payment. It endorses, however, the principle of promoting the teaching of First Nation languages and of recognizing that teachers who provide First Nation language instruction should be entitled to the specialization allowance. The policy reasons for doing so are compelling. The Commission is particularly struck by the fact that the Bargaining Agent's proposal aligns with recommendations made by the landmark *Truth and Reconciliation Commission* and with the thrust of the resulting federal government response in the form of Bill C-91, the *Indigenous Languages Act*. While the parties will need to agree on appropriate procedures for administering the allowance for First Nation language teachers within the architecture of Article 49, the time for taking this important step has clearly come.

Article 60 Leave for ED-EST and EU Employees who work a Ten (10) Month Work Year

[76] The Employer proposes that the entitlement of up to 15 hours of leave with pay for personal reasons under clause 60.01 may, subject to operational requirements, be granted in up to two periods of 7.5 hours each.

[77] The Commission recommends inclusion of the Employer's proposal in the collective agreement.

New **Article Indemnification of Employees**

[78] The Bargaining Agent proposes a new article that reads as follows:

> ***XX.01 if an accusation is made, or an action or proceeding is brought against any Employee covered by this agreement for an alleged act committed by him or her in the performance of his or her duties, then:***
>
> ***a) The Employee, upon being accused or being served with any action or proceeding against him or her, shall advise the Employer of any such notification;***
>
> ***b) the Employer, upon receiving such notification in accordance with paragraph a) above, shall appoint counsel within twenty-four (24) hours. The Employer shall place the counsel in contact with the Employee within twenty-four (24) hours of having been appointed. The Employer accepts full responsibility for the action or proceeding brought against the Employee, and the Employee agrees to co-operate fully with appointed counsel.***

[79] The Commission does not recommend inclusion of this new article in the collective agreement. It does, however, recommend that the parties carry through with

consultations on the strengths and weaknesses of the existing *Policy on Legal Assistance and Indemnification* to which the Employer previously committed by letter to the Public Service Alliance of Canada under the signature of the Executive Director, People Management and Engagement, Treasury Board of Canada Secretariat.

New Article Alternative Work Arrangements

[80] The Bargaining Agent proposes a clause that specifies that the "Employer shall not unreasonable deny employee requests to carry out regularly assigned duties away from the Employer's premises".

[81] The Commission does not recommend inclusion of the New Article in the collective agreement.

Annex "A5" Educational Support Group (EU) Annual rates of Pay (in Dollars)

[82] The Employer proposed deletion of Annex A5.

[83] The Commission understands that this proposal has been withdrawn.

IV. Concluding Comments

[84] Following publication of this Report and of the reports from the other PICs, the parties must engage in renewed negotiations, preferably earlier rather than later and without the necessity of work action. The Commission believes that the parties must be willing to set aside the constraints that prevented real bargaining at the Commission stage in order to find a path to settlement.

[85] Once new collective agreements are concluded, a period of reflection may be appropriate. Did the structure chosen for negotiations best serve the parties interests? By timing 4 PICs closely together, did the parties improve the efficiency of negotiations or introduce more roadblocks and greater complexity? Did use of a "Common Issues Table", mated to the PA Group at the PIC stage, achieve the advantages that were envisaged by the parties?

[86] It is not for this Commission to answer these questions. It is appropriate, however, that it signal its assessment that the Public Interest Commission process did not work as well as it should in the case of the EB Group. Within the allotted 4 days, it did not substantially achieve the purpose intended by Parliament: ". . . *to assist the*

parties to the dispute in entering into or revising a collective agreement." The constraints attending this round of negotiations meant that that was never a real possibility. The Commission hopes, nonetheless, that its report may yet, with time, offer some measure of assistance to the parties.

January 27, 2020.

Dan Butler, Chairperson,
on behalf of the Public Interest Commission

Annex 1

Comment by Bargaining Agent Nominee

1. I cannot rationalize the inclusion of the Employer's proposal on 23.05 (Education Leave allowance) as there was no demonstrated need for this. The members of this bargaining unit believe that the proposed change will only serve to diminish the use of the leave by making it financially unviable.

Comment by Employer Nominee

1. Regarding the recommendation in Clause 22.12 Leave with Pay for Family Related Responsibilities to consider a limited carry-over provision of unused family related leave, there was no representation presented by the bargaining agent to include a carry-over and the data illustrated that employees in the EB group are not using the 5 days currently available to them.

2. In response to the Employer's proposed 1% wage adjustment, the Chair of the Public Interest Commission has decided to recommend an increase beyond what has been provided recently in 34 other collective agreements across the public service. The Chair has determined that a 1% wage adjustment is not enough for the parties to reach a final negotiated agreement.

Having reviewed the decision of the Chair to make a recommendation for a 2% to 3% wage adjustment, 1% to 2% over and above the current 1%, I must register my dissent.

A Chairperson is required to render a decision and make recommendations that are faithful to the factors set out in s.175 of the *Federal Public Sector Labour Relations Act*. This provision states the following:

> Factors to be considered
>
> *175. In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:*
>
> *(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 public interest commission 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.*

These factors are mandatory and any recommendation rendered by a Chairperson must not depart from these elements.

In my respectful opinion, the Chair has exceeded his statutory authority in his presumption of the 1% wage adjustment, and by ignoring the Employer's arguments in support of s. 175 has failed to abide by the factors set out above.

The arguments presented in the Employer's Brief clearly validate the factors set out in s. 175:

(i). Recruitment and retention [s.175(a)]

While all factors under s.175 have been recognized to have equal importance, there can be no question that issues with recruitment and retention are often a symptom that one or more of the other factors are not in balance. The core public administration (CPA) does not have any difficulty in attracting and retaining competent persons in EB group positions to deliver on its mandate. As outlined in the evidence presented, the vast majority of external separations are due to retirement, which is not a retention issue, and is more than made up for with hiring rates that generally exceed those experienced by the CPA average. In addition, Public Service Employment Survey results show that the majority of employees in the EB group like their jobs and do not intend to leave their positions for the next two years with most results exceeding the Public Service average.

(ii). External Comparability [s.175(b)]

The data provided demonstrates that the EB group compensation and negotiated wage increases are highly competitive with the external labour market. For instance, from 2010 to 2017, the cumulative wage growth for the EB group classifications were comparable or exceeded public and private sector settlements and the cumulative price increases.

(iii). Internal Relativity [s.175(c)]

The evidence provided does not demonstrate any issues regarding internal relativity for the EB group. For instance, from 2010 to 2017, the cumulative wage increases received by the most populous sub-group of the EB group exceeded those received by the sub-groups of the PA group. Additionally, when considering the CPA as a benchmark, the EB group classifications were either comparable or exceeded the CPA growth.

(iv). Total Compensation [s.175(d)]

The data presented demonstrates that the EB group's total compensation, which is composed of wages, pensions and various benefits, is substantial, fair and reasonable in relation to the qualifications required and work performed by EB group employees.

(v). State of Canadian Economy [s.175(d)]

The data and analysis presented supports that the new collective agreement for the EB group will cover a timeframe of low to moderate economic growth. Namely, over the 2018 to 2021 period, real economic growth markedly slowed down, averaging at 1.7%. Additionally, although inflation exceeded 2.0% for the first time in seven years in 2018, at 2.3%, inflation is expected to decline to 2.0% in 2019 and further decline to 1.9% in 2020. In considering the various risks to the fiscal outlook, which include geopolitical risks and trade disputes, a prudent approach to compensation is key to preserve fiscal capacity to respond to an economic slow-down or recession. The evidence was overwhelming that the state of the Canadian economy militates in favour of the Employer's proposed economic increases and the 1% wage adjustment from a wages perspective. This factor has not been properly taken into consideration by the Chair.

Through meaningful, good faith negotiations, the government has reached 34 agreements and more than 65,000 employees in the federal public service have voluntarily agreed with the "pattern" increases that includes the 1% wage adjustment. Despite the fact that such a significant population of public servants received "pattern"

and the wage adjustment, the Chair has made a recommendation for an additional monetary increase to the wage adjustment that is unprecedented and unfounded.

In making such a recommendation the Chair has chosen to discount the most compelling piece of evidence to support the principle of replication – the well-defined pattern of replication that includes 34 other bargaining agents that have voluntarily accepted a "pattern" that includes the 1% wage adjustment. And that the Alliance itself on behalf of the employees it represents at the Royal Canadian Mint accepted a pattern agreement that did not include a 1% wage adjustment. The Chair's recommendation is made without any evidence (or even argument) that the Education and Library Science group needs or merits higher wages than what has been established by the replication principle.

In summary, it is my view that the wage adjustment increase of 2% to 3% (1% to 2% more than the Employer's offer) cannot be justified under s.175 and is certainly not supported by the replication principle. The Chair has not provided any justification for such an increase and completely discounted or ignored all the other factors that form part of the statutory compensation framework which we, as a (PIC) Board, are bound by.