

Date: 2020-03-16

File: 590-02-39499

IN THE MATTER OF
THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT
and a Request for the 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 Technical Services (TC)
Group

Indexed as
Public Service Alliance of Canada v. Treasury Board

Before: Morton Mitchnick, Chairperson; Greg Cwitco and Kathryn Butler Malette,
members

For the Bargaining Agent: Seth Sazant, Negotiator and Silja Freitag, Research
Officer

For the Employer: Yves Beaupré, Negotiator and Greg Enright, Economist

Heard at Ottawa, Ontario,
December 17 to 19, 2019.

PUBLIC INTEREST COMMISSION REPORT

I. Introduction

[1] This is the Report of a Public Interest Commission (PIC) established under the *Federal Public Sector Labour Relations Act* relating to renewal of the collective agreement between the Public Service Alliance of Canada and the Treasury Board of Canada, for the unit of the Core Public Administration (CPA) referred to as Technical Services (cited “TC”). The TC unit comprises just under 10,000 employees in a variety of technical classifications, populated as follows:

- Drafting and Illustration (DD): 59 employees
- Engineering and Scientific Support (EG): 5,862 employees
- General Technical (GT): 2,337 employees
- Photography (PY): 7 employees
- Primary Products Inspection (PI): 137 employees
- Technical Inspection (TI): 1,439 employees

[2] This Chair has had the experience of the Program and Administration (PA) table, and the bargaining history here unfortunately is no different. The parties met on 25 days, including the days at the “common issues” table of which TC is a part, and the one thing the parties agree on is that the items they have been able to sign off were nothing more than “house-keeping” changes. That, including the “common issues”, has left on the table some 80 requests for changes on the Union side alone, with the overall value of the Alliance’s proposals at the TC table costed by Treasury Board at 28.09% of the TC wage base. As with the PA table, the Chair of the Federal Public Sector Labour Relations and Employment Board in January of last year declined the Alliance’s request to appoint a PIC, but ultimately established the present Commission in May. A PIC has no power to impose a settlement, however, and once established, the Commission was faced with the unrealistic prospect, in light of the large number of issues on the table, of weaving together a comprehensive settlement that *either* side might view as attractive. That presumably was a factor in the FPSLREB Chair’s initial recommendation to the parties to return to negotiations and attempt to shrink their list. No such shrinkage has occurred however, and the challenge for us now, as was the case at PA, is to point the parties in a direction that might break the impasse, and lead to productive bargaining that will bring a peaceful end to the dispute.

[3] A particular challenge for the parties here is the diversity of this skilled bargaining unit, with each component potentially having its own unique agenda of needs and interest. At the page Romanically numbered “x” in its Brief, the employer described the difficulty it was having moving forward, having regard to length of the Alliance’s list together with the Wage demands generated by it, in the following terms:

The large number of proposals make it challenging for the parties to identify and focus their work on key priorities; a more limited number of proposals is expected to meaningfully improve the likelihood of settlement.

[4] The panel accepts that offer from the employer, and, in the hope of indeed moving the parties in the direction of a settlement, would suggest as priorities for the employer’s consideration the following areas of contention.

Wage Rates

[5] As noted in the Report for the PA Group, the issue of wage rates alone (including special adjustments) has been a major stumbling block to Treasury Board and the Alliance making any progress in their bargaining this round. As set out at paragraph 12 of that Report: “If the Alliance were to consider a four-year deal, it has made it clear that the general increase must take into account inflation, and must stand on its own, quite apart from the case it believes can be made for special adjustments or extensions that should be made to Allowances”. Treasury Board, on the other hand, maintains that any such adjustments must fall within the combined ceiling of the “pattern” wage increases of 8% negotiated with the Board’s other bargaining partners (7% economic increases plus 1% for group-specific adjustments). About that principled divide between the parties, the Commission for the PA Group, in similarly trying to point the parties in a realistic direction for settlement, commented as follows:

[10] ... The Alliance notes that it is by far the biggest Union presence in the federal public sector, and that it historically has always made its own judgment with regard to settlement, notwithstanding that to which other Unions in the sector may have acceded. ...

[11] The employer relies heavily on the “replication” principle in support of its decision to date to hold fast to the now very extensive “pattern” existing on the wage front. That reliance is not surprising. It must be said, however, that the replication principle is largely a tool used in interest arbitration for arbitrators to

attempt to provide some kind of “objective” perspective on what a settlement, based on trends in the marketplace, might be expected to look like. That is done because on the arbitration track there is no ability to test the outcome of the parties’ “subjective” perspectives by way of access to the strike/lock-out mechanism. But this is not an interest arbitration – and this Report conceivably could read quite differently if it were. Rather, the Commission in the circumstances here is limited to attempting to divine what initial modifications in the positions of the parties might open the door to an overall settlement, and to urge the parties to consider those modifications.

[12] The first consideration, it is clear from our dealings with this matter, must be given to the wage package. In that regard it must be added that the replication principle cannot be said to be of no significance for the parties in the situation at hand. Bargaining strength can vary by bargaining agent to bargaining agent, and indeed from bargaining unit to bargaining unit depending on the size and strategic importance of the unit. That said, the government has now arrived at good-faith settlements with a wide range of its other bargaining partners, and, notwithstanding any difference in bargaining strength, those settlements at the very least create parameters beyond which the government cannot realistically be anticipated to move in a very large way.

[6] Similarly here, it is difficult to see Treasury Board achieving an accommodative settlement ahead of sanctions that does not provide at least some measure of flexibility on the combined issues of general increase and special adjustments – ultimately being the full cost of the wage settlement. At TC we recognize the added challenge posed by the fact that for this diverse Group, the percentage value of the Allowances/Rate adjustments sought by the Alliance is itself considerably higher than was noted for the PA Group, costed by Treasury Board at some 14.08% of the current wage base, and it is clear that work has to be done to reduce that number if negotiations here are going to move forward.

[7] Taking into account the request of Treasury Board for “prioritizing”, as noted at the outset, the Commission suggests that to close that gap the parties focus their attention on the following:

The EG Group – CFIA Comparability

[8] A long-standing gap, currently shown as 3.3%, has existed between those classified as EG’s in the TC/CPA Group and those similarly classified at the CFIA. The parties previously agreed to study the respective jobs jointly, and in June 2018 the study group issued its report, concluding:

The parties agree that the EG classification in the TC bargaining unit and at CFIA are essentially equivalent and directly comparable for the purposes of collective bargaining.

[9] Bridging that wage gap, however, is an expensive proposition: the EG classification makes up roughly 60% of the overall TC unit, and Treasury Board costs the impact of such an adjustment on the total TC wage base at 2.04%. Nonetheless, there has been a recognition on the employer's part that this gap at least in some measure needs to be addressed this round, and it is important that this internal equity issue be given the parties' attention.

Appendix A-1 - Transportation Inspectors (TI's)

[10] We recognize the employer's argument that Appendix A-1 was originally intended to recognize employees in the TI classification that held specific qualifications or certifications. Were the Alliance to moderate its demands, however, the Commission can see this as an area of potential compromise.

Appendix C - Off-shore Surveillance by Fishery Officers

[11] While the employer is requiring further study of the matter, there is evidence of preliminary support for increasing the daily hours of work from 9.5 to 11.5 hours, and this needs to be looked at by the parties, along with the current restriction that work performed under this Appendix is excluded from travel status leave under Article 34.09.

Appendix W - Employees working in Onshore Operations at the CCG

[12] The employer proposed to increase the allowance for the GT-06 and GT-07 levels and expand the application to employees who possess a post-secondary diploma/degree combined with extensive experience in the field. The Alliance has indicated that it is amenable to this.

Appendix Z - Fishery Officers Allowance

[13] We note that at the PA table the Employer is prepared to consider expanding this allowance to Supervisors of Fishery Officers at the PM-05 and PM-06 classification levels to address compression issues. The Alliance's request for an increase to the Allowance itself requires further consideration, however, for this to move forward.

Appendix AA - Environmental Enforcement and Wildlife Officers

[14] We note that the Employer is prepared to consider extending the Allowance at some stage of the collective agreement to the GT-06 and GT-07 levels of the classification. Consideration should, however, be given to the Alliance's request for an increase to this Allowance generally, maintaining its applicability to both categories of enforcement officers.

Appendix BB - Fleet Maintenance Facilities

[15] We note that the Employer is prepared to consider extending the allowance in the collective agreement to all groups and levels at Fleet Maintenance Facilities or the Formation Technical Authority but not at the 202 Workshop. The Alliance points to the equivalency in duties between the Maintenance facilities currently covered and those at "Workshop 202", and seeks the extension of the Allowance to that latter facility. That extension would effectively resolve the issues around this Appendix, and should be further considered by the employer.

Appendix CC - Search and Rescue at Canadian Coast Guard

[16] We note that the Employer is prepared to consider extending the allowance in the collective agreement to GT-06 level employees who work as supervisors of Maritime Search and Rescue. It seems to the Commission that an increase to the Allowance for SAR Co-ordinators and Hovercraft crew only would resolve this Appendix, and we again recommend consideration of that by the Employer.

Appendix DD - Labour Affairs Officers

[17] We note that the Employer is offering to extend the allowance to the TI-06 level at some point in this Agreement. This would move the parties a significant way toward resolving this, but further consideration needs to be given to the Alliance's request for an increase generally.

Appendix EE - Measurement Canada

[18] We again see this as a potential area of compromise were the Alliance to moderate the level of increase it is seeking.

[19] In a broader vein, we note that the Alliance is in all cases seeking a roll-in of the existing allowances into salary rates. The Employer objects to the Commission issuing

any recommendation on this on jurisdictional grounds, but the parties in any event will need to discuss this.

[20] Beyond the above wage-related issues, the Commission recommends consideration of the following additional items. We note that although not strictly “wage-related”, some would have an impact on cost that will have to be considered.

Article 62 - Transportation of Dangerous Goods

[21] The existing Allowance is \$3.50 a day to a maximum of \$75 a month. The Alliance asks that this be replaced simply by a monthly Allowance of \$75. The Employer appears agreeable to this.

Appendix I - Sea Lamprey Control Unit

[22] This is a special Appendix applying only to this Unit whose members work on rivers and lakes. It gives the Employer latitude in the way the members’ work hours are scheduled. The Alliance is of the view that these employees essentially are “day” workers, and seeks to delete this Appendix so that this small group is treated in the collective agreement’s standard way for hours of work and overtime. The Employer is of the view that there are other ways of going at this, and needs to articulate those more clearly to the Alliance.

Article 28.10 - Meal Allowance

[23] The Alliance seeks an increase to \$12. We note that this is in line with trends and the Employer is agreeable to this.

Article 34 - Travelling Time

[24] Currently the collective agreement makes a distinction between necessary travel done as part of an employee’s assigned duties on a day he or she otherwise works, versus such travel carried out on a day on which the employee does not otherwise work. The Alliance seeks to eliminate this distinction, as well as any artificial “cap” on how much of an employee’s unavoidable travel time is compensated. The Employer is concerned over the impact that any change to the current pay system may have, as well as the proposed elimination of any cap whatsoever. Nonetheless efforts need to be made to come to a resolution on this item if the parties are going to move forward.

Article 41 - Injury-on-Duty Leave

[25] The current provision in the collective agreement provides for an employee injured on duty to remain on the employer's payroll "for such period as may be reasonably determined by the Employer", subject to recovery by the employer of all benefits paid to the employee by a provincial Workers' Compensation authority. The Alliance seeks to change this to such period of time as a Workers Compensation authority determines that the employee is still unable to return. While there is some precedent for this, it is not wide-spread, and the employer is strongly opposed to any change. Once again, the Commission sees efforts needing to be made to come to a resolution on this item, if the parties are going to move forward.

Appendix GG - Occupational Group Structure Review and Classification Reform

[26] This is the final item on our list, and appears to present the same difficulty moving forward as the Injury-on-Duty issue. It has long been recognized that the current structures and classifications, established in the 1960's, are in need of reform. It has been agreed in successive collective agreements that the employer would have new job evaluation standards in place so that negotiation on the appropriate wage rates could begin for the next ensuing collective agreement. The latest deadline for the standards to be in place was December 30, 2019, once again now past. The employer seeks to renew the existing Memorandum, but with a new completion date of June 30th, 2021. Given the number of missed deadlines to date, however, the Alliance has run out of trust on this, and is seeking substantial penalties, payable from the beginning of 2020, for the failure of the employer to have the new standards ready for bargaining. We see it as unlikely for the Alliance to move off this item without something more from the employer, and commend that for the employer's further consideration.

[27] Apart from the "priorities" identified by the Commission above, as requested by the employer, the Treasury Board obviously will have priorities of its own, including the various proposals it has made to modify the provisions around hours of work for the Primary Production Inspection group, under Appendix M. And not surprisingly, the employer places a very high value on consistency across the CPA on Appendices newly-negotiated this round, particularly as those new items will have to be integrated into the Phoenix payroll system. That pay system, colloquially now referred to as "the Phoenix debacle", has raised heightened concern for the employer over implementation of this round's collective agreement, and we note the balance that has

been struck with other Unions in the sector between a measure of latitude for the employer on timelines, versus a commitment of dollars to the membership in recognition of the impact that delay may have upon them. We appreciate as well that this impact of Phoenix on the Implementation problem is difficult to separate from the Alliance's need for a satisfactory resolution of the Phoenix "damages" issue that is the subject of much anguish across the bargaining unit, and hopefully the high-level discussions taking place away from the bargaining table can find their way to a timely resolution as well.

[28] We turn it back to the parties.

March 16, 2020.

**M.G. Mitchnick,
for the Public Interest Commission**
