

Date: 2020-04-29

File: 590-34-39682

IN THE MATTER OF
A PUBLIC INTEREST COMMISSION
UNDER THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
BETWEEN
THE PUBLIC SERVICE ALLIANCE OF CANADA
AND
CANADA REVENUE AGENCY
FOR THE PROGRAM DELIVERY AND ADMINISTRATIVE SERVICES GROUP

Indexed as

Public Service Alliance of Canada v. Canada Revenue Agency

Before: Lorne Slotnick, chairperson,
Joe Herbert and Anthony Boettger, nominees

For the Bargaining Agent:

Morgan Gay, Negotiator and Pierre-Samuel Proulx, Senior Research Officer

For the Employer:

Marc Bellavance, Chief Negotiator, Human Resources Branch and
Patti-Ann Sirois, Senior Advisor, Human Resources Branch

Heard at Ottawa,
January 6 and 20, 2020.

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 (FPSLRA)* relating to renewal of the collective agreement between the Public Service Alliance of Canada (PSAC) and the Canada Revenue Agency (CRA), for the unit referred to as the Program Delivery and Administrative Services Unit. This group of nearly 30,000 employees (lower outside the February to June tax season) administers tax programs and economic and social benefits.

[2] **NOTE: The hearing in this matter took place before the COVID-19 pandemic emergency, and this report is based on the briefs provided and presentations made at that time. We recognize that the situation has changed rapidly and may continue to do so.**

[3] The parties agreed to an extension of the 30-day time limit from the time of establishment for the commission's report, in accordance with section 176 of the *FPSLRA*.

[4] Within the bargaining unit, there are two occupational groups: the Services and Program (SP) group – about 90 per cent of the bargaining unit – and the Management (MG-SPS) group. These classifications are specific to the CRA. There are 10 levels within the SP group, each with a five-step grid. The top annual rates for these 10 groups under the last collective agreement range from \$41,019 to \$108,951, with an average annual salary for the whole bargaining unit of \$61,917, according to the CRA. About two-thirds of the bargaining unit is female.

[5] Among the workplaces are seven large tax centres across the country. Due to the seasonal aspect of tax filing season, the CRA hires more term employees than any other federal public service employer. About a quarter of the bargaining unit consists of term employees.

[6] There is one other bargaining unit of CRA employees, the Audit, Financial and Scientific (AFS) group represented by the Professional Institute of the Public Service of

Canada (PIPSC). This group of about 11,000 consists mainly of auditors, computer science professionals and financial specialists.

[7] While the CRA is a separate agency, it must have its collective bargaining negotiating mandate approved by the president of the Treasury Board, pursuant to Section 58 of the *Canada Revenue Agency Act*. A tentative agreement must obtain Treasury Board endorsement.

II. Bargaining History

[8] The collective agreement now being renewed had an expiry date of Oct. 31, 2016. The parties exchanged proposals in June 2018, and met in a total of six multiple-day sessions between June 2018 and January 2019, with little progress achieved. At that point, the bargaining agent requested that a PIC be established, but the chair of the Federal Public Sector Labour Relations and Employment Board instead directed the parties to return to negotiations with a mediator. The parties attended two mediation sessions in the spring of 2019, but again, little progress was made. The bargaining agent renewed its request for a PIC, and this commission was appointed.

[9] At this point, the only matters resolved can be characterized as “housekeeping issues.” The CRA did not table a wage offer in negotiations, saying there were too many union proposals still outstanding.

[10] There are nearly 100 proposals currently outstanding, about 20 of them tabled by the employer.

[11] In their six rounds of bargaining prior to the current one since the agency was created, the parties have successfully settled their collective agreement four times themselves, and twice following a conciliation process. Sometimes these settlements were achieved before expiry. However, the previous round took four years and included a strike vote. Wage increases for the final two years of the four-year agreement were settled by a binding conciliation board pursuant to a wage reopener clause.

[12] The bargaining agent’s presentation at the hearing highlighted its proposals for improvements in four areas: wages, scheduling in the call centres, work-life balance

and union rights. As a general statement, the CRA said its objective in this round of bargaining is to reach a collective agreement that is consistent with other public service settlements, and that is fair and reasonable to employees, the bargaining agent and to Canadian taxpayers.

[13] Looming behind the bargaining is the issue of the Phoenix pay system. That is being discussed separately from collective agreement bargaining, but will likely be part of an overall settlement package.

III. Statutory Criteria

[14] In considering the matters at issue, the commission has had regard to the factors listed in Section 175 of the FPSLRA, which reads as follows:

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.

IV. Duration and Rates of Pay

[15] The bargaining agent seeks a four-year term, ending on Oct. 31, 2020. It has proposed a wage adjustment of 9 per cent prior to application of the following general increases:

November 1, 2016 - 1.4%

November 1, 2017 - 1.6%

November 1, 2018 - 3.75%

November 1, 2019 - 3.75%

[16] While the CRA did not table a wage offer in bargaining, it stated its position at the hearing. The CRA advised it wants a six-year agreement ending in October 2022. The employer also argued that the economic pattern between the Treasury Board and the PSAC has been well established for the first two years of this renewal agreement at increases of 1.25% for each of 2016-17 and 2017-18, along with a market adjustment of .5% at the start of the first year. Beyond that, it points to 34 collective agreements in the federal public sector that have been settled (nearly all for the 2018-21 period) with unions other than the PSAC. Those settlements contained increases of 2%, 2%, 1.5% and 1.5% for those four years, along with targeted adjustments totalling roughly 1% during the first two years of the agreement. The CRA says it is amenable to replicating that pattern for this bargaining unit, in the context of an overall settlement.

[17] The bargaining agent acknowledges the economic pattern contained in the 34 federal public sector settlements for 2018-21, but notes that this relates to unions other than PSAC. It says the PSAC, by far the largest federal union, traditionally sets the pattern for the sector, whereas the employer is asking now for “the tail to wag the dog.”

[18] The bargaining agent says the appropriate comparators for this group are the CRA’s bargaining unit represented by PIPSC, and the non-uniformed employees who work for the Canada Border Services Agency (CBSA), about a third of the FB bargaining

group. (The CBSA was split off from the former Canada Customs and Revenue Agency in 2003.) This comparison is the basis for the PSAC's proposed 9% adjustment before the general wage increase is applied. The CRA, however, says the closest comparator with this bargaining unit is the large Program and Administrative Group (PA) within the core public administration, citing a 2014 PIC report and a later binding conciliation determination, both rejecting the FB as the best comparator.

[19] The bargaining agent says this bargaining unit has never followed the PA's settlement pattern since the CRA was created, and, in any event, the PA settlement for 2016 and 2017 was lower than for virtually all other groups in the federal public sector. While in the core public administration, all PSAC settlements were for 1.25% increases in both those years, groups other than PA received higher adjustments than the .5% applied across the board in the PA group (along with a \$650 signing bonus received by the PA employees.) This also applies to agreements reached with unions other than the PSAC, as well as to interest arbitration awards in the federal public sector, the bargaining agent says.

[20] Among those settlements cited by the bargaining agent was CRA's agreement with its other bargaining unit, represented by PIPSC. This group received the standard 1.25% in each of 2016 and 2017, but also an adjustment of 2.5% across the board in 2016. The bargaining agent argues that there has been a pattern of identical economic increases between its bargaining unit and the PIPSC bargaining unit. The employer asserted that the 2.5% adjustment reflected market realities.

[21] In our view, there is no reason for this commission to depart from the 2014 PIC report's conclusion that the PA group, rather than the FB group, is the closest comparator to this CRA bargaining unit. However, we agree with the bargaining agent on two important points: first, that other federal public sector settlements for the 2016-18 period tended to contain more generous economic increases than those achieved by the PA group; and second, that one of those groups that settled is particularly significant here, namely the CRA's other bargaining unit, a group of 11,000 who received a 2.5% adjustment across the board before application of the pattern economic increase.

[22] The commission majority believes that a settlement for the PSAC group is unlikely unless the CRA receives a revised mandate from Treasury Board that would include addressing the 2.5% adjustment given to the PIPSC group within the CRA, whether the adjustment is granted retroactive to 2016 or phased in over time. This adjustment would be in addition to the 1.25% for each of 2016-17 and 2017-18 years that is normative in the federal public sector for those two years. We accept that the two bargaining units within CRA have traditionally matched each other's economic settlements; failure to do so in this round could create a serious internal inequity.

[23] We are reluctant to recommend a collective agreement duration of longer than four years. While we recognize the problems associated with a perpetual bargaining cycle, this has not been a longstanding issue for these parties, who have been able to settle some of their renewal agreements in a timely way. However, while we are reluctant to recommend a duration of longer than four years, we believe the parties ought to consider agreeing to a longer term. We would hope that even if they ultimately agree to a fall 2020 expiry, the parties will be able to move in the future toward settling their agreements without long delays after expiry.

[24] Regarding the 2018-19 and 2019-20 years, the wage pattern that has been set in the 34 non-PSAC agreements in the federal public sector cannot be ignored. Although this is not an interest arbitration where replication is the primary consideration, it is difficult to envisage a settlement that will depart from this pattern in any significant way. Much as we understand the PSAC's desire to chart its own course because of its size, we recommend that these parties follow the established pattern for 2018-19 and 2019-20, that is, 2% for 2018-19 and 2% for 2019-20, with an extra 0.8% in 2018-19, and 0.2% in 2019-20, across the board. This would replicate the CRA's settlement for those years with its other bargaining unit.

V. Other issues

[25] Given the large volume of issues outstanding, we do not intend to address each individual change proposed. For any proposal not addressed below, the commission recommends renewal of the existing language without change.

Article 2 - Definitions, and Article 46 - Bereavement Leave

[26] The bargaining agent has proposed several changes to the definition of “family,” and to the bereavement leave provisions. The commission recommends adoption of the language agreed in the most recent PA agreement, which expands the definition of family for the purpose of bereavement leave, and enables employees to take a bereavement leave in two periods.

Articles 10, 12, 13, 14, 17, 18 - Union-Management Relationship

[27] The bargaining agent is proposing changes to the language governing access by union representatives to the employer’s premises, leave for union business, and representation at disciplinary and other meetings. The employer is proposing a change to the current language obliging it to provide a paper copy of the collective agreement to each employee, and a change to the grievance procedure allowing it more response time.

[28] The commission agrees that there is no longer a need for paper copies to be provided to all employees in this bargaining unit, and recommends the current Article 10.02 be deleted and replaced with the following:

10.02 (a) This Agreement, and any amendments thereto, will be available electronically.

(b) Printed copies of the collective agreement will be provided to the Alliance and all UTE stewards.

[29] The bargaining agent has cited problems with the current language on access to the employer’s premises. The commission majority recommends that Article 12.03 be amended to read as follows:

12.03 A duly accredited representative of the Alliance may be permitted access to the Employer’s premises to assist in the resolution of a complaint or grievance, and to attend meetings called by management and/or meetings with Alliance-represented employees. Permission to enter the premises shall, in each case, be obtained from the Employer. Such permission shall not be unreasonably withheld.

[30] The commission does not recommend any changes to the other articles listed in the heading above.

Article 17 – Discipline

[31] The employer proposes to extend the two-year sunset clause where there is a long leave of absence. The commission recommends that the parties add the following sentence at the end of Article 17.05

This period will automatically be extended by the length of any single period of leave without pay in excess of six months.

Article 20 – Sexual Harassment

Article 38 – Maternity Leave without pay

Article 40 – Parental Leave without pay

Article 53.04 – Compassionate care leave

New Article – Domestic Violence leave

[32] In each of the areas listed above, the employer has indicated a willingness to agree to language that has been settled in the 34 non-PSAC agreements concluded recently. We recommend adoption of this language, contained in Appendices M, P, Q, S and V of the employer’s brief.

Article 25 – Hours of Work

[33] Each party has proposed numerous changes to various provisions related to hours of work. Many of the issues revolve around the CRA call centres, which employ large numbers of term workers and where many employees work outside normal business hours answering calls from other time zones. In the parties’ last collective agreement, they agreed to “participate in a joint working committee to discuss issues regarding the administration of shift, evening and part-time schedules, as well as the use of seniority, in call centers, tax centers and tax service offices.” A brief report was produced based on answers to questionnaires. The employer says there are ongoing discussions and initiatives designed improve the working conditions in the call centres. However, the bargaining agent maintains that problems persist, and that the

assignment of undesirable shifts and allocation of extra hours is arbitrary and prone to favouritism, because there are no rules set out in the collective agreement. Among its proposals, briefly stated, is that a seniority system for scheduling of early or late hours be introduced. In our assessment, some movement by the employer on one or more of the issues focused on the call centres may be necessary for the parties to achieve a settlement.

[34] Somewhat related, the employer has proposed that the permitted starting time for normal work day as defined in the collective agreement be changed from the current 7 a.m. to 6 a.m. At the same time, the bargaining agent proposes that employees who select flexible hours, which can now start as early as 7 a.m., be allowed to select and request hours that start at 6 a.m. While each party has rejected the other's proposal, there are indications in the briefs that both parties may be willing to consider a compromise on these two proposals. While we make no recommendation, we believe this issue merits further discussion by the parties.

[35] With respect to extra hours, the collective agreement allows the employer to change the hours of an employee on day work (i.e. currently defined as between 7 a.m. and 6 p.m.), providing there is consultation with the union, that it can demonstrate that the hours are required operationally, and that the employer pays a premium of \$7 for each hour outside the normal day hours. The bargaining agent proposes that these hours be posted on a master schedule two weeks in advance of an eight-week period, that prior to posting the schedule that the employer ask for volunteers, that seniority be used to assign the hours if there are too many qualified volunteers, and that if there are insufficient volunteers, there be consultation with the bargaining agent on assignment of the hours. While we do not recommend the union's proposal for a master schedule, we note that the CRA has confirmed that a request for volunteers is already an established practice at many of its offices. We also accept the CRA's point that it needs a mix of skill and experience levels at work at any given time. However, we see no detriment to the CRA's operations if seniority is a consideration, providing the skill and ability of two volunteers is relatively equal. The commission majority therefore recommends that language be added to Article 25.12 specifying that where hours of work subject to the late hour premium are to be worked, the employer will canvass employees for volunteers; if the skill, knowledge and experience of the

volunteers is relatively equal, the employer will, after considering the mix of skills necessary for staffing the late hours, consider length of service of the volunteers when deciding the employees to be scheduled. At the hearing, the employer raised a jurisdictional objection to the commission making recommendations on some or all of the bargaining agent's proposals in this area. The commission majority does not agree that Section 177 (1) of the *FPSLRA* applies here.

[36] We make no recommendation on any of the many other proposals from both parties on Article 25.

Article 28 – Overtime

[37] Among the proposals by both parties related to overtime is a bargaining agent proposal to increase the overtime meal allowance from \$10.50 to \$20.00. The bargaining agent says this allowance has not been increased since 2007.

[38] The commission recommends an increase to \$12.00, to match the amount in the collective agreement covering the CRA's other bargaining unit.

Article 32.06 Travelling Time

[39] The maximum payment under this article (currently 12 hours) has been increased to 15 hours in the PA agreement and in the CRA's other bargaining unit. The employer has indicated it is amenable to agreeing to the change for this group, and the commission recommends this change.

Article 33 – Leave-General

[40] The employer has established a demonstrated need for a change in this language, which would mirror language recently agreed to by its other bargaining agent. We recommend Article 33.08 be amended to read as follows:

33.08 An employee shall not earn or be granted leave credits under this Agreement in any month nor in any fiscal year for which leave has already been credited or granted to the employee under the terms of any other collective agreement to which the Employer is a party or under other rules or regulations of the Employer.

Article 34 – Vacation leave with pay

[41] Each party has proposed a clarification to existing language. We recommend the change proposed by the employer to Article 34.02, and the change proposed by the bargaining agent to Article 34.03.

[42] We make no other recommendations regarding the other proposals of each party on Article 34.

Article 35 – Sick Leave with Pay

[43] The employer’s proposed clarification in Article 35.01 is similar to that proposed for Article 34.02, and is recommended.

Article 43.01 – Leave Without Pay for Personal Needs

[44] The employer has indicated it would agree to changing the phrase “only once” to “only twice” in Article 43.01 (c), as it has done in the collective agreement covering its other bargaining unit. The commission recommends this change.

Article 53 – Medical Certificate

[45] The bargaining agent seeks a new clause specifying that a certificate by a qualified medical practitioner would meet the requirements for receiving sick pay, that employees be reimbursed for the cost of a medical certificate when it is requested by the employer, and that employees who are requested to provide a medical certificate would be granted leave for the time associated with obtaining it. The current language (Article 35.04) says that if the employee has enough credits, it is sufficient for sick pay to be granted if the employee provides a statement signed by the employee stating that they were unable to perform their duties, “unless otherwise informed by the Employer.”

[46] The commission majority recommends the following language be added:

When the employee is asked by the Employer to provide a medical certificate, the employee shall be reimbursed for the cost of the certificate to a maximum of \$50.

[47] While the union's request is for language about medical certificates to be added to Article 53, it may be more appropriate to add it to Article 35.

Appendix C – Workforce Adjustment

[48] It appears from the employer brief that the bargaining agent proposed changes to this lengthy appendix, although the bargaining agent brief does not include these proposals. The employer has indicated it is amenable to making changes that have been made in other collective agreements, including the agreement covering CRA's other bargaining unit. We recommend further discussion by the parties.

Appendix E – Implementation

[49] The commission recommends the employer's proposal, with a 180-day implementation period and the language contained in Appendix W of the employer brief, which mirrors settlements reached recently with other bargaining agents.

April 29, 2020

“Original signed by”

Lorne Slotnick, Chair

COMMENTS OF THE EMPLOYER NOMINEE

[50] I would like to acknowledge the hard work done by the Public Interest Commission (PIC) in preparing this report in the current extraordinary context and offer the following comments as I join the other Board members in issuing the report to allow the process to follow its course.

[51] As noted in the Report, this PIC report is being issued under dramatically different circumstances than when the hearings took place in January and some amplification of these circumstances is offered. Since January, the COVID-19 pandemic and a collapse in oil prices have brought an already fragile world economy to the brink of a recession. Every sector of the Canadian economy will be affected.

Already, Canada has suffered major job losses and a record number of employment insurance claims have been submitted – three and half million Canadians had applied for Employment Insurance or the new Canada Emergency Response Benefit at the end of the first day of eligibility for the new benefit.

[52] There is tremendous uncertainty and risk regarding the economic outlook. Forecasters are now warning of prolonged economic pain due to increased barriers to international trade, disruptions to supply chains and shaken consumer confidence. There is the potential for a number of international and domestic risks -- if they become manifest -- to further deepen the economic disruption created by COVID-19 and the decline in oil prices.

[53] The support the government is providing to Canadians to help them deal with the current situation, combined with the current economic slowdown, will significantly increase the federal deficit and debt. In this regard, the Parliamentary Budget Office (PBO) has developed a scenario based on social distancing restrictions and self-isolation measures continuing until August 2020, and benchmarked to economic developments during the 2008-09 Global Financial Crisis. PBO's scenario entails a fall in real GDP of 5.1% in 2020, an unemployment rate of 12.4% and a deficit of \$184.2B, or 8.5% of GDP, taking into account revenue losses and new expenditure measures.

[54] The disruption is expected to be considerably larger than that Canada experienced during the 2008-09 Global Financial Crisis when real GDP declined by 3.2%, the unemployment rate reached 8.3% and the deficit stood at \$56.4B. Moreover, the last time the deficit was near such a high level in percent of GDP than is assumed under the PBO's scenario was in 1984-85. In the PBO's scenario, year-over-year inflation rates would decline to 0.9% in 2020, which would be far lower than the Employer's economic offer for that year.

[55] This new reality will need to be taken into consideration as parties return to the table, in a manner that takes into account the valuable work provided by the employees of CRA in support of Canadians, but that equally recognizes the dire circumstances created by recent developments.

Other comments

[56] As the parties return to the table, any contemplation of wage increases or compensation changes will necessarily have to include consideration of all relevant factors and not simply the internal/external wage comparisons on which there is little agreement at this time. This is only one factor in the blend of considerations that will ultimately make a settlement acceptable to both parties.

[57] Additional to the state of the economy as a major factor for consideration, is the reality that the recruitment and retention of qualified employees provides objective indication of the acceptability and relativity of the total compensation package and terms and conditions of employment. The data that was presented to the PIC showed strong retention patterns and very robust pools of qualified candidates. This information cannot be ignored particularly under the changed circumstances in which we find ourselves.

[58] Internal relativity is a very real consideration for the parties. Salary compressions between occupational groups is certainly something that needs to be avoided and balanced with appropriate job market comparability.

Hours of Work

[59] The proposition that years of service (seniority) should or needs to play any role in assignment of hours of work was unconvincing. The Employer has a highly evolved process for scheduling hours of work that includes consultation efforts with the union. The bargaining agent failed to prove there was any problem with the current system. The Employer demonstrated that considerable efforts are expended attempting to balance the needs of the workplace with those of its employees. Establishing good work/life balance is a major challenge and not one that is well served with an arbitrary rule that automatically disadvantages some employees while favouring others. It is difficult to see how forcing such a dramatic change into an established merit based workplace serves any useful purpose or maintains CRA as an attractive workplace for either current employees or potential recruits.

-- Anthony Boettger