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File: 485-HC-42082

Citation: 2021 FPSLREB 45

Federal Public Sector Labour Relations and Employment Board Act, Parliamentary Employment and Staff Relations Act

Before a panel of the Federal Public Sector Labour Relations and Employment Board

IN THE MATTER OF
THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*
and disputes affecting
the Public Service Alliance of Canada, as Bargaining Agent,
and the House of Commons, as Employer,
in respect of the bargaining unit composed of all employees of the employer in the Reporting Sub-Group and Text Processing Sub-Group in the Parliamentary Programs Group

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

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

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

For the Employer: Carole Piette, counsel and Jean-Michel Richardson, co-counsel

Decided on the basis of written submissions,
February 12 and 26, 2021.

ARBITRAL AWARD

I. Application before the Board

[1] On June 22, 2018, the Public Service Alliance of Canada ("the bargaining agent") served notice to bargain on the House of Commons ("the employer") under section 37 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c.33 (2nd Supp.)("*PESRA*") on behalf of the bargaining unit composed of all employees of the employer in the Reporting Sub-Group and Text Processing Sub-Group in the Parliamentary Programs Group.

[2] The last collective agreement for the bargaining unit expired on June 30, 2018.

[3] Payroll information provided by the employer indicates that there were 62 employees in the bargaining unit as of January 5, 2021, with an average annual salary of $73925 and total annual payroll of just over $4.5 million.

[4] Employees perform a wide range of duties critical to the operations of the House of Commons: (1) production of specialized documents required by the Speaker and Members of the House of Commons; (2) technical preparation, data entry, formatting, quality assurance (including proof-reading/concordance) and publishing of draft and final versions of translated parliamentary texts related to debates, committee evidence, committee reports and special projects, and their preparation for electronic and print publication in both official languages; (3) formatting and publishing of legislation; (4) preparing the Hansard daily report, in both official languages, of the debates of the House of Commons and for revising each day's Hansard so that bound volumes of the debates can be prepared (includes the recording, transediting, editing and verification of the transcripts of the proceedings of the House of Commons); and (5) recording, transcribing, editing and reviewing of transcripts and the record of Parliamentary committee proceedings.

[5] The parties met for three (3) days of negotiations in September and November 2019 and for a fourth day in September 2020. During those negotiations, the parties signed off twenty (20) clauses.

[6] By letter to the Federal Public Sector Labour Relations and Employment Board ("the FPSLREB" or "the Board") dated September 24, 2020, the bargaining agent requested arbitration pursuant to section 50 of the *PESRA*.

[7] The bargaining agent subsequently selected Joe Herbert from the panel of persons representative of the interests of employees and the employer selected Kathryn Butler Malette from the panel of persons representative of the interests of the employer for the arbitration panel. The Chairperson of the FPSLREB appointed me as chairperson of the arbitration board which is deemed to comprise the Board for purposes of these proceedings.

[8] The Chairperson of the FPSLREB established the mandate for these proceedings in *Public Service Alliance of Canada v. House of Commons*, 2020 FPSLREB 97, consisting of the parties' proposals for the following collective agreement articles and appendices:

> Article 20.16 - Leave for Medical and Dental Appointments
>
> Article 24 - Hours of Work and Overtime
>
> Article 38 – Duration
>
> Article 41 – Seniority
>
> Appendix A - Rates of Pay
>
> New Appendix XX - Memorandum of Understanding - Lump Sum Payment
>
> New Appendix XX - Memorandum of Understanding - Implementation of the Collective Agreement
>
> New Article XX - Bilingual Bonus

[9] Consultations with the parties to schedule hearing dates began immediately after the arbitration panel was formed. Those consultations indicated that there would be a lengthy delay before the parties were both available for an oral hearing. Given that the previous collective agreement had already been expired for two and one-half years, and so as to avoid a lengthy delay, the Board proposed, and the parties agreed to proceed by way of written submissions. In the Board's view, proceeding on the basis of written submissions conforms with the requirement stated in s. 54 of *PESRA* which reads as follows:

> *54. Subject to this Part, the Board shall, before rendering an arbitral award in respect of a matter in dispute, give full opportunity to both parties to present evidence and make submissions to it.*

[10] The Board wishes to thank the parties for their written submissions which provided comprehensive information on which the following reasons were based.

II. Reasons

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

> …
>
> *53. In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, the Board shall consider:*
>
> *(a) the needs of the employer affected for qualified employees,*
>
> *(b) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations of employees,*
>
> *(c) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered, and*
>
> *(d) any other factor that to it appears to be relevant to the matter in dispute,*
>
> *and, so far as consistent with the requirements of the employer, the Board shall give due regard to maintaining comparability of conditions of employees with those that are applicable to persons in similar employment in the federal public administration.*
>
> …

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

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

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

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

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

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

Article 20 – Other Leave With or Without Pay

[16] The employer proposed a revision to clause 20.16 as follows:

> *Leave for Medical and Dental Appointments*
>
> *20.16 An employee shall be granted **up to** three (3) hours per visit to attend **routine** medical or dental **or periodic check-up** appointments. Any hours spent at the medical or dental appointments beyond the three (3) hours may, at the employer's discretion, be deducted from the employee's sick leave.*

[17] The bargaining agent proposed renewal of the existing provision.

[18] The Board considers the addition of the words "**up to**" to be a reasonable clarification that links the entitlement to the actual time taken by an employee to attend a medical or dental appointment. The Board is not convinced that there is strong justification for the other revisions to clause 20.16 proposed by the employer.

[19] Clause 20.16 shall read as follows:

> *20.16 An employee shall be granted **up to** three (3) hours per visit to attend medical or dental appointments. Any hours spent at the medical or dental appointments beyond the three (3) hours may, at the employer's discretion, be deducted from the employee's sick leave.*

Article 24 – Hours of Work and Overtime

[20] The bargaining agent proposed a revision to clause 24.14 as follows:

> *Transportation*
>
> *24.14* ***(a)*** *An employee who meets one of the following criteria and has not been issued a House of Commons parking permit* ***or does not have a vehicle on site*** *shall be provided with taxi voucher or taxi fare when required, upon presentation of a receipt and approval by the Employer:*
>
> *(****i****) works overtime after public transportation has been suspended for the day;*
>
> *or*
>
> *(****ii****) leaves work after* ~~***10:00***~~ ***9*** *p.m.* ***(-)***

[21] The Board notes that the following additional language also appears in clause 24.14:

> *Notwithstanding the above, when employees are required to work unscheduled overtime, the Employer has the discretion to make exceptions to the provisions contained in a) and b), and to provide a taxi voucher or taxi fare to employees that have been issued a parking permit, when individual circumstances warrant.*

[22] It is not clear whether the bargaining agent proposes to renew or delete that language. The Board will assume that the intent is to renew the additional paragraph.

[23] The proposal reported in paragraph 20 appears on p. 73 of the bargaining agent's brief. It differs somewhat from the proposal reported in the employer's brief on p. 55. The Board has taken the proposal reported at paragraph 20 as the position of the bargaining agent to be considered.

[24] The employer proposed renewal of clause 24.14.

[25] The Board notes that there are precedents for providing a taxi chit or for paying for taxi fare after 9 p.m. in several collective agreements in the parliamentary precincts although the provisions in question sometimes include a requirement that the employee work a specific number of hours of overtime.

[26] The underlying issue, according to the bargaining agent, is employee safety. The Board agrees that employee safety should be the principal consideration governing the administration of clause 24.14. It notes that the employer can exercise discretion under the second paragraph of clause 24.14 to provide taxi chits or reimburse taxi fares "when individual circumstances warrant". Nonetheless, emphasizing the high

priority that should always be attached to employee safety concerns, the Board is prepared to adopt 9:00 pm as the appropriate hour triggering the entitlement.

[27] The award of the Board is to change 10:00 p.m. in the existing language of clause 24.14(b) to **9:00** p.m.

[28] The Board does not agree to delete the qualifying words "*where it is not part of his/her regular scheduled hours of work*" which followed "*10 p.m.*" in the existing collective agreement provision or to add the words "*or does not have a vehicle on site*" in the first sentence of clause 24.14, also proposed by the bargaining agent.

[29] For greater certainty, clause 24.14 shall read as follows:

> *Transportation*
>
> *24.14 An employee who meets one of the following criteria and has not been issued a House of Commons parking shall be provided with taxi voucher or taxi fare when required, upon presentation of a receipt and approval by the Employer:*
>
> *(a) works overtime after public transportation has been suspended for the day;*
>
> *or*
>
> *(b) leaves work after **9 p.m.**, where it is not part of his/her regular scheduled hours of work.*
>
> *Notwithstanding the above, when employees are required to work unscheduled overtime, the Employer has the discretion to make exceptions to the provisions contained in a) and b), and to provide a taxi voucher or taxi fare to employees that have been issued a parking permit, when individual circumstances warrant.*

[30] The bargaining agent also proposed that shift and weekend premiums in clauses 24.15 and 24.18 be set at **$2.35** for all hours worked effective **July 1, 2018**, and at **$2.40** for all hours worked effective **July 1, 2019**.

[31] The employer proposed renewal of clauses 24.15 and 24.18.

[32] The bargaining agent's written submissions did not address the proposed increases in clauses 24.15 and 24.18 to shift and weekend premiums. Whether that omission was intended or inadvertent, the Board does not have the benefit of a justification by the bargaining agent for the proposed increases.

[33] The Board, therefore, determines that clauses 24.15 and 24.18 shall remain unchanged.

Article 38 - Duration

[34] The bargaining agent proposed that the new collective agreement expire on June 30, 2021.

[35] The employer proposed that the provisions of the collective agreement become effective on the date of the arbitral award and that they remain in effect until June 30, 2022.

[36] The following provisions of the *PESRA* govern:

> *58 (1) The Board shall, in respect of every arbitral award, determine and specify therein the term for which the arbitral award is to be operative and, in making its determination, it shall take into account*
>
> *(a) where a collective agreement applicable to the bargaining unit is in effect or has been entered into but is not yet in effect, the term of that collective agreement; and*
>
> *(b) where no collective agreement applying to the bargaining unit has been entered into,*
>
> *(i) the term of any previous collective agreement that applied to the bargaining unit, or*
>
> *(ii) the term of any other collective agreement that to the Board appears relevant.*
>
> *(2) No arbitral award, in the absence of the application thereto of any criterion referred to in paragraph (1)(a) or (b), shall be for a term of less than one year or more than two years from the day on and after which it becomes binding on the parties.*

[37] The Board notes that a number of collective agreements referenced by the parties in their submissions, primarily in the federal public administration, have terms of four years, suggesting that it is open to the Board to consider an expiry date in 2022 as justified under s. 58(1)(b)(ii) of the *PESRA*. However, the most important consideration for the Board is its concern that the June 30, 2021, expiry date proposed by the bargaining agent would require a formal notice to recommence collective bargaining within weeks of the expiry date. The Board believes that a longer break from the formal negotiation process would be appropriate. The Board has decided on that basis to accept the expiry date of June 30, 2022, as proposed by the employer. The

Board's decision conforms with s. 58(2) of the *PESRA* although the time limit guidance of that provision was not the only consideration driving the Board's determination.

[38] Clause 38.01 shall read as follows:

> *38.01 Unless otherwise stipulated, the provisions of this Agreement shall become effective on* ***the date of the Arbitral Award*** *and shall remain in force until June 30,* ***2022****.*

Article 41 - Seniority

[39] The bargaining agent proposed altering the definition of "seniority" in clause 41.01 to specify that seniority shall be deemed to commence on the date of hiring with the House of Commons. Currently, clause 41.01 defines seniority as the length of continuous service with the House of Commons.

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

[41] The bargaining agent's proposal has been considered, and not accepted, in several interest arbitration proceedings for bargaining units at the House of Commons.

[42] Given that changing the definition of seniority could have a significant impact on the administration of a number of collective agreement provisions, the extent and nature of which might not be entirely foreseen, the Board does not believe that it should intervene to revise the existing provision. The Board also understands that the bargaining agent's proposal would bring discontinuous service into play, a change whose effect may be substantial.

[43] The Board has determined that the bargaining agent's proposal shall not be incorporated into the collective agreement.

Appendix A/A-1 – Rates of Pay

[44] The bargaining agent's proposal consists of the following components:

> (1) a proposal to adjust the wage grid for the TXT and RPT sub-groups by increasing those increments whose current value is 2% to 4%, by deleting the lowest step in each range, by adding a new 4% step at the maximum of each range, and by moving each employee up by one step;

(2) a proposal to adjust the wage grid for the RPG sub-group by deleting the lowest step in each range, by adding a new 4% step at the maximum of each range, and by moving each employee up by one step;

(3) a proposal for wage adjustments to all rates of pay of 0.8% and 0.2% effective, respectively, on July 1, 2018, and on July 1, 2019, prior to application of general economic increases; and

(4) a proposal for general economic increases of 2.0% effective July 1, 2018, 2.0% effective July 1, 2019, and 1.5% effective July 1, 2020.

[45] The employer proposed increases to all rates of pay as follows:

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

A. Wage Grid Adjustments for the TXT and RPT subgroups

[46] In 2004, a single job evaluation plan was introduced for employees of the House of Commons. The RPG sub-group pay scales for ten classification levels of that plan (B through K) are found in Appendix A-1 of the collective agreement. According to the employer's payroll data, there are no employees at level B or levels H through K.

[47] Appendix A contains separate pay scales for the TXT and RPT sub-groups. Those pay scales apply only to employees who enjoy salary protection status as a result of having been converted to a level in the universal classification plan which had a lower maximum rate of pay than they previously enjoyed.

[48] As of January 5, 2021, three employees were salary-protected at the existing maximum step of the RPT-2 rate scale and 2 employees were salary-protected at the maximum step of the RPT-3 rate scale.

[49] The bargaining agent proposes to adjust the wage grid for the TXT and RPT subgroups in the following ways; (1) by increasing those increments whose current value is 2% to 4%; (2) by deleting the lowest step in each range; (3) by adding a new 4% step at the maximum of each range; and (4) by moving each employee up by one step. The proposed effective date for the scale restructuring is July 1, 2018.

[50] The employer submits that the three salary-protected editors (RPT-2) receive 3.95% more than their counterparts classified at Level D, paid at the scale maximum. The two salary-protected editors (RPT-3) receive 15.91% more than their counterparts classified at Level F, paid at the scale maximum. In its rebuttal, the bargaining agent does not challenge the comparisons.

[51] There appears to the Board to be no reason to provide any rate of pay in Appendix A other than the two actual maximum pay rates that apply to the five salary-protected RPT-2 and RPT-3 employees. Presumably, no employee will ever be paid at any other rate because no further employees will acquire the requisite salary protection status. The Board suggests that the parties consider how Appendix A might be recast to reflect that reality.

[52] Two aspects of the bargaining agent's proposals are essentially moot. No employees are paid at the scale minima. Deleting the lowest step in each range thus has no effect. Doing anything to the TXT-01 range also has no effect since no employee is salary-protected at that level.

[53] The elements which materially affect the five salary-protected employees at levels RPT-2 and RPT-3 are the increase in increment values to 4% and the addition of a new step.

[54] In the Board's view, the only compelling justification for adopting either proposal would be to maintain existing relativities with the maximum rates for Levels D and F of the RPG sub-group in Appendix A-1 if the Board accepted the restructuring of RPG rate scales advocated by the bargaining agent. If it does not adopt the proposal for RPG scale restructuring, adding a new 4% step to the maxima of the RPT-2 and RPT-3 levels would widen the significant differential that already exists relative to the maximum pay rates available to comparable employees at levels D and F of the RPG sub-group without obvious justification.

[55] As the Board has determined in the next section not to award the scale restructuring proposed by the bargaining agent for the RPG sub-group, it declines to reconfigure pay scales in Appendix A.

B. Wage Grid Adjustments for the RPG subgroup

[56] The bargaining agent proposes to adjust the wage grid for the RPG sub-group by deleting the lowest step in each range, by adding a new 4% step at the maximum of each range, and by moving each employee up by one step. Those measures take effect July 1, 2018.

[57] Scale restructuring is frequently used as a tool to address internal or external pay relativity problems and/or recruitment and retention issues. In its submission, the bargaining agent offers justification for restructuring RPG rate scales principally as a matter of mirroring changes in the pay scales for other groups on Parliament Hill. Notably, the groups referenced by the bargaining agent work for other parliamentary employers, not the House of Commons.

[58] It is not unreasonable that employees in the bargaining unit might wish to be treated similarly to colleague employees of other parliamentary employers. At the same time, the House of Commons reasonably expresses concern for the wider impact of scale restructuring within its own establishment where employees are classified under a common plan and paid on rate scales associated with the levels of that plan.

[59] The Board has weighed the contrasting “internal” pay relativity arguments presented by the parties. To consider scale restructuring for the RPG sub-group and, by doing so, alter relativities to other House of Commons groups using the same classification plan, the Board believes that it would need to rely on other superseding considerations. It acknowledges that the examples of scale restructuring cited by the bargaining agent at the Library of Parliament, the Senate and the Parliamentary Protective Service weigh in its favour to some extent. However, on balance, the Board takes the view that concerns about internal pay relativities within the House of Commons have somewhat greater impact. It also has taken into consideration the pay comparisons to the federal public administration outlined by the employer which suggest that RPG pay scales are not inappropriately positioned in the broader context. The bargaining agent chose not to address those comparisons in its rebuttal. Finally, as indicated in the next section, the Board has not identified recruitment and retention issues that would lead it to increase rate maxima other than through normal wage adjustments or economic increases.

[60] On balance, the Board declines to award the bargaining agent's RPG scale restructuring proposal.

C. Wage Adjustments

[61] The bargaining agent proposes wage adjustments to all rates of pay of 0.8% and 0.2% effective, respectively, on July 1, 2018, and on July 1, 2019, prior to application of general economic increases.

[62] The employer opposes the proposal.

[63] As detailed in the briefs of both parties, a large number of collective agreements in the federal public administration contained separate wage adjustments, sometimes characterized as "market adjustments", in years 2018 and 2019. The value of the wage or market adjustments varied to some extent, but most typically amounted to 0.8% in 2018 and 0.2% in 2019. For four of the Treasury Board groups represented by the bargaining agent (PA, TC, EB and SV), ratified settlements did not include separate wage or market adjustments but, instead, appear to have taken the O.8% and 0.2% increase values into consideration in setting general economic increases of 2.8% and 2.2% in 2018 and 2019, respectively.

[64] The Board also understands that some unrepresented employee groups received similar wage adjustments. Of particular note, the bargaining agent outlined that the unrepresented House of Commons Law (HLA) Group was provided a 0.8% wage adjustment effective April 1, 2018, and a 0.2% wage adjustment effective April 1, 2019, in addition to economic increases of 2.0% on each of those dates.

[65] The employer submits that the primary purpose of wage or market adjustments is to address recruitment and retention issues. It submits that, in the absence of data substantiating any difficulty in attracting employees to the bargaining unit, or in retaining them, there is no justification for the wage adjustments proposed by the bargaining agent.

[66] The Board concurs with the employer that it has not been presented with information that would lead it to find, and act to address, a significant recruitment and retention problem. That said, it seems clear from the widespread adoption by parties in the federal public administration, and by the employer itself with respect to the HLA Group, of 0.8% and 0.2% adjustments in 2018 and 2019 that such adjustments have

often been used as surrogates for, or supplements to, general economic increases. The essential point is that the salary mass associated with pay scales for many or most groups in the wider jurisdiction typically increased by at least 2.8% in 2018 and by at least 2.2% in 2019. That reality should inform the Board's approach to determining rates of pay.

[67] The Board, however, does not award the bargaining agent's proposal for separate wage adjustments. The Board prefers to address the information presented about the pattern of separate wage adjustments as part of its assessment of the general economic increases that should be afforded to the bargaining unit. Lacking a compelling reason specific to the bargaining unit to distinguish between wage adjustments and general economic increases, the Board believes that a consolidated approach is both simpler and better justified.

D. General economic increases

[68] As indicated in a previous section, the Board has accepted the employer's proposal that the term of the arbitral award extend to June 30, 2022, rather than to one year earlier as proposed by the bargaining agent.

[69] With respect to general economic increases, both parties have proposed the same approach for the first three years; 2.0% effective July 1, 2018, 2.0% effective July 1, 2019, and 1.5% effective July 1, 2020.

[70] The employer has proposed an increase for the fourth year of 1.5%. The bargaining agent did not specifically address the employer's fourth-year proposal in its rebuttal but did point out that the pattern of freely negotiated settlements across the federal public service normally included an increase of 1.5% for that year. To be sure, the Board finds ample reason in the main submissions of both parties to accept that 1.5% is the most common increase negotiated for 2021.

[71] The Board concluded in the previous section that pay scales for many or most groups in the wider jurisdiction increased by at least 2.8% in 2018 and by at least 2.2% in 2019. The typical pattern provided general economic increases as proposed here by both parties for the first three years, plus the fourth-year economic increase proposed by the employer. In addition, settlements mandated wage or market adjustments in 2018 and 2019 typically valued at 0.8% and 0.2% respectively.

[72] On balance, weighing the factors outlined in s. 53 of *PESRA*, the Board believes that replicating that pattern for this bargaining unit constitutes a fair and reasonable outcome. The Board prefers to consolidate wage adjustments and general economic increases in the absence of a strong reason to distinguish between the two elements. The award of the Board, therefore, is for general economic increases to all rates of pay as follows:

Effective July 1, 2018	2.8%
Effective July 1, 2019	2.2%
Effective July 1, 2020	1.5%
Effective July 1, 2021	1.5%

New Appendix XX – Memorandum of Understanding – Lump Sum Payment

[73] The bargaining agent proposed a new Memorandum of Agreement to provide as follows:

> ***1. The Employer will compensate all current employees with a lump sum payment of $2500.00 for general damages as compensation for stress, aggravation and pain and suffering for the late implementation of the previous collective agreement.***
>
> ***2. In order to be eligible for the financial compensation provided for in clause 1, an employee need only be on strength for one day between July 1, 2018, and the date of signing of this Agreement.***
>
> ***3. Former employees will be eligible, following submission of a claim and validation, to be compensated on the basis of clause 1 and 2.***
>
> ***4. In order to be eligible for the payment provided for in clause 3, a former employee need only to have been on strength for one day in the year to which a lump sum payment applies.***

[74] The employer opposed the proposal.

[75] The bargaining agent's proposal describes the lump sum payment of $2500 as general damages, intended to compensate employees for "the stress, aggravation and pain and suffering" caused by "the late implementation of the previous collective agreement". The employer disputes the scope of the implementation problems experienced by employees, notes that the parties had agreed to extend the

implementation period by thirty days in the face of delays, and states that no grievances were filed alleging implementation delays nor any formal complaint by the bargaining agent.

[76] The Board accepts that there were implementation issues following the last round of collective bargaining but is not convinced that those issues were sufficiently widespread so as to necessitate an award of damages. The bargaining agent cites "a sample" of a few problems experienced by individual employees to support its proposal. It does not offer further details about the late implementation of the previous collective agreement nor does it convincingly outline how the actions of the House of Commons caused "stress, aggravation and pain and suffering". It states in its rebuttal that the same Phoenix-related issues encountered in the federal public administration "have befallen employees in this bargaining unit" but does not offer substantiation for that allegation that would assist the Board to understand the full nature and extent of the alleged problem.

[77] The Board believes that the real reason for the bargaining agent's proposal has less to do with circumstances within the House of Commons than with the bargaining agent's comparability argument. In the bargaining agent's submission, the proposed lump sum payment is justified because its members "should be compensated in line with the tens of thousands of PSAC members employed in the federal service" who were covered by the Phoenix settlement negotiated with Treasury Board. In support of its contention that employees have received damages even if they did not experience Phoenix-related problems, the bargaining agent notes, for example, that its members at the Canada Revenue Agency received the damages despite no reports of pay errors. The Board understands, however, that employees at the CRA represented by the bargaining agent received smaller general economic increases in the third and fourth year of their collective agreement than the Board has awarded in this decision.

[78] The essential issue before the Board, then, is whether the House of Commons should be required to match the Phoenix payments, in whole or in part, even if the actual damages experienced by employees in the bargaining unit were not of a nature or extent that would, in the normal course of bargaining, warrant an outcome matching the negotiated settlement in Treasury Board's jurisdiction.

[79] The employer has offered extensive reasons for opposing the bargaining agent's proposal. It outlines the history of the Phoenix situation in the core federal

administration and why that history differs from what the House of Commons has experienced. The Board finds that the employer's explanations undermine an argument that the factors justifying Phoenix damage payments were sufficiently present at the House of Commons.

[80] That brings the Board back to the simple comparability argument that employees in the bargaining unit should receive the same lump sum payment as their fellow PSAC members elsewhere. (The Board notes that the bargaining agent's proposal actually appears to provide more compensation to some employees than would be the case in the Treasury Board jurisdiction. Under the bargaining agent's proposal, eligibility for the full payment depends on establishing standing in only one year of the coverage period. In the Treasury Board's jurisdiction, the Board understands that receipt of the full payment requires establishing eligibility in each of the years of the coverage period.)

[81] The employer submits that there are no settlements or arbitral awards which embrace lump sum payments to address Phoenix-related issues for employees in the parliamentary precincts. It must be noted, however, that most collective agreements in place were concluded prior to the Phoenix settlement.

[82] Weighing all considerations, the Board is not prepared to establish the precedent of matching the Phoenix settlement in this award. It does not in this instance accept that matching a damage award designed to compensate employees for the specific problems that occurred in Treasury Board's jurisdiction is justified by a comparability argument without there also being clearer proof that problems of similar or substantial extent occurred at the House of Commons.

[83] The Board has determined that the bargaining agent's proposal shall not form part of the collective agreement.

New Appendix XX – Memorandum of Understanding – Implementation of the Collective Agreement

[84] The bargaining agent proposes a new Memorandum of Agreement to provide as follows:

> ***This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada regarding a modified approach to the calculation***

> ***and administration of retroactive payments for the current round of negotiations.***
>
> ***1. Compensation increases will be implemented within ninety (90) days after ratification or arbitral award.***
>
> ***2. Employee recourse***
>
> ***(a) An employee who is in the bargaining unit for all or part of the period between the first day of the collective agreement (i.e., the day after the expiry of the previous collective agreement) and the signature date of the collective agreement will be entitled to a non-pensionable amount of five hundred dollars ($500) payable within ninety (90) days of signature, in recognition of extended implementation.***
>
> ***(b) Employees in the bargaining unit for whom the collective agreement is not implemented within ninety (90) days after the signature will be entitled to a fifty dollar ($50) non-pensionable amount; these employees will be entitled to an additional fifty dollar ($50) non-pensionable amount for every subsequent complete period of ninety (90) days their collective agreement is not implemented. These amounts will be included in their final retroactive payment.***
>
> ***(d)*[sic] *Employees will be provided a detailed breakdown of the retroactive payments received and may request that the Employer verify the calculation of their retroactive payments, where they believe these amounts are incorrect. The Employer will consult with the Alliance regarding the format of the detailed breakdown.***

[85] The employer opposed the proposal.

[86] In its rebuttal submission, the employer appears to express confidence that it will be able to implement the pay provisions of the award within the normal 90-day period based on the premise that the new payment process in the Phoenix system for mass retroactive increases (known colloquially elsewhere as the "Barracuda") will result in more timely payments.

[87] The Board is not in a position to judge whether the employer's confidence is well-justified, or not. If the employer is unable to meet the 90-day timeline, it would need either to negotiate an implementation extension with the bargaining agent or to apply to the Board under s. 59 of the *PESRA* for such an extension.

[88] The arbitration board faces a difficult choice. It can decide not to entertain provisions of the type proposed by the bargaining unit in the new Memorandum of Understanding, thus leaving it either to the parties or to the Board (i.e., the FPSLREB) to

address problems should they occur. In the alternative, the arbitration board can anticipate the possibility that there could be delays in implementation and award measures to address that eventuality.

[89] As much as the arbitration board believes that reducing the possibility of litigation under s. 59 of the *PESRA* is an important consideration, it has decided to rely on the employer's confidence that implementation will occur within the 90-day period or, if not, that the parties will be willing and able to conclude a voluntary agreement providing an extension.

[90] The Board declines to award the new Memorandum of Understanding.

New Article XX - Bilingual Bonus

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

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

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

[93] The proposed bilingual bonus is not a feature of existing collective agreements for any unionized employees of the House of Commons. Arbitration panels have consistently declined to introduce a bilingual bonus in the parliamentary precincts.

[94] The Board has determined that the bargaining agent's proposal shall not form part of the collective agreement.

April 21, 2021.

(Original signed by)

Dan Butler
Board Member
Chairperson of the arbitration board