Date: 20210504

File: 485-HC-41951

Citation: **2021 FPSLREB 51**

Parliamentary Employment and Staff Relations Act

Before the Federal Public Sector Labour Relations and Employment Board

IN THE MATTER OF

THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*

and a dispute affecting

Unifor, as Bargaining Agent,

and the House of Commons, as employer

in respect of the Technical Group bargaining unit

Indexed as
Unifor v. House of Commons

Before: David Orfald, Kathryn Butler Malette, and Nycole Turmel, deemed to form the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Adrienne Lei and Amani Rauff

For the Employer: Carole Piette and Jean-Michel Richardson

Heard via videoconference
March 22 and 23, 2021.

ARBITRAL AWARD

I. Application before the Board

[1] On February 8, 2018, Unifor ("the bargaining agent") served notice to bargain on the House of Commons ("the employer") under s. 37 of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); "the *Act*"), in respect of all employees in the Technical Group bargaining unit.

[2] The Technical Group is composed of employees who provide information technology and live broadcasting services to Parliament. As of December 31, 2020, the bargaining unit consisted of approximately 99 employees.

[3] The last collective agreement for the bargaining unit expired on March 31, 2018.

[4] The parties met for eight days of negotiations between March of 2019 and March of 2020.

[5] By email of August 5, 2020, the bargaining agent requested arbitration pursuant to s. 50 of the *Act*. Along with its request, the bargaining agent provided a list of terms and conditions of employment that it wished to refer to arbitration.

[6] By letter of August 17, 2020, the employer provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer relied on ss. 5(3) and 55(2) of the *Act* in support of its objections to several bargaining agent proposals. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

[7] By letter of August 27, 2020, the bargaining agent maintained its position on its proposals and provided its position on the terms and conditions proposed by the employer.

[8] The membership and terms of reference for the arbitration board deemed to form the Federal Public Sector Labour Relations and Employment Board ("the Board") were established by the Chairperson of the Board in *Unifor and House of Commons*, 2020 FPSLREB 90.

[9] Following the establishment of the Board, the parties were able to resolve several matters. Both the bargaining agent and employer withdrew some proposals,

either before or during the hearing. The following proposals remained in dispute (the proposing party is indicated in parentheses):

Clause 2.2 – Recognition (bargaining agent)

Clause 4.1 – Dues Check-off (bargaining agent and employer)

Clause 8.1.4 – Posting of Vacancies (bargaining agent and employer)

Clause 14.4 and (New) Appendix – Severance Pay (employer)

Clause 16.4 – Scheduling and Posting of Schedules (bargaining agent and employer)

Clauses 17.2 and 17.5 – Scheduling of Meal Periods and Meal Displacement (employer)

Clause 20.1 – Duration (bargaining agent and employer)

Appendix A – Rates of Pay (bargaining agent and employer)

NEW Article – Seniority/Layoffs (bargaining agent)

II. The award

[10] In rendering its decision, the Board is guided by the relevant provisions of the *Act*, and in particular by s. 53, which sets out what the Board must consider and is worded 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 employment of employees with those that are applicable to persons in similar employment in the federal public administration.*

[11] The Board has considered the employer's objections to several of the bargaining agent's proposals on the basis that they are outside its jurisdiction, given one or both of s. 5(3) and s. 55(2) of the *Act*, which read as follows:

> ***5 (3)*** *Nothing in this Part shall be construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment.*
>
> *…*
>
> ***55 (2)*** *No arbitral award shall deal with the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.*

[12] Throughout the award, a strike through (~~strikethrough~~) indicates a deletion, and bold (**bold**) characters in a clause indicate an addition or change in wording.

A. Clause 2.2 – Recognition (bargaining agent)

[13] The bargaining agent proposed the following changes to clause 2.2:

> *2.2 Short-term or long-term employees will not be hired to avoid posting and filling indeterminate position(s) in the bargaining unit. However, term appointments may be used to meet operational and organizational requirement to cover leaves specified in the collective agreement, additional requirements during peak periods, requirements for projects, contracts and service agreements, while a vacant position is being staffed or when backfilling a position to replace employees on assignments. Where term appointments are to exceed twelve (12) months, the Employer will~~, upon request,~~ give the reasons to the Union* ***and obtain consent from the local Union****.*
>
> ***The employer agrees that it will not contract out, sub contract, hire casuals or assign work of the Technical Group to persons outside the bargaining Unit unless all efforts have been made to use alternative arrangements such as the use of term employment which shall not result in the erosion or duplication of duties and responsibilities of existing employees.***

[14] The employer objected to the bargaining agent's proposals, in accordance with ss. 5(3) and 55(2) of the *Act*.

[15] The Board has decided that these proposals will not be included in the arbitral award.

B. Clause 4.1 – Dues Check-off (bargaining agent and employer)

[16] The employer proposed the following changes to clause 4.1:

> *4.1 Dues Check-Off*
>
> *Union dues and assessments shall be deducted monthly by the Employer from all employees in the bargaining unit. The Union will provide the Employer with a schedule, which it may amend at any time, setting out the amount(s) to be deducted from all earnings of every employee, beginning with their date of hiring as: indeterminate, long-term contract, part-time or* ***a person ordinarily required to work*** *more than seven hundred (700) hours over a calendar year or short-term contract when extended to more than six (6) months of continuous employment which shall be consistent with* the Parliamentary ~~Employee~~ **Employment** Staff Relations Act *(PESRA).*

[17] The bargaining agent did not agree with the employer's proposal to add the words "a person ordinarily required to work" but did agree to the proposed correction to the name of the *Act*. The bargaining agent also proposed the addition of this new sentence, to be added to clause 4.1:

> ***A weekly list of all casual/contract workers doing bargaining unit work with a total of hours worked.***

[18] The changes proposed by the employer to clause 4.1 concern the bargaining agent's obligation to provide it with a schedule for dues deduction for employees under the *Act*. The Board is satisfied that the change proposed does not alter who is included in bargaining unit. The Board agrees to award the changes to clause 4.1 proposed by the employer.

[19] With respect to the bargaining agent's proposed change, the Board has agreed to include in its award a new clause, worded as follows:

> ***4.3.2 Every January and July, the Employer will provide the Union with a list of all casual employees and contract workers that did bargaining unit work over the previous six months, along with a total of hours worked.***

C. Clause 8.1.4 – Posting of Vacancies (bargaining agent and employer)

[20] The employer proposed the following changes to clause 8.1.4:

> *8.1.4* ***When e****mployment opportunities within the bargaining unit* ***are posted, they*** *shall be posted in the workplace for a minimum of ten (10) working days to allow interested candidates to apply. Temporary vacancies may also be filled via the Restricted Recruitment Process. The employer will consult with the union of any need to fill a vacancy without posting.*
>
> *Where a position that has been posted and again becomes vacant or another need arises within twelve (12) months candidates from an existing eligibility list may again be considered. The employer will use internal notification process to advise members of the vacancy and its intention to access the eligibility list.*

[21] The bargaining agent proposed that the existing wording of clause 8.1.4 be renewed without change and that an additional paragraph be added as follows:

> ***The parties recognize that merit is the guiding principle for promotions, courses, rotational transfers or filling job vacancies. Seniority shall be the governing factor where qualifications are determined.***

[22] The employer objected to the bargaining agent's proposal, in accordance with ss. 5(3) and 55(2) of the *Act*.

[23] The Board has determined that neither the bargaining agent nor the employer's proposal will be included in the arbitral award. Clause 8.1.4 will be renewed without change.

D. Clause 14.4 and (New) Appendix – Severance Pay (employer)

[24] The employer proposed that the existing clause be modified to remove clauses 14.4(b) and 14.4(c), on severance pay for resignation and retirement, as well as the existing clauses 14.4.3 and 14.4.4, on employees' options for the voluntary severance termination benefit. Along with associated other changes to the clause, the employer proposed to place the clauses it wished to remove in a new Appendix entitled, "Archived provisions for the elimination of severance pay for voluntary separations (resignation and retirement)".

[25] The employer argued that severance pay for voluntary departures was removed from the collective agreement on June 15, 2012, and that clauses 14.4(b) and 14.4(c)

are no longer in effect. It proposed to place the archived provisions in the new Appendix for the benefit of those employees who had opted to delay all or part of their voluntary severance termination benefit until their date of retirement. Approximately 17 employees selected one of those options. Once all those employees have been paid their voluntary severance termination benefit, the employer will propose to remove the Appendix, as it will no longer be required.

[26] The bargaining agent proposed the renewal of the existing provisions.

[27] The Board has determined that it will include the employer's proposed changes in its award. Clause 14.4 is amended as proposed by the employer. A new appendix will be added to the collective agreement, as proposed by the employer.

E. Clause 16.4 – Scheduling and Posting of Schedules (bargaining agent and employer)

[28] The employer proposed the following changes to clauses 16.4 and 16.4.1:

> *16.4 Scheduling and Posting of Schedules*
>
> *Each employee's schedule for any week shall be posted* ***electronically*** *as early as possible, but in no event later than 1500 hours of the Friday ~~three (3) weeks~~ prior to the week covered by the schedule. It is the Employer's intent to ensure that each employee shall be advised of their work schedule at the earliest possible time.*
>
> *16.4.1 Each employee's* ***electronically*** *posted schedule shall state clearly daily starting ~~time,~~* ***and*** *finishing time~~s and first meal period~~.*

[29] The bargaining agent proposed the renewal of the existing clauses 16.4 and 16.4.1. However, it proposed the following changes to clause 16.4.2:

> *16.4.2 Notice of any change in posted hours shall be given not later than ~~1200 hours~~* ***seven (7) days*** *of the employee's last working day prior to the day in question. When changes are made to an employee's schedule on the employee's last working day, the employee will be informed directly. Otherwise the employee shall be credited with all hours originally scheduled, plus any additional hours worked.*

[30] The Board notes that the parties wanted to move in opposite directions with their proposals. The employer sought to shorten the time frame for the advance posting of shift schedules; the bargaining agent wanted to increase the notice period

for a shift change. Both parties had reasonable arguments for their positions. The Board has determined that it will not include either proposal in its award. It encourages the parties to engage in a joint discussion of scheduling issues before the next round of collective bargaining.

[31] The Board has determined that it will include in the arbitral award only those changes proposed by the employer related to the "electronic" posting of schedules, understanding that this accords with current practice. Clause 16.4 will now read as follows:

> *16.4 Scheduling and Posting of Schedules*
>
> *Each employee's schedule for any week shall be posted* ***electronically*** *as early as possible, but in no event later than 1500 hours of the Friday three (3) weeks prior to the week covered by the schedule. It is the Employer's intent to ensure that each employee shall be advised of their work schedule at the earliest possible time.*

[32] Clause 16.4.1 will now read as follows:

> *16.4.1 Each employee's* ***electronically*** *posted schedule shall state clearly daily starting time, finishing time and first meal period.*

F. Clauses 17.2 and 17.5 – Scheduling of Meal Periods and Meal Displacement (employer)

[33] The employer proposed the following changes to clauses 17.2 and 17.5:

> *17.2 First Meal Period*
>
> *In all work assignments of five (5) hours or more, the first meal period, which shall have a duration of sixty (60) minutes, shall* ***be assigned at the start of the shift or shortly thereafter. This meal period shall commence no earlier than the beginning of the second (2nd) hour and be completed by the beginning of the fifth (5th) hour. Upon mutual agreement, the meal period can be assigned outside the period referenced above.*** ~~*be scheduled as follows:*~~
>
> ~~*(a) between 1115 hours and 1430 hours;*~~
>
> ~~*or*~~
>
> ~~*(b) between 1630 hours and 2000 hours;*~~
>
> ~~*or*~~
>
> ~~*(c) at times mutually agreed by the employee and Employer.*~~

> *[…]*
>
> *17.5 Meal Displacement*
>
> ***When an employee has not been able to have a meal period within the time frames established at article 17.2, the meal period shall be paid at one-half (1 ½) times the employee's basic hourly rate. The meal displacement shall not be paid if the meal period had been assigned by mutual agreement outside the time frames established at article 17.2.*** *~~If the scheduled meal period as per clause 16.4.1 is not changed before 1700 hours of the day prior and the meal period is displaced by more than fifteen (15) minutes in relation to the scheduled time, the scheduled meal period shall be paid at one and one-half (1½) times the employee's basic hourly rate.~~*

[34] The employer's proposals with respect to clauses 17.2 and 17.5 were associated with its proposal with respect to clause 16.4.1, which would have removed the requirement for the employer to specify a meal period when posting an employee's work schedule.

[35] The bargaining agent proposed the renewal of the existing provisions.

[36] The Board has decided that these proposed changes will not be included in the arbitral award. Clauses 17.2 and 17.5 are to be renewed without change.

G. Clause 20.1 – Duration (bargaining agent and employer)

[37] The bargaining agent proposed that clause 20.1 be amended as follows:

> *20.1 Unless otherwise expressly stipulated, the provisions of this Agreement shall become effective* ***April 1, 2018*** *~~May 23, 2017~~ and shall remain in force until March 31,* ***2021*** *~~2018~~.*

[38] The employer proposed that clause 20.1 read as follows:

> *20.1 Unless otherwise expressly stipulated, the provisions of this Agreement shall become effective* ***on the date of the Arbitral Award*** *~~May 23, 2017~~ and shall remain in force until March 31,* ***2022*** *~~2018~~.*

[39] The Board has determined that it will include the employer's proposal in its award.

H. Appendix A – Rates of Pay (bargaining agent and employer)

[40] The employer proposed to adjust all rates of pay as follows:

> Effective April 1, 2018 – 2.0%
>
> Effective April 1, 2019 – 2.0%
>
> Effective April 1, 2020 – 1.5%
>
> Effective April 1, 2021 – 1.5%

[41] The bargaining agent proposed to adjust all rates of pay as follows:

> Effective April 1, 2018, increase all salary rates by 1.5%.
>
> Effective April 1, 2018, add an eighth step to the salary grid that is 4% greater than the seventh step.
>
> Effective April 1, 2019, increase all salary rates by 2.0%.
>
> Effective April 1, 2020, increase all salary rates by 2.0%.

[42] The Board has determined that it will not award the bargaining agent's proposal to add an eighth step to the salary grid. In making this decision, the Board is particularly mindful of s. 53(b) of the *Act*, which speaks to the maintenance of appropriate relationships across different grade levels and occupations. The Board was not provided with a rationale that would justify departing from the seven-step pay grid system in place across the House of Commons bargaining units, such as wage comparability studies. The Board is mindful of the internal relativity with other groups and of the larger impact that a decision to amend the wage grids without sufficient evidence may have on other bargaining units.

[43] The Board's award is to adjust all rates of pay as follows:

> Effective April 1, 2018 – 2.8%
>
> Effective April 1, 2019 – 2.2%
>
> Effective April 1, 2020 – 1.5%
>
> Effective April 1, 2021 – 1.5%

I. NEW Article – Seniority/Layoffs (bargaining agent)

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

> ***The parties recognize that Seniority is the guiding principle for layoffs; Seniority shall be the governing factor where layoffs are determined.***

[45] The employer objected to the bargaining agent's proposal, in accordance with s. 55(2) of the *Act*.

[46] The Board has decided that this proposal will not be included in the arbitral award.

III. General

[47] The Board will remain seized of this matter for a period of three (3) months from the date of this award, in the event that the parties encounter any difficulties in its implementation.

May 04, 2021.

David Orfald,
for the Federal Public Sector Labour Relations and Employment Board