Date: 20210909

File: 485-SC-42083

Citation: 2021 FPSLREB 103

Federal Public Sector Labour Relations and Employment Board Act and *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
the Public Service Alliance of Canada, as bargaining agent,
and the Senate of Canada, as employer,
in respect of the Operational Group, except for employees in the Protective Services Sub-group bargaining unit

Indexed as
Public Service Alliance of Canada v. Senate of Canada

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

For the Bargaining Agent: Morgan Gay and Silja I. Freitag, Public Service Alliance of Canada

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

Heard at Ottawa, Ontario,
May 7 and 14, 2021.

ARBITRAL AWARD

I. Matter before the Board

[1] On April 19, 2018, the Public Service Alliance of Canada ("the bargaining agent" or PSAC) served notice to bargain on the Senate of Canada ("the employer") under s. 37 of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); *PESRA*) on behalf of the Operational Group, except for employees in the Protective Services Sub-group bargaining unit.

[2] The bargaining unit is composed of approximately 93 employees employed in the Building Operations Section and the Material Management and Logistics Section under the employer's Property and Services Directorate. The positions in the bargaining unit include those engaged in committee room support and mail services, installations and transport, maintenance, and printing services.

[3] The last collective agreement for the bargaining unit expired on September 30, 2017.

[4] The parties met for 5 days of negotiations between June 2019 and September 2020. During those negotiations, the parties signed off on 18 articles.

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

[6] The Chairperson of the Board established the mandate for these proceedings in *Public Service Alliance of Canada v. Senate of Canada*, 2020 FPSLREB 98, consisting of the parties' proposals for the following collective agreement articles and appendices:

Article 10 – Check-Off
Article 12 – Provision of Bulletin Board Space and Other Facilities
Article 15 – Joint Consultation
Article 21 – Other Leave With or Without Pay
Article 22 – Sick Leave
Article 26 – Shift Premium
Article 29 – Travelling Time
Article XX – Sessional Indeterminate Employees
Article 43 - Duration
Appendix A – Rates of Pay

Appendix XX - Lump Sum Payment

Appendix XX - Implementation of Collective Agreement
Article XX - Bilingual Bonus

[7] At the commencement of the hearing, the parties advised that the outstanding issue relating to bereavement leave was no longer in dispute. In addition, they stated that they had reached an agreement on maternity and parental leave.

[8] The bargaining agent provided exhibits to the employer and the Board on the morning of the first day of the hearing. The hearing was adjourned to allow the employer to obtain particulars on one exhibit and to review the additional exhibits.

[9] The hearing continued on May 14, 2021.

II. The award

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

> …
>
> ***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 with those that are applicable to persons in similar employment in the federal public administration.*
>
> …

[11] The Board considered those factors when it weighed the parties' proposals.

[12] Under s. 56(1) of the *PESRA*, as follows, 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 a panel appointed under section 47.*

[13] Sections 56(2) and (3) of the *PESRA* governed the process by which the members of the Board decided the arbitral award, as follows:

> ***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.*

[14] In what follows, revised or new collective agreement language is indicated in **bold**. A revision that removes existing collective agreement language without replacing it is signified by strikethrough: "-".

A. Article 10 – Check-Off

[15] The employer proposed a change to the check-off provision in the collective agreement as follows (the change is in bold):

> *10.08 - The Employer agrees to continue the past practice of making deductions for other purposes* ***where feasible*** *on the basis of the production of appropriate documentation.*

[16] The employer's proposal was based on its concern that the new pay system (Phoenix) might not allow it to process all deductions, as had been done in the past. It stated that there have been no issues with deductions under the new system. The bargaining agent submitted that there was no demonstrated need for this proposed change.

[17] In the absence of a demonstrated need, the Board declines to award the employer's proposal.

B. Article 12 – Provision of Bulletin Board Space and Other Facilities

[18] The bargaining agent proposed replacing the current provision for access to employer premises (clause 12.03) with a new clause. The current clause is as follows:

> *The Employer may make its premises available to the Alliance provided the following conditions are met:*
>
> *(a) permission is obtained from the Employer prior to entering the premises;*
>
> *(b) there is no additional cost incurred by the Senate.*
>
> *Exceptions may be made where in the opinion of the Employer adherence to this provision would make it virtually impossible for the bargaining agent to communicate with members of the Alliance that it represents;*
>
> *(c) meetings will not be held during the working hours of the employee unless, in the opinion of the Employer, the circumstances are appropriate.*

[19] The bargaining agent proposed this as a replacement:

> ***Representatives of the PSAC shall have access to the Employer's premises at reasonable notice to and free from unreasonable interference from the Employer, at reasonable hours and in a manner that will not interfere with the normal operations of the Employer.***

[20] The Board notes that other bargaining units in the parliamentary precinct have language similar to that proposed by the bargaining agent. It also notes that the provision applicable to the Legislative Clerks bargaining unit with the employer refers to "accredited" representatives. The Board awards the following replacement clause 12.03:

> ***Accredited representatives of the PSAC shall have access to the Employer's premises at reasonable notice to and free from unreasonable interference from the Employer, at reasonable hours and in a manner that will not interfere with the normal operations of the Employer.***

C. Article 15 – Joint Consultation

[21] The bargaining agent proposed the replacement of clause 15.08 ("Policies"). The current provision reads as follows:

> *The Employer agrees that new policies which would affect the majority of employees in the bargaining unit or existing policies similarly affecting the majority of employees in the bargaining unit will not be introduced or cancelled without prior consultation with the bargaining agent.*

[22] This is the proposed replacement:

> ***The Employer agrees that policies will not be introduced, cancelled or amended by the Employer in such a way as to affect employees covered by this Agreement, until such time as the Alliance has been given a reasonable opportunity to consider and to consult on the Employer's proposals.***

[23] In the absence of a demonstrated need for a change to the current language, the Board declines to award the bargaining agent's proposal.

D. Article 21 – Other Leave With or Without Pay

a. Clause 21.12 – Leave with Pay for Family-Related Responsibilities

[24] The bargaining agent proposed changes to clause 21.12 ("Leave with Pay for Family-Related Responsibilities"), as well as rewriting existing entitlements.

[25] The bargaining agent proposed an expansion of the definition of "family" to include a stepchild and ward, grandchild, sibling and step-sibling, mother-in-law, father-in-law, grandparent, and relative for whom an employee has a duty of care.

[26] The employer stated that it agreed to expand the definition of "family" to include employees' grandparents. It stated that recently, it negotiated an agreement with the legislative clerks that contained only minor amendments to the definition of "family".

[27] The bargaining agent also proposed an increase in the number of days of leave to six. The employer opposed the proposal on the basis that five days was the norm in the parliamentary precinct and the federal public administration.

[28] The bargaining agent proposed the replacement of paragraph (b) of this article with new language for existing entitlements, as well as providing additional circumstances for family related leave. The current provision is as follows:

> *(b) The Employer shall grant leave with pay under the following circumstances:*
>
> *(i) an employee is expected to make reasonable effort to schedule medical or dental appointments for dependent family members to minimize or preclude his absence from work, however, when alternate arrangements are not possible an employee shall be granted leave for a medical or dental appointment when the dependent family member is incapable of attending the appointments by himself, or for appointments with appropriate authorities in schools or adoption agencies. An employee requesting leave under this provision must notify his supervisor of the appointment as far in advance as possible;*
>
> *(ii) leave with pay to provide for the immediate and temporary care of a sick member of the employee's family and to provide an employee with the time to make alternate care arrangements where the illness is of a longer duration;*
>
> *(iii) leave with pay for needs directly related to the birth or to the adoption of the employee's child.*
>
> *(iv) leave with pay to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;*
>
> *…*
>
> *(d) Leave granted under the provisions of subparagraph (b) (i) and (ii) is subject to the employee submitting to the Employer satisfactory evidence that alternate arrangements could not be made.*

[29] The bargaining agent's proposed revision is as follows:

> *…* ***the Employer shall grant the employee leave with pay under the following circumstances:***
>
> ***(i) to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;***
>
> ***(ii) to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;***
>
> ***(iii) to provide for the immediate and temporary care of an elderly member of the employee's family;***
>
> ***(iv) for needs directly related to the birth or the adoption of the employee's child;***
>
> ***(v) to attend school functions, if the supervisor was notified of the functions as far in advance as possible;***

> ***(vi) to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;***
>
> ***(vii) to attend an appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.***

[30] The bargaining agent also proposed an additional paragraph, as follows:

> *(d) Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under 21.12 c) ii) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.*

[31] The bargaining agent also proposed the elimination of paragraph (d) of the current agreement. That provision is as follows:

> *(d) Leave granted under the provisions of subparagraph (b) (i) and (ii) is subject to the employee submitting to the Employer satisfactory evidence that alternate arrangements could not be made.*

[32] The Board declines to award an increase in the quantum of days of leave for family related responsibilities as the norm within the parliamentary precinct and the federal public administration is five days of leave.

[33] The Board recognizes that the definition of "family" has recently expanded in other parliamentary precinct collective agreements, including at the House of Commons for the Reporting and Text Processing Sub-groups bargaining unit. The changes to the definition for that agreement were freely negotiated. In the Reporting and Text Processing Sub-groups collective agreement, the parties negotiated the following definition of "family":

> *(a) For the purpose of this clause, family is defined as spouse (or common-law spouse resident with the employee), children (including foster children or children of legal or common-law spouse), parents (including step-parents or foster parents), father-in-law, mother-in-law, brother, sister, step-brother, step-sister, grandparents of the employee, or any relative permanently residing in the employee's household or with whom the employee permanently resides or any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee,*

> *or a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.*

[34] Therefore, the Board grants the bargaining agent's proposal for the definition of "family", with the addition of step-children and grandparents, as follows:

> *(a) For the purpose of this clause, family is defined as spouse (or common-law partner residing with the employee), children (including foster children,* ***step-children*** *or children of spouse or common-law partner), parents (including step-parents or foster parents),* ***grandparents of the employee*** *or any relative permanently residing in the employee's household or with whom the employee permanently resides.*

[35] The Board also notes that the proposed change to the circumstances for granting family leave responsibilities has been freely negotiated at the House of Commons. The Board has determined that the bargaining agent's proposal (as set out earlier in this award) shall be granted and identified as paragraph (b).

[36] Due to the additional circumstances awarded by the Board, the numbering of paragraph (c) of the current agreement is changed as follows:

> *(c) The total leave with pay which may be granted under subclauses (b) (i), (ii), (iii),* ***(iv), (v), (vi), and (vii)*** *shall not exceed five (5) days in a fiscal year.*

[37] In light of the accepted changes to the circumstances of granting leave, the current paragraph (d) is no longer relevant, and the Board awards the deletion of this paragraph.

[38] The bargaining agent's proposed paragraph (d) is consistent with freely negotiated changes to collective agreements in both the parliamentary precinct and the federal public administration. Accordingly, the Board awards the bargaining agent's proposal as set out earlier in this award.

b. Clause 21.18 – Medical and Dental Appointments

[39] The employer proposed changes to this clause. The current provision is as follows:

> *An employee shall be granted three (3) hours per visit with pay 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.*

[40] The employer proposed the following changes:

> *An employee shall be granted **up to** three (3) hours per visit with pay to attend **routine or periodic** medical or dental appointments. Any hours spent at the medical or dental appointments beyond the three (3) hours ~~may, at the employer's discretion,~~ **shall** be deducted from the employee's sick leave **bank**.*
>
> ***When medical or dental appointments are related to ongoing treatments over a prolonged period, all time spent attending such appointments shall be deducted from the employee's sick leave bank.***

[41] The employer submitted that the addition of "up to" three hours was necessary because employees were taking a full three hours for medical appointments.

[42] The employer also submitted that it should be clarified that this article applies only to routine or periodic medical or dental appointments and that when appointments are related to ongoing treatments over a prolonged period, all time spent attending such appointments shall be deducted from the employee's sick leave bank.

[43] The employer stated that the intent of its proposal was to ensure that employees use this leave for appointments of a preventative nature and not for appointments when they are ill or injured. The employer submitted that the time spent at non-preventative appointments clearly falls under the provisions of the sick leave article and should not be covered under this clause as well. It also stated that it wanted to clarify its existing practice that any hours spent at appointments beyond three hours are deducted from employees' sick leave banks. The employer stated that in the past, in some instances, supervisors did not deduct from the employee's sick leave bank those hours beyond the three hours set out in this clause.

[44] The employer also submitted that its proposal sought to clarify that when appointments are related to ongoing treatments over a prolonged period, all the time spent attending such appointments shall be deducted from the employee's sick leave bank. The employer referenced guidance from the Treasury Board to departments in the federal public administration.

[45] The bargaining agent submitted that there was no demonstrated need for the proposed changes to the article.

[46] 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 employer has not demonstrated the need for the other parts of its proposal.

[47] Accordingly, the Board orders the following revised clause:

> *An employee shall be granted **up to** three (3) hours per visit with pay 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.*

E. Article 22 – Sick Leave

a. Clause 22.01 –Credits

[48] The bargaining agent proposed an increase in the rate at which employees earn sick leave credits from 8.75 hours to 9.92 hours for each calendar month in which the employee receives pay for at least 70 hours.

[49] The bargaining agent submitted that its proposed formula for sick leave entitlement was consistent with the standard for shift workers elsewhere in the federal public administration. The employer submitted that the current rate is normative for bargaining units in the parliamentary precinct.

[50] The Board declines to award the bargaining agent's proposal as it is not consistent with the earning of sick leave credits in other parliamentary precinct collective agreements.

b. Clause 22.03(c) – Medical certificates

[51] The employer proposed a change to this clause, as follows:

> *An employee may be asked to produce a medical certificate only for periods of absence in excess of three (3) consecutive days **for any period in which the employee has been absent for medical reasons for less than nine (9) days in a calendar year. When an employee has been absent for medical reasons for nine (9) days***

> ***or more in a calendar year, he or she may be asked to provide a medical certificate, at the employer's discretion.***

[52] The employer submitted that the current collective agreement language prevents it from managing "excessive and abusive absenteeism". It submitted that the current language provides no option when abuse is suspected. It stated that because of this lack of recourse, it has had to refer cases of excessive absenteeism to a third party for management. It submitted that allowing it to request medical certificates when sick leave usage becomes suspect would be a simpler and faster way to address the issue. The employer submitted that it should have a mechanism to monitor and manage its employees' attendance. It noted that the current collective agreement provision is the only provision in the parliamentary precinct that does not provide for any safeguard to prevent abuse.

[53] The bargaining agent submitted that the current clause has been in effect for only three years and that in negotiations, it was not provided with examples of why this proposal was necessary. It also submitted that this was a "dramatic departure" from what was awarded in the previous round. It provided the example of an illness of more than nine days resulting in the requirement to provide a certificate for every subsequent sick day for the entire year.

[54] The Board notes that other collective agreements for parliamentary employers contain an exception to the allowance of no medical certificates for absences of three days or less. However, the Board finds the employer's proposal overbroad. In the proposal, a request for a medical certificate for a period of less than three days could become automatic after the employee reaches nine days of sick leave in a calendar year, as there is no requirement that the employer have reasonable cause to believe that an employee has abused sick leave. The Board recognizes that an employee can take more than nine days of sick leave without abusing the sick leave provisions in the collective agreement. Therefore, in keeping with other collective agreement provisions in the parliamentary precinct, the Board awards the following article:

> ***Unless the Employer has reasonable cause to believe that the employee has abused his or her sick leave entitlement,*** *an employee may be asked to produce a medical certificate only for periods of absence in excess of three (3) consecutive days.*

F. Article 26 – Shift Premium

[55] The bargaining agent proposed these increases to shift premiums:

> *Effective July 1, 2018, a premium of two dollars and thirty-five cents ($2.35) for all hours worked.*
>
> *Effective July 1, 2019, a premium of two dollars and forty cents ($2.40) for all hours worked.*

[56] The bargaining agent submitted that a majority of the employees at issue are shift workers. Premiums have remained unchanged since 2014. The bargaining agent noted that shift premiums for the Parliamentary Protective Services' (PPS) Detection Specialists and Supervisors bargaining unit increased to $2.40 per hour as of April 1, 2019 (2020 FPSLREB 70), and that the same increase was awarded to the House of Commons Security Services Employee Association (SSEA) protective officers/constables (2019 FPSLREB 104).

[57] The employer submitted that the bargaining unit did not show a demonstrated need to increase the shift and weekend premiums. It noted that the current premiums of $2.25 are in line with those paid to other parliamentary bargaining units. It also noted that the current premiums are higher than those in the federal public administration, with only one bargaining unit recently negotiating an increase to $2.25. The employer submitted that the arbitral awards relied on by the bargaining agent were not normative or consistent with the requirement under the *PESRA* that an arbitration board must give due regard to maintaining comparability of conditions of employment with those applicable to persons in similar employment in the federal public administration.

[58] In light of the predominant shift premium amounts both in the parliamentary precinct and the federal public administration, the Board declines to award the bargaining agent's proposal.

G. Article 29 – Travelling Time

[59] The employer proposed the following change to clause 29.08 (Transportation):

> *Employees required to work overtime beyond 20:00 hours are entitled to ~~receive free~~* ***be reimbursed for the cost of the*** *transportation back to their residence providing they have not reported to work using their privately owned vehicle.*

[60] The employer submitted that reimbursement was the current practice. The bargaining agent objected to the change in language on the basis that the provision has been in the collective agreement for many years and that there was no demonstrated need for the change.

[61] The Board awards the employer's proposal. The reimbursement of transportation expenses is the consistent practice at the employer. The bargaining agent identified no issues with the current practice. The Board views this change as only a housekeeping measure.

H. Article XX – Sessional Indeterminate Employees

[62] Sessional indeterminate employees ordinarily work more than 700 hours but less than 1820 hours in a calendar year. By working more than 700 hours in a calendar year, a sessional indeterminate employee is considered an "employee" within the meaning of the *PESRA* and is a member of the bargaining unit. The parties have proposed the addition of a new article to address the working conditions related to these new employees.

[63] The bargaining agent's proposal differs from the employer's proposal in two areas. The bargaining agent proposed the following additional language:

> *(m) The Employer agrees not to artificially create a break in service or reduce a person's scheduled hours in order to prevent said person from working 700 hours and therefore achieving 'employee' status.*

[64] The bargaining agent stated that this provision exists in collective agreements at the House of Commons, and the employer provided no cogent rationale for why such a basic protection contained in agreements with virtually identical contexts should not be included.

[65] The employer submitted that the bargaining agent's proposal (m) was based on the provision for the House of Commons, where the hiring process for sessional employees is different. The employer stated that when it hires sessional employees, they become part of the bargaining unit immediately, while at the House of Commons, they enter the bargaining unit only after reaching 700 hours of employment.

[66] The bargaining agent also proposed that a correction for inconsistencies in assigned hours for superannuation purposes would be corrected "no more than once per fiscal quarter". The employer proposed that corrections could be made once per calendar year.

[67] The bargaining agent submitted that the employer's proposal for corrections was inconsistent with the collective agreement provision at the House of Commons as well as with other federal employers. It submitted that its position was consistent with the regulations applying to the corrections as well.

[68] The employer submitted that a calendar year is more representative of a normal Senate sitting year for the purpose of correcting inconsistencies, if any. It stated that fiscal quarters would be too frequent as activity levels at the employer may vary.

[69] The Board does not award the bargaining agent's proposal (m) on the basis that employees are immediately included in the bargaining unit upon hiring. The Board accepts the bargaining agent's proposal for corrections for superannuation purposes on the basis that the timely correction of errors that have a potential impact on pension benefits should be encouraged.

[70] Accordingly, the new article awarded is as follows:

> ***XX. Sessional Indeterminate employees are employees hired and expected to work for more than 700 hours per year while the Senate is in session. The creation of Sessional Indeterminate positions shall not result in a reduction of hours for full-time or part-time indeterminate employees.***
>
> ***The following shall apply to Sessional Indeterminate employees:***
>
> ***Hours of Work***
>
> ***a) The 'assigned hours of work' for sessional employees are based on sitting weeks per year.***
>
> ***b) Employees shall be paid at the hourly rate of pay for all hours of work performed up to seven (7) hours in a day or up to thirty-five (35) hours in a week.***
>
> ***c) The days of rest provisions in this Collective Agreement apply only in a week when the employee has worked five (5) days and a minimum of thirty-five (35) hours in the week.***
>
> ***d) When such employees are required to work on a day which is prescribed as a designated paid holiday listed in clause XX of this Agreement, the employees shall be paid time and one-half***

(1½) the hourly rate of pay for the first seven (7) hours worked on the holiday and double (2) time thereafter.

Overtime

e) (i) Overtime means authorized work performed in excess of the normal daily or weekly hours of work of a full-time employee as specified by this Agreement but does not include time worked on a holiday.

(ii) Subject to clause (e)(i) when such employees are required to work overtime they shall be paid overtime as specified by this Agreement.

Leave Entitlements

f) Unless otherwise specified in this Article, employees shall be entitled to the benefits provided under this Agreement, in the same proportion as their assigned hours of work.

g) Continuous employment for employees shall include all time in the bargaining unit pro-rated in the ratio of the employees' hours of work of eighteen hundred and twenty (1820 hours).

h) Bereavement leave can only be claimed on days when the employee would normally be scheduled to work. Such days shall not be prorated.

i) Sessional employees will earn sick leave credits pro-rated on their assigned hours of work, for each month in which they receive pay for at least twice the weekly assigned hours of work. Earned sick leave credits will be credited on the fifteenth (15th) of the following month. Sick leave credits can only be claimed on days when the employee would normally be scheduled to work.

j) Sessional employees will be entitled to family-related leave prorated based on the 'assigned hours of work'.

k) Sessional employees shall receive six per cent (6%) in lieu of earning vacation leave credits. Sessional employees may not take annual leave (unpaid) when the Senate is sitting.

l) Sessional employees shall not be paid for designated holidays but shall be paid a premium of four point six (4.6%) percent for all straight time hours worked.

Pension and benefits

m) Sessional employees will participate in the superannuation and insured benefit programs.

Assigned Work Week

n) Upon request, the Employer shall notify an employee of his or her assigned work week as reported for superannuation purposes.

o) In the event that an employee believes that his or her assigned work week as reported for superannuation purposes is inconsistent with his or her actual hours, the employee may

> ***request a review by the Employer. In the event that there are inconsistencies, the Employer will correct such inconsistencies accordingly, subject to any applicable statutory limitations. Such correction shall occur no more than once per fiscal quarter.***

I. Article 43 - Duration

[71] The employer proposed that the collective agreement expire on September 30, 2022. The bargaining agent proposed an expiry date of October 1, 2021.

[72] The Board has determined that the duration of the award should be until September 30, 2022. This will not only give the parties a pause before the next round of negotiations but also, it is in keeping with the expiry of other collective agreements in the parliamentary sector.

J. Appendix A – Rates of Pay

[73] The bargaining agent proposed the following wage adjustments:

Effective October 1, 2017, before the general economic increase: 0.75%

Effective October 1, 2018, before the general economic increase: 0.8%

Effective October 1, 2019, before the general economic increase: 0.2%

[74] The bargaining agent proposed the following general economic increases to all rates of pay:

Effective October 1, 2017: 1.5%

Effective October 1, 2018: 2.0%

Effective October 1, 2019: 2.0%

Effective October 1, 2020: 1.5%

[75] The employer proposed the following general economic increases to all rates of pay:

Effective October 1, 2017: 1.25%

Effective October 1, 2018: 2.8%

Effective October 1, 2019: 2.2%

Effective October 1, 2020: 1.5%

Effective October 1, 2021: 1.5%

[76] As noted by the arbitration board in *Public Service Alliance of Canada v. House of Commons*, 2021 FPSLREB 45, wage adjustments have often been used as "… surrogates for, or supplements to, general economic increases." The bargaining agent provided no compelling reason for separate wage adjustments, and the Board declines to award the proposed wage adjustments.

[77] The Board notes that the parties are in fundamental agreement with the economic increases for 2018, 2019, and 2020. With respect to the patterns of settlements in the parliamentary sector, the Board awards the following:

Effective October 1, 2017: 1.5%

Effective October 1, 2018: 2.8%

Effective October 1, 2019: 2.2%

Effective October 1, 2020: 1.5%

Effective October 1, 2021: 1.5%

K. Appendix XX – Memorandum of Understanding with respect to Lump Sum Payment

[78] The bargaining agent proposed the following new appendix:

> *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 and 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 October 1st 2017 and the date of the signing of this Agreement.*
>
> *3. Former employees will be eligible, following the submission of a claim and validation, to be compensated on the basis of clauses 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 pertains.*

[79] The bargaining agent submitted that its proposal for a lump-sum payment of $2500 replicates the settlement that the PSAC negotiated with the Treasury Board for the federal public administration as compensation due to the damages that arose from the introduction of the Phoenix pay system. It submitted that management had recognized that Senate employees had had compensation problems. The bargaining agent provided some evidence of the impact of Phoenix on Senate employees through transcripts of evidence before a Senate committee and through news reports.

[80] The bargaining agent also submitted that employees at the Canada Revenue Agency (CRA) received damages even if they had not experienced Phoenix-related problems.

[81] The employer responded that it renewed the collective agreement with the other bargaining agent without any Phoenix damages. It also noted that the Board rejected the same proposal in a recent House of Commons arbitration decision (2021 FPSLREB 45). The employer further submitted that it did not face pay issues of the same magnitude as did employees in the federal public administration.

[82] The Board agrees that it had more evidence before it on the Phoenix issue than the Board had in *Public Service Alliance of Canada v. House of Commons*. In that decision, the Board noted as follows (at paragraph 82):

> *… 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 ….*

[83] The employees of the Senate were not able to escape all the frustrations associated with the new pay system. However, the employer was responsive to the challenges. In the Board's view, the bargaining agent has not provided evidence of problems of "similar or substantial extent" to those experienced in the federal public administration.

[84] With respect to the CRA example, the Board notes that employees at the CRA represented by the bargaining agent received a smaller general economic increase for 2020 than the Board has awarded in this decision.

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

L. Appendix XX – Memorandum of Understanding with respect to Implementation of Collective Agreement

[86] The bargaining agent proposed the following new appendix:

> *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 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.*
>
> *c. 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.*

[87] The bargaining agent submitted that recent settlements in the federal public administration by PSAC-represented bargaining units included robust articles concerning the implementation of the new collective agreements. It noted that the collective agreements had expired several years ago and that additional delays in pay were anticipated due to Phoenix-related pay system issues. The bargaining agent submitted that employees should be compensated in line with those PSAC members employed in the federal public administration.

[88] The employer submitted that if it is unable to implement the arbitral award within the 90-day period set out in the *PESRA*, there is a clear mechanism in the *PESRA* for seeking an extension (s. 59), or it and the bargaining agent can attempt to negotiate a mutually agreeable resolution for an extended implementation period. If these steps are unsuccessful, the bargaining agent can make a complaint that would be addressed by the Board.

[89] Normally, the *PESRA* requires an employer to implement the terms of an arbitral award within 90 days of the date on which the award becomes binding on the parties, "… or within such longer period as, on application to the Board by either party, appears reasonable to the Board." In its proposals, the employer did not request an extended implementation period.

[90] The Board notes that the bargaining agent requested an initial payment of $500 at the 90-day implementation date. This is the standard implementation period and not an extended implementation date. The Board finds that there is no basis to provide a payment at the 90-day mark. The Board also notes that there is no demonstrated need for a longer implementation period. In the event that the employer is unable to meet the 90-day implementation period, recourse is available under the *PESRA*.

[91] The Board has determined that the bargaining agent's proposal will not be included in the collective agreement.

M. Article XX - Bilingual Bonus

[92] The bargaining agent proposed a bonus of $800 for any employee occupying a position identified as bilingual.

[93] The proposed bilingual bonus is not a feature of existing collective agreements for parliamentary employees. Arbitration boards have consistently declined to introduce a bilingual bonus to the parliamentary sector.

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

III. General

[95] The Board will remain seized of this matter for a period of three months, in the event that the parties encounter any difficulties implementing the arbitral award.

September 9, 2021.

Ian R. Mackenzie,
for the Federal Public Sector
Labour Relations and Employment Board