

Board file: 590-02-44769

**In the matter of a Public Interest Commission established under
the *Federal Public Service Labour Relations Act***

Between:

Treasury Board of Canada

and

The Public Service Alliance of Canada

(Technical Services Group)

Before:

William Kaplan, Chair
Lynn Harnden, TB Nominee
Gary Cwitco, Alliance Nominee

Appearances

For PSAC:

Seth Sazant, Negotiator
Silja Freitag, Research Officer
PSAC

For Treasury Board:

Danielle Chaine
Negotiator, Compensation & Collective Bargaining
Management, Treasury Board of Canada

The matters proceeded to a hearing held by Zoom on December 9, 2022.

Public Interest Commission Report

Introduction

[1] This is the Report of a Public Interest Commission (PIC) established under the *Federal Public Sector Labour Relations Act* (FPSLRA) relating to the renewal of the collective agreement between the Public Service Alliance of Canada (Alliance) and the Treasury Board of Canada (TB) for the unit of the Core Public Administration referred to as the Technical Services (TC) Group. The TC Group comprises approximately 11,000 positions, 75% of which are classified as General Technical (GT) and Engineering and Scientific Support (EG).

History of Negotiations

[2] The collective agreement for the TC Group expired on June 21, 2021. The parties met in collective bargaining in June, September and November 2021, and then in January, March, May and October 2022 (the Common Issues Table bargaining took place separately). In total, the parties met on 32 occasions; however, agreement was only reached on a handful of housekeeping items leaving outstanding all the TC Group proposals: 89 Alliance and 12 TB. While the context is disputed, it is quite clear that whatever collective bargaining had taken place by the time the Alliance declared impasse on May 18, 2022 (or since), no real progress had been made in resolving outstanding issues.

[3] Notably, the Alliance was opposed to the establishment of a PIC. Indeed, the Alliance wrote to the Coordinator of Mediation and Dispute Resolution Services at the FPSLREB on June 14, 2022, making clear that a PIC would not be an effective means of assisting the parties in reaching a collective agreement (and attaching evidence demonstrating a generally low degree of take-up by the parties of PIC recommendations). In its view, a PIC would only delay reaching a collective agreement when, given inflation and other reasons, time was of the essence. It, therefore, asked that no such appointment be made.

[4] On the other hand, the TB was fully in favour of the establishment of a PIC. A failure to do so would put the union in a strike position without sufficient and serious bargaining, not to mention consideration of the public interest. TB also sought a return to negotiations with a reasonable number of key priorities and a reduced number of proposals. Moreover,

... the Employer continues to seek to understand “the why” behind each of the Bargaining Agent’s many tabled proposals ... Unfortunately, the Bargaining Agent has not provided the Employer with information, evidence, or justification with respect to many of their proposals ... this supports evidence-based discussions that lend themselves to the parties being able to identify a potential path to settlement.

[5] On June 29, 2022, the Chairperson of the FPSSLREB advised the parties that she was establishing a PIC (and she also appointed a mediator to assist in the period prior to the PIC hearing). The Chairperson clearly concluded, in accordance with section 162(2), that the bargaining had progressed to the point where it was appropriate to initiate the PIC process. Put another way, the Chairperson determined – after reviewing the extensive written submissions on point – that it was time to appoint a PIC. Mediation sessions at the TC Table (as well as the others) thereupon occurred but, yet again, progress was nominal. After this PIC was established on August 15, 2022, the parties filed detailed written submissions and the matters in dispute proceeded to a hearing held by Zoom on December 9, 2022.

The Legislative Context and Position of the Parties

[6] We begin with our mandate: “As soon as possible after being established the public interest commission must endeavour to assist the parties to the dispute in entering into or revising a collective agreement.” Our work is also guided by the factors listed in section 175. Attention is invariably paid to factors (a) through (e). But the introductory sentence is also relevant and applicable: “In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, *in addition to any other factors that it considers relevant*” (our emphasis). Our task therefore is to come up with a Report that will assist the parties in reaching a collective agreement and, in doing so, taking into account the enumerated factors along with any others we consider relevant.

[7] Normally, PICs approach their task by making extremely specific or, sometimes, more general, recommendations about the proposals both parties have brought forward. They do this because by bringing their expertise to bear by commenting on the outstanding proposals they can through recommendations provide guidance to the parties about where a potential settlement might lie. In this case, for the reasons discussed below, we have concluded that picking and choosing among proposals, and making recommendations about some and not others, would not be of particular use in helping the parties to reach a collective agreement.

[8] First, there are a large number of outstanding issues. This is not surprising. The TC Group is large and extremely heterogenous. The bargaining unit has an obligation to represent the interests of many relatively small groupings of employees. Clearly, not all of the union’s proposals will eventually be included in the settled collective agreement. Nevertheless, the sheer number of outstanding issues makes resolution challenging particularly given the absence of identified priorities – an observation that equally applies to the TB proposals (albeit in the context of a much smaller number of outstanding issues). Both parties acknowledge this conundrum.

[9] Second, and making our task even more difficult is the dramatically different lenses through which the parties view the governing criteria set out in Section 175 of the FPSLRA:

- **(a)** the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
- **(b)** the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public interest commission considers relevant;
- **(c)** the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
- **(d)** the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
- **(e)** the state of the Canadian economy and the Government of Canada's fiscal circumstances.

[10] In TB's view, as set out in detail its brief (together with supporting evidence), there were, for example, no recruitment and retention challenges. In its submission, based on the data it brought forward, the compensation levels for the TC Group are appropriate to attract and retain employees and that above-pattern increases or allowances were not needed in any of the classifications that the Alliance proposed be upwardly adjusted. TC Group wages were highly competitive with the external labour market and there was, likewise, no internal relativity issue to be addressed. Finally, while Canada was recovering well from the economic damage caused by the pandemic, the economic situation was turbulent with serious issues including the possibility of a recession needing to be addressed.

[11] Overall, in TB's submission, there was a strong case for compensation restraint (a conclusion that was reinforced when Alliance demands were placed in the overall context of prevailing major wage settlements in all jurisdictions, private and public, for the period under review). Simply put, the Alliance monetary proposals for the TC Group alone were, TB advised, conservatively costed at approximately \$300M or 28.33% of the TC wage base and, therefore, inconsistent, indeed contrary to, the appropriate application of the statutory criteria. They were not, by any measure, fair and reasonable.

[12] The Alliance view can be described as the polar opposite of that expressed by TB. The job market for TC Group employees was highly competitive – in general, the job market was tight – and there was demonstrable evidence of recruitment and retention challenges in many job classifications identified and set out by the Alliance. Making matters even worse, there were numerous examples of government

employees performing virtually identical jobs but receiving different wages with no explicable explanation offered when one was requested. The Canadian economy had not only rebounded but was robust.

[13] Inflation, however, needed to be immediately addressed given its corrosive impact on employee wages, and this was increasingly reflected in annual wage settlements across Canada in both public and private negotiated agreements, settlements which were obviously intended to catch up to inflation. The Alliance took specific issue with the TB costing of its proposals pointing out that certain incorrect TB assumptions and methodologies inflated the actual amount. When all these factors and other relevant issues were considered, the only appropriate outcome in the Alliance's view was a recommendation that its proposals be agreed to. At the very least, a Report, even a barebones one, had to be issued with no delay so that bargaining could more effectively resume (In its view, TB's various offers in collective bargaining failed to address any of the Alliance's key priorities and were calculated to attract rejection given the TB's take it or leave it approach).

Discussion

[14] In making our Report we are required to consider factors (a) through (e) along with any other factor we consider relevant. We have concluded that the time is not yet ripe for productive collective bargaining.

[15] It is clear that the parties are far apart and have divergent explanations for the distance. We have reached the conclusion that it would not be particularly helpful, given this context, to wade into the granularity of the outstanding TC Group proposals. Put another way, specific recommendations on particular proposals would not in our view assist in achieving our statutory mandate of assisting the parties in reaching a collective agreement.

[16] The first thing that has to happen is that the common issues at the Common Issues Table have to be resolved. Until that process is complete, the parties are effectively restrained from engaging in full collective bargaining. The Chairperson of the FPSLREB could have declined to appoint a PIC and could have directed the parties to continue bargaining. She obviously concluded, as do we, that bargaining needs to move on. Once the common issues have been settled, that will provide an overall architecture for resolution of the other issues at the TC Table. Until that occurs, bargaining is in a vacuum. The second thing that has to happen is that both parties need to identify their priorities so they can engage in more narrow and focused discussions even in the current context where, by necessity, the Alliance must advance numerous proposals given the composition of the bargaining unit.

[17] In the Alliance’s view, virtually all classifications within the TC Group are underpaid on both on external and internal comparability basis. In addition, the Alliance makes the case for specific additional wage adjustments and allowance adjustments for certain classifications. The TB disagrees and it gave some of the reasons for its various disagreements in its brief and at the hearing. In our view, these issues need to be addressed in context, and that context must include the resolution of the common economic issues followed – in a collective bargaining process – by a full and frank exchange about the justification for the proposals; a process where questions can be asked and answered together with compromise movements by both parties. The TB proposals need to be part of this which, after all, is nothing less than the give and take of free collective bargaining.

[18] It does not escape our attention that many of the outstanding issues in this PIC were also at issue in previous PICs (reinforcing our view that free collective bargaining, not this process, is the best bet for resolving outstanding issues in dispute). In our view, once the major economic items have been resolved, if the parties identify priorities, exchange views and information and then moderate demands, there appears to us to be many areas of potential compromise. But that will require a reset to collective bargaining – in whatever fora – with a focus on priorities and compromise. We are also of the view that many of the classification adjustment proposals might be resolved through the ongoing job evaluation reform, something which would obviously benefit from some expedition given its projected timelines.

Recommendations

1. We recommend that the twenty-five (25) housekeeping items agreed to and signed off during bargaining/mediation form part of any final negotiated settlement.
2. We recommend that, in whatever forum, the parties focus their efforts on identifying among the outstanding issues their true priorities and then meet to actually collectively bargain outcomes.

DATED at Toronto this 13th day of January 2023.

“William Kaplan”

William Kaplan, Chair

“Lynn Harnden”

Lynn Harnden, TB Nominee

“Gary Cwitco”

Gary Cwitco, Alliance Nominee