

IN THE MATTER OF AN INTEREST ARBITRATION
UNDER THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*

BETWEEN:

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
(“OSFI”)

and

PUBLIC SERVICE ALLIANCE OF CANADA
(the “Alliance”)

Before: William Kaplan, Chair
Kathryn Butler Malette, Employer Nominee
Joe Herbert, Union Nominee

Appearances

For the Employer: Jock Climie
Emond Harnden
Barristers & Solicitors

For the Union: Laneydi Martinez Alfonso
Negotiator, PSAC

Djimy Theodore
Research Officer, PSAC

The matters in dispute proceeded to a hearing held by Zoom on December 8, 2022.
The Board met in Executive Session January 20, 2023

Report or Award

Introduction

[1] This Board of Interest Arbitration was consensually convened to resolve the remaining collective agreement issues in dispute between the Office of the Superintendent of Financial Institutions (employer) and the Public Service Alliance of Canada (union). The employer is a federal government agency responsible for regulating approximately 400 financial institutions and 1200 pension plans. The union represents 28 employees working in a variety of secretarial and clerical positions such as bookkeepers, administrative and human resource assistants, and facilities coordinators in what is referred to as the Administrative and Support Group. The previous collective agreement expired on March 31, 2018. Notice to bargain was served by the union the following December. The parties met in collective bargaining in September and October 2021 and February, March, and May 2022. Agreement was reached on most issues in dispute, but seven outstanding issues remain including wages and term. An impasse was declared on May 17, 2022, and the union filed for arbitration in June. This is the first time since the union was certified in 1988 that the parties have had to resort to interest arbitration.

[2] In determining the outstanding issues in dispute, the Board has paid careful attention to the criteria that govern adjudications of this kind. The statutory criteria under Section 148 of the *Federal Public Service Labour Relations Act* were fully argued by the parties in their written submissions and at the hearing held by Zoom on December 8, 2022. We have also paid careful attention to the normative interest arbitration criteria that apply, most particularly replication: the replication of free collective bargaining as seen by other unionized employees with this employer and in the sector more generally.

[3] In its submissions, the union took the position that its proposals would ensure that compensation and other terms and conditions of employment were comparable to those of other federal service employees and would, moreover, advance internal comparability: it pointed to governing terms and conditions with the main union (PIPSC) at this employer. It also drew attention to a recently released unanimous interest arbitration decision: *Public Service Alliance of Canada and Statistics Survey Operations* (FPSLREB 585-24-44403 October 28, 2022) and argued that the approach taken there should be followed here.

[4] Independent of all that, the union was of the view that its proposals were necessary, reasonable, and appropriate. Some of its proposals, for example vacation carry over or the proposed increase to the overtime meal allowance, would come at virtually no cost. These proposals were amply justified by all relevant comparators and were long overdue (the amount of the overtime meal allowance not having increased for sixteen years). In terms of wages, the union spent some time in its brief and at the hearing in reviewing inflation and its persistent and corrosive impact on wages and asked that this reality be addressed in the final year of the collective agreement.

[5] For its part, the employer argued that the appropriate comparators were other PSAC-represented bargaining units within the core public service and in separate agencies. It did not accept that a bargaining outcome somewhere could and should dictate bargaining outcomes everywhere. More specifically, the employer did not agree that the existence of two bargaining units in a single employer meant that each of them received the best of the outcomes bargained in both. Instead, what governed were bargaining outcomes achieved at other PSAC tables based on recognized and established comparators, not PIPSC outcomes in this workplace. Moreover, the employer took the position that there was no demonstrated need for some of the union proposals, for example, vacation leave carry over (even if found in comparable collective agreements), while other union asks such as the union's overtime proposal – giving employees the sole right to decide whether earned overtime was taken in cash or lieu – was a breakthrough and without a comparator anywhere in the federal public service. Another proposal, the employer observed, namely, the union proposal to eliminate the three-day trigger for receiving acting pay was non-normative and completely unworkable.

[6] Overall, what mattered most in the employer's view were the established patterns that were now effectively governing as this was the last remaining case from the most recent bargaining cycle. And, in that regard, and assuming the Board was inclined to award a fifth year, the employer took the position that the only rational outcome was a me-too clause as this 28-person bargaining unit should await negotiated or awarded outcomes for other PSAC units for 2022.

Award

[7] Obviously, wages were a major matter in dispute, and it is useful to set out the respective positions of the parties.

[8] **The wage increases offered by the Employer were as follows:**

Retroactive to April 1, 2018: 2.8%

Retroactive to April 1, 2019: 2.2%

Retroactive to April 1, 2020: 1.5% (offset to 1.35% by any economic improvements beyond wages)

Retroactive to April 1, 2021: 1.5%

[9] **The wage increases requested by the Union are as follows:**

Retroactive to April 1, 2018: 2.8%

Retroactive to April 1, 2019: 2.2%

Retroactive to April 1, 2020: 1.5%

Retroactive to April 1, 2021: 1.5%

Retroactive to April 1, 2022: 5.3%

[10] In our view, there is an established pattern which we have followed for the first four years of the agreement. We are also of the opinion that there is a benefit to a longer term and have exercised our statutory discretion to provide for an additional year beyond that proposed by the employer with the important caveat of a “me-too” with the PA Group (as has been done elsewhere. See: *Statistics Survey Operations & PSAC* (referred to above)). There were a number of other issues in dispute, and having carefully considered the submissions of the parties, and paying close attention to relevant comparators, we have determined that some modest changes are in order and have, accordingly, improved the number of hours of unused vacation available for carryover (consistent with existing norms and without any increase in cost). The adjustment to the meal allowance is normative, modest, and also long overdue – as noted by the union, it was last changed 16 years ago – and it does not, by any measure, represent a significant cost increase (in 2021, for example, 8 employees were paid for 42 meals).

[11] We direct that the collective agreement settled by this award contain the unamended provisions of the predecessor collective agreement, the items agreed upon in bargaining and the terms of this award. Any proposal not specifically dealt with in this award is deemed dismissed.

Term

[12] April 1, 2018 to March 31, 2023.

[13] Wages - Appendix A

April 1, 2018: 2.8%

April 1, 2019: 2.2%

April 1, 2020: 1.5%

April 1, 2021: 1.5%

April 1, 2022: 1.5% Interim. Me-too with PA Group for 2022 increase, retroactive to April 1, 2022.

[14] Retroactivity to current and former employees within sixty days from issue of award.

Article 19.08 & 19.10

[15] Union proposals awarded.

Article 26.11

[16] Increased to \$12.00 effective date of award.

Appendix B - Memorandum of Understanding

[17] Replace current 1-4 with 1-5 of PIPSC Appendix D effective date of award.

[18] Retroactivity on pre-existing performance pay rates to April 1, 2020.

Conclusion

[19] At the request of the parties, we remain seized with respect to the implementation of our award.

DATED at Toronto this 31st day of January 2023.

“William Kaplan”

William Kaplan, Chair

I partially dissent.

Kathryn Butler Malette, Employer Nominee

“Joe Herbert”

Joe Herbert, Union Nominee