

Board file: 590-02-44770

**IN THE MATTER OF A PUBLIC INTEREST COMMISSION
UNDER THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT***

and a Request for the Establishment of a Public Interest Commission
affecting the Public Service Alliance of Canada and the Treasury Board,
in relation to the Education and Library Sciences Group

Before: Jesse Kugler, Chairperson

J. D. Sharp, Employer Nominee

Bob Kingston, Bargaining Agent Nominee

For the Bargaining Agent:

Erin Sirett, Negotiator

Sarah Allen, Research Officer

For the Employer:

Luc Presseau

Michael Gager – Analyst

Yanan Wang – Analyst

Gregory Enright - Analyst

Hearings held via Zoom on November 21 and December 12-13, 2022

Background

1. This is a report of a Public Interest Commission (the "Commission") established under the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the "Act") relating to the renewal of a collective agreement between Public Service Alliance of Canada (PSAC) and the Treasury Board, for the unit referred to as the Education and Library Science (EB) group.

2. PSAC is the exclusive bargaining agent of the following unit EB employees:

"The education and library science group comprises positions that are primarily involved in the instruction of people of different age groups in school or in out of school programs; the application of a comprehensive knowledge of educational techniques to the teaching in counseling of students in schools into the education, training and counseling of youths and adults in out of school programs, to the conduct of research into the provision of advice related to education; And the application of a comprehensive knowledge of library and information science to the management and provision of library and related Information Services."

3. As of March 31st, 2021, the EB bargaining unit covered 1113 employees broken down into the following categories:

- Education (ED) 852
- Library Science (LS) 226
- Educational Support (EU) 35

4. The Education (ED) classification is primarily involved in the education and counseling of students in schools and youths and adults in out-of-school programs, conducting educational research and providing advice related to education. This group is broken down into several subgroups, namely:

- Language Teaching (ED-LAT) – involves teaching, including the supervision of teaching, of an official or foreign language to members of the public service;
- Elementary and Secondary Teaching (ED-EDS) – involves teaching and counseling of students in schools, or teaching and counseling of youths and adults, and includes the supervision of that work; and
- Education Services (ED-EDS) - planning, development, direction or evaluation of education programs, the conduct of educational research and the provision of advice.

5. The Library Science (LS) classification comprises positions that are primarily involved in the application of library and information science to the management and provision of library and related Information Services.

6. The Educational Support (EU) classification consists of positions that are involved in the instruction of people of different age groups in school or an out of school programs. They may help instruct students at a level below that of teachers (e.g., teacher's aides), Assistant instruction of a second language or help deliver physical education programs.

The Structure of Collective Bargaining and the History of Negotiations

7. While there are several different bargaining agents that represent employees employed in the core public administration (CPA), PSAC is the largest representing approximately 128,987 of the 234,713 CPA employees as of March 2021.

8. The CPA employees represented by PSAC fall into one of five bargaining units: (i) Program and Administrative Services (PA) (96,698 employees); (ii) Technical Services

(TC) (10,892 employees); (iii) Operational Services (SV) (10,464 employees); (iv) Border Services (FB) (9,805 employees); and (v) Educational and Library Science (EB) (1,128 employees). The EB group is by far the smallest in size.

9. Collective bargaining between PSAC and the Treasury Board for the PA, TC, SV and EB bargaining units is conducted at separate bargaining tables but contemporaneously and in a coordinated manner. Further, as some of the issues raised by the parties across the four bargaining tables overlap, PSAC and the Treasury Board have reasonably agreed those overlapping or common issues be bargained separately from the issues specific to each of the four separate bargaining units (the "Common Issues Table"). In this round of bargaining, the Common Issues Table is being conducted jointly with the PA table.

10. The parties have identified thirty-five common issues that they have agreed constitute common issues to be negotiated at the Common Issues Table. As noted in the Treasury Board's written submissions to the Commission, the parties "agreed that it was appropriate to make representations on these provisions only once, and to do so during the PIC process for the PA group." The parties quite rightly agreed that this was necessary to avoid unnecessary duplication and to reduce the risk of Public Interest Commissions rendering conflicting recommendations on the common issues.

11. The issues identified by the parties as falling exclusively to the Common Issues Table include several significant monetary items, including the issue of general wage increases which represents the costliest financial items to be negotiated.

12. The most recent EB collective agreement expired on June 30, 2021. The PSAC gave notice to the Treasury Board of its desire to bargain a renewal collective agreement by letter dated February 26, 2021. The parties thereafter met and engaged in collective bargaining with respect to the EB bargaining unit on the following dates:

- June 22-23, 2021
- September 14-16, 2021
- November 8-10, 2021
- January 11-13, 2022
- March 8-10, 2022
- May 11 and 12, 2022

13. At the same time, the parties engaged in collective bargaining at the remaining bargaining tables. Negotiations between the parties at the Common Issues Table itself spanned approximately twenty days.

14. Despite this extraordinary investment of time, the parties have made very little progress. They have reached agreement on only a handful of proposals, many of which are properly characterized as mere “housekeeping”. According to the material before the Commission, the PSAC still has approximately seventy-four outstanding EB-specific proposals and two hundred and nine outstanding proposals at the Common Issues Table; while the Treasury Board still has approximately thirty-five outstanding EB-specific proposals and fifty-two outstanding proposals at the Common Issues Table.

The Statutory Context

15. Pursuant to section 172 of the *Act*, the Commission was established to endeavour to assist PSAC and the Treasury Board in entering into a renewal collective agreement in respect of the EB group. The *Act* contemplates that the Commission will provide such assistance by issuing a report to the Chairperson “as to its success or failure in assisting the parties to the dispute and as to its findings and recommendations.” Unless agreed to by the parties, the Commission’s report is non-binding and only serves to assist the parties in their effort to conclude a renewal collective agreement.

16. Section 175 of the *Act* prescribes the factors that the Commission must take into account in the conduct of its proceedings and in making a report to the Chairperson. Section 175 of the *Act* provides as follows:

175. 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:

(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.

17. The parties made comprehensive written and oral submissions with the Commission addressing the application of these factors to issues before the Commission.

Discussion

18. Unfortunately, two fundamental issues arising out of the current round of bargaining have impeded the Commission's ability to provide the parties with specific

recommendations on the terms and condition of employment of a renewal collective agreement. The first issue relates to the *bona fides* of bargaining to-date; the second issue relates to a structural impediment imbedded in the bargaining process itself.

i. The *Bona Fides* of Collective Bargaining

19. The parties appeared before the Commission with *hundreds* of outstanding proposals between them. They have made little to no progress in their bargaining efforts despite having spent approximately *fifteen* days. A healthy collective bargaining relationship requires parties to listen to each other, to engage in each other's concerns, and to demonstrate flexibility and compromise in seeking out creative solutions at the bargaining table. The absence of any real progress in bargaining between the Treasury Board and PSAC signals to the Commission that the collective bargaining relationship between these two parties is suffering. This view was reinforced at the hearing before the Commission, and in the mediation sessions that followed. Either the parties are speaking at cross-purposes, or the parties' bargaining efforts lack *bona fides*.

20. Historically, Public Interest Commissions have issued reports that provide specific recommendations on the terms and conditions of employment that ought to be included in a collective agreement. These types of specific recommendations have been useful to the parties in concluding collective agreements and maintaining labour relations stability. However, the issuance of specific recommendations is largely contingent on the parties themselves having engaged in meaningful collective bargaining and having developed a narrowed list of priorities items prior to appearing before a Public Interest Commission. Parties should not appear before a Public Interest Commission with hundreds of outstanding proposals, and without having engaged in meaningful collective bargaining, and expect to receive a report that provides specific recommendations on the terms of a renewal collective agreement.

21. Regrettably, in this case, as the parties have yet to truly engage in collective bargaining and have not identified their priority issues, the Commission is unable to provide a report with specific recommendations on the terms and conditions of a renewal collective agreement.

ii. The Structural Impediment

22. As previously noted, the parties have quite reasonably assigned several important overlapping issues to the Common Issues Table and have agreed that those matters be addressed only by the Public Interest Commission that is seized with the Common Issues Table. This bifurcated process ensures that common issues are addressed comprehensively and in a single forum. It avoids the pitfalls of having the common issues addressed in multiple forums, including the very real potential for there to be conflicting findings and recommendations by Public Interest Commissions. Such a result would run counter to the statutory purpose of Public Interest Commissions, which is to “endeavour to assist the parties to the dispute in entering into or revising a collective agreement.”

23. However, collective bargaining cannot occur in a vacuum. Having assigned the common issues to the Common Issue Table, those common issues must be addressed in some forum before the EB table can properly negotiate over many of the EB-specific issues. How can the parties at the EB table engage in meaningful collective bargaining over EB-specific financial proposals without knowing the outcome of the common issues at the Common Issues Table, including the issue of general wage increases? It is difficult to envision these two sophisticated parties doing so. This, along with the *bona fides* concerns raised above, may explain why such meagre progress has been made at the EB table to-date, and why the parties have yet to identify their true priorities in this round of bargaining.

24. The same holds true for the Commission. The Commission cannot issue a report containing specific findings and recommendations in a vacuum. Section 175 of the *Act*

requires, *inter alia*, that the Commission evaluate total compensation and engage in a comparative analysis of compensation and terms and conditions of employment across the public and private sectors prior to rendering a report containing findings and recommendations. It is difficult, if not impossible, for the Commission to properly engage in this analysis without knowing the outcome of free collective bargaining over the common issues or, at the very least, having the Public Interest Commission's findings and recommendations on the common issues at its disposal. Making findings and recommendations in a vacuum is inconsistent with the balancing of considerations prescribed by section 175 of the *Act* and would not, in our view, assist the parties with respect to reaching a renewal collective agreement.

25. The order of collective bargaining and the establishment of Public Interest Commissions should have regard to this labour relations reality. The Common Issues Table must get on with the process of collective bargaining before each individual bargaining table can meaningfully progress further. The proper order of collective bargaining between PSAC and the Treasury Board was recently discussed in the report of the Public Interest Commission January 13, 2023 that presided over the TC group (590-02-44769, 2023 CanLII 1810 (PSLREB)):

...

[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.

...

26. We agree with and adopt the above reasoning. As with the TC Group, the EB table remains far apart with divergent rationales in support of their respective positions. Compromise and the give-and-take that are the hallmarks of healthy collective bargaining have yet to occur. The issues before the Common Issues Table must be negotiated before the EB group can meaningfully bargain further. Bargaining should not occur in a vacuum.

27. As with the TC group, once this has occurred the parties at the EB table must work towards identifying their priorities so that bargaining can begin to focus on the issues that must be addressed to achieve a renewal collective agreement. Until that happens, the Commission does not believe that issuing a report with specific findings and recommendations would help the parties reach a renewal collective agreement.

Findings and Recommendations

28. Further to the reasons provided above, the Commission finds and recommend as follows:

- i. That the items agreed-to by the parties be incorporated into the renewal collective agreement;
- ii. That collective bargaining proceeds in the proper order and context to allow for rationale and informed collective bargaining to occur; and

- iii. The parties identify their true priorities and thereafter engage in collective bargaining with a view to reaching a renewal collective agreement.

February 2, 2023.

"Jesse Kugler"

Jesse Kugler, Chairperson

"J.D. Sharp"

J.D. Sharp, Treasury Board Nominee

"Bob Kingston"

Bob Kingston, PSAC Nominee