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*Parliamentary Employment and
Staff Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

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 Library of Parliament, as employer,
in respect of the Clerical and General Services and Library Technicians and Library
Science bargaining unit

Indexed as
Public Service Alliance of Canada v. Library of Parliament

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

For the Bargaining Agent: Morgan Gay, Public Service Alliance of Canada

For the Employer: Carole Piette, counsel

Heard at Ottawa, Ontario,
June 24 and 25, 2019.

ARBITRAL AWARD

I. Files before the Board

[1] On October 10, 2017, the Public Service Alliance of Canada (“the bargaining agent”) served notice to bargain on the Library of Parliament (“the employer”) for the employees in the Library Science (LS) Group (“the LS bargaining unit”) under s. 37 of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); *PESRA* or “the Act”).

[2] The parties commenced bargaining on April 3, 2018, and met for 11 bargaining sessions.

[3] By letter of December 12, 2018, the bargaining agent requested arbitration, pursuant to s. 50 of the *Act*, in respect of all employees of the employer in the LS bargaining unit. Along with its request, the bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration.

[4] By letter of December 21, 2018, the employer provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

[5] By letter of December 27, 2018, the bargaining agent provided its position with respect to the additional matters referred to arbitration by the employer.

[6] On October 30, 2017, the bargaining agent served notice to bargain on the employer on behalf of employees in the Library Technicians and Clerical and General Services (LT-CGS) sub-group (“the LT-CGS bargaining unit”) under s. 37 of the *PESRA*.

[7] The parties commenced bargaining on April 12, 2018, and met for seven bargaining sessions.

[8] By letter of January 14, 2019, the bargaining agent requested arbitration, pursuant to s. 50 of the *Act*, in respect of all employees of the employer in the LT-CGS bargaining unit. Along with its request, the bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration.

[9] By letter of January 22, 2019, the employer provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

[10] By letter of January 23, 2019, the bargaining agent provided its position with respect to the additional matters referred to arbitration by the employer.

[11] The terms of reference for the arbitration board deemed to form the Federal Public Sector Labour Relations and Employment Board (FPSLREB) were forwarded to the Board members on February 12, 2019, by the Chairperson of the FPSLREB (see *Public Service Alliance of Canada v. Library of Parliament*, 2019 FPSLREB 21).

[12] The parties settled a number of issues at the bargaining table and withdrew some proposals before and at the hearing. The following bargaining agent proposals remained in dispute:

Article 17	Vacation Leave
Article 18	Designated Paid Holidays
Article 19	Other Leave With or Without Pay
Article 21	Education Leave
Article 23	Hours of Work
Article 26	Shift Premium
Article 34	Health and Welfare Plans
Article 35	Job Security
Article 38	Use of Taxis
NEW	Parking
NEW	Telework
NEW	Social Justice Fund
Appendix A	Rates of Pay

[13] The following employer proposals remained in dispute:

Article 15	Restrictions From Outside Employment
Article 19	Other Leave With or Without Pay
Article 23	Hours of Work
Article 34	Health and Welfare Plans
Article 39	Authorship
Appendix A	Rates of Pay

II. The award

[14] The parties have agreed on the duration of the collective agreement; the expiry date is August 31, 2020.

[15] In rendering its decision, the Board is guided by the relevant provisions of the PESRA, in particular s. 53, which sets out as follows what the Board must consider:

53 ...

(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.

A. Article 15: Restrictions From Outside Employment

[16] The employer proposed to change the language in article 15.01 to refer to the employer's values and ethics code.

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

B. Article 17: Vacation Leave

[18] The bargaining agent proposed to lower the years-of-service thresholds for vacation leave entitlement in article 17.02.

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

[20] The parties each had a proposal with respect to the scheduling of vacation leave with pay (article 17.05), and their proposals had some common language. In addition, the employer agreed to some of the bargaining agent's suggested changes at the hearing. As well, the Board has accepted some of the bargaining agent's proposed changes. Accordingly, the Board awards the following:

17.05 Scheduling of Vacation Leave With Pay:

- a) Employees are expected to take all their vacation leave during the vacation year in which it is earned.
- b) The Employer shall, subject to operational requirements, make every reasonable effort to:

- (i) grant an employee's vacation leave in the vacation year in which it is earned;

- (ii) grant the employee's vacation leave with pay for at least two (2) consecutive weeks during the period requested, provided written notice of the period requested is given by the employee **in accordance with 17.05(e) as soon as possible to allow for operational planning but at the latest by 15 April;**

- ~~(iii) the Employer will respond to an employee's request by 15 May.~~

- c) Upon request from the employee, the Employer may grant vacation leave with pay on shorter notice than that specified **below** ~~above~~.

- d) In the case of disapproval, alteration or cancellation of vacation leave, the Employer shall give the written reason ~~therefor~~ **upon request from the employee. The Employer shall make every reasonable effort not to disapprove, alter or cancel any employee's scheduled vacation leave.**

- ~~e) Library of Parliament seniority for scheduling of vacation leave shall be deemed to be the length of continuous employment.~~

(e) Vacation Leave with Pay shall be scheduled as follows:

- i) Employees shall submit vacation requests by the following deadlines for the following months:

- a) May 15 through to November 15 by April 15;

- b) November 15 through to May 15 by October 15.

- ii) The Employer shall respond to such leave requests no later than thirty (30) days after the submittal deadline for each period above.

- iii) In the event that the employer is unable to grant all leave requests for a certain period of time due to operational requirements, and where affected employees are unable to resolve the issue with management, seniority shall be the determining factor for the granting of such vacation leave requests.

- (iv) Vacation leave requests submitted after the deadlines contained in e) i) above shall be granted on a first-come first-serve basis.

C. Article 18: Designated Paid Holidays

[21] The bargaining agent proposed the addition of Family Day to the list of designated paid holidays.

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

D. Article 19: Other Leave With or Without Pay

[23] The bargaining agent and the employer proposed changes to article 19.13 (Leave with Pay for Family-Related Responsibilities). The Board has decided to award the following:

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

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 shall also meet the definition of family for the purposes of this clause.

b) The Employer shall grant leave with pay under the following circumstances:

~~(i) while an employee is expected to make reasonable effort to schedule medical or dental appointments for dependent family members to minimize or preclude his/her absence from work, however, when alternate arrangements are not possible an employee shall be granted up to three (3) days for a medical or dental appointment when the dependent family member is incapable of attending the appointments by himself/herself, or for appointments with appropriate authorities in schools or adoption agencies. An employee requesting leave under this provision must notify his/her supervisor of the appointment as far in advance as possible;~~ **up to the full amount of regularly scheduled hours on a given day 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) leave with pay to provide for the immediate and temporary care of a member of the employee's family and to provide an employee with the time to make alternate care arrangements **including but not limited to cases of an unforeseeable closure of the school or daycare facility;**

(iii) leave with pay for needs directly related to the birth or to the adoption of the employee's child. This leave may be divided into two (2) periods and granted on separate days.

(iv) to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;

(v) 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;

(vi) seven (7) hours out of thirty-five (35) hours stipulated in Article 19.13(c) may be used to attend school functions, if the supervisor was notified of the functions as far in advance as possible.

c) The total leave with pay which may be granted under sub-clauses b)(i), (ii), ~~and~~ (iii), **(iv), and (v)** shall not exceed thirty-five (35) hours in a fiscal year.

d) It is recognized by the parties that the circumstances which call for leave for family-related responsibilities are based on individual circumstances. On request, the Employer may, at its discretion after considering the circumstances, grant leave with pay for a period greater than that provided for in paragraph c) above.

[24] The employer proposed the deletion of article 19.22 (Deferred Leave).

[25] The Board has decided not to include this proposal in its award.

[26] The bargaining agent proposed an amendment to article 19.23 (Leave with Income Averaging). It proposed the addition of a requirement that requests not be unreasonably withheld and that seniority should be the determining factor for granting requests in the event of more requests being received than could be operationally accommodated.

[27] The Board has decided not to award this proposal.

[28] The bargaining agent proposed a new leave provision entitled, "Pre-retirement Transition Leave".

[29] The Board has decided not to award this proposal.

E. Article 21: Education Leave

[30] Both the bargaining agent and the employer had proposals with respect to Education Leave without Pay. They agreed on a new article 21.01. The Board awards this new language as follows:

21.01 The parties recognize that it is essential that employees possess the appropriate skills and knowledge to improve the capacity of the Library of Parliament to adapt to change as well as to enhance their own career advancement and employment security. The parties agree that employees, from time to time, need opportunities to attend or participate in career development activities described in this Article and will cooperate to promote such opportunities based on the following principles:

a) Career development is a shared responsibility of management and employees, requiring joint planning and investment.

b) Individual employees are responsible for identifying their career development needs in consultation with management and for planning, investing in, and implementing a career development program as agreed with management.

c) Management is responsible for actively promoting and guiding career development and, to this end, shall make every reasonable effort to provide appropriate resources and opportunities.

[31] The bargaining agent proposed a change to the renumbered article 21.02. It proposed that the criteria for the selection of candidates for Education Leave be subject to consultation with it under the Joint Consultation article of the collective agreement. The employer submitted that determining the skills and qualifications relevant to a position is a traditional management right and that it is best placed to determine the relevance of a proposed field of studies in a request for Education Leave.

[32] The Board has decided to award the bargaining agent's proposal. The bargaining agent is not proposing that it establish the skills and qualifications relevant to a position or the relevance of a proposed field of study. The proposal requires only that the employer consult the bargaining agent on the criteria used to assess requests for Education Leave. The Board awards the proposal, as follows:

21.02

The Employer recognizes the usefulness of education leave. Upon written application by the employee and with the approval of the Employer, an employee may be granted education leave without pay for varying periods of up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for studies in some field of education in which preparation is needed to fill his/her present role more adequately or to undertake studies in some field in order to provide a service which the Employer requires or is planning to provide.

The criteria for selection of candidates for Education Leave shall be subject to consultation with the Alliance as provided for under article 33.

[33] The bargaining agent proposed that the renumbered article 21.03 be amended to require that an employee on education leave without pay receive an allowance of not less than 50% of his or her annual rate of pay.

[34] The Board has determined that it will not award this proposal.

F. Article 23: Hours of Work

[35] The bargaining agent and the employer both had proposals relating to hours of work.

[36] The bargaining agent proposed the following for the LT-CGS Group: the normal hours of work for employees in the Information, Documentation and Resource Service (IDRS) shall be between 07:00 and 16:00 hours; the normal hours of work for employees in the Parliamentary Information and Research Service (PIRS) shall be between 07:30 and 17:30 hours; and the normal hours of work for employees in Corporate Services shall be between 07:00 and 17:30 hours. The bargaining agent also proposed that in the event that the employer requires different starting and finishing times among employees performing duties in the same department, the employer would be required to canvass employees for preferences, and in the event that not all preferences could be accommodated, seniority would be the determining factor. The bargaining agent also proposed changes to the provision for variable starting and finishing times for LT employees working on Quorum.

[37] The Board declines to award this proposal.

[38] The employer proposed that the core hours of work for the LT-CGS Group be from 09:00 to 17:00 hours unless otherwise specified for particular work areas.

[39] The Board declines to award this proposal.

[40] The employer proposed that the core hours of work for the LS Group be from 09:00 to 17:00 hours, unless otherwise specified for particular work areas. The bargaining agent proposed that the normal hours of work for the LS Group be between 07:00 and 18:00 hours.

[41] The Board declines to award these proposals.

[42] The parties had common proposals for articles 23.01 and 23.02. In article 23.01(e), they both proposed removing the phrase “and the concurrence of the Employer” for an employees’ request to complete his or her weekly hours in a period of other than five full days.

[43] The Board has decided to award the removal of the phrase “and the concurrence of the Employer” from article 23.01(e), which will read as follows:

e) Notwithstanding the provisions of 23.01 and 23.02a) and b), upon request of an employee ~~and the concurrence of the Employer~~ and subject to operational requirements, an employee may complete his/her weekly hours of employment in a period of other than five (5) full days provided that over a period of up to twenty-eight (28) calendar days, the employee works on an average her/his normal work week.

[44] Both parties also proposed the removal of the phrase “with the concurrence of the Employer” from article 23.02 and the addition of “subject to operational requirements” for requests for flexible hours. The bargaining agent also proposed a change to the period in which those hours would be worked to between 07:00 and 21:00 hours.

[45] The Board awards the following:

Upon the request of an employee and with the concurrence of the Employer, **subject to operational requirements**, an employee may work flexible hours on a daily basis provided such hours are worked between 07:30 hours and 21:00 hours.

[46] The bargaining agent proposed further changes to article 23.02 (Annual Schedule) with respect to the Long and Short Week Schedule. For the LT-CGS Group and the LS Group, the Board awards the following bargaining agent proposal:

23.02 (b)

Prior to establishing the flexible schedule, the employer shall canvas all employees subject to the schedule to determine employee preference with respect to which day of the week is assigned as a day off during short weeks. The employer shall make every reasonable effort to accommodate employee preferences. Seniority shall be the determining factor for assigning days off during short weeks where preference cannot be accommodated.

[47] Both parties proposed changes to article 23.02(e), eliminating the phrase “with the agreement of the Employer” and replacing it with “subject to operational requirements”. The Board awards the following:

e) Notwithstanding 23.02(a), upon request of an employee, and ~~with the agreement of the Employer~~ **subject to operational requirements**, an employee may work a schedule other than that outlined in this Article. Such requests shall not be unreasonably denied.

[48] Both the bargaining agent and the employer proposed the removal of article 23.02(g), relating to the 27.5-hour Short Week.

[49] The Board awards the deletion of this provision.

[50] The bargaining agent proposed changes to article 23.04 (Rest Periods), including removing operational requirements and requiring the employer to make every reasonable effort to accommodate employee requests concerning the duration of meal breaks.

[51] The Board declines to award this proposal.

G. Article 26/36: Shift Premium

[52] The bargaining agent proposed the elimination of articles 26.02 (LT-CGS Group) and 36.02 (LS Group), which set out the timeline for applying for the shift premium.

[53] The Board declines to award this proposal.

H. Article 34: Health and Welfare Plans (LT-CGS Group)

[54] The bargaining agent and the employer both proposed provisions related to the Dental Plan. The Board has decided not to award either proposal.

I. Articles 35 (LT-CGS Group) and 38 (LS Group): Job Security

[55] The bargaining agent proposed harmonizing the provisions in the two collective agreements and providing for the use of seniority in a layoff and recall.

[56] The Board has decided not to include this proposal in the award.

J. Articles 38 (LT-CGS Group) and 35 (LS Group): Use of Taxis

[57] At the hearing, the employer stated that it was prepared to agree to the bargaining agent's proposal to remove the 20 km limit on taxi fare in article 38.02 of the LS agreement.

[58] Accordingly, the Board awards the deletion of article 38.02 from the LS Group collective agreement.

[59] The bargaining agent has proposed additional changes to the provisions on the use of taxis during late hours.

[60] The Board has decided not to award these additional proposals.

K. Article 39: Authorship (LT-CGS Group)

[61] The employer proposed the elimination of article 39.01 for the LT-CGS Group.

[62] The Board has decided not to include this proposal in the award.

L. NEW ARTICLE: Parking

[63] The bargaining agent proposed that the employer's "Parking Policy" be incorporated into the agreement and that the employer be required to make every effort to ensure access to parking in safe and secure areas.

[64] The Board has decided not to include this proposal in the award.

M. NEW ARTICLE: Telework (LT-CGS Group)

[65] The bargaining agent proposed that requests for telework shall not be unreasonably denied.

[66] The Board has decided not to include this proposal in the award.

N. NEW ARTICLE: Social Justice Fund

[67] The bargaining agent proposed the establishment of a Social Justice Fund.

[68] The Board has decided not to include this proposal in the award.

O. Appendix A: Rates of Pay**1. Wage adjustments for the LT-CGS Group**

[69] The bargaining agent proposed that the CGS and LT wage grids be reduced from five to four steps.

[70] The Board has decided not to include this proposal in the award.

2. Wage adjustments for the LS Group

[71] The bargaining agent proposed a market adjustment of 3% for the LS Group before the application of the general economic increase to all rates of pay, effective September 1, 2017. It also proposed a wage grid restructuring for the LS Group, effective September 1, 2018.

[72] The bargaining agent submitted that the LS classification in the core public administration (CPA), in the EB group, received a 3% market adjustment effective July 1, 2016, and that the same market adjustment should be applied to the LS bargaining unit. The employer submitted that the LS market adjustment for the CPA was intended to bring the LS rate in line with the market and that there was no corresponding need for the LS classification at the Library of Parliament. The employer noted that after the application of the market adjustment to the LS classification in the CPA, the rates of pay for the LS bargaining unit at the Library exceeded the revised rates at all levels, with the exception of the minimum rate for the LS-03 classification, where there was a 0.94% difference. The employer submitted that this difference did not justify a 3% increase to the entire grid.

[73] The Board has decided not to award the bargaining agent's proposal for a market adjustment for the LS bargaining unit.

3. Economic increases

[74] The bargaining agent proposed economic increases of 1.5% in 2017, 3.75% in 2018, and 3.75% in 2019. The employer proposed economic increases of 1.25% in 2017, 2.0% in 2018, and 2.0% in 2019.

[75] The Board has determined that the economic increases will be as follows:

Effective September 1, 2017:	1.5%
Effective September 1, 2018:	2.0%

Effective September 1, 2019: 2.0%

P. General

[76] The Board will remain seized of this matter for a period of three months from the date of this award in the event that the parties encounter any difficulties in its implementation. As part of their implementation consultations, the parties may agree to alternate language for the collective agreement that achieves the same purpose as that contained in this arbitral award and may use article 37 (Agreement Reopener) to incorporate that language into the collective agreement.

December 16, 2019.

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