

**IN THE MATTER OF a Public Interest Commission under
the *FEDERAL PUBLIC SERVICE LABOUR RELATIONS ACT***

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

(the “Alliance”)

-and-

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES, CFB Petawawa

(“SNPF”)

Before: William Kaplan, Chairperson, Sebastien Huard, Employer Representative and Joe Herbert,
Alliance Representative

For the Applicant: MaryAnne Laurico, Regional Representative and Union Chairperson PSAC,
Sarah Allen, Research Officer, Tim McIntyre, Regional Representative and
Patrick Desormeaux, Local Representative and Nixie Orr, Local Representative

For the Respondent: Amy Lecompte, National Manager

Report

Introduction

[1] The Staff of the Non-Public Funds, Canadian Forces (SNPF) is a unique governmental organization within the public service. SNPF employees at Petawawa – the members of the bargaining unit of concern in this Public Interest Commission Report (Report) – work in Non-Public Property (NPP) operations to deliver morale and welfare programs and services to members of the Canadian Forces and their families. SNPF is a separate agency within the federal public administration and all positions and employees are excluded from the application of the *Public Service Employment Act*. The Minister of Defence manages all SNPF functions and authorities and has delegated authority to the SNPF Chief Executive Officer.

[2] In brief, the employer holds money belonging to Army, Navy and Air Force members in a trust-like manner and uses these funds to enhance morale and wellness, quality of life and to promote operational readiness and effectiveness. The Department of Defence contributes to the SNPF; approximately 40% of funding comes directly from government. Myriad programs and services are provided, tailored to the unique needs of military personnel and their families. To give two examples: on the financial front, Canadian Defence Community banking facilitates transition on posting, while on the social front, food concessions, cafeterias, convenience stores, community centres, recreational and sports programs are made available to Canadian Forces personnel and their dependents. These and other operations are realized through three lines of business.

The Petawawa Bargaining Unit and Bargaining History

[3] In general, SNPF has some 4000 employees located in 48 bases in Canada and Europe. There are 22 different bargaining units; 12 represented by UFCW, the remainder National Defence Employees/PSAC (PSAC). The Petawawa bargaining unit consists of all operational and administrative support employees, both full- and part-time. The current collective agreement expired on April 30, 2022. On January 27, 2022, the union filed its Notice to Bargain. The parties met for four days beginning on November 15, 2022; bargaining, however, was unsuccessful, the union declared an impasse and filed for conciliation on December 2, 2022, and asked the FPSLERB to establish a Public Interest Commission (Commission) to assist the parties in their negotiations. More than thirty issues remained in dispute, both union and employer proposals. This PIC was then established, briefs were filed, and a hearing was held in Ottawa on September 7 & 8, 2023. The Commission was able to assist the parties in resolving several outstanding matters – including the withdrawal of a number of items – but most issues remained unresolved; a two-day hearing was therefore held.

The Criteria

[4] Section 175 of the FPSLRA sets out the relevant criteria:

- (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.

Union Submissions

[5] In the union's view, and referring to the governing criteria, SNPF staff at Petawawa should receive the same terms and conditions of employment – especially wages – as paid to employees elsewhere in government – within the core public administration – not to mention within the Canadian labour market considered more generally. The union asked that no attention whatsoever be paid to any UFCW settlements between this employer and employees at other bases where that union held bargaining rights. UFCW settlements, the union submitted, have never been considered relevant and there was nothing about any of the recent outcomes relied on by the employer that should have any persuasive impact. The union, therefore, sought recommendations endorsing what it described as its fair and reasonable proposals to narrow, indeed, close the terms and conditions of the employment gap between SNPF and other central government organizations and the Canadian labour market. The union's requested increases were also necessary to protect SNPF members against inflation.

[6] The need to address inflation was, the union observed, obvious and increasingly reflected in both voluntary settlements across the broad swath of the Canadian economy, including the federal government, and in adjudicated interest arbitrations. Economic data indicated that a robust recovery, not a recession, was underway, making the necessary increases affordable. Likewise, in the union's submission, and pointing to one of the criteria normally considered in cases of this kind, there was a clear recruitment and retention issue reflected in a large number of bargaining unit vacancies in Petawawa, and that meant a wage recommendation to adequately address this factor. Comparability, another interest arbitration criterion, amply supported both the requested general wage increases and wage adjustments. There was

simply no justification for wide disparities in compensation and terms and conditions of employment for SNPF employees simply because of geographic location, a problem that the union asked the Commission to make a recommendation to address.

[7] While it was correct that position funding was largely generated from members of the Canadian Forces, it was also true that significant public Treasury Board monies were made available through the Department of Defence and some positions were directly funded by government. There was, in these circumstances, no reason why employees in this bargaining unit should be paid anything less than the going rate for other government employees and in the private sector. The fact that the use of public funds, for many SNPF activities, was highly prescriptive and restricted was not, in the union's view, a basis for not recommending appropriate compensation. The law was clear that funding allocations could not determine collective bargaining replication and could not, indeed should not, constrain the Commission from making appropriate recommendations based on the governing criteria.

[8] Accordingly, the union sought grid standardization to achieve internal relativity within SNPF unionized positions (and externally) based on principles it advanced and comparators it identified together with, and this is what was requested, general increases of 3.5%, 3% and 2%, in a proposed three-year collective agreement; with additional wage adjustments of 2.5% in the first year, 3.5% in the second, and 1% in the third year. The union asked the Commission to recommend this in its Report. Given the urgent need to raises rates, that meant that as much of the general wage increase as was possible needed to be allocated to the first year of the term.

Employer Submissions

[9] In the employer's view, none of the union's monetary and non-monetary proposals should be recommended. The monetary proposals were completely unaffordable, while the outstanding non-monetary proposals were non-normative, could not be the result of free collective bargaining, did not give effect to any statutory or other criteria, and should not be included in any of the Commission's recommendations in its Report. Wages were, as was generally agreed, at the crux of the dispute, and granting the union's wage proposals would have a detrimental effect on the delivery of services to members of the Canadian Forces and their families. There was a limit to non-public funds that could be generated to provide these services, and those services were already under stress, requiring the employer to concession some of them out. While there was some limited public funding available, recent governmental directives required reduction in program spending, making impossible the unaffordable union's sought-after compensation requests. In addition, what public funding that was available was allocated and unavailable for compensation increases. The immediate impact of recommending the union's economic demands – assuming that they were accepted – would be a reduction in programs. In these circumstances, they should never form part of the Commission's Report.

[10] On the other hand, in the employer's view, its proposed wage increases would allow continuation of existing programs and were, in the employer's view, fair and reasonable, bearing in mind that government money was simply not available to fund the union's myriad economic asks. It was also important, in acknowledgement of the replication principle, that the recent settlements between three SNPFs and UFCW be given effect and reflected in the Commission's recommendations. They were the best evidence of what free collective bargaining could achieve because they were freely bargained and then ratified by SNPF employees doing the same jobs as the employees in this bargaining unit while working for the very same employer. These settlements informed the employer's wage proposals and should, the employer asked, be the basis of the Commission's general wage increase recommendation.

[11] It was also a fact, the employer observed, that there is no history of parity between SNPF bargaining units in different geographic locations, nor between the employer and other public service employers. Capacity to pay at each location has always been one of the long-standing characteristics of negotiations between these parties, and that meant any proposals to achieve harmonization must be rejected. In any event, replication would not justify the compensation sought by the union in this round. Likewise, the data the union advanced about comparability between classifications here and elsewhere inside and outside of government was both incomplete and unreliable. The point was also made that the union's assertions about recruitment and retention were completely unfounded: yes, there were job vacancies, but the explanation was not an inability to recruit or retain, but an absence of money to pay for the positions. One distinguishing feature that the employer urged us to carefully consider was that for the most part, positions were funded with non-public funds – the beneficiaries of the programs, the men and women in the military, were paying – not the government. By and large, the employer was limited by its ability to internally raise funds. In these circumstances, wage outcomes in the federal public service were simply inapposite. Accordingly, at the hearing the employer asked the Commission to recommend a three-year term with wage increases of 3.5%, 3%, 2% and additional wage adjustments of 2.5% in the first year and 1% in the third.

Discussion

[12] We begin with some initial observations: SNPF is a public service for the people who serve our country; for the men and women who are called upon to put themselves in harm's way to protect us. The SNPF enhances the well-being of members of the Army, Navy and Air Force (and their families) and contributes to operational effectiveness and readiness. These are important public functions reflected in part by the government's substantial monetary contributions to supplement those of the members themselves. Clearly, SNPF is not the usual government workplace, with 60% of operations funded by the members of the Canadian Forces for their own benefit with the remainder coming from Treasury Board through the Department of Defence. The employer notes that the government part of the funding is highly

prescriptive. However, it is well established that in making recommendations we are not constrained by government funding allocations. If we were, we could not attempt to replicate free collective bargaining as the funder would have already decided the outcome. Put another way, the funder does not get to determine our recommendations by deciding on how much and what to fund, or not. Arriving at recommendations is actually accomplished through the application of relevant criteria. Those criteria require us to consider both the private and public sector comparators, to review between occupations in the public service, and to take into account the state of the economy, among other factors.

[13] Relevant to this process are the freely bargained – and ratified – agreements reached with UFCW. It is normal to pay attention, and to give weight to, free collective bargaining outcomes between the same employer and its other bargaining units representing employees in the very same classifications. Internal comparators matter, and UFCW represents employees at 12 of these bargaining units; PSAC at 10. UFCW has negotiated and ratified three settlements for the same term as is at issue here. This is instructive but not ultimately governing as the evidence indicates that UFCW outcomes do not dictate PSAC results and vice versa. The data over a lengthy period indicates no direct correlation between UFCW and PSAC general wage increases. In some years, UFCW results are superior to PSAC, in others, the reverse is true. It is certainly relevant that the employer’s final proposal before this Commission is superior to that negotiated with UFCW. All this being said, our job is to assist the parties by making recommendations to facilitate – these parties – reaching a collective agreement.

Non-Monetary Proposals

[14] We are not of the view that any of the union’s outstanding non-monetary proposals should be recommended as they are either beyond jurisdiction, non-normative, unnecessary, or breakthroughs (the employer withdrew all its proposals when these proceedings convened). For example, the union’s casual employee proposal is not within jurisdiction. Casual employees do not meet the statutory definition of employee and are not part of the union. There is simply no need for the union’s Health and Safety proposal as that matter is fully subject to legislation. In another example, classification disputes are not subject to the grievance procedure, and this is not, therefore, a matter upon which we can make a recommendation. Recommending these and other proposals would not replicate free collective bargaining. (It should be noted that the employer has agreed to begin offering part-time employees benefits in January 2024.)

Monetary Proposals

[15] In terms of the union’s monetary proposals, apart from the general wage increase and wage adjustments, they range from individual items such as improvements to various allowances to pre-retirement transition leave (that would appear to require an amendment to the pension plan with potential

impacts on its sustainability) to a request that fitness trainers be given an opportunity to train for at least five hours a week with pay. The union's proposal for adding the provincial Family Day to the list of designated holidays is both non-normative and would be a breakthrough; and the same is true about the request to increase bereavement to eight days. Another proposal, for Dependency Leave, is presumably currently covered under the employer's broad duty to accommodate and, in any event, this is one of a number of instances where there was no evidence of demonstrated need. Given total compensation and availability of funds, not to mention the general agreement of the parties that the focus in this round must be on wages, we are declining to recommend any of these, and other like proposals, in our Report.

[16] This Report must focus on wages, as there was, as just noted, agreement about this at the informal mediation discussions that took place when the PIC convened: focusing on wages is the best path to the parties ultimately reaching agreement. We are, however, not recommending a lump sum as has occurred elsewhere because the pressing and demonstrated need is to improve compensation for a group of employees who are not, on the evidence before us, highly paid. Accordingly, we have followed the same architecture as the core public administration and agencies such as the CRA by recommending general wage increases and wage adjustments. The amounts partially reflect the fact that no lump sum is proposed, and also reflect the corrosive impact of inflation, especially on those who are less well paid. There is no intention to split the difference in the second year, but to arrive at a possible landing point, one that both parties may ultimately accept.

[17] At the hearing, the parties agreed on a three-year term.

[18] We have also made a recommendation about retroactivity that, in our view, is nothing more than a matter of fairness without significant cost implications. To be clear: the fairness we are recommending here is not some abstract notion of what is right or wrong and any characterization as such would be incorrect. The fairness arises from the fact that employees were at work for periods of time and the wages were later adjusted for those periods of time. There is no justification to pay some employees the full value of their work, but to say to others, because of the happenstance of timing, that they are not to receive the same rate as everyone else for doing the same work at the same time. There is also nothing unusual about providing retroactivity for current and former employees. That is the standard practice in the private and public sector from coast to coast to coast.

Other

[19] By and large, and for whatever this observation is worth, positions that are identical, or are extremely comparable, should, absent exceptional circumstances, be comparably paid where the employees are working for the same employer. We understand that local bargaining history, and perhaps local conditions, have affected outcomes and created disparities, but we are of the view that the parties –

i.e., the employer and all PSAC units – should initiate a process to harmonize wage rates between the same or similar classifications in the different locations. We are not including this as a specific recommendation, however, as our jurisdiction is limited to terms and conditions at Petawawa. Compensation and other Human Resource Policies are under review across the system, and this is perhaps an opportunity to consider classification disparities. However, to the extent that the union wishes to achieve uniformity across the workplace in all locations, it must reconsider its bargaining approach. For example, it continued in this proceeding to advance a layoff proposal, but it is one that had been withdrawn before a different PIC. The parties might also carefully consider, next time around, requesting the consolidation of all the SNPF Public Interest Commissions.

Recommendations

Term

[20] As agreed, three-year term. May 1, 2022 to April 30, 2025.

Wages

[21] We recommend:

May 1, 2022: 3.5% GWI + 2.5% Wage Adjustment

May 1, 2023: 3% GWI + 1.75% Wage Adjustment

May 1, 2024: 2% GWI + 1% Wage Adjustment

Retroactive Pay

[22] We recommend that the collective agreement be amended to add:

Retroactive pay will be provided to all Employees who were on strength for any period during the life of the Collective Agreement.

Pay Notes

[23] We recommend deletion of that sentence at Paragraph F of the Pay Notes that reads:

“However, the differential increase as described above is subject to a maximum of 30 cents”.

DATED at Toronto this 31st day of October 2023.

“William Kaplan”

William Kaplan, Chair

I dissent. Dissent attached.

Sebastian Huard, Employer Representative

Addendum attached.

Joe Herbert, Alliance Representative

EMPLOYER REPRESENTATIVE DISSENT

I agree with the Chair that, in the circumstances of these parties' bargaining, and the bargaining agent's stated objectives, the way to a negotiated settlement is to focus the parties' efforts exclusively on wages. However, I am unable to endorse two aspects of the Chair's final recommendations: the additional 1.75% wage adjustment effective May 1, 2023, and the application of retroactive pay to all former employees.

Wage Adjustment

As detailed by the Chair, by the end of the hearing, the parties' final proposals on wages only diverged on whether an additional wage adjustment was warranted in the second year of the renewal agreement (2023). The Union proposed an additional 3.5% wage adjustment, whereas the Employer offered none. The Chair recommended a 1.75% wage adjustment.

Considering the efforts already consented by both parties to nearly reach an agreement, my view is that any additional adjustment would need to be supported by clear evidence of a demonstrated need. We were not provided with such evidence. I cannot therefore support the recommendation of the additional 1.75% wage adjustment effective May 1, 2023.

Contrary to the Union's assertion, the Federal public service is not an appropriate comparator. The parties' own bargaining history does not support such a position.

Previous PIC reports for other locations also do not support the conclusion that there should be comparability between SNPF employees and core public administration employees. During the last round of bargaining, after hearing similar arguments to those made to this Commission with respect to appropriate comparators, Chairperson Flaherty stated in unanimous PIC reports for CFB Valcartier and CFB Bagotville that it was appropriate to consider similar positions in both the private and public sectors and ultimately recommended wage improvements that did not replicate the wage increases negotiated for the core public administration.

I would have accorded more weight to comparison to internal groups in other bases, where the same or similar positions provide similar programs and services, with similar duties and within the same legislative and financial frameworks, whether or not they are represented by PSAC. The Employer had presented settlements with three different UFCW bargaining units that were ratified at the end of the summer. While PSAC and UFCW settlements do not necessarily follow each other between locations, it remains a persuasive indication of what these parties could agree for themselves.

Retroactive Pay

I also diverge from the Chair's view with respect to the appropriateness of retroactive pay. The parties in this instance have an accepted practice to limit retroactive pay to active employees at the time of ratification. The recent UFCW settlements provide that former employees will receive retroactive pay only if they have left because of the posting of a family member to another base. And unanimous PIC reports for Bagotville and Valcartier during the last round of bargaining did not address retroactive pay.

For these reasons, I do not concur in the Chair's recommendation regarding retroactive pay.

Addendum by the Alliance Representative

While I would have personally recommended a higher wage outcome in 2023 than has the Chair of the Commission, I see little purpose in ‘dissenting’ on a PIC. In my view that would be of little value to the parties who still must come to a collective agreement. Each party is given, as here, an opportunity to make its best arguments to a consensually chosen panel, in this case one chaired by a pre-eminent neutral. Our task is to steer the parties toward a settlement that is fair and that is based on objective criteria, some of which are expressly identified in the *Act*.

The wage data analysis provided by the PSAC identified the significant disparity between the salaries paid at this separate agency, and those paid throughout the federal public service. In my view, both in light of the significant wage disparity, and in recognition of the extent to which similar gaps have been closed in this bargaining round (see e.g. *SSO and PSAC, October 28, 2022*), the second year increase ought to have gone further in bringing the incomes of employees at SNPF closer to those paid to employees at other separate agencies, not to mention the core public administration.

Having said that, I wish to express my concurrence with the following statement in the Chair’s reasons:

We begin with some initial observations: SNPF is a public service for the people who serve our country; for the men and women who are called upon to put themselves in harm’s way to protect us. The SNPF enhances the well-being of members of the Army, Navy and Air Force (and their families) and contributes to operational effectiveness and readiness. These are important public functions reflected in part by the government’s substantial monetary contributions to supplement those of the members themselves...The employer notes that the government part of the funding is highly prescriptive. However, it is well-established that in making recommendations we are not constrained by government funding allocations. If we were, we could not attempt to replicate free collective bargaining as the funder would have already decided outcome. ...Arriving at recommendations is actually accomplished through the application of relevant criteria. Those criteria require us to consider both the private and public sector comparators, to review between occupations in the public service, and to take into account the state of the economy among other factors. (emphasis added)

All of this should be uncontroverted. The SNPF’s goal is to better the morale, preparedness and well-being of those called to put themselves between us and danger. The SNPF is one of Canada’s most important public services, not, as was suggested to us, an agency only remotely connected to public service, more comparable to the discount retail sector. And our job in making a recommendation, as the Chair notes, is to adhere to those legal criteria identified in the *Act*.

Dated at Ville de Québec, this 15th day of October 2023.

Joseph Herbert