
Board file: 590-18-46501

**IN THE MATTER OF A PUBLIC INTEREST COMMISSION UNDER
THE FEDERAL PUBLIC SERVICE LABOUR RELATIONS ACT
and a Request for the Establishment of a Public Interest Commission affecting the
Public Service Alliance of Canada and the Staff of the Non-Public Funds, Canadian
Forces Operational Category - Kingston**

Public Interest Commission:

Jesse Kugler, Chairperson
Sebastien Huard, Employer Nominee
Joe Herbert, Bargaining Agent Nominee

For the Bargaining Agent:

MaryAnne Laurico, Regional Representative, Union Chairperson
Sarah Allen, Research Officer
Tim McIntyre, Regional Representative
Kristofer Klith, Local Representative
Robin Delve, Local Representative

For the Employer:

Amy Lecompte
Andrea Kelly
Diana Guinee
Ryan Thompson

Hearings held in Ottawa, Ontario on August 29 and 30, 2023, and by video conference on September 28, 2023. Executive session held on November 2, 2023.

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 Staff of the Non-Public Funds, Canadian Forces Operational Category - Kingston (“SNPF-Kingston” or the “Employer”).

[2] The Employer’s mandate is to provide services to members of the Canadian Forces and their families to enhance the morale and welfare of the military community and contribute to the operational readiness and effectiveness of the Canadian Forces. The Employer fulfills this mandate through the delivery of three primary programs: (i) the Canadian Forces Exchange System (CANEX); (ii) SISIP Financial Services; and (iii) Personnel Support Programs.

[3] In short, CANEX is a system of retail and food outlets operated on Canadian Forces Bases, Wings, Units and Stations for the benefit and convenience of military personnel and their families. In addition to meeting the day-to-day retail needs of the military community, CANEX supports members of the Canadian Armed Forces and their families by using a percentage of its revenue to support other morale and welfare enhancing activities. SISIP Financial Services offers life and disability insurance to members of the Canadian Armed Forces. Personnel Support Programs include a wide range of recreational, fitness and community services that improve the quality of life, morale, and fitness of the military community.

[4] The Staff of the Non-Public Funds (“SNPF”) employs approximately 4,000 employees throughout its 48 bases, Wings and Units across Canada, Europe, and internationally. The SNPF has twenty-two bargaining units across Canada. Twelve of those bargaining units are represented by the United Food and Commercial Workers International Union (the “UFCW”) and ten are represented by the PSAC.

[5] PSAC was certified as the exclusive bargaining agent of all SNPF-Kingston employees employed in the operational category on June 10, 1982. The parties have negotiated successive collective agreements since that time and have a long and mature collective bargaining relationship.

[6] The services offered by the SNPF at each Canadian Forces Base vary depending on the needs of the military community being serviced. The SNPF-Kingston bargaining

unit represented by PSAC consists of approximately 97 employees, of whom 44 are full-time and 53 are part-time. At the time of the hearing, there were approximately 26 vacant bargaining unit positions, of which 3 were full-time and 23 were part-time. The bargaining unit encompasses employees employed in “operational” classifications related to the operation of CANEX Supermarket, RMC CANEX, Fort Frontenac Officers’ Mess, RMC Senior Staff Mess, Garrison Golf and Curling Club, RMC Cadet Mess Recreation Centre, Garrison Lanes, Fitness and Sports, Community recreation, C & E Museum, CFB Kinston Messes, and RMC Athletics.

Collective Bargaining

[7] The most recent collective agreement between PSAC and SNPF-Kingston expired on June 30, 2022.

[8] The PSAC issued notice to bargain a renewal collective agreement on June 14, 2022. The parties engaged in collective bargaining on January 10-12, 2023. While some progress was made, many monetary and non-monetary issues, including wages, remained outstanding.

[9] On January 17, 2023, PSAC filed a request to the Federal Public Sector Labour & Employment Board to establish a Public Interest Commission and, subsequently, this Commission was established.

[10] A hearing before the Commission was convened on August 29 and 30, and September 28, 2023. With the assistance of the Commission, the parties engaged in mediation and were able to resolve some of the outstanding issues in dispute. Importantly, the parties agreed that the renewal collective agreement would operate for a three-year term. They further agreed to the following wage increases and wage adjustments over that term:

2022: 3.5% general wage increase & 2.50% grid adjustment

2023: 3.0% general wage increase

2024: 2.0% general wage increase & 1.0% grid adjustment

[11] The parties were unable to reach agreement on the appropriate wage grid adjustment for 2023, with the PSAC proposing 3.5% and the SNPF-Kingston taking the position that there should be no grid adjustment in 2023 at all. In addition to this issue, the parties were unable to reach an agreement on twenty-six PSAC non-wage

proposals. Accordingly, the hearing before the Commission proceeded to address those issues that remained outstanding.

The SNPF-Petawawa PIC Report

[12] On October 31, 2023, the Public Interest Commission chaired by Arbitrator Kaplan (the “Kaplan Commission”) released its report with respect to PSAC’s bargaining unit at SNPF-Petawawa. As in the present matter, PSAC and SNPF-Petawawa agreed to a three-year term and to wage increases and wage adjustments referred to in paragraph 10 above. As in the present matter, the only outstanding issue regarding wages was the 2023 wage grid adjustment with the parties taking the same positions before the Kaplan Commission as they took before this Commission.

[13] In the report, the Kaplan Commission recommended a 1.75% wage adjustment for 2023. Other than recommending language on retroactivity and the deletion of a Pay Note, the Kaplan Commission did not recommend any other monetary or non-monetary proposals. The Kaplan Commission reasoned that the focus ought to be on wages exclusively because the issue of wages was the focus of the parties’ mediated discussions and because this represented the best path forward to achieving a renewal collective agreement. This Commission agrees with that approach.

[14] The Commission held its executive session on November 2, 2023, and both nominees made submissions on the relevance and application of the Kaplan Commission recommendations in the matter.

The Statutory Context

[15] Pursuant to section 172 of the *Act*, the Commission was established to endeavour to assist PSAC and the SNPF-Kingston to enter into a renewal collective agreement. 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 consider in its deliberations. 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 lengthy and comprehensive written and oral submissions to the Commission addressing the application of these factors to the issues in dispute. While it is neither practical nor necessary to recite those submissions in their entirety, the Commission has thoroughly considered them prior to making its recommendations.

The Union's Submissions

[18] PSAC's submitted that the following factors supported the proposals it seeks in collective bargaining: recruitment and retention, comparability, and recent wage trends in the current economic and fiscal circumstances.

[19] With respect to recruitment and retention, PSAC submits that SNPF-Kingston has a problem that is both “serious” and “persistent.” PSAC notes that the Canadian Forces Moral and Welfare Services (CFMWS) 2022-2025 Strategic Plan itself explicitly recognizes this problem. It states that the Employer’s rationale for refusing its “Union Representative Leave Bank” proposal is rooted in the Employer’s desire to avoid exacerbating its current staffing issues. Similarly, PSAC notes that the Employer’s rationale for rejecting its Vacation Leave proposal is, too, grounded in its concern with the “shortage of staff” it is experiencing. According to PSAC, these recruitment and retention issues are inextricably linked to “uncompetitive compensation” that must be addressed in this round of collective bargaining.

[20] With respect to comparability, PSAC submits that the core public administration is the best and most appropriate comparator. It submits that a comparison between positions at SNPF-Kingston and relevant comparators within the PA, SV, EB and TC bargaining units represented by PSAC reveals a significant wage disparity that must be corrected. PSAC relies on an interest arbitration award between PSAC and Statistic Survey Operators issued by a Board of Arbitration chaired by Arbitrator Mitchnick in 2022 for the proposition that the core public administration remains a relevant and appropriate comparator for separate agencies operating within the broader federal public sector. PSAC denies that the settlements reached between UFCW and SNPF are appropriate comparators, and notes that there has been no historical pattern or relationship between PSAC and UFCW bargaining outcomes.

[21] With respect to recent wage trends, PSAC emphasizes the crippling effect that inflation has had on real wages and the overwhelming trend amongst arbitrators to account for that fact by increasing wages when settling collective agreements by interest arbitration. PSAC submits that this case should be no different, and that its proposal on wages better reflects the current economic circumstances and arbitral trends. PSAC submits that the Commission should reject the Employer’s claimed inability-to-pay argument, noting that the principle has little application in the context of employer’s operating in the broader public service, such as the SNPF. Accordingly, in the circumstances, PSAC asks that the Commission recommend its wage proposal.

[22] Finally, PSAC submits that its non-wage proposals are reasonable, needed, and ought to be recommended by the Commission.

The Employer's Submissions

[23] The Employer submits that it is a unique governmental organization within the public service and the appropriate collective bargaining outcome must align with that reality. Unlike the core public administration, the Employer submits that it is not subject to the policies and guidelines issued by the Treasury Board, and it does not receive funding directly from the Treasury Board. The Employer submits that it is subject to several revenue generating restraints that position it uniquely with the federal public sector.

[24] The Employer emphasizes that it is funded differently than organizations within the core public administration. It submits that approximately sixty percent of its funding is generated directly from services provided to the military community it serves while only forty percent is derived from the Department of National Defence through the Treasury Board. According to the Employer, its unique funding model, along with its operational independence, means that it is inappropriate to replicate collective bargaining outcomes in the core public administration at SNPF-Kingston. The Employer further submits that PSAC's reliance on the National Occupational Classification (NOCs) system is flawed because NOCs are too general and vague to allow for a proper application of the keystone principles of replication and comparability.

[25] Rather, the Employer submits that the most appropriate comparators for PSAC's bargaining unit at SNPF-Kingston are private market and internal comparators. Most important, from the Employer's perspective, are the freely bargained collective agreement outcomes it reached with the UFCW. The Employer argues that the UFCW outcomes, which apply to the same types of employees performing the same type of work with the same employer, provide the best evidence of free collective bargaining in the present matter. Given that the UFCW outcomes do not support the demands of the PSAC, the Employer asks that its position on wages be recommended by the Commission. The Employer also notes that if PSAC's financial demands were met, the services it provides would be adversely affected.

[26] The Employer denies that there is a recruitment and retention problem at SNPF-Kingston, and certainly not one that that would justify granting PSAC's proposals. The Employer submits that the ability to recruit and retain is difficult throughout the labour market generally, and that several of the vacancies that currently exist at SNPF-

Kingston remain vacant because of funding shortfalls and not, as PSAC suggests, because of an inability to recruit and retain staff.

[27] With respect to the approximately twenty-six non-wage proposals advanced by PSAC, the Employer characterizes them as breakthrough proposals for which there is no evidence of demonstrated need and which are not supported by the relevant comparator data. Accordingly, the Employer asks that they be rejected by the Commission.

Discussion

[28] The task of this Commission is to assist the parties with concluding a renewal collective agreement by making recommendations on the issues in dispute after considering, amongst other things, the statutory factors set out at section 175 of the *Act*. The parties, quite rightly, focused much of their time addressing the issues of wages. This report does the same.

[29] The need to attract and retain competent employees to serve the needs of the SNPF-Kingston military community is self-evident. The SNPF plays an important role in the overall effectiveness of Canada's Armed Forces. PSAC says that the Employer has acknowledged its staffing challenges and claims that this fact is borne out by the significant number of bargaining unit positions that remain unfilled. PSAC says the cure to this ailment is a hefty wage increase. The Employer says otherwise, claiming that the vacancies exist because it has not been able to secure funding to fill them and not, as PSAC asserts, because wages rates are insufficient to attract and retain staff. Having considered the material and submissions of the parties, it is not possible for the Commission to conclude whether there is a recruitment and retention problem at SNPF-Kingston. We therefore give this factor little weight.

[30] This case, as with most, turns on the application of the principles of comparability and replication that underly sections 175(a) and (b) of the *Act*. The Commission must consider both public and private comparators, and the need to maintain appropriate relationships with respect to terms and conditions of employment amongst occupations in the public sector in arriving at its recommendations. The voluntary settlements SNPF achieved with UFCW, while relevant, do not establish a pattern *per se* that PSAC and SNPF-Kingston must follow. The material before the Commission discloses that PSAC has not historically followed

the collective bargaining outcomes reached by SNPF and UFCW, and that notion is supported by the Employer's current position on wages which is superior the settlement(s) it reached with the UFCW. In a similar vein, the material before the Commission does not establish that PSAC and SNPF-Kingston always replicate the pattern established by PSAC in the core public administration.

[31] Ultimately, the statutory factors set out in the *Act* and the principles of replication and comparability lead us, like the Kaplan Commission, to conclude that the appropriate landing spot is in the middle of the parties' respective positions. Accordingly, in our view, the appropriate wage grid adjustment for 2023 is 1.75%.

[32] PSAC has made proposals intended to harmonize wage rates amongst employees at different bases who perform the same or substantial similar work, a worthwhile objective from a labour relations standpoint as the Kaplan Commission noted, but beyond our jurisdiction which is limited to SNPF-Kingston.

[33] Before concluding our discussion on wages, we feel compelled to make two observations. First, the Employer submitted that it was constrained by the restrictions or "mandate" imposed by the government on the public funding it receives and urged the Commission to construct its recommendations in line with those constraints. We do not accept this submission. In our view, to do so would fetter the broad discretion conferred on the Commission pursuant to section 175 of the *Act* to consider the enumerated factors and make recommendations to assist the parties conclude a renewal collective agreement. Second, the Employer submitted that it was unable to fund the monetary proposals advanced by the PSAC, and that to do so would negatively affect the delivery of services to the SNPF-Kingston military community. Arbitrators have consistently rejected the notion that public sector employers can claim an inability-to-pay to avoid normative wage increases. In any event, without determining this issue, a heavy evidentiary onus rests on an employer to establish an inability-to-pay and we are not satisfied that the Employer has discharged that onus based on the material before the Commission.

[34] PSAC advanced a myriad of non-wage proposals. They range from enhanced union leave, to increased statutory holiday benefits, to the provision of pre and post-retirement benefits that mirror those found in the core public administration. Having considered the principles of comparability, replication and demonstrated need, and the mandate of the Commission, we do not believe that recommending them will assist the

parties with concluding a renewal collective agreement. A number of them are properly characterized as breakthrough proposals. Some lacked evidence of demonstrated need while others did not appear to be normative. A few appeared to be beyond the Commission's jurisdiction or were issues that are governed by legislation. In the circumstances, the Commission declines to recommend any of the PSAC's non-wage proposals.

Recommendations

[35] For the reasons above, the Commission recommends:

- i. That the items agreed-to by the parties be incorporated into the renewal collective agreement.
- ii. Wages as follows:
 - July 1, 2022: 3.5% GWI + 2.5% Wage Adjustment
 - July 1, 2023: 3% GWI + 1.75% Wage Adjustment
 - May 1, 2024: 2% GWI + 1% Wage Adjustment
- iii. Retroactive pay will be provided to all Employees who were on strength for any period during the life of the Collective Agreement.

Dated this November 30, 2023.

"Jesse Kugler"

Jesse Kugler, Chairperson

I dissent. See attached.

Sebastien Huard, Employer Nominee

Addendum attached.

Joe Herbert, PSAC Nominee

EMPLOYER REPRESENTATIVE DISSENT

I am unable to endorse two aspects of the Chair's final recommendations: the additional 1.75% wage adjustment effective July 1, 2023, and the application of retroactive pay to all former employees.

Wage Adjustment

As detailed by the Chair, 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 to 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 July 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 with the Chair's recommendation regarding retroactive pay.

Addendum

The issues in this case largely mirrored those in *SNPF (Petawawa) and PSAC*, October 31, 2023 (Kaplan) and so my comments there, to the extent the issues are the same, are equally applicable in this case. That said, it is additionally significant that the final Reports of the respective Commissions are so similar in their conclusions.

Dated this 21st day of November 2023.

Joe Herbert

PSAC Representative
