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Parliamentary Employment and Staff Relations Act

Before the Federal Public Sector Labour Relations and Employment Board

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 Parliamentary Protective Service, as Employer
in respect of the Detection Group bargaining unit

Indexed as
Public Service Alliance of Canada v. Parliamentary Protective Service

In the matter of the *Parliamentary Employment and Staff Relations Act*

Before: Christopher Rootham, Joe Herbert, and Kathryn Butler Malette, deemed to form the Federal Public Sector Labour Relations and Employment Board

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

For the Employer: Sébastien Huard, Paula Campbell and Tess Brown, counsel

Heard by videoconference,
February 1 and 13, 2024.

ARBITRAL AWARD

I. Matter before the Board

[1] This is an arbitral award to determine the terms and conditions of employment for the employees in the Detection Group bargaining unit employed by the Parliamentary Protective Service (PPS) and represented by the Public Service Alliance of Canada (PSAC). The outline of this decision is as follows:

Part I:	This outline.
Part II:	General information about this bargaining unit and the employer.
Part III:	The procedural history of this arbitral award.
Part IV:	The principles applied to determine this arbitral award.
Part V:	The arbitral award about duration, rates of pay and lump-sum payments.
Part VI:	The arbitral award about other issues referred to arbitration.
Part VII:	The order.

II. The bargaining unit and employer

[2] The PPS is one of seven employers regulated by the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp); "*PESRA*"), and it is the parliamentary entity responsible for the physical security of the Parliament of Canada. It was created in 2015 and unified the House of Commons Security Services, the Senate Protective Service, and the Royal Canadian Mounted Police detachment that patrolled Parliament Hill into a single protective service. As a result of amendments to *PESRA* in 2015, the PPS became the successor employer to the House of Commons and Senate. Unionized employees of PPS were divided into two bargaining units: one for protection officers (and their supervisors) and one for detection specialists (and their supervisors). This case is about the second bargaining unit, which is more commonly called the Detection Group. The other bargaining unit will be called the Protection Group in these reasons.

[3] Employees in the Detection Group operate scanning equipment used on people entering Parliament Hill. They will also sometimes search people or their effects, confiscate dangerous items, and report any breaches of security to protection officers.

While the Detection Group collective agreement has 10 classification levels for salary purposes, there are only 3 active positions for the approximately 102 employees in the Detection Group: Detection Specialists (level 5, approximately 90 in number), Detection Supervisors (level 6, approximately 10 in number) and Detection Trainers (level 7, approximately 2 in number). The rest of the PPS's 786 employees are either in the Protection Group (approximately 485) or are unrepresented (approximately 199).

III. Procedural history

[4] PSAC served notice to bargain on the PPS on July 6, 2020. The parties met to negotiate on eight occasions: October 12 and December 19, 2022 and January 26, February 9, and June 6, 8, and 20 to 21, 2023. During those negotiations, the parties agreed on 12 items.

[5] On June 29, 2023, PSAC requested arbitration under s. 50 of *PESRA* and set out a list of the terms and conditions of employment it wished to have referred to arbitration. On July 13, 2023, the PPS provided its position on the terms and conditions proposed by PSAC and a list of additional terms and conditions it wished to refer to arbitration. PSAC replied on July 14, 2023 to state that it agreed with the PPS's position on two issues (which it had previously agreed to and included in its reference to arbitration through an oversight), but otherwise that it maintained its previous position on all other items.

[6] The terms of reference for the arbitration board deemed to form the Federal Public Sector Labour Relations and Employment Board ("the Board") were forwarded to the Board members on August 8, 2023 by the Chairperson of the Board.

[7] PSAC modified its wage proposal before the hearing, and the PPS dropped two of its proposals during the hearing. The following proposals remained in dispute, the titles being a description prepared by this Board for ease of understanding and the proposing party in parenthesis:

Article 7.02: Jurisdiction of employee representatives (PSAC)

Article 10.02: Copies of collective agreement (both)

Article 10.04: Orientation with new employees (PSAC)

Article 14.04: Consultation about changes (PSAC)

Article 16.09: Vacation liquidation (both)

Article 16.14: Vacation leave restriction periods (PSAC)

Article 17.05: Work on a holiday (PSAC)

Article 18.02: Family members for eligible bereavement leave (PSAC)

Article 18.12: Leave with pay for family-related responsibilities (both)

Article 18.16: One-time vacation leave credit (PPS)

Article 18.17: Personal leave (PSAC)

Article 19.01(c): Sick leave for shift workers (PSAC)

Article 19.03: Statement attesting illness for sick leave (PSAC)

Article 21.11: Rest periods (PSAC)

Article 21.16: No guarantee of minimum or maximum hours of work (PSAC)

Article 21.xx (NEW): Overtime assignment to replace a shift (PSAC)

Article 21.xx (NEW): Operational requirements (PSAC)

Article 22.07: Pay increment administration (PSAC)

Article 22.09: Pay increment date (PSAC)

Article 22.10: Rate of pay on promotion (PSAC)

Article 22.XX (NEW): Paid half-hour lunch break (PSAC)

Article 25.01: Shift premium (PSAC)

Article 25.02: Weekend premium (PSAC)

Article 28.01: Progressive discipline (PSAC)

Article 28.02: Timelines for discipline (PSAC)

Article 29.08: Timeline to present a grievance (PSAC)

Articles 36.03 & 36.04: Training (PSAC)

New Article: Bilingualism bonus (PSAC)

Appendix D: Scheduling Guidelines (PPS)

Appendix U: Uniforms and Equipment (PSAC)

Appendix (NEW): Equipment and travel to and from post premium (PSAC)

Appendix A: Economic increases (both)

Appendix A: One-time lump sum payment (PSAC)

Appendix A: Damages (PSAC)

Appendix A: Payment for late implementation of arbitral award (PSAC)

IV. Principles applied in making this arbitral award

[8] In rendering its decision, the Board is guided by s. 53 of *PESRA* which reads as follows:

> ***53*** *In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, the Board shall consider*
>
> ***(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.*

[9] This Board is tasked with determining the terms and conditions of employment for employees in the Detection Group. In most jurisdictions, this exercise is called interest arbitration. Interest arbitrators have developed and applied several principles that they follow when making their decisions. These principles are broadly reflected in s. 53 of *PESRA* as well, and the Board has been guided by those principles in this decision too.

[10] Interest arbitration is a substitute for strikes and lockouts. Therefore, at its core, the task of an interest arbitration board is to determine what the parties would have agreed to after a strike or lockout, or the threat of one. Interest arbitrators commonly refer to this as the replication principle: that the job of this arbitration board is "to replicate what conventional bargaining would have produced" (see *Construction and Labour Relations Assn. of British Columbia v. Operative Plasters' and Cement Masons' International Assn., Local 919*, [2006] B.C.C.A.A.A. No. 11 at para. 7). This does not permit the Board to speculate about how the issues would have played out at the bargaining table; instead, we are "required to act adjudicatively and to respond to objective criteria" (see *Beacon Hill Lodges of Canada v. H.E.U.* (1985), 19 L.A.C. (3d) 288 at para 59). Section 53 of *PESRA* is an effort to list some of those objective criteria. However, despite the Board's best efforts, collective bargaining and interest arbitration are not precise exercises, as explained in *Sudbury (City) v. The Sudbury Professional Fire Fighters Association Local 527, International Association of Fire Fighters*, 2017 CanLII 54143 at para. 15 as follows:

> *15. Collective bargaining is not a precise mathematical exercise. There is significant room for legitimate disagreement among experienced labour relations practitioners about the arbitrated result that would best replicate an agreement if it had been freely negotiated in a right to strike or lockout environment. All that an interest arbitrator can hope to do is to produce an award that falls within a reasonable range. Analysis of various data does not dictate a single 'right' answer immune from rigorous debate and credible differing opinion.*

[11] The most important way that interest arbitrators attempt to replicate a freely negotiated collective agreement is to examine the agreements reached in similar workplaces. In this way, the goal of replication is achieved through comparability — by comparing or even copying the results reached in similar workplaces. As one leading arbitrator has put it, "[c]omparability puts the flesh on the bones of replication, providing the surest guide to what the parties would likely have done, in all of the circumstances, had the collective agreement been fully and freely bargained" (*Bridgepoint Hospital v. Canadian Union of Public Employees, Local 79*, 2011 CanLII 76737 (ON LA) at p. 4).

[12] The criteria listed in s. 53(b) and in the provision that follows s. 53(d) reflect the principle of comparability — s. 53(b) providing for "internal comparability" (comparability within an employer) and the ending provision in s. 53 providing for

"external comparability" (comparability with other employers, in this case in the federal public administration). In essence, s. 53 provides for an arbitration board to consider comparables as if they were concentric circles nested within one another. At the centre is the terms and conditions of the same Parliamentary employer; the next circle is other Parliamentary employers; the next circle is the federal public administration; and finally, an arbitration board can consider other relevant employers. Typically, an arbitration board gives more weight to the innermost concentric circle, and then decreasing weight to each successive circle.

[13] In this case, there was considerable debate over the utility of the inner-most circle — in particular, whether the Protection Group was an appropriate comparator for the Detection Group. Both parties were guilty of cherry-picking whether the Protection Group was an appropriate comparator. The employer insisted that it should not go above what is set out in the Protection Group collective agreement, but at the same time insisted that the two groups are different and therefore the Detection Group should not gain certain benefits available to employees in the Protection Group. Similarly, PSAC argued on the one hand that its members worked closely with employees in the Protection Group and one of its main goals in this round of bargaining was parity with the Protection Group, but then turned around and argued that PSAC always negotiated for more than other groups which is why the Protection Group negotiated a "me too" clause so that they would copy any wage increases negotiated by PSAC for the Detection Group.

[14] In short, both parties treated the Protection Group as a comparator when it suited them, but argued against it as a comparator when it served their interests to do so.

[15] This is a common problem when a law enforcement entity is split between uniform and civilian bargaining units. The general approach by interest arbitrators is that the civilian unit is not entirely comparable to the uniform unit, but the civilian unit is also not entirely comparable to the rest of the public sector either. As one leading interest arbitrator has put it: "[t]he Board, while rejecting that civilian police work is comparable to uniformed police work with its inherent dangers, accepts that its civilian workers can reasonably seek a premium over other public sector employees based on the uniqueness and critical nature of some of the work" (see *North Bay Police Services Board v. North Bay Police Assn.* (1999), 88 L.A.C. (4th) 231 at p. 234).

[16] The Board has followed that approach here: the Protection Group is the most appropriate comparator, unless the difference between the duties of the two groups warrants a difference in their terms and conditions of employment.

[17] Finally about comparability, the Board has been heavily influenced by the recent wage agreements between Treasury Board and PSAC in the core public administration. Those agreements were reached after a roughly two-week strike, and therefore are a strong predictor of what these parties would have agreed to had they reached an agreement without resorting to arbitration. The Board draws further support for that conclusion knowing that other bargaining units in the federal public administration have essentially copied the agreements reached between Treasury Board and PSAC.

[18] In addition to comparability, the Board has also been influenced by two other general approaches in interest arbitration. The first is incrementalism. As the leading text in this field states, "interest arbitration [is] a conservative process, not one prone to major breakthroughs in either language outcome" (see Sanderson & Cole, *The Art of Collective Bargaining*, 3rd ed., at p. 156). If either party wants a breakthrough or a significant change, they should purchase it at the bargaining table. The second principle is that of total compensation. Throughout this decision, this Board has considered the total cost or impact on compensation of each parties' proposal. To this end, both parties provided detailed costing information about their respective proposals. The Board would like to thank both parties for providing this detailed information, as well as the thoroughness and quality of their submissions generally.

[19] With those principles in mind, the Board has made the following determinations.

V. Determination about duration, rates of pay, and lump-sum payments

1. Duration

[20] Both parties initially proposed and had previously agreed upon a four-year term for this arbitral award, from April 1, 2020 to March 31, 2024. However, s. 58 of *PESRA* reads as follows:

> ***58 (1)*** *The Board shall, in respect of every arbitral award, determine and specify therein the term for which the arbitral award is to be operative and, in making its determination, it shall take into account*

> ***(a)*** *where a collective agreement applicable to the bargaining unit is in effect or has been entered into but is not yet in effect, the term of that collective agreement; and*
>
> ***(b)*** *where no collective agreement applying to the bargaining unit has been entered into,*
>
> > ***(i)*** *the term of any previous collective agreement that applied to the bargaining unit, or*
> >
> > ***(ii)*** *the term of any other collective agreement that to the Board appears relevant.*
>
> ***(2)*** *No arbitral award, in the absence of the application thereto of any criterion referred to in paragraph (1)(a) or (b), shall be for a term of less than one year or more than two years from the day on and after which it becomes binding on the parties.*

[21] The Board was concerned that the hearing of this arbitration was scheduled for February 2024 and that the most likely outcome would be that the arbitral award would expire almost immediately (or even before) the award was issued. Therefore, the Board asked the parties for their submissions on whether the duration of the arbitral award should be until March 31, 2025 and, if so, what other changes should be made.

[22] PSAC argued that the award should expire on March 31, 2024 as it had originally agreed, basically because PSAC has not been able to generate new bargaining proposals since it first met with the employer in 2022 and there are new issues arising in the workplace that need to be addressed. Unfortunately, PSAC was unable to name any of those issues — the two issues it named (discipline and vacation scheduling) already form the basis of proposals in this round of bargaining. In the alternative, PSAC proposed a wage increase of 2% and a wage adjustment of 0.25% for the final year of the arbitral award, but asked for no other changes.

[23] The PPS argued that the term of the award should extend to March 31, 2025 in the interests of labour relations stability. PPS also proposed a wage increase of 2% and a wage adjustment of 0.25% for the final year of the award, but asked for no other changes.

[24] In *Public Service Alliance of Canada v. Library of Parliament*, 2023 FPSLREB 91 (the "*Library of Parliament Award*") a recent arbitration board extended the term of its award to August 31, 2025 (instead of earlier dates proposed by the parties), stating as follows:

> …

> *[35] The Board relies on ss. 58(1)(b)(ii) and (2) to set the term.*
>
> *[36] The previous collective agreements expired on August 31, 2020. This award is being issued over three years after that expiry. The collective bargaining regime is ill-served if the parties are always playing catch-up in order for the collective agreement to be relevant to the bargaining unit members and meet their needs.*
>
> *[37] The interests of the employees and of the employer are best served at the bargaining table. They are in the best position to know the workplace and the working conditions. We wish, by setting a date in 2025, to allow the bargaining process to unfold as it should.*
>
> *[38] As stated in s. 58(1)(b)(ii) of the* PESRA, *"…the Board shall take into account… the term of any other collective agreement that to the Board appears relevant."*
>
> *[39] PSAC has just concluded a number of collective agreements with federal public service employers. Their terms extend to 2025. The economic pattern has been set for the federal public service, and we see no good reason not to follow it in this award, to offer fair working conditions to the bargaining unit members.*
>
> *…*

[25] The Board agrees with the *Library of Parliament Award*. If anything, the need to extend this award through 2025 is even more acute here than in that case. The parties should have the opportunity to live with this arbitral award, if only for just under a year, before having to decide what changes they want to negotiate. As another arbitration board put it in *Research Council Employees Association v. National Research Council of Canada*, 2014 unreported (but available online on the Board's website), "it makes little labour relations sense to have collective agreements that have already expired at the time of the issuance of the Award. The parties will be required to start collective bargaining immediately and will have no opportunity to see how the new collective agreement works."

[26] Finally, in this case PSAC and the PPS agree on the terms that should apply to the "extra" year of the award.

[27] The Board has decided that the term of the collective agreement will be until March 31, 2025.

2. Rates of pay and one-time lump sum payment

[28] There were three main differences between the parties about the rate of pay and a one-time lump sum payment.

[29] First, the parties disagreed about the pay increases for the first two years of the agreement (April 1, 2020 and April 1, 2021). PSAC wanted a 2% increase for each year, essentially copying what was negotiated or arbitrated at the Library of Parliament. PPS wanted a 1.5% increase for those two years, essentially copying what was negotiated for the Protection Group, most other Parliamentary employers, and the large majority of agreements reached voluntarily in the federal public administration.

[30] Second, the parties disagreed about 2022 and 2023. For context, in the federal public administration, the agreements reached included 3.5% wage increases plus a 1.25% wage adjustment in 2022, and a 3% wage increase plus a 0.5% wage adjustment in 2023.

[31] In this case, the parties both proposed a 4.2% wage increase in 2022, which the PPS earlier negotiated with the Protection Group. PSAC then proposed a 0.6% wage adjustment in 2021. It explained that the agreement reached with the Protection Group had a “me too” clause that applied to wage increases in 2022. It wanted to help the PPS avoid triggering that clause by pushing the wage adjustment back to 2021. It also reasoned that the compounded effect of the 3.5% wage increase and the 1.25% adjustment was 4.8% and, therefore, there should be a 0.6% wage adjustment in 2021. Finally, it proposed a 3.5% wage increase for 2023.

[32] The PPS said that it did not ask for that structure to avoid triggering the “me too” clause. Instead, it proposed a 3.55% increase for 2023 which, it explained, is a 3% increase plus the missing 0.55% from 2022 — implicitly acknowledging that its proposal for 2022 was light. It did not explain why it proposed a 3% increase for 2023 (plus the additional .55%). In particular, the PPS identified no comparable bargaining unit that only received a 3% wage increase in 2023 without any additional wage adjustment. The Protection Group agreement ended after the 2022 wage increase.

[33] Third, PSAC proposed a $2500 pensionable lump-sum allowance. This allowance was negotiated in the recent agreements in the federal public administration, and was awarded for employees in the *Library of Parliament Award*. While the PPS did not explicitly consent to this proposal, it did not strongly contest it and, instead, asked that this Board keep it in mind when assessing PSAC’s other compensation proposals and that it ensure that the language used would mean that bargaining unit members only receive the payment once. The PPS was particularly worried about employees leaving the Detection Group to join the Protection Group receiving the allowance twice

if it negotiated a similar allowance for the Protection Group. On this point, the Board declines to award any particular language to address this concern here; the concern is hypothetical at this stage, and the PPS can address it during negotiations with the Protection Group.

[34] This Board has decided to replicate the agreement reached between PSAC and Treasury Board in the federal public administration. This reflects the broad pattern of collective bargaining across Parliamentary employers and the federal public administration more generally, and is the best way to replicate what the parties would have ultimately agreed to had they reached a freely negotiated outcome.

[35] While this means that the agreement is different in 2022 from that negotiated with the Protection Group (i.e. the inner-most of the concentric circles), the PPS's proposal acknowledges that it needs to do something to reflect the broad pattern of bargaining for 2022 that is different from that agreement. In other words, both parties acknowledge that for 2022 the Protection Group is an imperfect comparable for the Board to follow.

[36] This also means that the award is different for 2020 and 2021 than in the *Library of Parliament Award*; however, the Library of Parliament is the only relevant comparator with higher than 1.5% economic increases for 2020 and 2021. The Board chooses to follow the pattern within PPS, other Parliamentary employers, and the majority of the of the federal public administration for those years.

[37] Consequently, the Board awards the following increases:

April 1, 2020: 1.5% economic increase

April 1, 2021: 1.5% economic increase

April 1, 2022: 3.5% economic increase, plus 1.25% wage adjustment

April 1, 2023: 3% economic increase, plus 0.5% wage adjustment

April 1, 2024: 2% economic increase, plus 0.25% wage adjustment

(Note that the wage adjustments are compounded.)

[38] The Board also awards a lump-sum allowance of $2500 paid to all employees in the bargaining unit on the date of the award. This lump-sum award is common across the federal public administration for agreements negotiated in 2023 and later. The

lump-sum allowance is not contained in the Protection Group agreement, but that agreement pre-dated this pattern of a lump-sum allowance in 2023 or later. The lump sum is paid for the performance of regular duties and responsibilities associated with their position.

3. Other lump-sum payments and allowances

[39] PSAC proposed an annual $800 bilingualism bonus, an annual allowance of $1000 for performing public safety duties, a payment of $2500 in general damages for a combination of problems with the Phoenix pay system and the late implementation of the previous arbitral award, and a one-time payment of $500 plus an additional $50 for each 90-day period that the PPS delays implementing this award.

[40] The Board does not award the bilingualism bonus, the public safety allowance, the general damages, or the $500 one-time payment.

[41] Every member of the bargaining unit is already bilingual, so the bilingualism bonus is not really a bilingualism bonus so much as a bonus for everyone — which was never its intent in the federal public administration. It is also uncommon in Parliamentary employers.

[42] The public safety allowance would be a breakthrough item as PSAC was unable to point to any clearly comparable workers who received that allowance: the allowances for parole officers, environmental enforcement officers, and fishery officers were negotiated for employees of Treasury Board with very different duties.

[43] The $2500 award for general damages has never been awarded for a Parliamentary employer, and this Board is not going to award this breakthrough item here. Additionally, there are ongoing grievances about problems with pay at PPS; if there are any damages to be awarded, they should be awarded in those grievances instead of here.

[44] Finally, the $500 one-time payment has also never been awarded or negotiated for a Parliamentary employer. PSAC also explained in its submissions that the intention behind this $500 one-time payment was to compensate members of the bargaining unit for the late implementation of the previous arbitral award. There are a number of outstanding grievances about that issue. While PSAC's representative indicated that PSAC may be willing to drop those grievances if the Board awarded this

one-time payment, he was unable to firmly commit to doing so. The Board will not order this payment in these circumstances.

[45] On the $50 for each 90-day period that this award is delayed, the PPS argued that any late implementation requires it to apply to the Board under s. 59 of *PESRA* for an extension of time to implement the award. That is true; however, s. 59 of *PESRA* does not prevent this Board from anticipating a delay in implementation and settling the consequences of that delay so that the parties do not need to argue that point in a later application.

[46] PSAC also bases this $50 payment on similar agreements reached in the federal public administration. Again, this is true; however, those agreements called for implementation to occur within 180 days and made the payments after that date, and this Board cannot reduce the implementation time below 90 days because of s. 59 of *PESRA*.

[47] That said, the Board was very concerned to hear that the PPS took years to implement the wage increases and retroactive pay in the previous arbitral award, and that there are still ongoing disputes about that late implementation. There are only roughly 100 employees in this bargaining unit, along with approximately 61 former employees who may be entitled to retroactive pay (according to the PPS' brief setting out the number of employee departures between 2020 and 2023). Pay increases and retroactive pay involve straightforward arithmetic.

[48] For each employee who is employed in the bargaining unit on both the date of this arbitral award and 90 days after that date and who does not receive a wage increase, wage adjustment, or retroactive pay within 90 days of the date of this award, the PPS must pay that employee (1) the sum of $200 if the outstanding amount owing is greater than $500, plus (2) an additional $50 for each additional 90-day period of delay. To be clear, former employees (i.e. the approximately 61 employees who may be entitled to retroactive pay) are not eligible to receive this payment even if the PPS takes more than 90 days to implement this arbitral award. Further, any employee who leaves the Detection Group in the 90-day period after this award is issued is not eligible to receive that payment even if the PPS takes more than 90 days to implement this arbitral award. This Board has selected the amount of $200 because that is the lump-sum payment agreed to recently by Treasury Board and PSAC in the core public administration for late implementation of the collective agreement. Even though in

that case the amount is being paid immediately and regardless of whether the implementation is delayed, it is still a way to approximate a likely outcome had the parties negotiated an agreement in this case.

[49] For greater certainty, the Board is not ordering the parties to word this payment in a way that would make it pensionable.

4. Equipment allowance and paid lunch

[50] PSAC has proposed two other items with a meaningful monetary cost. First, it proposed a monthly premium of $270 to compensate employees for time spent to change into their uniform, retrieve their equipment, and attend their duty post prior to the commencement of their shift. PSAC made this proposal because employees in the Protection Group are paid a $300 monthly premium for similar purposes. However, the premium for the Protection Group is only paid to employees who carry a firearm. None of the employees in the Protection Group carry a firearm. The Board does not order this proposal.

[51] Second, PSAC has proposed that employees be paid a half hour for their one-hour lunch. The other half hour of lunch would remain unpaid. PSAC makes this proposal because there is a similar entitlement in the Protection Group.

[52] By way of context, in *House of Commons Security Services Employees Association v. Parliamentary Protective Service*, 2019 FPSLREB 104 another arbitration board ordered a half-hour paid lunch for employees in the Protection Group in response to a proposal by the bargaining agent for a change from a 35-hour to 40-hour work week. That board's decision reads as follows:

> …
>
> *[11] This would represent a major change for the bargaining unit. The regular work week is now defined as a 35-hour work week.*
>
> *[12] The underlying rationale for this demand is the remuneration of the lunch hour. The bargaining agent submits that protection officers, given the new requirement to* ***either remain in full uniform during their lunch hour or store their firearm, pepper spray and radio in a secure area and locker****, cannot fully enjoy their lunch break as they did before.*
>
> …
>
> *[14] The Board heard considerable evidence from Mr. Lapensée, that the requirement to either remain in full uniform or store*

> *securely weapons and radio has had a considerable impact on the quality of the lunch hour for the protection officers. For example, it was possible before to enjoy a run or gym session during the lunch hour; now, this is very much complicated by the need to securely lock certain items. This testimony is not contradicted by the factual findings of* Volpi.
>
> *[15] The Board has come to the conclusion that the work week should remain at 35 hours. While we do not accept the bargaining agent's proposal for a fully paid lunch hour, in our view* ***the evidence establishes that the lunch hour of Protection Officers is frequently disrupted*** *thus the Board awards that for each day worked, Protection Officers are entitled to a paid half hour at lunch, the other half hour being unpaid and the payment being at the straight time rate.*
>
> …
>
> [Emphasis added]

[53] In this case, the Board heard no evidence about the quality of the lunch hour for employees in the Detection Group. PSAC's brief described that the employees often have their lunch periods disrupted by members of the public and by their supervisors, and that employees must change out of their uniform in order to leave the Parliamentary Precinct for lunch. The PPS's brief disputes the second claim, and states that employees in the Detection Group can and do wear their uniform outside of the Parliamentary Precinct so long as their lapels are covered. During oral argument, the PPS's representative stated that it was trying to distinguish the uniforms worn by different employees to alleviate issues about being contacted by members of the public – acknowledging implicitly that some public contact during lunch breaks has taken place.

[54] Without clear evidence one way or the other, the Board is left in a different position than in the 2019 decision for the Protection Group.

[55] Additionally, employees in the Detection Group do not carry a firearm, pepper spray or radio — the key pieces of equipment relied on by the arbitration board in that case.

[56] The parties in that case never implemented a half-hour paid lunch. Instead, they negotiated a lump-sum annual premium ranging between $3600 and $5700 for each employee. That lump-sum then increased at the same rate as the annual wage increase for the bargaining unit as a whole. The premium is approximately six and two-thirds percent of the base salary of each classification, which is the value of being paid an

extra 30 minutes a day in a 35-hour week. It is not precisely 30 minutes worth of pay per day, but instead a rough calculation of that amount that does not consider which step the employee is on in the pay grid.

[57] This means that, in practice, PSAC's proposal is for a premium worth roughly six and two-thirds percent of base salary.

[58] The way the Protection Group implemented the paid lunch in the Protection Group is noteworthy in other ways. The lump-sum payment negotiated by the parties states specifically that "[f]or further clarity, it is understood by the parties that the present agreement applies to all SSG protection staff, irrespective of their specific assignments, irrespective of the amount of disruption during their lunch breaks, and irrespective of the manner in which their lunch breaks are actually spent." In other words, the parties de-coupled the paid lunch from the idea of specific disruption to the lunch period.

[59] The lump-sum payment is not permanent, as the parties agreed that: "[i]n the event that working conditions have changed whereby protection employees are provided sufficient time, within their regular and overtime paid shifts, to remove their uniform and equipment and still enjoy a full unencumbered hour for lunch, then the premium will expire." Also, the lump-sum payment is not paid to dispatchers or their supervisors in the Protection Group – presumably because they do not have the same equipment to store during lunch.

[60] The Board does not order PSAC's proposal, for two reasons. First, some of the conditions triggering the arbitral award imposing it for the Protection Group are missing here — namely, employees in the Detection Group do not carry firearms, pepper spray, or radios. The evidence about disruption to the lunch break is also less clear. Second, the Board is concerned about the impact of that proposal on the total compensation for this bargaining unit. The experience in the Protection Group shows that this proposal is, in reality, a request for a significant annual allowance.

[61] However, there is some indication that employees in the Detection Group have their lunch hours interrupted (sometimes by their supervisors, and sometimes by members of the public) – and the PPS did not state that interruptions never take place. The Board also considers the interrelationship between employees in the Protection Group and Detection Group. Employees in the Protection Group are paid an allowance

in lieu of a paid lunch; it is unlikely that the parties would have ultimately agreed to do nothing for employees in the Detection Group. Finally, the Board acknowledges that no other Parliamentary agreement (and very few agreements in the federal public administration) provide a paid lunch; however, the principle set out in *North Bay Police Services Board* is relevant here – namely, that uniform groups tend to get more than non-uniform groups, but the non-uniform groups tend to get more than other public servants.

[62] For that reason, the Board orders as follows:

> *Employees in the position of Detection Specialist shall receive an annual premium of $1000 to reflect the disruption to their unpaid lunch break.*
>
> *This premium will come into force on April 1, 2024.*
>
> *The premium expires on March 31, 2025.*

[63] This terminable allowance is only paid to the Detection Specialists because the Board has no indication that the lunch hours of trainers or supervisors have been disrupted – in fact, some of the disruption to lunch hours was from supervisors.

[64] Had the Board awarded an allowance equivalent to a half-hour lunch, that would be worth just over $5000 to a Detection Specialist at the top of the wage grid, or just over $4000 to one at the bottom of the wage grid. The amount of $1000 reflects the relative strength of the evidence in this case versus the Protection Group case (including the absence of firearms and the lesser intrusion on lunch breaks generally).

[65] Replication of bargaining results is not an exact science – the Board cannot say that the evidence in this case is 25% as strong as for the Protection Group and therefore the allowance should be precisely that amount. There is always a fair amount of guesswork involved in predicting what the parties would have eventually negotiated. This is the Board's closest prediction, and what the Board considers would fall within the reasonable range of outcomes described in *Sudbury Professional Fire Fighters*.

[66] The terminable allowance comes into force on April 1, 2024, the final year of the collective agreement. It is also a terminable allowance, meaning that it will expire upon the commencement of the parties' next collective agreement unless it is expressly renewed (see *Professional Institute of the Public Service of Canada v. Treasury Board*, 2005 PSLRB 36 at paragraph 39, upheld 2006 FCA 185 for why the terminable

allowance will continue during the statutory freeze period until the parties enter into a new agreement). This will give the parties the opportunity to meaningfully discuss lunch breaks. For example, if the PPS makes or is making changes to the uniform mean that Detection Specialists are no longer being interrupted during lunch, the parties may discuss the consequences of that change.

[67] Finally, the Board emphasizes that this award is the result of the unique circumstances of the PPS that currently exist.

VI. Determination about other terms and conditions

1. Proposals that the Board does not include in the arbitral award

[68] The Board does not include the following proposals in the arbitral award:

Article 7.02: Jurisdiction of employee representatives

Article 14.04: Consultation about changes

Article 17.05: Work on a holiday

Article 18.17: Personal leave (except to the extent the parties agreed to during bargaining)

Article 19.01(c): Sick leave for shift workers

Article 19.03: Statement attesting illness for sick leave

Article 21.11: Rest periods

Article 21.16: No guarantee of minimum or maximum hours of work

Article 21.xx (NEW): Overtime assignment to replace a shift

Article 21.xx (NEW): Operational requirements

Article 22.07: Pay increment administration

Article 22.09: Pay increment date

Article 22.10: Rate of pay on promotion

Article 25.01: Shift premium

Article 28.01: Progressive discipline

Article 28.02: Timelines for discipline

Article 29.08: Timeline to present a grievance

Appendix D: Scheduling Guidelines

Appendix U: Uniforms and Equipment

[69] For each of those proposals, the party making the proposal has not satisfied the Board that there is a demonstrated need for the change being proposed.

2. Proposals that the Board includes in the arbitral award

[70] The Board includes the following proposals in the arbitral award. For modifications to the collective agreements' language, bold type indicates what is added, and strikeout indicates what is deleted.

a. Article 10.02 — copies of the collective agreement

[71] Both parties agreed to transition from providing written copies of the collective agreement to electronic copies. However, PSAC wanted a guarantee that an employee could receive a written copy if they deemed it impractical to use the electronic copy, and also wanted a printed copy available at every post and office where employees work.

[72] The Board has concluded that electronic copies of the collective agreement should be sufficient in most cases, as is the case elsewhere in the federal public administration. The Board therefore orders the following language to amend article 10.02:

> 10.02 ~~The Employer agrees to supply each employee with a copy of the Collective Agreement and will endeavour to do so within one (1) month after receipt from the printer.~~ **The Employer agrees to make a copy of the signed Collective Agreement available electronically to all employees as soon as possible after ratification. Where electronic access to the agreement is deemed unavailable or impractical by an employee, the employee will be supplied with a printed copy of the agreement upon request once during the life of the collective agreement.**

b. Article 10.04 — Orientation with new employees

[73] The parties agreed to increase the orientation session PSAC holds with new employees from 15 to 30 minutes in length. The Board has decided not to include PSAC's proposal to specify a "minimum" of 30 minutes in length, as it has not demonstrated a need for that qualifier. The Board therefore orders the following language to amend article 10.04:

> 10.04 As part of their orientation, a new employee will be granted a ~~fifteen (15)~~ **thirty (30)** minute period with pay, during normal working hours to meet with their shop steward or the local PSAC representative. When feasible, the orientation period will be scheduled to group a number of employees.

c. Article 16.09 — Vacation liquidation

[74] Both parties agreed that employees should be allowed to liquidate their earned vacation credits. The PPS proposed that this liquidation be subject to its approval at its absolute discretion. The Board does not agree with that proposal. Vacation credits are an earned benefit of an employee and their payment should not be subject to the employer's absolute discretion. PSAC proposed that employees should be permitted to liquidate their credits without limitation once per fiscal quarter. The Board does not agree with that proposal, as quarterly liquidation creates too severe an administrative burden on the PPS. The Board also rejects PSAC's proposal to have the value of the vacation credit calculated as of the time the request is made as opposed to the previous year, as that would create a discrepancy between the employer-order payment under what will now be article 16.09(a)(ii) (formerly article 16.09(b)) and the employee-initiated payment.

[75] The Board orders the following language to amend article 16.09:

> 16.09 Liquidation
>
> **a)** In order to minimize the amount of vacation leave credits to be carried over when the employee's bank contains more than the equivalent of one (1) year's entitlement of earned but unused vacation leave credits, the ~~e~~Employer reserves the right to:
>
> **(i)** ~~to~~ schedule the employee's vacation; or
>
> (**ii)** pay to the employee the credits at the employee's daily rate of pay as calculated from the classification prescribed in the employee's certificate of appointment of the employee's substantive position on December 31st.
>
> **b) During any vacation year, an employee may request to liquidate earned but unused vacation leave credits in excess of fifteen (15) days. Such requests shall not be unreasonably denied. Any liquidated vacation leave credits will be paid at the employee's daily rate of pay as calculated from the classification prescribed in the employee's certificate of appointment of the employee's substantive position on December 31st.**

d. Article 16.14 — Vacation leave restriction periods

[76] The PPS has a practice of restricting vacation leave around Canada Day. PSAC has expressed concern that the PPS has also recently restricted vacation leave on other occasions. However, PSAC was only able to identify one example of this, being a state visit by a foreign leader in 2023. The Board has decided that there is no demonstrated need for restrictions on the employer's right to restrict vacation leave.

[77] However, the Board appreciates that unexpected vacation leave restrictions can have a serious impact on employees, particularly because they bid on their vacation schedule every six months. To ameliorate this concern, the Board orders the following article added to the collective agreement:

> **16.14 Notice of Vacation Leave Restriction Periods**
>
> **The Employer agrees to provide as much advance notice as is practical to PSAC of any vacation leave restriction periods.**

[78] The Employer objected to the Board's jurisdiction to award PSAC's proposal under s. 5(3) of *PESRA* on the basis that the proposal interfered with its right to determine its organization by limiting its ability to restrict vacation leave during certain periods. Since the language ordered by the Board does not infringe upon the PPS's organization, the Board does not need to address that jurisdictional objection.

e. Article 18.02 — Bereavement leave

[79] PSAC proposes adding uncles and aunts to the list of family members whose death would make employees eligible for bereavement leave.

[80] The Board grants this proposal. The Board appreciates that this language does not yet exist for any other Parliamentary employer. However, this was a new item agreed in the rest of the federal public administration in 2023. The list of relatives in this article traditionally follows the list negotiated in the rest of the federal public administration, so the Board orders that same result here. The Board therefore orders the following language to amend article 18.02(c):

> … c) An employee is entitled to one (1) day's bereavement leave with pay for a purpose related to the death of his or her brother in-law or sister-in-law, **aunt, uncle** and grandparents of spouse.

f. Article 18.12 — Leave with pay for family-related responsibilities

[81] PSAC proposes that employees may take this leave in 0.25-day (quarter-day) increments, as opposed to the current practice of taking the leave in full days. The PPS proposes that the language in the clause be changed from 5 days leave to 35 hours of leave. Both parties oppose each other's proposal.

[82] The Board has ordered the PPS's proposal, as calculating leave in hours instead of days is consistent with other forms of leave in the collective agreement. The Board also orders PSAC's proposal in part by allowing employees to take the leave in 0.5-day (half-day) increments, for the same reasons as a similar change to personal leave was ordered in the *Library of Parliament Award*. The Board therefore orders the following language to amend article 18.12:

> 18.12 …
> (b) The total leave with pay which may be granted under this clause shall not exceed ~~five (5) days~~ **thirty-five (35) hours** in a calendar year. **Such leave may be taken in half-day or full-day segments.**

g. Article 18.16 — One-time vacation credit

[83] The parties agreed on some changes to this article to delete transitional provisions that have expired and to clarify that employees receive this leave only once in their careers throughout the public service. The PPS proposed extra clarification language that the Board does not order because the extra clarification language would be redundant. The Board therefore orders the following language to amend article 18.16:

> 18.16 One-time Vacation Leave Credit
> …
> **(b) For clarity, employees shall be credited the leave described in 18.16 (a) only once in their total period of employment with the Parliament of Canada and the public service whether continuous or discontinuous.**
>
> ~~(b) Transitional Provisions~~
>
> ~~Employees of the bargaining unit transferred to the Parliamentary Protective Service on June 23, 2015, who at that time had more than two years of continuous House of Commons employment and who have been credited the onetime entitlement of thirty-five (35) hours of vacation leave with pay, will not receive an additional entitlement under this clause.~~
>
> ~~Employees of the bargaining unit transferred to the Parliamentary Protective Service on June 23, 2015, who at that time had not received the one-time~~

~~entitlement, shall be so credited upon reaching two years of combined continuous service within the House of Commons and the Parliamentary Protective Service.~~

h. Article 25.02 Weekend Premium

[84] PSAC proposed an increase in the weekend premium from $2.40 per hour to $2.50, retroactive to April 1, 2020. The Board does not award this increase. The current premium of $2.40 is already higher than the weekend premium with every other Parliamentary employer and with other PSAC units at Treasury Board. This is also why the Board did not order an increase to the shift premium.

[85] PSAC also proposed a change to the wording of the weekend premium provision so that the premium is payable for **all** hours work instead of just regularly scheduled hours at straight-time rates.

[86] The use of the phrase "… regularly scheduled hours at straight-time rates …" in article 25.02 is not normative. According to the PPS's brief, every other collective agreement with Parliamentary employers that has such a provision (except for a unit in the Senate of Canada and the Protective Group) removes the modifier "regularly scheduled". In addition, the standard language at Treasury Board goes even further and states that the weekend premium to be paid on "all hours worked, including overtime hours" — although, as pointed out earlier, the premium is higher here than at Treasury Board.

[87] On balance, the Board has decided to adjust this provision to match the language used in the rest of the federal public administration. However, the Board notes that this change will only be effective on the date of the arbitral award.

[88] Finally, both parties agreed to strike out the transitional language in the current agreement.

[89] The Board therefore orders the following language to amend article 25.02:

25.02 Weekend Premium

~~(a)~~ Employees shall receive an additional premium **of two dollars and forty cents ($2.40) on** Saturday and/or Sunday for **all** hours worked.

~~(i) 1. Effective April 1, 2017, the premium shall be two dollars and thirty cents ($2.30) for all hours worked.~~

~~2. Effective April 1, 2018, the premium shall be two dollars and thirty-five cents ($2.35) for all hours worked.~~
~~3. Effective April 1, 2019, the premium shall be two dollars and forty cents ($2.40) for all hours worked.~~

~~(b) Weekend premium shall be payable in respect of all regularly scheduled hours at straight-time rates worked on Saturday and/or Sunday.~~

i. Article 36 — Training

[90] PSAC proposed that the PPS be required to provide training to all employees every six months and also proposed some rules about scheduling that training. The crux of this proposal is not normative in Parliamentary employers or in the federal public administration. The Board denies this proposal. However, PSAC also proposed to correct a typographical error in the current version of article 36.03, and the Board therefore orders the following language to amend article 36.03:

> 36.03 The Employer shall communicate the general business priorities and plans, strategies, directions as well as associated training plans of the ~~Security Service~~ **Employer** to the PSAC and the employees.

VII. Order

[91] The Board will remain seized of this matter for a period of 120 days, in the event the parties encounter any difficulties implementing the arbitral award.

May 27, 2024.

Christopher Rootham,
for the Federal Public Sector Labour
Relations and Employment Board