

Date: May 29, 2024
Board File: 590-02-48310

**In the matter of a Public Interest Commission established under
the *Federal Public Service Labour Relations Act***

Between:

Treasury Board

and

The Public Service Alliance of Canada

(Border Services Group)

Before: William Kaplan, Chair
Jean-Steph en Pich e, TB Nominee
Joe Herbert, Alliance Nominee

Appearances

For PSAC: Morgan Gay Negotiator
Darren Pacione, Research Officer
PSAC

For Treasury Board: Annie Grenier
Treasury Board

The matters proceeded to a hearing held by Teams/Zoom on April 10 & 22, 2024.

Introduction

[1] This is the Report of a Public Interest Commission (Report, Commission) established under the *Federal Public Sector Labour Relations Act* (FPSLRA) relating to the renewal of a collective agreement between the Public Service Alliance for the Border Services bargaining unit ((FB group or union) and its 9000 employees and Treasury Board. All Border Services employees work for the Canada Border Services Agency (CBSA). The FB group includes positions that are responsible for:

- determining the admissibility of people or goods entering Canada,
- post-entry verification of people or goods that have entered Canada,
- arresting, detaining or removing those people who may be in violation of Canada's law,
- investigating the illegal entry of people or goods, and
- conducting intelligence activities related to the monitoring, inspection or control of people or goods entering Canada.

[2] Members of the FB group are assigned to marine operations in Halifax, Montreal and Vancouver and also work at Canada's land border crossings, international airports, and mail processing and immigration holding centres. These employees are central to Canada's security and prosperity. There is no question that they provide a very important public function and help keep Canada safe. A review of their accomplishments – as set out in the union brief – makes this crystal clear. They enforce approximately 100 acts, regulations and international agreements; they have the power to seize, and the power to arrest. Beginning in 2006, Border Services Officers (BSO) – the predominant classification – working in land border and marine environments were equipped with firearms (referred to by the parties as tools, later extended to include Inland Enforcement and Intelligence Officers and Investigators).

History of Negotiations

[3] The collective agreement expired on June 20, 2022. The parties met between June 2022 and September 2023. Fourteen items were signed off. (Between April 10, 2024, when the Commission first met, and April 22, 2024, our second and final day of hearing, the parties were able to agree on four additional items for which no recommendations are accordingly required.) On September 29, 2023, PSAC declared an impasse and asked that no Commission be appointed; the employer disagreed, pointing out that there had been few meetings and little bargaining. On October 30, 2023, the Chair of the Federal Public Sector Labour Relations and Employment Board recommended the appointment of a Public Interest Commission. Following consultations with the parties, this Commission was appointed, briefs were filed, and hearings held on April 10 & 22, 2024. The Commission met in Executive Session on May 13, 2024.

The Legislative Context

[4] In making recommendations, we are bound to consider the criteria set out in section 175 of the FPSLRA:

- (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.

Why Have the Parties not reached a collective agreement?

[5] There are three major impediments to reaching a collective agreement. The first is a dispute about the applicable comparator(s). The second is the sheer number of outstanding issues, and the third is the distance between the parties on all outstanding monetary and non-monetary proposals (many of which are directly linked to the comparator dispute).

Comparators

[6] The union is of the view that the terms and conditions of employment for the FB group should mirror those that are standard for other Canadian law enforcement workers, including those employed elsewhere in the federal public service, most especially the RCMP. As the union stated in its brief, "the central priority of this round of bargaining for the FB group is parity with the RCMP...." The CBSA was, the union observed, the second largest law enforcement agency in Canada. Accordingly, the existing discrepancy in terms and conditions of employment between it and the RCMP was, in the union's view, unjustified and demanded immediate attention in the form of appropriate recommendations from this Commission.

[7] The employer saw things differently: RCMP constables and other Canadian police forces were not proper comparators for the FB group. While many members of the FB group were designated as peace

officers under the *Criminal Code*, their authority was strictly circumscribed by the CBSA's enabling legislation. Police officers, the employer observed, have a much broader mandate including enforcing the *Criminal Code* as a whole. There were other important distinctions as well: peace officers have an ongoing duty to intervene whether on or off duty. FB group employees exercised their (much more limited) powers only when they were on duty, and usually in a customs office. Differences in training, skill, effort, responsibility and working conditions between the two was substantial.

[8] The employer acknowledged that BSOs were part of our law enforcement system, but where it parted company with the union was the propriety of direct police comparators. A day in the life of BSO was quite different from a day in the life of a Constable in the RCMP. In addition, FB group members had, in previous rounds, already received wage increases substantially above those in the core public administration, making further wage adjustments both unnecessary and inappropriate.

Number of Outstanding Issues/Delta Between the Parties

[9] The second and third barriers to reaching a collective agreement are (i) the sheer number of outstanding proposals and (ii) the huge gap between the positions of the parties on appropriate outcomes, both monetary and non-monetary. The union brought forward approximately 50 proposals for amendments to existing collective agreement provisions (or more than 180 outstanding proposals when the changes within articles were added up). The employer had proposals on 29 existing articles or appendices (or more than 40 outstanding proposals when the changes within articles were added up). Experience indicates, as discussed below, that if there is a genuine shared desire to reach a voluntarily negotiated collective agreement both parties will need to winnow the number of outstanding issues and focus on true priorities.

Our Overall Approach

[10] It would not be productive to comprehensively discuss all the union's and all the employer's outstanding proposals including a full canvass of their pros, cons, and areas of dispute (and potential agreement): there are too many. Given the number of issues, and their relative weight, success in signing off on a collective agreement will ultimately depend, in our view, on focusing on key priorities of both parties and then balancing interests. Not all outstanding proposals are referred to in our Report; a full list is set out in the parties' briefs.

FB group Submissions

Overview

[11] In the union's submission, above-pattern increases were justified by overall economic conditions; namely, the robust state of both the Canadian economy and governmental finances. Also necessary were

long overdue amendments to numerous non-monetary provisions to begin to repair what the union described as the CBSA's heavy-handed workplace culture.

FB Group – Proposals and Rationale

[12] Underlying almost all the FB group's most important proposals was its insistence that the Commission acknowledge that the RCMP (along with other law enforcement agencies) was the most applicable comparator.

[13] The first proposal in the FB group brief was made with the intention of securing that recognition: a request for a recommendation that the pension plan be amended to allow bargaining unit members to retire without penalty after 25 years. There was no reason why FB group members, the union argued, should be treated any differently for pension purposes than those who were comparably employed in the RCMP (and across Canadian law enforcement) and at Correctional Services Canada. In all cases, the work was dangerous and physically demanding, and in all cases the employees were administering and enforcing the law. Appropriately applying the governing statutory criteria, as set out in the written submissions and at the hearing, led to the conclusion that FB group employees should be, indeed must be, in the union's view, treated the same as their RCMP (and other law enforcement) comparators/counterparts.

[14] The union candidly acknowledged that no Commission had jurisdiction to make recommendations about this number one priority. Nevertheless, in the union's submission, this legitimate demand had to be considered as it was standing in the way of settlement and improving labour relations. It was also completely affordable given the pension surplus and relevant economic factors. In any event, the legitimacy of this bargaining proposal, even if it could not form part of any Commission recommendations, had to be acknowledged – and the union specifically asked us to do so – for it established a baseline context for consideration of the other important union asks (below).

Positive Economic Indicators

[15] There was no inability to pay, the union observed. In fact, there was a demonstrated ability to pay as RCMP increases (and other special targeted adjustments to other classifications in the current bargaining cycle) established. To be sure, there were financial strains brought about by the governmental response to the pandemic, but the situation had turned around: the government's fiscal situation was both strong and stable. The key and generally followed economic indicators – which the union reviewed – were clear: recovery, not recession, was underway.

Recruitment and Retention

[16] The proposed special adjustments were also necessary to foster recruitment and retention. There were the vacancies, there was the turnover, the excessive use of overtime (and the union had some proposals about that), increased reliance on surge capacity and growing evidence of widespread burnout. When the evidence was carefully assessed, there was, in the union's submission, only one conclusion that could be drawn: there was a recruitment and retention crisis that cried out for attention. Compensation, the union pointed out, was a key driver in attracting employees and retaining them.

Pay Parity

[17] In the union's view, after pension reform, pay parity with the RCMP was paramount. It could and should be achieved with a market adjustment of 7.801% to all employees effective June 21, 2022, together with a further adjustment of 6.667% on account of the union's request for a paid meal break (discussed below). Following these adjustments, the union proposed the following in the context of a three-year term with the collective agreement expiring on June 20, 2025 (together with other economic improvements):

General Wage Increases

Effective June 21, 2022, after the application of the market adjustment and paid meal break: 3.5%.

Effective June 21, 2022, 1.25% wage adjustment.

Effective June 21, 2023, 3.0%.

Effective June 21, 2023, 0.5% pay line adjustment.

Effective June 21, 2024, 2.0%.

Effective June 21, 2024, 0.25% wage adjustment.

One-time allowance Related to the Performance of Regular Duties

The Employer will provide a one-time lump-sum payment of two thousand five hundred dollars (\$2,500) to incumbents of positions within the FB group on the date of signing of the collective agreement. This one-time allowance will be paid to incumbents within the FB group for the performance of regular duties and responsibilities associated with their position.

Paid Meal Break and other Monetary Proposals

[18] As noted above, the union sought the introduction of a new paid meal period of thirty minutes a day, again a Canadian law enforcement standard. Also required to reflect sector norms were the union's plain clothes and dry-cleaning allowance proposals as well as a wellness allowance to help subsidize the cost of a gym membership. Introduction of a coaching and mentoring payment was in the interest of the employer and new employees and was also law enforcement sector-normative. Improvements were also sought to a lengthy list of different leaves and appointments, hours of work, travel status/time, shift, weekend, escort premiums, payments for tooling up and tooling down, the dog handlers' allowance and payment of professional fees.

[19] The union proposed a new annual pensionable stipend for Hearings Officers and paid time for firearm practice (also normative in law enforcement). The union asked that a recommendation be made adding National Indigenous Peoples Day to the list of designated paid holidays, along with one more paid holiday on account of Family Day together with a third new paid day off: Wellness Day (provided to members of the RCMP). Clarity on the rules governing pay treatment of employees performing the duties of a higher classification was necessary and proposed with the added advantage of remedying some unfairness in the current regime. Placement of employees on the grid was a continuing, and from the union's perspective, unnecessary, bone of contention between the parties. The union asked for a recommendation that newly minted BSOs begin work at Step 3.

FB group Non-Monetary Proposals

[20] Top of the list of the union's non-monetary proposals were amendments to the Technological Change provision of the collective agreement, specifically an increase in the amount of advance written notice of any proposed introduction of technological change from 180 days to 360 days (the CBSA proposed a reduction to 90 days). Under the union's proposal, written notice was to include the business case for any proposed change including an assessment of potential threats to national security. The union expressed serious concerns, and reservations, about increased automation at border crossings and the threats to Canadian safety and security that might occur in the result (BSOs were best positioned through training/personal interactions to identify individuals who should be subject to additional scrutiny upon entry into Canada). Central to the union proposal was an amendment to the existing provision that no jobs be lost or positions eliminated as the result of the introduction of technological change. A new article on the work of the bargaining unit would ensure that any planned contracting-out cease, and any currently contracted-out work be brought back into the bargaining unit. Student employment had to be clarified: students should not be used to do the work of BSOs, and there was a need for other collective agreement guardrails as well, which the union identified and asked that the Commission recommend. Changes to the workforce adjustment provisions were necessary and justified by demonstrated need, as described by the union in its brief.

[21] Another non-monetary union priority, and reflecting the contemporary workplace reality, was proposed new collective agreement language setting out employee entitlements to request telework. The fact of the matter, the union observed, was that a provision of this kind of was long overdue (and the union reviewed the history of telework at CBSA, a most unhappy one from its perspective). Telework was obviously not appropriate for many bargaining unit positions, but where it was operationally feasible clear rules governing requests, their consideration, and their review were needed to ensure fairness and transparency. Indeed, the union observed, in the most recent bargaining cycle, a settlement was reached with Treasury Board that included a letter setting out a telework framework, creation of a joint committee

and separate grievance process should there be any disputes. There was no question, given increasing requests for telework that the CBSA routinely denied, that there was demonstrated need for clear and enforceable collective agreement provisions setting out employee entitlements and appropriately limiting the exercise of management's discretion (and providing for independent review).

[22] Amendments to Article 17 – Discipline – were proposed. In the union's submission, these and other changes were necessary and justified. There was demonstrated need to protect the union and its members against what the union described as the CBSA's increasingly authoritarian approach, a management style that led to an unprecedented number of grievances being filed, not to mention numerous complaints/applications before the courts, including the Supreme Court of Canada, the Occupational Health and Safety Tribunal, the Workplace Safety and Insurance Tribunal, the FPSLRB and the Canadian Human Rights Commission. In particular, the FB group sought Commission recommendations for various due process revisions to ensure that discipline was only for just cause and that grievances were addressed in a timely manner. The union asked the Commission to recommend a provision prohibiting the employer from using electronic surveillance systems to evaluate employees or to gather evidence in support of disciplinary measures (unless the disciplinary measures resulted from a criminal act). A proposed amendment to Appendix G – Memorandum of Agreement with Respect to Administrative Suspensions and Removal of Security Clearance Pending Investigations – would ensure that all investigatory and administrative suspensions were with pay (unless the employee was subject to disciplinary measures consistent with the Discipline article).

[23] This change was necessary, in the union's estimation, because CBSA was sidestepping the disciplinary process and conducting Professional Standards Investigations to determine whether discipline was warranted, putting the cart, in effect, before the horse. The employee was, in the result, put on leave without pay while the employer sought evidence establishing misconduct. Employees subjected to one of these investigations – which were often interminable, going on for months and sometimes years – were entitled to union representation, but practices varied (another proposal on employee representatives would ensure that they could perform their representation duties without loss of pay). Likewise, it was a simple matter of fairness that an employee's right to pay continuation be enshrined in the collective agreement while any investigation unfolded: the exact same entitlement at the RCMP and at Correctional Service Canada and among the law enforcement community more broadly, where it was normative that employees under investigatory suspension remained on salary. A related proposal provided for paid leaves in certain circumstances for employee representatives conducting union business. For reasons explained in the union brief, removal of tools and suspension of security clearances should be treated no differently than any other investigatory or disciplinary process, and the union asked that an appropriate recommendation be made in the Commission's Report.

[24] While the collective agreement currently contained a harassment provision, it was narrow in scope and dated. In the union's view, it also failed to reflect the reality of the CBSA workplace where an astonishing 65% of employees surveyed in 2022 reported being a victim of harassment and 77% reported experiencing discrimination from individuals in positions of authority. The current provision failed to reflect now governing legislation and required immediate modernization. A comprehensive revision to the existing language was proposed, clearly and unequivocally setting out the rights and entitlements of all workplace parties. The union advanced a proposal to update the collective agreement definition of "family." This would foster equity by updating that definition to reflect current social realities.

[25] There were more than 100 Voluntary Shift Scheduling Arrangements (VSSA) in effect across Canada, but there was still a need for clear parameters in the collective agreement about shift length and scheduling because of the CBSA's unilateral imposition of non-normative, unreasonable, and unnecessarily disruptive shift schedules. Creation of a national VSSA consultation committee made sense to expand the processes currently available at the local level. Recognition of years of service in shift schedule assignments was a union priority in this round, another matter of fairness, in the union's submission. Ensuring that a vacant line was first offered to employees covered by the schedule where the vacancy occurred, followed by employees in the same workplace, then district, then region, with the shift being assigned at each level to the most senior qualified employee who expressed interest, was the manner in which work was generally assigned in a unionized environment, and there should be no different rules here.

[26] There was, in the union's submission, clear demonstrated need for this change as movement of employees was currently at the CBSA's sole discretion, leading to completely unfair placements of new hires, to the disadvantage of long-service employees. All the union sought was what it described as a fair, transparent and normative process of assigning employees to shifts, a process that recognized seniority interests of employees qualified to perform the work. The union also sought a change to ensure adequate rest between shifts when an employee was required to work mandatory overtime (although there was also a proposal for increasing the rates and providing that overtime was strictly voluntary), and appropriate notification to day workers when there were changes to assigned work hours.

[27] The collective agreement contained several appendices, and the union asked for recommendations that some, but not all, be renewed. Among the union's priorities, however, was the introduction of a new appendix requiring replacement of name tags with numerical identification tags. There was demonstrated need for this change – BSOs could be, and were being, publicly identified – and it was perplexing to the union why this was not appreciated by the employer. The suggestion that full names be replaced with first names was rejected when proposed to management. In these circumstances, the union asked the Commission to recommend this proposal.

[28] The FB group urged the Commission not to recommend any of the employer's proposals. They were concessionary, or they would exacerbate existing problems, or they were completely non-responsive to the union's asks, or they were all three. For example, the employer wanted to reduce overtime, but failed to address the reason for the need for overtime: because there was not enough staff. The employer wanted to tear up long-standing VSSAs. Management had made that request in the past, the union had never agreed, and no Commission had ever recommended this. If anything, the VSSA regime needed to be expanded, leaving it to the local parties to determine how best to arrange scheduling based on local conditions.

[29] The bottom line, though, was that the employer refused to recognize the RCMP as the appropriate comparator and to do what was necessary to ensure equal pension treatment. Together with pay parity and a paid meal break, addressing telework and technological change and fixing a broken and unfair discipline system, these were core demands (along with other law enforcement norms) that needed to be resolved immediately in the union's favour. The union's point was that the employer's proposals were divorced from the reality of what was needed to achieve a collective agreement (and the CBSA was trying to take the parties in the opposite direction with their ill-founded interest arbitration demands that would make an already unacceptable situation even worse).

[30] The past spoke volumes, in the union's submission. In every collective bargaining round the FB group has moved further away from collective agreement terms and conditions found in the core public administration and closer to the terms and conditions found at the RCMP and in the broader law enforcement community. Unless there was continued and significant movement in this direction on all these core issues there would, the union predicted, inevitably be a labour dispute.

Treasury Board

The Workplace

[31] The employer took strong objection to the union's characterization of the workplace. The fact of the matter was that the employer had important responsibilities and it discharged them diligently and appropriately. The suggestion that management was acting in a high-handed fashion was categorically rejected. For example, the decision to place an employee on leave without pay pending investigation was only reached in the most egregious cases (and there were only eight such instances in the last three years, which, in the employer's view, demonstrated the exaggerated nature of the union's claim). The decision to remove tools, in another example, was rare, and it was subject to immediate review. Notably, almost all tool removals were completely unrelated to discipline but arose because of mental health and substance abuse concerns. Speaking of discipline, in the employer's view, the union's proposals were a solution in search of a problem; by and large, the existing terms and conditions were appropriate, reflecting

established norms. The truth was that the CBSA sought a collaborative relationship with the union and its members and pointed to numerous initiatives underway to improve workplace culture and overall employee well-being.

[32] To be sure, the CBSA readily acknowledged, there was always room for improvement, but existing mechanisms and continued dialogue were the best route to resolution. What was not productive, if that was a shared goal, were overstated union allegations and non-normative and unjustified union proposals grounded in disputed claims, the comparability claim with the RCMP being the number one case on point. It was an aspiration; it was not based on evidence (except some anecdotal and completely non-persuasive union submissions). Differences between RCMP Constables and BSOs were significant, and union proposals predicated on this comparator were inapposite (discussed further below).

The Criteria

Replication

[33] Before turning to the outstanding proposals, the employer asked that this Commission be placed in context. And that context was the collective bargaining in the current cycle: there was an established monetary settlement pattern overwhelmingly agreed to in the core public administration and separate agencies. All these agreements – both finalized and tentative – shared common features, including annual general wage increases, the addition of the National Day for Truth and Reconciliation (and adjustments to part-time rates to account for this new holiday) and a lump sum pensionable adjustment. In these circumstances, and using replication as the guide, when it came time for the Commission to include compensation recommendations, there was no reason why the FB group should receive any more or any less than the pattern arising out of free collective bargaining covering hundreds of thousands of employees in the federal public service. In that light, the union's various economic enhancements were completely out of step with prevailing settlement patterns (and/or were cherry-picked from inapplicable comparators).

Recruitment and Retention

[34] The employer did not agree that there were any recruitment or retention challenges. Analysis demonstrated stable hiring and renewal levels and a retention rate – 95.5% – that outstripped the core public administration average of 91.2% (which was itself very high when compared to other employers). The pandemic disrupted training of new officers, but there was no meaningful decrease in employees: in 2018-19 the 12-month average population was 10,275. In 2020-21, it was 10,278, and in 2022-23, it was 10,433. Voluntary non-retirement separation numbers told the story: 57 in 2018-19, 44 in 2020-21 and 61 in 2022-23. Employees did leave the CBSA, but at normal retirement age.

[35] Recruitment was, of course, the other side of the coin, and the evidence here, the employer observed, pointed to no difficulties whatsoever in attracting employees. Despite a Canada-wide labour shortage, CBSA was able to attract employees. In 2018-19, 386 external employees were hired; 532 in 2022-23. There was one blip: in 2020-21, in the middle of the pandemic, recruitment dropped to 275. The jobs were extremely attractive: in 2022-23, 19,257 people submitted job applications in response to three postings. There was a large pool of qualified candidates who wanted to work at the CBSA. In these circumstances, in the employer's view, the case could not be persuasively made that there were difficulties in either recruitment or retention that justified non-normative pay and other compensation increases. Indeed, the evidence was to the exact opposite effect.

State of the Canadian Economy

[36] While Canada had managed to quickly recover from the economic damage caused by the pandemic, economic and other challenges persisted. All the economic indicators – GDP growth, CPI, unemployment, inflation, rising federal deficits, growing public debt and high interest rates – established a need for caution in public spending when considering improvements to collective agreements. The employer estimated that the union's monetary proposals represented an ongoing cost of approximately \$441.7 million or 41.75% of the 2022 FB group wage base (when spread over three years, or 12.33% a year). This was, in a word, unaffordable. It was also completely inconsistent, as noted above, with the weight of freely bargained settlements.

Appropriate Comparators

[37] The CBSA was on record: the RCMP was not an appropriate comparator for the FB group. The union, it noted, asserted comparability with the RCMP but provided no evidence – other than anecdotal or unpersuasive points of comparison – to support that unfounded claim. This was a false equivalency that led to unrealistic demands for pay parity and a paid meal break, to give just two examples. Merely existing within the law enforcement sector does not necessarily mean that all positions within that sector are equivalent. Just because some FB group members can act as peace officers in extremely limited circumstances under clearly defined parameters did not make a BSO into a commissioned Constable of the RCMP. Police officers do policing; peace officers included police officers but also employees working in corrections, border services, customs, immigration and fisheries. Members of the FB group who are peace officers can exercise that designation while on duty, usually in a completely controlled environment, in complete contrast to the police. Not all FB group members carry firearms, and FB group employees, unlike police officers, cannot lay charges; only police officers can do that. The academic program at the RCMP Depot was completely different from that at the CBSA's Rigaud College, which was not, in any event, a recognized police institution.

External and Internal Relativity

[38] In the employer's view, FB wages were highly competitive when compared to the external labour market. As of 2022, FB group employees were earning 40% more than most Canadians. Public sector employees, like the members of the FB group, enjoyed employment advantages far surpassing those of many Canadians, including a defined benefit pension, superior health and welfare benefits, generous vacations, meaningful job security – the list, the CBSA observed –went on and on. When total compensation was considered, the overall situation for FB employees was extremely favourable. Year over year, the wage growth of the FB group surpassed the cumulative wage increases in both the public and private sector (and outpaced inflation, thereby achieving real growth in purchasing power). In terms of internal comparability, between 2010 and 2021, the FB group has received wage increases higher than the core public administration average (40.7% vs. 25.6%).

Employer Proposals

Term

[39] Four years.

Monetary

Effective June 21, 2022: 3.5% + 1.25% market adjustment.

Effective June 21, 2023: 3% + 0.5% pay line adjustment.

Effective June 21, 2024: 2% + 0.25% market adjustment.

Effective June 21, 2025: 2%.

One-time payment of \$2500 (pensionable) for performance of duties and responsibilities.

Addition of National Day for Truth and Reconciliation and adjustments to pay for part-time employees to account for this new holiday.

Memorandum of Understanding on pay simplification.

[40] The employer sought a four-year agreement and noted that its proposed general wage increases aligned with the existing percentage pattern and market and pay line adjustments (as was voluntarily agreed upon with this union in the core public administration and with numerous agencies). These parties had also agreed to four-year agreements in the last two rounds, and the employer urged that this now-established pattern be followed.

[41] What should not be recommended, in the employer's view, was the union's overall economic ask (across-the-board increases, paid lunch, and the countless individual economic enhancements that were being sought). The cost was inordinate and non-normative and completely inconsistent with the government's fiscal capacity. Put another way, there was nothing justifying the FB group receiving a settlement, including general wage increases exceeding anything freely negotiated in the current cycle, a paid meal break and numerous other economic improvements, that were vastly more favourable than the pattern that now applied across the system, a pattern achieved in free collective bargaining.

Employer Proposals

[42] In addition to pattern compensation, the employer brought forward numerous other proposals, all set out in its brief (and reviewed at the hearing). It is fair to say that at the heart of the CBSA's most important proposals was its desire to modernize existing but dated collective agreement language; language that it believed enshrined work rules attracting unnecessary and additional expense and frustrating efficient operations and the employer's commitment to better serving Canadians. In general, the CBSA sought to harmonize collective agreement language with provisions agreed to by this union in collective agreements found in the core public administration.

[43] Just like the FB group, the CBSA sought changes to the Hours of Work provision, for example, by reducing from 7 days to 48 hours the amount of notice of a scheduled shift change. This proposal was characterized as in the interest of both the employer and employee. To be sure, it was needed for operational reasons. (The employer objected to the notion that a strict seniority regime be introduced for filling vacant lines, as the union proposed, or to any elimination or reduction of employer discretion in deciding whether to approve shift exchanges given operational considerations that it explained.) A related management proposal would provide the employer with the power to determine start and finishing times notwithstanding the standard shift schedule, as would the employer's Proposed Appendix B, which would consolidate and modernize existing rules and ensure that shift schedules were cost effective, reflect operational requirements and the service needs of Canadians.

[44] Operational efficiency was a continuing theme: the employer noted that there were more than 200 VSSAs currently in place, and most were negotiated years, if not decades, ago. They needed to be modernized. In the CBSA's view, many of the many existing VSSAs imposed staffing restrictions that were contrary to operational needs and led to otherwise avoidable overtime. What the employer needed was the ability to ensure that the right number of people were at work at the right time. Unfortunately, from management's perspective, current rules accomplished the exact opposite. There was certainly no need to create a national VSSA committee (a national committee would likely provide little, if any,

value). To have value, VSSAs had to be viable, and balance competing interests. That was a matter best left to local parties at the local level.

[45] The employer sought changes to the overtime regime, and it definitely opposed the union's proposals that overtime become entirely voluntary and that the rates substantially increase. The employer did its best to offer overtime on a voluntary basis, but sometimes this was impossible such as, for example, where a BSO was involved in a seizure. One important employer proposal was a refinement to the provision in the collective agreement providing for double overtime rates for an employee called in on a day of rest: under the proposed change, an employee called in on second or subsequent day of rest would only be entitled to the premium provided he, she or they also worked on the first day of rest. While rejecting the union proposal for paid meal breaks – particularly unjustified for BSOs in receipt of the annual paid \$5000 meal premium – the employer advanced a proposal of its own to ensure that employees in receipt of that premium could not pyramid benefits.

[46] Some related overtime revisions were brought forward to distinguish between when an employee called in for overtime physically reports to the workplace versus when the employee works remotely (with the employer's agreement). Employees working remotely do not experience the same disruption as employees required to report to work at their workplace, and these different levels of disruption should attract different levels of remuneration. The employer also wished to clarify that no meal allowance was payable when an employee was working remotely. Likewise, a cap on the number of kilometres that an employee could claim when called to work for overtime or on a designated paid holiday would help curtail costs from the currently unlimited entitlement which, given the location of certain worksites combined with frequent overtime, was resulting in significant costs.

[47] In management's view, there was demonstrated need for changes to Article 30 – Designated Paid Holidays. Some holidays result in a reduced number of border crossings, some more. Current collective agreement language, however, fettered the employer's ability to appropriately staff. Related to this was a necessary clarification to the value of a Designated Paid Holiday.

[48] Another one of the employer's priority items was amending Article 41.02 – Leave Without Pay for the Care of Family. One specific proposed change – a must-have priority from management's perspective – was substituting the word "may" for "shall," thereby making any leave subject to operational requirements (as well as changing the minimum leave period). Requests for this type of leave generally coincided with peak traveller times. The employer indicated that while it wished to be respectful and accommodating of work-life balance, it also had to balance those interests with operational needs. That was the primary basis for the proposal. The employer was opposed to the union's proposal to expand the definition of family as doing so was unnecessary.

[49] The union had submitted numerous proposed revisions to Appendix C - Workforce Adjustment, and so too did the employer. It sought to harmonize in the FB group collective agreement what had been agree upon with other union groups. Four key priorities included (i) reducing the opting period from 120 to 90 days, (ii) introduction of a new definition of work unit to reflect hybrid work units and redefine the relocation of a work unit to specify the distance that is required to be considered a relocation of a work unit, (iii) introduction of an annual review of surplus employees in receipt of a guarantee of a reasonable job offer to ensure that employees are followed closely and should the employment availability situation change, allow employees to enjoy access to transition support measures, and (iv) clarification of past practice about training: salary protection and retraining at one level lower than the employee's substantive position.

[50] The employer asked the Commission to recommend its proposal that employees be provided electronic access to the collective agreement, not printed copies, as was currently required. This was now a public sector norm. Printing was extremely expensive and, invariably, supply of the printed copies far exceeded demand, which was extremely wasteful. Requiring the employer to print and distribute collective agreements in an electronic world no longer made sense, Safeguards could be incorporated to ensure that where access was unavailable or impractical, a printed copy could be provided.

Employer Position on Outstanding Union Issues

[51] By and large, and for reasons detailed in its written submissions and discussed in detail at the hearing, the employer was opposed to all the union's requests for recommendations. In summary, the employer was of the view that they were based on an incorrect comparator, or that there was no demonstrated need, or that they were unjustified as completely non-normative and unaffordable, or that they were unprecedented breakthroughs, or that they would impact operational efficiency, or that they were otherwise inappropriate, inapplicable or beyond jurisdiction, or that they were practically and administratively impossible to implement, or that they were a combination of all these factors.

[52] The CBSA was already struggling to efficiently deliver services because it was hampered by out-of-date and anachronistic collective agreement rules. Individually and collectively, the union's proposals would exacerbate this problem and could not, therefore, be the outcome of free collective bargaining. What the CBSA needed was relief – and there was demonstrated need for that – and that demonstrated need informed most of the proposals the employer was bringing forward.

[53] Indeed, the related point was made that many of the union's non-monetary proposals – technological change was one such example – were simply out of step with contemporary reality. Around the world, technology was being introduced at border crossings. The intention here, however, was not to displace union members but to provide better service to Canadians and visitors to Canada. Other union proposals such as the union's demand for a pension improvement was beyond jurisdiction – as the union admitted – and should not, the CBSA argued, be included in any Commission Recommendation (and it also failed based, as it was, on an inapplicable comparator). A similar observation was made about the union's proposed telework provision: that was a matter of management rights and was not appropriate in a collective agreement. The CBSA urged the Board not to make any recommendation about this issue, one that was currently under review system wide.

Discussion

[54] As we observed at the outset, the most formidable obstacle standing in the way of resolving this dispute is that the parties cannot agree on the appropriate comparator. Previous Commissions have found that there is no perfect comparator. We agree. There are similarities with other law enforcement organizations such as the RCMP and other police organizations, but there are differences too. Our objective in this Report is not to answer this question. To be sure, we do not anticipate the parties reaching agreement on this contentious issue. We note, however, that there are unique features to this workplace that have previously been acknowledged; unique features that set the FB group apart from aspects of core public administration and separate agency settlements. We imagine that this pattern of acknowledging some differences will likely need to continue for a collective agreement to be reached, but to what extent will depend on the parties. We acknowledge the existence of a law enforcement ecosystem.

[55] There are areas where we are hopeful that the parties can find middle ground. Scheduling is a major sore spot, and both parties wish to make changes. This is an issue that traditionally can be addressed by balancing interests between employee well-being and the evolving requirements of the employer. In many workplaces – although for obvious reasons it is more limited here – telework is a fact of life. This is a legitimate bargaining interest of the union and its members but must be accommodated and balanced with the right of the employer to manage (and we note, something that is reflected in steps taken by this employer and this union to harmonize practices in the core public administration for example). Alternate work arrangements need to be addressed in a manner that reflects the legitimate interests of both the employer and the employee. We think that the parties would be well served by establishing a joint committee or review panel to discuss telework arrangements. Key features of any eventual agreement must, in our view, include a transparent process and provision for appropriate review.

[56] The parties disagreed about the existence and extent of a workplace culture issue, and about what, if anything, needed to be done. In our view, it would be in the shared interests of both parties to take advantage of existing mechanisms for collaborative discussions and to improve those mechanisms (and we note that both parties addressed this in their submissions and proposals). Technological change is inevitable. The parties need to ensure that the applicable provision continues to serve their mutual interests. There are other areas, like the outstanding proposal on Sexual Harassment, where there can and should be fruitful discussions leading to compromise and agreement on normative language. The name tags issue is not the most important on the long list of outstanding matters, but it is emblematic of the parties not being able to resolve an issue that cries out for a resolution that is respectful of and balances interests, many of which are shared. At the very least, this is an example of an outstanding proposal where the parties could engage. This issue might be best approached by the parties establishing a joint committee with a limited-term mandate to examine what is done in similar workplaces and report back with a view to establishing a best-practices regime at CBSA.

[57] Ultimately, the parties need to winnow the outstanding issues and then reengage in bargaining in a serious and sustained fashion. Accordingly, we recommend that collective bargaining immediately resume following the issue of this report. This is our first specific Recommendation.

[58] Duration was contested. The union sought a Recommendation that the collective agreement would expire on June 20, 2025, the employer June 20, 2026. There is a pattern of four-year agreements and, in the interest of stability, not to mention the fact that the parties are already well into the term, we recommend that the established pattern of a four-year agreement continue. This is our second specific Recommendation.

[59] This union has successfully negotiated improvements at other PSAC tables on various issues that remain in dispute here. We believe that these negotiated resolutions may help establish some common ground and that the parties should review these negotiated changes and consider whether they might be adapted to this workplace. This is our third specific Recommendation.

[60] We have carefully considered the employer's proposal for a change to Article 10. The employer asked the Commission to recommend its proposal that employees be provided electronic access to the collective agreement, not printed copies, as is currently required. This was now, the CBSA pointed out, a public sector norm. In our view, requiring the employer to print and distribute collective agreements in an electronic world is no longer necessary, subject to an important caveat: that safeguards are incorporated to ensure that where electronic access is unavailable or impractical, a printed copy can be provided. A cost benefit analysis comes in firmly on the side of recommending this proposal. This recommendation is also fully in accord with those of previous Commissions. And it is our fourth specific Recommendation.

Recommendations

1. We recommend that the parties meet and resume collective bargaining immediately following issue of this Report. For this to be successful, the parties must attempt to winnow the outstanding issues and focus on true priorities – both monetary and non-monetary – with a view to establishing a manageable baseline to facilitate collective bargaining that is respectful of competing interests.
2. We recommend that the parties agree upon a four-year term.
3. We recommend that the parties address improvements achieved at other PSAC tables on issues remaining in dispute here with a view to determining how those resolutions might be adjusted or adopted by them here.
4. We recommend that the parties amend the collective agreement to provide for electronic access to collective agreements with appropriate safeguards to ensure that printed copies are available where and if necessary.

DATED at Toronto this 29 day of May 2024.

“William Kaplan”

William Kaplan, Chair

“Jean-Stephén Piché”

Jean-Stephén Piché, Treasury Board Representative

“Joe Herbert”

Joe Herbert, PSAC Representative