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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 House of Commons, as Employer
in respect of the Operational Group bargaining unit

Indexed as
Public Service Alliance of Canada v. House of Commons

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

Before: Christopher Rootham, Joe Herbert, and Luc Pousseau, 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: Carole Piette and Jean-Michel Richardson, counsel

Heard by videoconference,
April 2 and 3, 2024.

REASONS FOR DECISION

I. Matter before the Board

[1] This is an arbitral award to determine the terms and conditions of employment for the employees in the Operational Group bargaining unit employed by the House of Commons (HoC) and represented by the Public Service Alliance of Canada (PSAC).

II. The bargaining unit and employer

[2] The HoC is one of seven employers regulated by the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp); “PESRA”). It provides administrative and other support for members of Parliament.

[3] The Operational Group bargaining unit used to be divided into 2 bargaining units: the Operational Group and the Postal Services Sub-Group. On November 8, 2019 the Federal Public Sector Labour Relations and Employment Board (“the Board”, which will also be used to refer to the 3 individuals deemed to form the Federal Public Sector Labour Relations and Employment Board for this arbitration) consolidated the 2 bargaining units into the current Operational Group unit. According to the latest data provided to the Board in this hearing, there are 293 employees in the bargaining unit. Most employees work full-time; however, there are some employees called Seasonal Certified Indeterminate (SCI) Employees who work more than 700 hours but less than 1820 hours in a calendar year. The employees are divided into 2 branches: Building Support Services (who maintain the buildings) and Client Service Delivery. The largest group in the Client Service Delivery branch is the food services group who provides various hospitality services to Parliamentarians, their staff, other employees, and visitors to Parliament Hill. For whatever reason, the HoC brief emphasized the quality of the food produced and that it includes “gourmet market items” such as “canapés preserves”. The other groups in the Client Service Delivery branch are postal and messenger services, transportation services, and trades services.

[4] The number of full-time and SCI employees in each job in the bargaining unit, divided by branch and group, was as follows as of June, 2023 (the most recent comprehensive data available to the Board, taken from reference 1E provided to the Board by PSAC):

| Job | Total |
|------------|--------------|
| | 99 |

| | |
|--|-----------|
| Maintenance and Building Operations | |
| Carpet Repair and Shampoo | 2 |
| Maintenance and Material Handling Person | 89 |
| Repair and Preventative Maintenance Technician | 1 |
| Supervisor (Maintenance and Material Handling Services) | 7 |
| <i>Client Service Delivery</i> | |
| Food Services | 99 |
| Cook | 11 |
| Dishwasher/Potwasher | 16 |
| Food Services Attendant | 43 |
| Kitchen Helper | 4 |
| Pastry Chef | 1 |
| Pastry Cook | 1 |
| Server | 4 |
| Short Order Cook | 6 |
| Station Chef | 7 |
| Supervisor | 6 |
| Postal and Messaging | 41 |
| Courier Services Officer | 12 |
| Messenger | 5 |
| Digital Printing and Plate Operator | 2 |
| Finishing Operator | 9 |
| Finishing Specialist | 9 |
| Press Operator | 4 |
| Transportation Services & Shipping/Receiving | 31 |
| Driver | 20 |
| Receiving, Shipping, Operational Coordinator | 4 |
| Shipper-Receiver | 7 |
| Trades | 23 |
| Cabinetmaker | 4 |
| Furniture Upholsterer | 3 |
| Painter | 3 |
| Refinisher | 3 |
| Supervisor, Painter and Refinisher | 1 |
| Picture Framer, Workstation Services, On-Site Carpentry | 4 |
| Locksmith Technician | 2 |
| Supervisor, Upholster, Framing, Workstation, On-Site Carpentry | 1 |
| Team Lead, Carpenter on-site and Framing | 2 |

III. Procedural history

[5] The current collective agreement between the parties expired on April 20, 2020. PSAC served notice to bargain on April 9, 2020. The parties met 7 times: 4 times (March 2 and 3 and July 25 and 26, 2023) before PSAC requested arbitration under s. 50 of the *PESRA* on July 28, 2023, and again on September 5, 6 and 11, 2023. The parties were able to resolve roughly 23 issues during their negotiations.

[6] As just stated, PSAC submitted its request for arbitration on July 28, 2023. The HoC provided its Notice of Request for the Arbitration of Additional Matters on August 10, 2023. After the parties met in September 2023, both of them filed revised proposals and responses on September 13, 26 and 27 and October 3, 2023.

[7] The terms of reference for the arbitration board deemed to form the Board were forwarded to the Board members on January 22, 2024 by the Chairperson of the Board.

[8] Finally, PSAC withdrew or modified some proposals on March 5, 2024. The HoC also withdrew a jurisdictional objection when it filed its arbitration brief.

[9] This means that the following proposals remained in dispute, the titles being a description prepared by this Board for ease of understanding and the proposing party or parties in parenthesis:

- 18.05 Scheduling vacation leave (PSAC)
- 18.08 Vacation carryover and payout (PSAC)
- 20.12 Leave with pay for family-related responsibilities (PSAC)
- 20.19 Personal leave (Both)
- 21.01 Sick leave credits (PSAC)
- 21.09 Medical certificates (PSAC)
- 21.10 Medical and dental appointments (HoC)
- 24.04 Changes to scheduled shifts (both)
- 24.19 Overtime meal allowance (both)
- 28.01 Shift premium (PSAC)
- 28.02 Weekend premium (PSAC)

- 45 Duration (HoC)
- Appendix C, article 11 Work schedules for SCI employees (PSAC)
- Bilingualism bonus (PSAC)
- Economic increases (both)
- One-time lump sum payment (both)
- Payment for damages (PSAC)
- Payment for late implementation of arbitral award (PSAC)

IV. Principles applied in making this arbitral award

[10] In rendering its decision, the Board is guided by s. 53 of the *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.

[11] This Board is tasked with determining the terms and conditions of employment for employees in the Operations 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 the *PESRA* as well, and the Board has been guided by those principles in this decision too.

[12] 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 p. 304). 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 (ON LA) 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.

[13] 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).

[14] 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.

[15] In this case, PSAC submitted that the natural comparator for this bargaining unit is the SV Group at Treasury Board. That bargaining unit contains employees in the Operational Services (SV) classification group within Treasury Board, which is defined as follows:

Operational Services (SV) Group Definition

The Operational Services Group comprises positions that are primarily involved in the fabrication, maintenance, repair, operation and protection of machines, equipment, vehicles, government facilities and structures such as buildings, vessels, stationary and floating plants, stores, laboratories, and equipment; and the provision of food, personal or health support services.

[16] The HoC did not contest the usefulness of the SV Group as a comparator, although it asked the Board to draw different conclusions from using that as the most appropriate comparator.

[17] The Board agrees that the SV Group is the most useful comparator in this case for compensation purposes for two reasons. First, it closely overlaps the work performed by employees in this bargaining unit. Second, Treasury Board and PSAC reached an agreement for the SV Group in May 2023 after a roughly two-week strike. This makes the result in the SV Group a strong predictor of what the parties would have agreed to had they reached an agreement without resorting to arbitration, as well as a recent predictor. Most of the other Parliamentary bargaining units comparable to this one do not have recent agreements that cover the time period that will be covered by this agreement.

[18] For aspects of this award that are not directly related to compensation, the Board will usually use the examples provided with the HoC or other Parliamentary employers — i.e. to use the inner-most of the concentric circles before reaching out to Treasury Board for a comparison. This reflects the important differences in working conditions on Parliament Hill from elsewhere in the federal public administration.

[19] 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 and Cole, *The Art of Collective Bargaining*, 3rd ed. (2017), 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, where applicable or available.

[20] 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

[21] The parties agree that the arbitral award will remain in force until April 20, 2025.

[22] The HoC has asked the Board to state specifically that “Unless otherwise expressly stipulated in this Agreement, the provisions of this Agreement shall become effective on the date of the arbitral award and shall remain in force until April 20, 2025.” It is not clear why this is necessary, as s. 57 of *PESRA* means that an arbitral award is effective on and after the date the Board renders it unless the Board explicitly states that it is effective retroactively or on some later date. However, since PSAC also agreed with the concept articulated by the HoC, for greater certainty, the changes awarded here are effective as of the date of the award unless expressly stated to be effective on an earlier or later date.

2. Rates of pay

[23] The parties disagreed about the pay increases for the first two years of the agreement (April 21, 2020 and April 21, 2021). PSAC wanted a 2% increase for each year, essentially copying what was negotiated or arbitrated at the Library of Parliament. HoC wanted a 1.5% increase for those two years, essentially copying what was negotiated by most other Parliamentary employers and the large majority of agreements reached voluntarily in the federal public administration (including the SV Group).

[24] As stated earlier, the Board is relying heavily on the SV Group for compensation purposes — i.e. 1.5% for 2020 and 2021. For those years, this also corresponds with the general pattern outside of the Library of Parliament. The Board is ordering a 1.5% wage increase for 2020 and 2021.

[25] For 2022, the parties' proposals are very similar. PSAC proposed a 3.5% economic increase followed by a 1.25% wage adjustment; the HoC proposed a 4.75% economic increase. While both proposals appear identical, the difference is that PSAC's proposal would compound (so that it is worth closer to 4.8% in total).

[26] The Board awards PSAC's proposal because the pattern across both Parliamentary employers (as shown in *Public Service Alliance of Canada v. Library of Parliament*, 2023 FPSLRB 91) and the broader federal public administration (as shown in *Canadian Merchant Service Guild v. Treasury Board*, Board File No. 585-02-44668 (20231221)) is for the increase in wages to be separated in the way proposed by PSAC and for those amounts to be compounded.

[27] The main difference between the parties concerns the wage increase for 2023. PSAC proposed a 3% economic increase and a 3% wage adjustment. The HoC proposed a 3.5% economic increase.

[28] For context, most of the federal public administration agreed on a 3% economic increase and 0.5% wage adjustment for 2023. However, some subgroups within the SV Group negotiated higher wage adjustments. Most of those higher wage adjustments were 3% instead of 0.5%. More specifically, employees in the GL-MAM, GL-COI, GL-VHE, GL-MDO, and HP subgroups received a 3% wage adjustment, employees in the SC subgroup received a 4% wage adjustment, and employees in the FR sub-group received a 6% wage adjustment. This reflected a concern that certain trades or occupations were

under-compensated compared to the broader public sector or private sector, leading to recruitment and retention problems.

[29] For the employees working in food services, PSAC argued that they are comparable to the SC (ships crew) who received a 4% wage adjustment in 2023 because that bargaining unit includes employees who prepare food on ships. The Board does not find that to be an appropriate comparator — Parliament Hill does not bear any similarity to a ship. The best comparator is the SV subgroup employed in food services (GS-FOS) who received a 0.5% wage adjustment.

[30] The HoC admitted that the Drivers and Locksmiths have comparator subgroups in the SV Group that received a 3% market adjustment (the GL-MDO and GL-MAM subgroups respectively). PSAC also acknowledges that the other trades, shipping and receiving, and postal workers have subgroups within the SV Group that only received a 0.5% wage adjustment in 2023.

[31] The main difference between the parties is over the employees working in Maintenance and Building Operations. The parties provide the Board with the job description for the Maintenance and Material Handling position (which comprises the vast majority of the employees). PSAC argues that the positions are comparable to the GL-MAM subgroup (which negotiated a 3% wage adjustment). The HoC argues that they are comparable to the GS-BUS subgroup (which negotiated a 0.5% wage adjustment) instead. For ease of reference, the job description of the Maintenance and Material Handling position is placed alongside the description of the GL-MAM and GS-BUS subgroups below (emphasis added throughout):

| Job Description | GL-MAM (machinery maintaining) | GS-BUS (building services) |
|---|--|--|
| The Maintenance and Material Handling Person is accountable for: the provision of quality and effective cleaning of all indoor space for the preservation, appearance and condition of interior finishes within the Parliamentary Campus, quality and effective cleaning services for outdoor courtyards and building entrances, Food Services areas and special events, timely delivery and pick up of materials and supplies, and for timely room set ups and equipment installations for events; performing | This sub-group includes such occupations as air-conditioning and refrigeration mechanic, millwright, locksmith, oil burner installer and repairer, building services technician , and related supervisors at classification levels 5 to 14 inclusive. | The performance or supervision of duties pertaining to building cleaning, upkeep and operation , general housekeeping, and laboratory cleanup. This sub-group includes such |

| | | |
|---|---|---|
| <p>office moves; making a significant contribution to the Greening the Hill program through the collection of recyclable and compostable materials; and performing, as required, other tasks of a physical nature.</p> <p>Principle Responsibilities</p> <ol style="list-style-type: none"> 1. Provides timely and secure delivery and pick up of all materials and supplies from trucks, building freights, offices of Members of Parliament and the House; produces a manifest and ensures the client signature is obtained for confirmation of delivery. 2. Sets up and dismantles rooms and equipment according to specifications for committees, caucus, state visits and other functions on Parliament Hill as well as for off-Hill special events and ceremonies. Removes and installs listening devices as part of the furniture set-up and dismantling, as well as performs a pre-check sequence of microphone selection, audio distribution and booth console activation to ensure appropriate installation and operation of facilities and equipment. 3. Provides moving services for Members of Parliament, House Administration offices and the Library of Parliament and rearranges furniture as part of the move; off-hill moving services are also provided to meet Parliamentary requirements; packs office contents and personal belongings, when required, and disconnects and relocates automated office equipment system components. 4. Provides executive level cleaning and custodial services of all indoor spaces as well as cleaning services for outdoor courtyards and building entrances for the cafeterias and special events; responds to clean-up requests including the need to clean up and dispose of blood spills, bodily fluids and any other contaminated area as well as dangerous goods and spills that may occur within the buildings and work sites. 5. Provides recycling services for Members of Parliament, House | <p>Skilled Trades, Journeyman and Higher The performance and supervision of duties that require fabricating, processing, inspecting or repairing materials, equipment, products or structural units, including the lay-out of work, the set-up of equipment and the operation of precision tools and instruments. The work performed requires the application of an organized body of knowledge related to materials, tools and principles associated with skilled crafts and a thorough knowledge of machine capabilities, properties of materials and craft practices. Workers plan the order of successive operations, use manuals and technical data to position work, adjust machines, establish datum points, verify accuracy, and assume responsibility for the completion of each assignment</p> | <p>occupations as cleaner, janitor, elevator operator, housekeeper, laboratory helper and related supervisors</p> |
|---|---|---|

| | | |
|--|--|--|
| <p>Administration offices, Food Services and the Library of Parliament by collecting recyclable and compostable materials and emptying in appropriate containers for pick up; provides water bottle services to all clients by ensuring adequate supply of filtered water and ensures that the water bottles and dispensers are cleaned and sanitized.</p> <p>6. Conducts minor adjustments and repair of furniture such as tightening of screws on chairs, replacing of hinges on committee tables, greasing of chair wheels and filing cabinet drawer tracks and basic assembly of furnishings such as legs on conference tables, chairs and shelves.</p> <p>7. Decorates and installs Christmas trees ranging from 6' to 20' in height, garland and wreaths throughout the interior of the Parliamentary Campus; participates in special project work such as changing time on all wall clocks, masonry and marble stone cleaning including all statues, cleaning and sanitizing microphones and ear pieces, assist in major moves, special event set-ups, etc.</p> | | |
|--|--|--|

[32] As can be seen, the Maintenance and Material Handling position is not perfectly aligned with either the GL-MAM or GS-BUS subgroups because it has elements of both. The position involves cleaning (which would fall within GS-BUS) but also more general building services and equipment set-up (which would fall within GL-MAM).

[33] The HoC also argued that the Maintenance and Material Handling position was similar to the GL-MAN sub-group, which is a sub-group comprised of employees who manipulate objects or materials. While that job title may superficially appear to be similar to the Maintenance and Material Handling position, the GL-MAN occupational sub-group states that it “includes such occupations as armature winder, farmhand-livestock, gardener, insulation worker, pipelayer, welder and canal maintenance worker” – jobs that bear no resemblance to the Maintenance and Material Handling position. The classification standard for the GL-MAN subgroup includes a bench-mark position of “General Maintenance Worker.” While based solely on a job title this may appear similar to a Maintenance and Material Handling position, the benchmark position is one that “carries out minor repairs and renovations to frame buildings; constructs cupboards, shelving and other items; prepares and paints new and old

interior and exterior surfaces; constructs concrete forms and pours concrete.” This is different from the duties of the Maintenance and Material Handling position. In other words, there is some facial similarity between the GL-MAN subgroup and the Maintenance and Material Handling position, but the similarity becomes slight upon careful review.

[34] PSAC also argued that the supervisor position compared closely to GL-COI; however, the GL-COI sub-group definition states that it is about the inspection of large-scale construction work such as (for example) “to act as the architect’s or engineer’s representative on the construction site of work being performed under contract ...”. There is no indication that this describes the work of the supervisors in this bargaining unit. Like the Maintenance and Material Handling position, the supervisors are also similar to the GL-MAM and GS-BUS positions in the SV Group.

[35] However, the job description for the supervisor position is even more clear that the Maintenance and Material Handling is not exclusively about cleaning or maintenance, as it states “the Supervisor plans, coordinates, supervises and inspects the operational activities of a crew of **cleaning and/or material handling** staff ...” [emphasis added].

[36] In total, this means that there are 22 employees (drivers and locksmiths) whose comparator received a 3% wage adjustment in 2023, 192 employees whose comparator received a 0.5% wage adjustment in 2023, and 99 employees without a perfect comparator but with elements of comparators with 0.5% and 3% wage adjustments in 2023.

[37] There are two ways that the parties could have addressed this during collective bargaining. First, the parties could have negotiated targeted wage adjustments for certain employees. Second, the parties could have negotiated a uniform wage adjustment for the entire bargaining unit but smoothed it so that it was something between 0.5% and 3%.

[38] The Board asked the HoC during oral argument about which approach to take. The HoC stated that its employees were already paid more on an hourly basis than those in the federal public administration so there should be no additional wage adjustment. The Board rejects that argument. As PSAC pointed out in reply, if the HoC was actually negotiating on that basis with its employees, it would not have made

other wage proposals that mirror what was negotiated in the rest of the federal public administration (especially the 2022 rate which included what amounts to a wage adjustment). If employees at the HoC earn more on an hourly basis than similar employees in the federal public administration (which is not a finding made by the Board here), there are a myriad of reasons why wage rates may evolve in that way. Without a detailed historical overview of the evolution of wage rates and the reasons why the hourly rate is different between the HoC and the Treasury Board, the Board will not speculate about why wages may be different and will not make its decision based on those differences.

[39] When the Board pressed the HoC for whether it preferred the targeted or smoothing approach, it stated that it would prefer to have targeted wage increases. However, it submitted (in the alternative to its main submission that there should be no wage adjustment) that only 22 employees in the bargaining unit would receive any targeted wage increase. If the Board were to award targeted wage increases, it would do so for 121 employees out of 293 in the bargaining unit (as of June 2023).

[40] PSAC did not advocate for either approach, as its position was that all positions should get a 3% wage adjustment in 2023.

[41] The Board has decided to adopt the smoothing approach. The parties have a universal wage grid, meaning that some employees who would receive a targeted wage adjustment are paid the same or placed on the wage grid at the same level as employees who do not receive a targeted wage adjustment. While the Board could award allowances for certain employees, it has decided not to do so because this would be complicated to implement and also create disharmony between employees in the bargaining unit.

[42] The final question then is what is the smoothing rate? The Board has concluded that the wage adjustment should be 1.25% for the unit as a whole. This reflects the relative proportion of employees in each position and the fact that the Maintenance and Material Handling position has elements of different SV subgroups that negotiated different wage adjustments for 2023.

[43] Therefore, the Board orders a wage adjustment of 1.25% in 2023 in addition to the 3% economic increase.

[44] The Board emphasizes that it has simply decided that, in light of the nature of the work and the wage adjustments in the SV group in 2023, the most likely outcome is that the parties would have agreed on a wage adjustment of 1.25% for 2023. This is not to say that this is the only possible outcome or the single correct outcome; this is also not to say that this is the approach the parties should or will take during the next round of collective bargaining. However, the Board has concluded that it is the most likely outcome this time and also a reasonable one in the circumstances.

[45] Finally, the HoC argues that there should not be any wage adjustment for 2023 because wage adjustments should be reserved for situations of a demonstrated retention or recruitment issue. The HoC argued that there was no evidence of such retention or recruitment issues to justify a wage adjustment in 2023. However, the HoC's argument is inconsistent with its proposal for a 3.5% wage increase in 2023 (which was intended to copy the 3% plus 0.5% wage adjustment in the majority of the federal public administration) and its proposal of 4.75% in 2022 (which was intended to copy the 3% plus 0.5% wage adjustment in the federal public administration). It did not require evidence of retention and recruitment issues for those wage adjustments, showing that - in this round of bargaining at least - such evidence was not determinative of the bargaining result.

[46] The Board also notes that separate agencies in the federal public administration (such as Parks Canada) copied the wage adjustments for 2023 despite the retention and recruitment data that PSAC prepared being about the core public administration. In other words, the pattern of bargaining has not been to require employer-specific recruitment and retention data but, instead, to rely upon broader recruitment and retention concerns throughout the federal public sector.

[47] The parties both proposed a 2.25% economic increase in 2024, so the Board will order that increase. PSAC did not request that it be divided into an economic increase and wage adjustment, so there will be no compounding in that year.

[48] Finally, the parties both agreed on a \$2500 one-time lump sum payment designed to be pensionable. PSAC wanted it to be paid to all employees on strength as of April 21, 2023; the HoC proposed it to be paid to all employees on strength as of the date of the arbitral award. This \$2500 lump-sum payment was negotiated as a form of signing bonus in the federal public administration, payable to all employees on strength as of the date the collective agreement was signed (which was sometime in

2023). When the Board asked PSAC why it wanted a different date here, it explained that some employees have retired in the past years.

[49] Any trigger date for the lump-sum payment is arbitrary in that an employee may leave or join the HoC a few days before or after that trigger date. Since all other comparable agreements use the signing date, this Board does the same by using the date of the arbitral award. This was also the approach taken in *Library of Parliament* and *Canadian Merchant Service Guild*.

[50] The HoC requested language to the effect that if an employee is eligible for compensation in respect to the one-time lump-sum payment at the HoC, the employee shall receive the payment only once. The language proposed by the HoC was copied in collective agreements in the federal public administration that were negotiated after the first set of agreements between PSAC and Treasury Board and Canada Revenue Agency (such as with Parks Canada), to prevent double payment of that \$2500. The Board was given no information from either party about whether this would be the first group of employees in the HoC to receive this payment. However, PSAC did not object to this condition for this proposal. Out of an abundance of caution (in case the HoC has already paid this \$2500 amount to other employees), the Board agrees with the thrust of the HoC's proposal and orders that an employee who has already been paid the lump sum for their service with the HoC may not receive it a second time.

[51] Consequently, the Board awards the following:

| | |
|-----------------|--|
| April 21, 2020: | 1.5% economic increase |
| April 21, 2021: | 1.5% economic increase |
| April 21, 2022: | 3.5% economic increase, plus 1.25% wage adjustment |
| April 21, 2023: | 3% economic increase, plus 1.25% wage adjustment |
| April 21, 2024: | 2.25% economic increase |

(Note that the wage adjustments are compounded.)

| | |
|-------------------------|---|
| Date of arbitral award: | \$2500 lump sum paid to each employee employed in the bargaining unit for the performance of regular duties and responsibilities associated with their position. If an employee has been paid this lump-sum by the House of Commons in respect of their service with the House of Commons, the employee is not eligible to receive this lump sum a second time. |
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3. Other lump-sum payments and allowances

[52] PSAC proposed an annual \$800 bilingualism bonus. The bilingualism bonus is uncommon across Parliamentary employers, as it is only paid to a small number of bargaining units. The Board does not order this proposal.

[53] PSAC requested 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. 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. If employees are owed damages for those items, PSAC is currently pursuing that recourse through other means and may continue to do so. Interest arbitration is not the appropriate forum in which to pursue damages for mental distress.

[54] Finally, PSAC proposed a \$500 payment to each employee plus an additional \$50 for each 90-day period that the HoC is late implementing this arbitral award. The \$500 one-time payment has never been awarded or negotiated for a Parliamentary employer, and PSAC has not demonstrated why this should be the first.

[55] That said, the Board was very concerned to hear about the delays in the HoC implementing the previous arbitral award. Those delays stretched on for almost a year: the arbitral award was issued on December 10, 2019, retroactive payments were not made until July 8, 2020, and further pay reconciliations were made on November 10, 2020 (see *House of Commons v. Public Service Alliance of Canada*, 2021 FPSLRB 49 at para. 19). The HoC acknowledged that there were delays, but stated that it has done better implementing new agreements with its other bargaining units more recently. Good. But that does not provide much comfort to the employees in this unit: the HoC is basically saying “trust me” to its employees and the Board. To that, the Board says: “not yet”.

[56] The HoC also 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 the possibility of 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.

[57] 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*.

[58] In light of the history of delay in implementing changes to a collective agreement or an arbitral award, the Board makes an order as follows. This award is the same as the Board recently made in *Public Service Alliance of Canada v. Parliamentary Protective Service*, 2024 FPSLREB 73 (“*Parliamentary Protective Service*”).

[59] 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 HoC 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.

[60] To be clear, former employees are not eligible to receive this payment even if the HoC takes more than 90 days to implement this arbitral award. Further, any employee who leaves the bargaining unit in the 90-day period after this award is issued is not eligible to receive that payment even if the HoC takes more than 90 days to implement this arbitral award.

[61] This Board has selected the amount of \$200 because that is the lump-sum payment agreed to recently by the Treasury Board and PSAC in the core public administration for late implementation of the collective agreement (the \$500 was from the previous round of bargaining). 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.

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

VI. Determination about other terms and conditions

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

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

| | |
|------------------------|---|
| Article 18.05: | Scheduling vacation leave (PSAC) |
| Article 21.01: | Sick leave credits (PSAC) |
| Article 21.09 | Medical certificates (PSAC) |
| Article 24.04 | Changes to scheduled shifts (both) |
| Article 28.01 | Shift premium (PSAC) |
| Appendix C, article 11 | Work schedules for SCI employees (PSAC) |

[64] 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. The Board will set out its reasons for the items that require some explanation.

[65] On the proposal about article 18.05, PSAC proposed removing the HoC's right to schedule an employee's vacation leave because it actually exercised that right during some recent renovations to the restaurant. The HoC objects to that proposal on the basis that it falls outside the jurisdiction of this Board because it affects its right to determine its organization and assign duties to its employees, contrary to s. 5 of *PESRA*.

[66] The Board has decided not to award PSAC's proposal because it has not demonstrated a need to make its proposed change and the current language is common across Parliamentary employers. The Board therefore does not need to decide the jurisdictional objection.

[67] For the proposal dealing with sick leave credits, PSAC proposed increasing the monthly amount of sick leave earned from 8.75 to 9.92 hours each month to reflect higher sick leave earning by shift workers in the SV Group collective agreement. While the employees in this bargaining unit do work on shifts, they are not "shift workers" as that term is defined in the SV Group collective agreement and their shifts are not variable in a way that would justify higher allotment of sick leave.

[68] PSAC proposed increasing both the shift and weekend premiums from \$2.25 to \$2.40. However, the shift and weekend premiums in the SV Group agreement are \$2.25. The units PSAC identified with higher premiums are not standard comparables with this unit.

[69] Both parties proposed adjusting to the notice of changes to scheduled shifts. The HoC proposed reducing the required notice to 2 days' notice, and PSAC proposed increasing it to 7 days' notice. The Board has decided not to change from the status quo of 5 days' notice.

[70] Finally, PSAC proposed a change to Appendix C of the collective agreement that would require the HoC to establish SCI employees' work schedules by taking into account employee seniority alongside operational needs and the preferences expressed by employees. However, when it explained its proposal, PSAC stated that it was only intended to require that SCI employees be offered **vacant** shifts on the basis of seniority. But that is not what its proposal says: its proposal is much broader than that. The Board does not award the proposal, or any change to Appendix C.

[71] However, the Board does want to say this. Scheduling for SCI employees has been an issue of longstanding contention with the parties. The type of proposal made by PSAC may make sense in the abstract, but it may also require detailed and significant changes to the operations of the HoC. This is the sort of change that requires a great deal of bargaining. The parties only negotiated during four days before referring this dispute to arbitration. From the text of the agreed-upon issues, it appears as if they agreed on most of those issues during the three days in September, 2023 when they met after referring this dispute to arbitration. Before referring this or similar issues to arbitration, any future arbitration board will likely want to see significant attempts by the parties to negotiate this issue.

2. Proposals included in the arbitral award

[72] 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. Vacation carryover and payout

[73] PSAC proposed two changes to article 18.08 of the collective agreement. First, it proposed increasing the maximum vacation carry-over from one year's credit to 261 hours (which is 1.24 times the maximum vacation hour accrual). It states that the carryover in the SV Group agreement is 280 hours, which is 1.24 times the maximum accrued vacation in a year (of 225 hours). It wants to follow that approach here. The

HoC states that vacation is credited in days and not hours. The HoC states that significantly increasing the amount of vacation leave would increase its financial liability; however, it also argued that there was little need for such a proposal because no more than 35 employees were required to cash out vacation in any year. Either this creates liability or it is not used very often — it cannot be both. Finally, the HoC states more convincingly that other Parliamentary employers cap the carryover at one year's worth of vacation with excess carryover only available on mutual agreement (as is the case here).

[74] The Board has decided to award a version of PSAC's proposal. Ultimately, it is the employee's vacation leave. Additionally, the collective agreement permits the HoC to schedule an employee's vacation leave so that if this extra carryover is a financial burden there is a mechanism to deal with it.

[75] PSAC also proposed changing the payout language so that unused credits exceeding 261 hours and not carried over would be cashed out based on an employee's current rate of pay instead of the current rule of being paid based on their rate of pay as of December 31st of the previous vacation year. That payout language is standard in Parliamentary employers and in the Treasury Board (which use March 31st because of a different fiscal year). The Board therefore refuses that proposal.

[76] The Board orders the following language to amend article 18.08:

*18.08 Where in any vacation year an employee has not been granted all of the vacation leave credited to the employee, the unused portion of the employee's vacation leave shall be carried over into the following vacation year. Carry-over beyond one (1) year of one (1) year's annual leave entitlement **plus five (5) days** shall be by mutual consent.*

b. Leave with pay for family-related responsibilities

[77] PSAC proposed adding a person who stands in the place of a relative to the scope of people for whom an employee can take leave with pay for family-related responsibilities. The parties agreed to make this change for bereavement leave. The HoC stated that it was opposed to making the same change for this type of leave because it could occur more often than bereavement leave. When the Board pointed out to the HoC during oral argument that this is always true for bereavement leave because a family member can only die once but can be ill more than once, the HoC

could only state that scheduling leave is complicated. In light of the parties agreement on this point for bereavement leave, the Board orders the same change here as follows:

20.12 Leave With Pay for Family Related Responsibilities

*(a) For the purpose of this clause, family is defined as spouse (or common-law spouse resident with the employee), children (including foster children or children of legal or common-law spouse), parents (including stepparents or foster parents), ~~or~~ any relative permanently residing in the employee's household or with whom the employee permanently resides, **or a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.** [...]*

c. Personal leave

[78] PSAC proposed increasing personal leave from one day to two days. The Board denies that proposal, as no other Parliamentary employer has two days' personal leave. There are two days' personal leave at the Treasury Board, but that is simply a conversion of what used to be one days' volunteer leave into personal leave.

[79] The HoC proposed permitting employees to take the leave in 3.5-hour increments. PSAC proposed permitting employees to take two periods of leave (but coupled that with its proposal to double the amount of leave). The Board grants the HoC's proposal. Article 20.19 will now read:

20.19 Personal Leave

*(a) Subject to operational requirements, as determined by the Employer, and with an advance notice of at least five (5) working days, the employee shall be granted, in each calendar year, a single period of up to seven (7) hours **or two (2) periods of three decimal five (3.5) hours each** of leave with pay for reasons of a personal nature. [...]*

d. Medical and dental appointments

[80] The employer proposed two changes to the current language about medical and dental appointments.

[81] First, the employer proposed amending the current provision so that continuing appointments about the same medical condition are charged to sick leave instead of treated as a medical appointment. Collective agreements with Parliamentary employers are mixed on this point, with some having similar language and others not. Board is not convinced that the HoC has demonstrated the need to prefer its proposal

over the status quo. The Board also notes that this is the same conclusion as that reached in *Public Service Alliance of Canada v. Senate of Canada*, 2021 FPSLREB 103 at para. 46 (“*Senate Operations Group 2021*”).

[82] Second, the employer proposed adding the words “up to” to modify the current three-hour period for medical appointments. The Board considers this to be a reasonable clarification that links the entitlement to the actual time taken by an employee – as other arbitral boards did in *Public Service Alliance of Canada v. House of Commons*, 2021 FPSLREB 45 at para. 18 and *Senate Operations Group 2021* at para. 46.

[83] The Board orders that clause 21.10 be amended as follows:

21.10 Medical and Dental Appointments

*An employee shall be granted **up to** three (3) hours per visit with pay to attend medical or dental appointments. Any hours spent at the medical or dental appointments beyond the three (3) hours may, at the employer’s discretion, be deducted from the employee’s sick leave.*

e. Overtime meal allowance

[84] PSAC proposed increasing the overtime meal allowance from \$11.50 to \$15. The HoC proposed increasing it to \$12. The Board orders the HoC’s proposal because that is the meal allowance negotiated for the SV Group.

24.19 Overtime Meal Allowance

(a) An employee who works three (3) or more hours of overtime,

(i) immediately before the employee’s scheduled hours of work and who has not been notified of the requirement prior to the end of the employee’s last scheduled work period,

or

(ii) immediately following the employee’s scheduled hours of work

shall be reimbursed for one (1) meal in the amount of ~~eleven dollars and fifty cents (\$11.50)~~ **twelve dollars (\$12.00)** except where free meals are provided or when the employee is being compensated on some other basis. Reasonable time with pay, (to a maximum of thirty (30) minutes), shall be allowed the employee in order that the employee may take a meal break either at or adjacent to their place of work.

- (b) When an employee works overtime continuously beyond the period provided in (a) above, the employee shall be reimbursed for one (1) additional meal in the amount of ~~eleven dollars and fifty cents (\$11.50)~~ **twelve dollars (\$12.00)** for each four (4)-hour period of overtime worked thereafter, except where free meals are provided or when the employee is being compensated on some other basis. Reasonable time with pay (to a maximum of thirty (30) minutes), shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.
- (c) This clause shall not apply to an employee who is in travel status which entitles the employee to claim expenses for lodging and/or meals.

f. Weekend premium

[85] PSAC proposed changing the language for weekend premiums so that the premium applied to all hours worked and not just straight time. The Board has decided to grant this proposal for the same reasons as in *Parliamentary Protective Service*. The Board therefore orders as follows:

28.02 Weekend Premium

Employees shall receive an additional premium of two dollars and twenty-five cents (\$2.25) per hour for all hours worked ~~at straight-time rates~~ on a Saturday and/or Sunday.

VII. Order

[86] 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.

June 19, 2024.

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