File: 585-02-48834

IN THE MATTER OF
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
and a Request for Arbitration affecting
the Professional Institute of the Public Service, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the bargaining unit composed of the Commerce and Purchasing (CP) Group Bargaining Institute

Before: William Kaplan, Chairperson,
Scott Streiner, Treasury Board nominee,
Joe Herbert Bargaining Agent nominee

For the Bargaining Agent: Denise Doherty-Delorme, Negotiator, Team Technical Lead
Franco Amato, Negotiator
Ryan Campbell, Team Lead, Research

For the Employer: Katia Morinville, Negotiator, Compensation & Collective Bargaining Management

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Heard in Ottawa, September 12, 2024. The Board met in Executive Session on October 11, 2024.

Arbitral Award

Introduction

[1] The Professional Institute of the Public Service (Institute) is the bargaining agent for the Commerce and Purchasing (CP) Group. Treasury Board is the employer for the Core Public Administration (CPA), which includes the CP Group and its more than 6300 employees located across Canada working in various government departments. There are two occupational classifications: Commerce (CO) and Purchasing and Supply (PG) (2825 COs and 3408 PGs).

[2] The previous collective agreement expired on June 21, 2022. Notice to bargain was served on June 9, 2022. The parties began bargaining in January 2023 and continued to do so until the following November when an impasse was declared. The parties were able to agree on many of the outstanding issues bilaterally and in mediation (and there was further agreement even following the impasse and referral of the dispute to interest arbitration, as set out in the briefs and at the hearing). It is fair to say that there is one major issue preventing agreement on a successor collective agreement: compensation; in particular, the Institute's request for a 4% market adjustment.

[3] A hearing was held in Ottawa on September 12, 2024. The Board met in Executive Session on October 11, 2024. The new collective agreement shall include the terms of the expired collective agreement, items agreed to in bargaining, including before and at the hearing, and the terms of this award. Any Institute or employer issue not specifically addressed in this award is deemed dismissed.

The Criteria

[4] Section 148 of the *Federal Public Sector Labour Relations Act* (FPSLRA) sets out the relevant criteria to be considered by the Board in determining the outstanding issues in dispute:

> 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.

Institute Submissions

[5] The Institute provided rationales for its proposals and submitted that they were justified by the proper application of the governing criteria.

[6] Turning to those criteria, there was, the Institute argued, definite recruitment and retention challenges. Indeed, the evidence established a global shortage of procurement professionals. The COVID-19 pandemic highlighted the important role of procurement to the supply chain, and as it did, employees with procurement expertise and knowledge have become increasingly in demand.

[7] The Institute contended that this had had an obvious and inevitable impact on both classifications, introducing challenges to recruiting new employees and retaining existing ones (especially in some departments like the Department of National Defence (Defence)). Insufficient compensation was one of the reasons explaining the problem and justifying the proposed market adjustment and other overall compensation increases.

[8] Also supporting its claim for a market adjustment, and other above-CPA pattern increases, was the rising cost of living. Inflation, even if it had begun to abate, was taking its toll, and employees in both classifications were falling behind. The CPA pattern increases simply did not keep pace with what were now baked-in inflationary increases to the cost of living.

[9] Comparability was a third factor to be addressed. When the two classifications were compared – both internally and externally – it was quite clear, in the Institute's view, that they had fallen behind their direct comparators (identified by the Institute and elaborated upon in its brief and at the hearing, below). Comparability with these

other groups made a very strong case for a market adjustment and an above-pattern increase.

[10] At one time, the Institute pointed out, compensation of the COs and ECs was closely aligned, but because of an arbitration decision in 2012, and subsequent developments, a gap was introduced, and it has widened. A comparison of COs and ECs left no doubt, the Institute argued, about the overlap between the two classifications. Likewise, there was a compelling case to be made, the Institute argued, that the PG group should be brought up to the SPs at CRA.

[11] Simply put, when the details of these classifications and their applicable comparators were examined, the conclusion was readily reached that there were sufficient similarities in the nature of the responsibilities and expertise so that the CO and PG rates should, the Institute argued, be upwardly adjusted. Instead, there was a widening delta that was completely contrary to the requirements of section 148 (c).

[12] This led, the Institute submitted, to another unfortunate consequence of particular relevance to the COs: decreased mobility on deployment. COs were no longer eligible to move laterally into equivalent EC positions based on Treasury Board deployment criteria. COs could apply for promotions, but their job mobility, and professional aspirations, were otherwise restricted by a completely unfair and unsupportable pay differential.

[13] In any event, in both classifications – COs and PGs – the Institute argued that there was an injustice: unfair wages, one made manifest when these classifications were compared to relevant comparators. A market adjustment was, accordingly, fully justified.

[14] Also supporting the proposed market adjustment, together with other above-pattern compensation increases, was the proper application of the other criteria. In the Institute's assessment, Government finances were robust; revenues were up. Economic forecasts indicated a recovery with a soft landing, not a recession. The employer's fiscal circumstances presented no barrier to the proposed adjustments. Indeed, the government had at its disposal the necessary revenue to provide employees with increases that matched inflation, respected comparability and responded to market conditions (and comparison to external comparators also supported the market adjustment in the Institute's view). It was also noteworthy, the Institute observed, that

in the current round several groups – listed in its brief – had received market adjustments based on the very same factors advanced here while the CP group were only being offered the bare pattern, failing to give effect to the governing criteria and failing to address the numerous inequities that had accumulated over time.

[15] As noted at the outset, the major matter in dispute is compensation. The Institute proposed the following:

> APPENDIX A – RATES OF PAY
>
> June 22, 2022 – Increase to rates of pay: 3.50%
> June 22, 2022 – Market Adjustment/Parity: 4.00%
> June 22, 2022 – Wage adjustment: 1.25%
> June 22, 2023 – Increase to rates of pay: 3.00%
> June 22, 2023 – Pay Line Adjustment: 0.50%
> June 22, 2024 – Increase to rates of pay: 2.00%
> June 22, 2024 – Wage adjustment: 0.25%
> June 22, 2025 – Increase to rates of pay: 2.50%
>
> One-time Allowance Related to the Performance of Regular Duties:
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> The Employer will provide a one-time lump-sum allowance of twenty-five hundred dollars ($2,500) to incumbents of positions within the CP group on the date of signing of the collective agreement for the performance of regular duties and responsibilities associated with their position. The One-time Allowance is to be pensionable.

[16] Notable features of the Institute's proposal are as follows:

> (i) a proposed June 22, 2022, 4% Market Adjustment,
> (ii) an additional 0.50% in 2023 (at the hearing, the employer acknowledged that this adjustment was aligned with settlements it had reached with multiple, although not all, groups) and
> (iii) a proposed increase of 2.5% on June 22, 2025 (instead of the 2% pattern).

[17] Other proposals brought forward by the Institute included a sought-after improvement in vacation leave – faster accrual – to increase productivity, improve morale, reduce burnout, promote better work-life balance, address recruitment and retention and encourage creativity. Improved vacation leave would, in the Institute's view, lead to more motivated, loyal and higher-performing employees and would be consistent with improvements obtained by other CPA bargaining units. Also proposed was a definition expansion in the bereavement leave provision, improvements to the leave with pay for family-related responsibilities, and an amendment to the registration fees provision. The Institute asked that all its proposals be awarded.

Employer Submissions

[18] The employer began its submissions with an overview of its approach – and the widely agreed-upon results – in the 2021-22 bargaining round. Agreements were reached with 20 of the 28 bargaining units representing 98% of the CPA population. There was a well-established pattern including a $2500 one-time allowance and, for many agreements, a .50% payline adjustment in 2023. In addition, 25 of the 29 publicly funded separate agency bargaining units had, likewise, followed this pattern. The employer was agreeable to following that pattern here. What it did not agree to was either the 4% market adjustment proposed by the Institute, or the above-pattern 2.5% (an additional .50%) in 2025. Neither a market adjustment nor an above-pattern increase in the final year was justified by the application of any of the criteria.

[19] There was, in the employer's submission, no recruitment and retention challenge; none whatsoever. There was a strong pool of qualified applicants and no difficulty in filling positions. At the other end, the separation rate was extremely low, even lower than the CPA average, lower than what was found in provincial governments, and lower than the private sector. In the employer's view, a non-normative compensation increase was not needed to attract and retain employees. Nor was a market adjustment necessary for comparability purposes.

[20] The employer rejected the assertion that the COs were properly compared with the ECs. There was, in its view, no direct comparator for the COs. The duties and responsibilities were different, as were the key skills and core competencies. At the risk of oversimplification, the employer pointed out that the CO work was practical – important work in program delivery – while the EC work – the comparator most heavily relied upon by the Institute – was more analysis-based. There were many other differences as well. A high threshold was required, in the employer's submission, to establish a direct comparability claim, and that threshold had not been met, nor could it be on the evidence advanced (and the employer again pointed out that in the handful of other cases where a market adjustment was agreed or awarded it was because of compelling evidence – for example, established recruitment or retention challenges requiring redress in the form of a compensation increase – something completely absent here).

[21] The employer also pointed to an external study that it had prepared establishing that current salaries were entirely competitive with the private sector. In

fact, the evidence, which the employer reviewed, demonstrated that CP hourly rates were considerably higher than those found in the private sector; CP compensation was, in other words, completely competitive with the external market. What should also be added to the mix, in the employer's view, were the generally superior working conditions including the total compensation composed of pension, paid leaves, benefits and various premiums, not to mention the employment stability, afforded by federal public sector employment. In the employer's view, there were key differences between the pay proposals of the parties. The employer's proposal was the one tethered to economic reality. It was also the one that replicated the pattern accepted by almost every single bargaining unit and covering almost every single federal public sector employee.

[22] The employer argued that the CO group had not established a basis for a comparator-driven pay increase, and nor had the PG group. A careful review of the evidence established, in the employer's view, that the Institute's case for direct comparability between the PGs and the SPs had not been met. These were completely different jobs with different duties and responsibilities.

[23] Other criteria were also relevant and had to be considered, including the state of the Canadian economy and the government's fiscal circumstances. The employer rejected the Institute's rosy view of the overall economic situation, noting that, if anything, there were many economic and fiscal challenges ahead, including lower real GDP growth, continued inflation, rising unemployment, substantial and growing public debt, and a stated, indeed obvious, need to curtail public spending. In this context, the Institute's overall compensation ask (including its various other monetary proposals such as improvements to vacation) was not only unjustified and unaffordable but bereft of any justification established by demonstrated need. It was, moreover, completely contrary to the application of governing principles of replication.

[24] Awarding additional compensation to the CP group would, in the employer's submission, constitute an unreasonable and unsubstantiated expenditure of public funds. Overall, and in conclusion, the employer argued that there was no case whatsoever for a market adjustment: none of the governing criteria were engaged by the proposal and it was completely without justification (in marked contrast, as earlier noted, to a handful of cases in the CPA where market adjustments had been agreed-upon in the current round).

[25] What would be justified, in the employer's submission, were its various proposals including a change to the overtime provision that was justified by replication; it was now largely accepted that employees performing overtime at home need not be reimbursed for meals. What was also now completely CPA normative, the employer suggested, was its proposed Appendix E – Memorandum of Understanding with Respect to the Implementation of the Collective Agreement. The employer concluded its submissions by asking that its proposals be awarded.

Discussion

[26] There is no doubt but that members of the CP group perform vital services and make a singular contribution to the work of the government for the benefit of the country. Their crucial work supports smooth and efficient government operations and Canada's economic growth.

[27] Having carefully considered the submissions of the parties – in their briefs and at the hearing – we cannot conclude that there is any justification for a market increase and for above-pattern increase in the final year (which we have, in any event, remitted to the parties). In our view, the proper application of the governing criteria cannot lead to such an outcome; rather, this is a case where the application of the replication principle requires that the pattern be followed, except for the final year which we have remitted to the parties while remaining seized as it is too early, in our view, to identify and then follow an applicable pattern.

[28] The main issue in dispute – and the parties were agreed about this – was the Institute's request for a market adjustment based on all the statutory criteria but most particularly the comparability between the COs and ECs and the PGs and SPs. The evidence falls short of establishing a case for a market adjustment.

Comparability

[29] Obviously, the FPSLRA requires an appropriate compensation relationship between different classification levels within an occupation and as between occupations. The CO and PG classifications are different, of course and the strongest case for comparison – and a market adjustment – is between the COs and ECs. But having carefully examined all the information, we cannot find a basis for finding that the (disputed) overlaps support the requested market adjustment for either group.

[30] In brief, the Institute argued that a market adjustment was justified for the CO group because pay for the EC group is higher, while the skills and responsibilities of employees in the two groups were similar. However, there are material differences in the group definitions and in the work performed by members of the CO and EC groups. As the Institute itself noted:

> *CO positions are more focused on economic development, trade, and industry, often involving regulatory and promotional activities. In contrast, EC positions emphasize research and analysis in economics, sociology, and social sciences, with a focus on development and evaluation. The CO group tends to work on practical applications related to trade, commerce, and industrial growth, whereas the EC group is more engaged in research, and data analysis. COs are involved in activities such as market analysis, financial compliance, and industrial promotion. ECs are more likely to conduct socio-economic research, and provide policy recommendations.*

There are similarities, to be sure. But in our view, the case for a market adjustment based on comparability was not made.

[31] Simply put, the kind of persuasive evidence needed to ground a comparability analysis is absent (and the sought-after result is also not justified by any of the other criteria advanced). The Institute's claim that the salary difference negatively impacts deployment – the employer disputes this assertion – is not on its own persuasive evidence for granting a salary adjustment.

[32] We have carefully reviewed the 2012 interest arbitration decision to which the Institute points (TBS and CAPE, July 12, 2012, Board File: 585-02-38) which granted the EC group a salary adjustment, and thus altered its earlier salary relationship with the CO group. According to the Institute's argument, the adjustment that the ECs received was based upon a new requirement for specialization within the EC group in an employee's respective field, a criterion the Institute asserts that the CO group now also meets as of June 2021. But that is not the reasoning of the 2012 award, nor is it what the award says. The EC group was provided an adjustment because that Board was convinced on the evidence before it, that the EC group lagged behind appropriate comparators (see paragraphs 12 and 49 of that decision). The CO group was not one of those comparators. We have no comparable evidence here.

[33] Insofar as the PG group is concerned, we are not persuaded by the Institute's argument that they are appropriately compared to SPs at CRA, or any of the other proffered comparators such as those at Nav Canada and the NCC (but we have no issue with comparing CPA and separate agency classifications). The evidence before us is insufficient to support the Institute's claim.

[34] Both PGs and SPs perform vital work. PGs play a pivotal role in major infrastructure projects and manage large-scale defence procurement, among other important responsibilities. These, and related tasks, are vital, but our review has led us to conclude that the PG and SPs jobs are not readily compared and what overlaps might exist are not sufficient to establish an entitlement to a market adjustment wage increase. The same conclusion is reached when the other applicable s. 148 statutory criteria are examined.

No Recruitment or Retention Issue

[35] We do not find, as the Institute submitted, that there are any recruitment and retention issues that need to be addressed by a market adjustment. The CP population is stable, indeed growing with demonstrable interest in employment opportunities reflected in applications for employment and a large pool of qualified candidates. There was a hiring decline in 2020-21 for obvious reasons, but a marked rebound in both the CO and PG groups since. The separation rates are low and stable, with retirements the primary explanation for departures. Recruitment and retention are not, in our view, factors justifying any deviation from the pattern. The Institute pointed to many vacant positions at Defence. However, it is not a lack of candidates that explains the vacancies at this one government department; the explanation, as provided at the hearing, was the need for bilingual candidates, completion of security clearances and expenditure restraint.

Other Criteria

[36] When some of the other criteria are examined, the conclusion is reinforced that the case has not been established for a market adjustment. There is no doubt that there are serious fiscal pressures affecting government spending. Nevertheless, above pattern increases may be necessary resulting from the application of the criteria, but only if they are justified. This is demonstrated by the market adjustments agreed to (and awarded) to other groups. The fact that a market adjustment is doable is not however, in our view, independent of some other compelling reason, a basis for

awarding one. The fact that others have received market increases – through free collective bargaining or in an interest arbitration award – is not justification for everyone to receive one.

[37] There is a freely bargained compensation pattern – and we reject any suggestion that this did not include at least a .50% additional adjustment in 2023 – one also reflected in arbitration awards giving effect to that pattern. This is what replication requires and, absent application of the criteria leading to a different result, this is what we award. However, in our view, as noted above, it is too soon to identify any applicable wage settlement pattern for 2025, and we have, accordingly, remitted that to the parties while remaining seized. (An outcome that parallels what was awarded in *Treasury Board & CMSG* Board file: 585-02-44668 December 21, 2023).

Arbitral Award

Term

[38] As agreed, four years expiring on June 21, 2026.

Wages

APPENDIX A – RATES OF PAY

June 22, 2022 – Increase to rates of pay: 3.50%
June 22, 2022 – Wage adjustment: 1.25%
June 22, 2023 – Increase to rates of pay: 3.00%
June 22, 2023 – Pay Line Adjustment: 0.50%
June 22, 2024 – Increase to rates of pay: 2.00%
June 22, 2024 – Wage adjustment: 0.25%
June 22, 2025 – Remitted to the parties. Board remains seized.

One-time Allowance Related to the Performance of Regular Duties: $2500. This one-time allowance is pensionable and will be paid to incumbents of positions within the CO and PG groups at the date of the issue of the arbitration board for the performance of regular duties and responsibilities associated with their positions.

Overtime

[39] Amend 9.06 (c):

[40] Paragraphs 9.06(a) and (b) shall not apply “or to an employee who has obtained authorization to work at the employee’s residence or at another place to which the

Employer agrees." We understand that this provision was successfully negotiated in respect of each of the other PIPSC groups across the CPA.

Memorandum of Understanding

[41] The Employer's Memorandum of Understanding with respect to the Implementation of the collective agreement was similarly negotiated in each of the other PIPSC CPA collective agreements (distinguishing this case from the result in *Treasury Board & CMSG* Board file: 585-02-44668 December 21, 2023 for example), and we award it here.

Vacation

[42] Finally, the Board understands that the Institute's proposal to reduce the threshold for the 4-week vacation entitlement has now been uniformly negotiated, in this round or previously, in respect of other PIPSC groups across the CPA – IT, SP, NR and RE – leaving this group as the only one where the higher threshold remains. Accordingly, we award the Institute's proposal to reduce that threshold to 7 years, making this collective agreement conform to what we understand is the TBS/PIPSC pattern across the CPA.

Conclusion

At the request of the parties, we remain seized with respect to the implementation of our award.

November 1, 2024.

"William Kaplan"

William Kaplan, Chair of the arbitration board

"Scott Streiner"

Scott Streiner, Treasury Board Nominee

"Joe Herbert" Addendum attached.

Joe Herbert, Institute Nominee

ADDENDUM

1. In respect of the CO group, the focus of the case before us, it struck me as counter-intuitive that an employee in the classification with the lower maximum rate, nevertheless takes longer to reach that rate than an employee in the higher paid (EC) classification. Normally salary scales vary in length in direct proportion with the time it is said that a typical employee may take to be able to perform the job most proficiently. In other words, occupations requiring a higher skill level typically have a longer grid. In light of the Chair's finding, it may well be that the parties will want to reduce the length of time taken to reach the maximum pay rate in the CO grid.

2. Second, again in respect of the CO, the 'nub' issue identified by employees, appeared to be less the inadequacy of the maximum rate than the effect of that rate for deployment compared to employees in the EC classification. It was apparent from what we were told by employees at the hearing, that the limiting of deployment opportunities by that differential is regarded as both unfair and demoralizing, and in my view the employer will do well to heed rather than downplay those concerns. Deployment can be directly addressed in the parties' future bargaining in order to address those legitimate concerns.

3. Finally, in respect of the PG group, the Chair indicates the evidence was insufficient to ground a salary adjustment. I had some concerns that the evidence proffered by the employer (while conceding it was the union's case to make) focused more on what might be taken as 'buzzwords' than substance. For example, it's easy to simply state that another classification (SP's at CRA) have jobs that are more 'analytical', but I would like to have had that assertion demonstrated by examples rather than being simply baldly made. Moreover, having heard from the employer on that point, I was left wondering who at CRA if it's not the SP classification, has the same core function as PG's? That question, and questions around the organization of work generally at the two (CRA and DOD in particular), were left somewhat unanswered.

October 21, 2024.

Joe Herbert