

**IN THE MATTER OF
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
and a Request for Arbitration affecting
the Canadian Federal Pilots Association, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the bargaining unit composed of the Aircraft Operations Group (AO)**

Before: Brian Keller, Chairperson,
Scott Streiner, Treasury Board nominee,
Phillip Hunt, Bargaining Agent nominee

For the Bargaining Agent: Stephen Hewitt, Phillipe Morchain, Andrew
Stirling, Ron Graham, Greg Holbrook,
Sean Yim and Justin Miller

For the Employer: Daniel Asselin, Jacques Lauoert and Michael
Gager

Heard in Ottawa, September 4 and 5, 2024.

Arbitral Award

[1] This arbitration award deals with the renewal of the collective agreement between the employer and the Association. The previous collective agreement was settled on the parties following an interest arbitration award and was for a term of January 26, 2015 to January 25, 2023.

[2] Matters that were in dispute and referred to this Board but not dealt with in this award are not awarded.

[3] The underpinnings of this award are the consideration by the Board of the submissions of the parties having regard to section 148 of the Federal Public Sector Labour Relations Act (“the *Act*”). Additionally, the various considerations traditionally brought to bear by interest arbitration arbitrators has played a central role in our determination of the issues in dispute. In particular, in fashioning this award, the Board has concluded that the issue of recruiting and retaining competent persons is a matter that requires particular attention and played a central role in our deliberations and this award.

[4] The replication principle is a principle that has been a major driver of arbitration awards for many years. Put simply, the replication principle requires an arbitrator or board of arbitration to put itself into the shoes of the parties and to try to replicate what the parties would have done had they been able to conclude a freely negotiated collective agreement. It is, of course, impossible to determine precisely what the parties may have agreed, but it is possible to reach certain conclusions based on past bargaining between the parties.

[5] In the instant case, the Board has reviewed the bargaining history between the parties dating back to an award by arbitrator George Adams in 2003. We note that from that date to the present, collective agreements have been concluded both through interest arbitration and through freely negotiated settlements. It is from this bargaining history that the Board has been able to reach certain conclusions to assist in attempting to replicate what the parties would have freely negotiated.

[6] The first conclusion is that, as a general rule, general wage increases for this group have closely mirrored general wage increases for the core public administration. The second conclusion is that the parties, and arbitrators, have had regard to the particular and specific attributes of this group and have provided for additional compensation in specific areas and to address specific needs where it was considered warranted having specific regard to the legislative criteria.

[7] In order to understand why additional compensation was awarded when it was, it is important to understand the composition of the bargaining unit, the recruitment pool, and the role performed by its members.

[8] The AO group includes positions that are primarily involved in aviation inspections, pilot flight testing, licensing, enforcement, certification of operators, aircraft certification, aircraft flight testing, and developing operating standards. It is common ground between the parties that the AO group plays an important if not vital role in ensuring the safety of the aviation industry in Canada.

[9] The duties of the members of this bargaining unit can be broken down into three main categories: flying, training and testing, and regulatory oversight. Currently, approximately 13% of the bargaining unit members are involved in flying, 11% in training and testing, and 76% in regulatory oversight. The nature of this regulatory oversight is such the Treasury Board has determined that recent experience piloting aircraft is a requirement for the performance of such regulatory activities. This is shown in the AO group definition:

The Aircraft Operations Group comprises positions that are primarily involved in inspecting, licensing and regulating aircraft, aviation personnel, air carriers, aircraft operators, airports, and supporting facilities; determining certification; developing aviation legislation, standards and information, and ensuring compliance with them; and piloting aircraft.

[10] The AO group qualification standards provides that the minimum standard for positions in the Engineering Test Pilots subgroup and the Civil Aviation Inspectors subgroup is possession of a valid Canadian Airline Transport Pilot License Aeroplane Category, or possession of a valid Canadian Commercial Pilot License-Helicopter Category. In other words, a valid airplane or helicopter license is required in order to be employed in the AO group. Without such a valid license, employment in this group is not possible. Not only is this a requirement for initial hiring, but, as well, all employees in this group are subject to currency requirements in accordance with article 46 of the collective agreement. The implications of this will be considered below.

[11] The principal issue separating the parties in the instant case is compensation. The Association seeks compensation increases in excess of 47%. For its part, the employer has offered pattern compensation increases that mirror compensation increases awarded across the core public administration. That includes both annual increases to rates of pay and annual wage adjustments.

[12] The employer justifies its offer based on the criteria in the *Act*. It points to the current Canadian economic situation and its fiscal circumstances. It submits that to award compensation increases beyond what it is offering would be to distort appropriate relationships with respect to compensation and other terms and conditions of employment between this group and other occupations in the public service. It suggests that there does not appear to be, at this time, any issue with either attracting competent persons to, or retaining them in the public service in order to meet the needs of Canadians.

[13] For its part, the Association submits that members of this group perform duties unique in the Canadian public service, have very particular and specific occupation standards and historically the parties have recognized the uniqueness of this group by negotiating areas of compensation beyond pattern general wage increases in the core public administration. It takes issue with the position of the employer that there is no problem with recruitment and retention.

[14] The Board has considered the five statutory requirements in the *Act*. It notes that the *Act* also provides that an arbitrator, in addition to taking account of the five specific statutory requirements may also consider such other factors that it considers relevant. Thus, the Board is not constrained by the five enumerated criteria.

[15] The history of settlements between the parties, whether freely negotiated or awarded, is that additional increases have been agreed or awarded where there has been a demonstrated need in that round of bargaining to address a pressing issue. We note that increases in compensation beyond what has been awarded in the core public administration is not unique to this group. The evidence demonstrates that, where circumstances warrant, the employer has negotiated increases, or increases have been awarded, beyond “pattern” for other bargaining groups. This has generally been the case where there has been a demonstrated need to deal with particular and specific circumstances.

[16] After considering the submissions of the parties, the Board has determined that there is a specific need to address the issue of external comparators. We point out that this is not a new issue but was noted in the award of arbitrator MacKenzie in the award dated December 18, 2019, which settled the terms and conditions of employment of the expired collective agreement. In that award, the Board wrote:

The employer recognized a high attrition - recruitment rate in a public presentation to the Air Transportation Association of Canada in 2016 when it was noted that the average age of Civil Aviation inspectors was over 50 and that the attrition - recruitment rate had been over 25% for the previous three years and was expected to be the same for several more years.

[17] As referenced above, employees in this group need to be licensed pilots, whether fixed wing or helicopter, as a condition precedent to being employed in the AO group. The pool from which the employer recruits to the AO group is, consequently, a limited one. For the most part, members of this bargaining unit are recruited from either the RCAF or the commercial aviation industry.

[18] The Association led evidence of recent increases in RCAF pilot pay, without being in a position to demonstrate why those increases had been granted. Consequently, this evidence has not been given any weight. The submission put to the Board by the Association is that the commercial aviation industry in Canada, and around the world, is currently suffering from a severe pilot shortage and that wages for pilots - the pool from which members of this bargaining unit are recruited - have increased dramatically over the last few years.

[19] In the last year, pilots' wages increased from 34 to 40% at the three biggest US airlines. In Canada, a recently negotiated pilot collective agreement at WestJet provided for an increase of 24% over four years. Most recently, a newly ratified collective agreement for pilots at Air Canada provided for a cumulative wage hike of nearly 42% over four years.

[20] It is more likely than not that the increases referenced above will put pressure on the ability of the employer to recruit and retain pilots in this bargaining unit. We also note that anecdotal evidence was presented to the Board suggesting that the issue of recruitment and retention is, if not an immediate issue, one that will become a major issue sooner rather than later. It is this unprecedented situation that, in the opinion of the Board, needs to be addressed now and is the prime motivator for what is awarded.

Award

[21] Therefore, having regard to all of the above, the Board awards as follows:

Annual Rates of Pay

Year 1-Effective January 26, 2023-increase to rates of pay: 3.5%
Year 1-Effective January 26, 2023-wage adjustment: 1.25%

Year 2-Effective January 26, 2024-increase to rates of pay: 3.00%
Year 2-Effective January 26, 2024-wage adjustment: 0.50%
Year 3-Effective January 26, 2025-increase to rates of pay: 2.0%
Year 3 -Effective January 26, 2025-wage adjustment: 0.25%
Year 4- Effective January 26, 2026-increase to rates of pay: 2.0%
Year 4-Effective January 26, 2026-wage adjustment: 0%

\$2500 one-time lump sum payment to incumbents of positions in the AO group on finalization of the collective agreement.

Restructuring of Paylines

Additional last step at 2.75% increase from the previous last step for the AO-CAI-02 pay scale.

Additional last step at 2.75% increase from the previous last step for the AO-ETP-01 pay scale.

Two additional steps at 2.75% each increase from the previous last step for the AO-HPS-01 pay scale.

Two additional steps at 2.75% each increase from the previous last step for the AO-HPS-02 pay scale.

Two additional steps at 2.75% each increase from the previous last step for the AO-HPS-03 pay scale.

Add AO-HPS-03 classified employees to the bargaining unit as of January 26, 2023.

All incumbents of HPS, ETP and CAI-02 positions will be moved up a step as of January 26, 2023.

Extra duty allowance

Effective January 26, 2023, increase the extra duty allowance to \$9500.00 and apply the pattern annual economic increases referenced above under annual rates of pay.

[22] The above increases are retroactive to the dates mentioned and are to be implemented in accordance with the collective agreement implementation language agreed by the parties.

Conclusion

[23] The nominees of the Board concur with the decision of this award.

[24] The Board remains seized to deal with any issues that might arise with respect to the application or implementation of any provision of this award.

November 26, 2024.

“Brian Keller”

Brian Keller, Chair of the arbitration board

“Scott Streiner”

Scott Streiner, Treasury Board Nominee

“Phillip Hunt”

Phillip Hunt, Bargaining Agent Nominee