File: 585-02-49101

IN THE MATTER OF
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
and a Request for Arbitration affecting
the Federal Government Dockyard Trades and Labour Council East, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the bargaining unit composed of the Ship Repair East (SR-E) Group

Before: William Kaplan, Chairperson,
J.D. Sharp, Treasury Board nominee,
Steven Barrett, Bargaining Agent nominee

For the Bargaining Agent:	Ronald Pink and Sophie Pineau
For the Employer:	Marc Bernard

Heard in Halifax as a mediation, November 16, 2024.
Heard by videoconference on December 2, 2024, and January 22, 2025.
The board met in an executive session on February 10, 2025.

Arbitral Award

I. Introduction

[1] The Ship Repair East Group (SR-E) is composed of tradesperson positions in the Department of National Defence (DND) located in Nova Scotia. The Dockyard Trades & Labour Council (Council) represents approximately 600 employees at the Fleet Maintenance Facility – Cape Scott (FMFCS) in Halifax – and the Canadian Forces Ammunitions Depot (CFAD) in Bedford.

[2] SR-E employees are vital to the defence and security of Canada. To a person, Council members hold high level NATO security clearances and are entrusted with the responsibility of keeping our Navy safely at sea: they repair and maintain frigates, destroyers, submarines, coastal patrol vessels and supply ships and their complex weapons, sonar and radar systems. These tradespeople make an indispensable contribution to the defence of Canada by maintaining the Navy's operational readiness and supporting it in its extremely important work. SR-E employees work in the national interest for the benefit of the people of Canada and our allies.

[3] The previous collective agreement expired on December 31, 2022. Notice to bargain was served one month earlier, on November 21, 2022. The parties met on eight occasions between June and December 2023. Impasse was declared on February 16, 2024, and the outstanding issues referred to arbitration (there was a further mediation effort in May 2024). As it turned out, the parties were only able to agree on a single item (adding National Day of Truth and Reconciliation to the list of paid holidays, which we direct be included in the collective agreement settled by this Award). The current arbitration board (board) was consensually convened, both parties filed briefs, and another mediation took place in Halifax on November 16, 2024.

[4] Unfortunately, the board was unable to assist the parties in reaching a renewal collective agreement, and the outstanding issues – both Council and Employer proposals – proceeded to hearings held by Teams on December 2, 2024, and January 22, 2025 (following further written submissions). The board met in Executive Session on February 10, 2025.

[5] Any Council or employer proposal not specifically addressed in this Award is deemed dismissed.

II. The Criteria

[6] 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.

[7] In addition to these statutory criteria, the board has also considered the normative ones that generally apply including, and especially, the replication of free collective bargaining, but also demonstrated need, gradualism, and total compensation.

III. The Outstanding Issues

[8] As noted above, both parties referred issues to arbitration. It is fair to say, however, that there was one major item in dispute: Wage Rates.

IV. Wage Rates

[9] The Council's economic proposal was as follows:

> Effective January 1, 2023: a wage restructure of a new pay increment of 4% at the top of the wage scale and eliminate the bottom increment;
> Effective January 1, 2023: an economic increase of 6.3%;
> Effective January 1, 2024: a wage restructure of a new pay increment of 4% at the top of the wage scale and eliminate the bottom increment;
> Effective January 1, 2024: an economic increase of 4.8%;
> Effective January 1, 2025: an economic increase of 4%; and
> Effective January 1, 2026: an economic increase of 4%.

[10] The employer's economic proposal was as follows:

Effective January 1, 2023: Increase to rates of pay: 3.50%
Effective January 1, 2023: Pay Line Adjustment: 1.25% pay line adjustment
Effective January 1, 2024: Increase to rates of pay: 3.00%
Effective January 1, 2025: Increase to rates of pay: 2.00%
Effective January 1, 2025: Wage Adjustment of 0.25%
Effective January 1, 2026: Increase to rates of pay: 2%

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 SR-E group at the date of the issue of the arbitration award for the performance of regular duties and responsibilities associated with their positions.

V. Council Submissions

A. Summary

[11] In the Council's view, this entire set of collective bargaining had not gone well, an unacceptable situation exacerbated by the employer not even tabling a wage proposal until the parties met with the board in mediation. This was, in the Council's submission, completely unacceptable. Also unacceptable was the employer's rote rejection of the Council's wage proposal, which was fully justified by the application of the statutory and normative criteria – reviewed below – and was also necessary to ensure that its members retained their lead position within the labour market as compared to Irving Shipbuilding (Irving). It was the Council's view that SR-E employees had been, and should continue to be, at top of market, a situation accepted without fail by successive interest arbitrators, establishing a pattern that should not be ignored absent exceptional circumstances absent here.

[12] In *Federal Government Dockyard Trades & Labour Council East & Treasury Board* (September 16, 2005, Norman), it was observed that "the Council's membership enjoys a significant entry level wage premium as compared to the three shipyards in the Atlantic area" (at para. 9). Likewise, in *Federal Government Dockyard Trades & Labour Council East & Treasury Board* (September 18. 2013, Ready), the arbitrator awarded pattern plus, an outcome the Council urged here, justified, in part, based on the "historic entry level wage advantage of SR-E… (at para 25).

[13] Very simply, in the Council's submission, it was now established over successive collective bargaining rounds that SR-E employees have been, and must remain, the market leader (and that meant wage rates approximately 20% higher than Irving, give or take). This top of market reality reflected the fact that Council members performed more sophisticated and complicated work – by a country mile when compared to the

trades at Irving – and everyone everywhere else. To be sure, Irving had agreed on certain trade flexibility with its union. The Council had previously done likewise. Notably, it was the employer, however, that abandoned these flexible work arrangements and now sought to justify its deficient wage proposal based on the Irving agreement. This was, the Council argued, completely inappropriate. How could it be fair, the Council asked, in these circumstances, to penalize the Council and its members for this unilateral management decision to abandon a flexibility agreement (which the employer now sought to deploy against them in support of an inadequate and unacceptable wage proposal)? Moreover, and as a practical matter, Council members were providing flexibility but were not receiving any recognition for doing so. This too was, in the Council's view, completely unfair.

[14] The Council elaborated on this factual context along with the specific statutory and normative factors that justified its wage ask as well as by referring to some affidavit evidence (the Fournier Affidavit, below).

B. Recruitment and Retention

[15] It was well accepted, the Council observed, that there was a skilled trades shortage in Canada, an unfortunate situation expected to worsen over the term of the collective agreement and well beyond. The federal government was paying attention: budget measures in 2023 and 2024 were specifically directed at attracting Canadians to skilled trades careers, something of special importance in Nova Scotia (where the skilled labour shortage was particularly pronounced).

[16] The bottom line, from a recruitment and retention perspective, was that to get the work done at FMFCS and CFAD, wage rates had to significantly improve to attract and retain these necessary workers. The bargaining unit had been below strength for years: in 2012 there were 809 members; in 2024, only 606 (with a vacancy rate of 18%, and impending retirements anticipated to push that number even higher). The employer needed approximately one hundred new trades positions, and that meant it had to compete with Irving; that meant granting the Council's wage request. Failing to recognize this recruitment and retention reality by matching Irving wages could only lead to future labour strife.

[17] Between the anticipated delivery of new destroyers, patrol ships, and the relocation of a submarine, together with the existing vessels being maintained, many

more new skilled tradespeople had to be recruited, the Council observed, otherwise the work could not get done. Moreover, existing employees had to be incentivized to remain. In the Council's view, very significant compensation adjustments, including removal/addition of one step on the grid, was necessary to fill the current and impending vacancies. It was also quite clear, looking at outcomes from the recent federal collective bargaining round, that market and other adjustments were regularly awarded (and agreed upon) on account of recruitment and retention and where application of the other criteria made it appropriate to do so, which was just this case.

C. External Comparators

[18] The Council had one priority: to maintain a wage advantage over the skilled trades at Irving. There was the historical wage advantage pattern which had received repeated arbitral recognition, and which had guided the workplace parties for decades, and it was one fully grounded in the workplace reality. The various trades at Irving and at the employer may have the same formal qualifications, but the skills required by Council members to meet exacting military standards far eclipsed any of the work that was being performed at Irving. SR-E rates had always surpassed those at Irving and, more widely, those in the private sector, for a reason: tradespersons at FMFCS and CFAD performed work that was more challenging and complex, requiring skill sets and experience well beyond any of the requirements at Irving or just about anywhere else. It was like, the Council argued, comparing apples with oranges.

[19] For example, the tradespersons employed at Irving, deployed on the Canadian Surface Combatant Project, would be building 15 River-class destroyers over the next twenty-five years. Building ships was far different than the much more specialized and complicated work performed by Council members at FFMCS and CFAD.

[20] The Council detailed this in the November 22, 2024, affidavit filed by Yves Fournier, the President of the Federal Government Dockyard Trades & Labour Council (East).

D. The Fournier Affidavit

[21] The Fournier Affidavit (Affidavit) began by describing the bargaining unit. There were 606 bargaining unit members who worked in 30 different classifications. Two thirds of the members were at Pay Group 6 or 7 (out of 12). To summarize the Affidavit, the evidence established – and numerous examples were provided by

persons formerly employed at Irving – that trades people at Irving performed basic trades tasks, with the complicated work contracted out. At FMFCS and CFAD, the full range of trades work was undertaken, work that was at a more sophisticated and technical level. This advanced, complicated and often dangerous work required expertise and craftsmanship. The work at Irving was completely different; none of the skills and experience required to perform this high-level work was needed. Council trades persons were also required to take special courses, not required at Irving.

[22] The Affidavit not only pointed out that the work at FMFCS and CFAD was much more demanding than that at Irving but, paradoxically, that the Irving trades people received a $3 an hour premium on top of their negotiated rates. This came about because of a Memorandum of Agreement: Skill Premium (MOA) entered between Irving and the trades bargaining agent, Unifor (June 21, 2023). According to the Affidavit, following an arbitration that set a fixed – instead of pre-existing variable – rate, the MOA was removed from the Irving-Unifor collective agreement. In other words, the premium was folded into the wage grid. The Council sought to improve its wage grid to reflect the historic delta between it and Irving, a collective bargaining pattern that was anchored by the parties' shared recognition that Council members had superior skills deployed on more challenging assignments.

E. Conclusions from the Fournier Affidavit

[23] Based on this comparative analysis, there could be, the Council argued, no justification for paying FMFCS and CFAD employees less than the trades persons at Irving, both wages and premiums (and again, the premiums in the MOA were now incorporated, across the board, in the Irving wage rates). If the employer's wage proposal were accepted, the starting rate for SR-E would, for the first time, drop well below the Irving starting rate, destroying longstanding relativities achieved in successive collective bargaining rounds. There was no possible free collective bargaining outcome where the Council and its members would accept the wholly inadequate, indefensible and inappropriate Core Public Administration (CPA) pattern, which was of dubious applicability to the skilled trades at SR-E.

[24] In the Council's view, using the CPA pattern for replication purposes was inapposite: there was no work done by any CPA employee anywhere that could be persuasively compared to the unique work and skills required of Council members at SR-E. Simply put, PSAC settlements, for example, had nothing to do with this union and

its legitimate demands. Making matters even worse, in the Council's submission, if the CPA pattern were accepted, and imposed, its members would fall behind analogous, very much in demand tradespeople in private industry, with their oversize wages when compared to those paid to the SR-E membership. This too could never be the result of free collective bargaining in the Council's submission.

F. Internal Comparators

[25] There were many settlements in this current federal public sector collective bargaining round that included adjustments above the CPA pattern. This same outcome was sought here as it was, likewise, justified. The SR-W bargaining unit was not an appropriate comparator. Wages had been unfairly depressed by legislation, and their collective agreement with a comparable term remained to be determined (and parity with SR-E was among the many bargaining objectives that it anticipated achieving at a forthcoming interest arbitration later in 2025). In these circumstances, the Council expressed the view that internal comparators were not a factor to be assessed in addressing compensation. They were completely inapplicable.

G. Terms and Conditions That Are Fair and Reasonable

[26] In the Council's submission, the importance of the bargaining unit's work, and the skill that its members required, was second to none (discussed above). This had been recognized in earlier arbitral awards, such as in 2013 when Arbitrator Ready wrote – citation above – that "there is little reasonable argument against the high-level nature of the work performed by members of this bargaining unit." The work was, Arbitrator Ready noted, "complex" and "sophisticated, with SR-E employees "more skilled, better trained, and fundamentally more important to the defence of Canada than any ship repair workers in private industry" (at paras. 31-33). In these circumstances, the Council argued, it was axiomatic that Council members continuing as the market leader was, by definition, fair and reasonable.

H. State of the Canadian Economy and the Government's Fiscal Situation

[27] Inflation was, the Council observed, a reality, and it must, therefore, factor into outcome. Appropriate application of this criterion required no less. While inflation might have begun to (modestly) abate, earlier and historic inflationary increases were now baked into prices, negatively affecting wage value and purchasing power. In 2021-22, the Council received a 1.5% increase to wages, meaning that substantially higher

percentage increases were required over the current term to account for earlier losses. Also justifying above-CPA pattern increases was the overall Canadian economy: it was in recovery: the economy was growing, and the economic indicators were, on balance, positive and promising. The government's fiscal prospects were, likewise, on the mend; indeed, looking up. Just about all the conventional economic indicators established cause for optimism, leading to the conclusion not only was there no inability to pay, but fully justified reasons for an economic award along the lines of what the Council proposed.

I. Conclusion to the Council's Submissions

[28] In conclusion, the council argued that it had made the case – based on both the statutory and normative criteria - not just for the awarding of its economic proposals, including the necessary compensation and step removal/additions, but for its non-monetary ones as well (as was comprehensively discussed in its written submissions).

VI. Employer Submissions

A. Summary

[29] In the employer's view, there was a CPA pattern, and the Council and its members were part of the CPA. The employer rejected the notion that as trades, Council members could side-step application of the replication principle. The federal public service was incredibly diverse; there was nothing about this, or any other occupation group, that exempted it from the replication of results freely agreed to by bargaining agents representing hundreds of thousands of employees. The employer noted that there were signed or tentative collective agreements for twenty of the 28 CPA bargaining units accounting for 98% of the CPA employee population. With one exception, all these collective agreements were for a four-year term, which is what the employer likewise proposed (and the Council agreed). The CPA pattern was also, the employer pointed out, followed in 27 of the 30 public funded separate agency bargaining units representing 97% of the entire separate agency-represented population. Based on replication of free collective bargaining alone, the employer took the position that the CPA pattern should be awarded, as there were no special or extenuating circumstances justifying any deviation from this ubiquitous result.

[30] Indeed, in the employer's submission, not a single criterion cited by the Council supported its economic ask. No one was leaving FMFCS or CFAD to work at Irving or

other private sector employers. That the street was one way in the opposite direction was not a surprising result given total compensation, absence of layoffs, a defined benefit pension plan and all the other top shelf terms and conditions in place at FMFCS and CFAD. A comparative analysis with Irving proved this point.

[31] Irving employees, for example, were annually laid off. This was not the case at FMFCS or CFAD. There was no family leave at Irving; there was no personal leave. Sick leave was better at FMFCS and CFAD, there was a defined benefit pension plan guaranteed by the Government of Canada. There were more opportunities for advancement. The list of superior terms and conditions of employment went on and on, and there could be no credible claim, on a total compensation basis, that Irving, or any possible private sector comparator, came even close to matching the terms and conditions of employment of Council members.

[32] Nothing, the employer argued, justified the wage increases the Council sought, and its assertions, both about the state of the Canadian economy and the government's fiscal circumstances, were simply contrary to objective reality (as the economic briefing at the hearing held on December 2, 2024, should have made clear). Moreover, the evidence established that there were, at most, a handful of limited market adjustments in the current round and where they had been agreed upon it was in curated circumstances with actual supporting facts. The Council was seeking compensation increases that were completely unprecedented in the CPA. The very small number of market adjustments were modest and in one year only, a pattern that radically departed from the Council's demands, which was for massive year-in, year-out increases in compensation for everyone in the bargaining unit regardless of any demonstrated need (except for the Council's stated desire to remain first in wage rates). The employer elaborated on these submissions.

B. Recruitment and Retention

[33] Simply put, there was no issue whatsoever, in the employer's view, in recruiting or retaining employees. In fact, the opposite was true, these DND positions were highly sought after, and the SR-E population was growing – excluding a small pandemic-related 2020-21 drop – which was not what one would expect if there really were recruitment and retention challenges. The trades were leaving Irving before the premium was negotiated, and they continued to leave after the premium was folded into the wage rate (in June 2024, for example, the employer recruited 12 electricians

from Irving and lost no employees to Irving). Put another way, both before and after the premium was agreed upon, Irving employees were walking down the street to seek employment with the employer. The same was true with the other regional private sector employers: here too, employees were moving to the employer, and never the other way around. There was always a substantial pool of qualified applicants who readily responded to advertised positions, and the reason for that was obvious: the rates of pay and benefits, including the defined pension plan, were highly competitive. The separation rate between 2018-2023 ranged between 0.18% and 0.52%, well below the CPA average rate of around 1%. In these circumstances, the employer argued, no above-CPA pattern increase could be justified based on either recruitment or retention.

C. Internal Relativity

[34] The best internal comparator for the SR-E group was the SR-W group. The two groups performed the same jobs on the same ships for the same employer, but wage rates at SR-E were approximately 6% higher at E than W. On this basis, no above-CPA pattern increase could be justified based on internal relativity.

D. External Comparability

[35] When SR-E rates (not including premiums, folded in or otherwise) were compared with the two largest private sector comparators – Irving and Chantier Davie Canada Inc. – in Eastern Canada, and when total compensation was considered, no case could be made, the employer submitted, to deviate from the CPA pattern. Put another way, comparing rates with rates was simplistic and misleading and did not justify any increase. However, when rates absent the folded-in premium – discussed below – were compared, Council employees came out way ahead and, in some bands, significantly so.

E. Employer Response to The Fournier Affidavit

[36] Most SR-E hires were apprentices, but of those who were not, half came from Irving– in Halifax, right next door – and these employees could be easily integrated because the trades were comparable. To be sure, tradespeople moving from one workplace to another often require additional workplace-specific training. Like any new employee, tradespeople hired from Irving required an adjustment period; onboarding, in other words. In the employer's experience, most of the Irving new hires were performing billable work within a few weeks. Notably, none of the employees

referenced in the Fournier Affidavit stated – nor could they because it would not be true – that they did not possess the skills to do the assigned work in their new jobs. Using skills differently did not mean that the (former) Irving employees came to work with the employer with a lower skill set. Obviously, higher wage rates were not necessary to incentivize these Irving employees to join the employer, which in the employer's view, spoke volumes about what really mattered: the entirety of the terms and conditions of employment: total compensation in other words.

[37] In all of this, the Council's assertion that jobs at Irving were less complex than those in its workplace was simply incorrect. The evidence advanced was hearsay, and far from compelling, or even accurate. Irving both built and overhauled ships; notably, employees at Irving worked to the full scope of their skill, and many had dual trades certifications (a flexibility absent at the employer). Irving, in the employer's view, where the work was organized completely differently, and where a premium was paid for workplace flexibility, was an inappropriate comparator in every respect.

D. The Irving MOA and Arbitration

[38] The employer also took the position that there was no justification to award the Irving premium to its employees when that premium was negotiated in an entirely different context and represented a bargain reached between Irving and its union, Unifor. The MOA provided that in exchange for a variety of premiums, Irving received relief from various work rules:

> Trade Flexibility
>
> In return for the ongoing payment of these premiums generally, no article of the collective agreement that restricts flexibility in any respect will apply to any employee, including Article 20.
>
> While an emphasis will be placed on ensuring employees work in their preferred trade, there will be no restrictions on trade flexibility.
>
> Normal torch burning will be considered part of the trades' skill requirements.
>
> Apart from improving the efficiency and productivity of the workforce, the goal of this enhanced trade flexibility is to reduce the Company's need to rely on touch labour contractors to complete the work available.

[39] There were some MOA implementation difficulties, and that matter proceeded to arbitration before Arbitrator Outhouse (unreported decision dated February 26, 2024). The employer drew attention to certain aspects of the arbitrator's decision:

> The concept of skill premiums was new and the intent was to reward trades employees for acquiring and performing multi-trade skills and thereby enhance trade flexibility. Under the MOA, trades employees could earn premiums ranging from $0.50 to $5 per hour depending on the number of specified skills they acquired. Unfortunately, the MOA proved to be unworkable in practice for a variety of reasons.
>
> As a result, in December of 2023, the parties participated in a mediation to try to resolve the problems caused by the MOA. However, the mediation was unsuccessful. In January 2024, the Employer filed a policy grievance to bring the matter to a head.

[40] In the end, Arbitrator Outhouse, effectively sitting as an interest arbitrator, resolved the dispute by selecting Irving's offer (reflecting the parties joint request that the MOA be cancelled but that the base rates of all employees be increased by $3 per hour).

[41] This outcome was, the employer argued, directly relevant. Quoting from the Outhouse decision:

> *In return for the payment of these premiums, the Company and the Union agree that no article of the collective agreement that restricts flexibility in any respect will apply to any employee, including Article 20. All employees will do all work they are trained for and qualified to do. The Company will continue to make efforts to minimize the use of touch labour in the shipyard.*
>
> *[…]*
>
> *The existing Dual Trades provisions in the MOA will be maintained for the remainder of the current collective agreement.*

[42] This factual context, the employer argued, was dispositive and led to the appropriate rejection of any request that Council member wage rates be adjusted to account for this premium. The employer explained: Yes, the MOA had been eliminated and $3 an hour for everyone incorporated into the wage rates, but Irving received unprecedented trades flexibility in return. This factual context did not support ratcheting Council rates to surpass Irving when it had not achieved any comparable work rules flexibility. Why, the employer asked, should it pay Council members for flexibility that was bought and paid for at Irving but not at it? Moreover, when the inapplicable premium was ignored, as it must be in the employer's view, and the CPA pattern applied, wage rates in all Pay Groups 6-12, were ahead of Irving, ranging from a very low of 2.43% to a high of 11.12%. That was the beginning and end of the matter for the Council's demand for completely unjustified above-CPA pattern adjustments, in

the employer's submission. For what it was worth, the employer also observed that there was no other private sector comparator that came out ahead of Council members following an objective assessment of total compensation.

E. The State of the Canadian Economy and the Government of Canada's Fiscal Circumstances

[43] While Canada recovered relatively quickly from the pandemic, new pressures had emerged since, requiring attention. There were persistent economic, social and political challenges and they were exerting pressure on Canada's economy and the government's fiscal circumstances and would likely continue to do so throughout the entire collective agreement term.

[44] The employer categorically rejected the Council's rosy view of the overall economic situation, noting that, if anything, Canada's economic prospects were compromised, reflected in lower real GDP growth (repeated and successive declines), continued inflation, rising unemployment and household debt – including an uptick in consumer and business bankruptcies – substantial and growing public debt with associated service costs, and an obvious need to curtail public spending. As noted above, the employer updated this discouraging fiscal situation with the latest data at the December 2, 2024 hearing (further confirming the submissions it had earlier set out in its brief), all leading to the conclusion, in the employer's submission, that a recession may be in the offing, and this did not even take into account the serious repercussions sure to follow from the announced imposition of American tariffs, which if implemented, could reasonably be expected to lead to catastrophic economic consequences.

[45] Any fair-minded analysis, the employer asserted, led to the inevitable conclusion that there was a real risk to Canada and its economic prospects. Government spending was under review, and that review did not include allocating funds in response to unwarranted Council demands. Budget 2023 and the 2023 Fall Economic Statement announced a total of $4.8 B in savings, while Budget 2024 announced further expenditure restraint, primarily though natural attrition in the federal public service. Compensation costs were a significant part of overall operating costs, and they needed to be reduced. That was a fiscal priority and imperative. The fiscal forecast was grim, with limited fiscal room to fund the Council's ask, particularly

in circumstances where it was not legitimately based on any of the statutory or normative criteria.

[46] In this context, the Council's overall demand of some 30% over the term (not to mention its various other monetary proposals such as improvements to vacation) was completely unjustified. No other group had received the compensation increases of the kind the Council proposed, or even close. Even where market adjustments had been agreed upon, they were one time in one year and at a far lower rate than that demanded here. The fact was that even the CPA pattern would not have been offered in the current economic climate. The economy had moved – it was a different economic and fiscal reality today – and while the employer did not resile from its offer of the pattern, it observed that circumstances had changed since it was established, and not for the better.

F. Conclusion to the Employer's Submissions

[47] When all the statutory and normative factors, and the facts, were analyzed, there was no basis, the employer argued, for the unprecedented sought-after compensation increases; increases that were not even curated to specific classifications where a case could be hypothetically made. Here, though, there was no case. Instead, special adjustments were being sought for everyone no matter what. Replication needed to be followed, and that meant the CPA pattern. There was no recruitment and retention challenge: only 27 employees in 15 years (2009) had voluntarily separated. Comparability – external or internal – did not help the Council, nor did Canada's economy, or the government's fiscal circumstances.

[48] It was appropriate to look at Irving but the premium was unique to it and, when unpacked, of no real import. There was a give for that take: real trades workplace flexibility in return for more money. Nothing like that was on offer here. What mattered most, the employer concluded, was total compensation and other terms and conditions of employment – including the ability to move up the grid – and when the larger picture was examined, the employer was clearly first in class. When actual rates were compared – without the premium – that left Council members way ahead. For all these reasons, and others, the employer asked that is proposals be awarded.

VII. Discussion

[49] As noted at the outset, but for disagreement on wages, the parties would likely have been able to resolve their collective agreement. In our view, the CPA pattern is pervasive and governing absent the proper application of statutory or normative criteria leading to a different result. CPA results – both economic and otherwise – reflect free collective bargaining agreements with unions representing hundreds of thousands of federal public sector employees. In these circumstances, any party who wishes to deviate from this kind of established pattern must make a clear, cogent and compelling case.

[50] Obviously, the Council is not PSAC or any of the other unions that have agreed on pattern outcomes, and vice versa. But replication requires us to consider the free collective bargaining outcomes of this major union and this employer (and an outcome replicated by other federal public sector unions and this employer). Relevant free collective bargaining outcomes agreed to by the same employer, and unions representing hundreds of thousands of employees, are not one hundred percent dispositive, but they come close. Presumably, if the Council thought the PSAC deal was attractive, it's submissions would be directed at encouraging the board to replicate it (should the employer have attempted to argue otherwise).

[51] We do not accept the submission that because Council members are trades with very specific duties and responsibilities that they are somehow, or should be, immunized from application of the CPA pattern (absent exceptional circumstances). The CPA contains many very diverse classifications. That does not constitute a reason to segregate SR-E members from the replication principle. There is always the opportunity, if appropriate, to negotiate market adjustments, and other compensation increases such as step removal/addition where the criteria and facts lead to that outcome.

[52] For example, in the recent PSAC round, market adjustments were identified and agreed upon for Firefighters: there was a large gap between those represented by PSAC and their municipal comparators. PSAC asserted a 20% gap; Treasury Board disagreed. The parties eventually settled on a one-time 6% market adjustment (and no 0.5% payline adjustment). Likewise, in the most recent round between PSAC and Border Services, another one-time market adjustment – 2.8% – was agreed upon. Notably, in return (and also with the CX Group represented by a different union) some work rule

efficiencies were agreed upon (including managing overtime). Other federal public sector market adjustments, for example to both recruit and retain RNs, can easily be understood as part of the overall recruitment and retention challenges across the Canadian healthcare landscape. None of that is present here, (and the overall increase sought by the Council exceeds anything sought or awarded anywhere else in the federal public service by a considerable margin). There are no recruitment and retention challenges at the employer, and no market increases can be justified on this basis. It must also be mentioned that on a total compensation basis Council members are well ahead of their private sector comparators like Irving, not just on the fiscal side but also in terms of overall terms and conditions of employment. There is a reason why there are so few voluntary departures from the employer; recruitment is almost entirely in the exact opposite direction.

[53] Market adjustments are usually agreed upon, or awarded, to respond to real workplace recruitment and retention challenges and in response to market realities establishing demonstrated need. The exact opposite is true here with uncontradicted evidence that Council members are not leaving their employer to go work at Irving (or anywhere else, for that matter, given the unchallenged job mobility statistics). It is also worth noting that, in general, market adjustments are curated one time and one year only; in this case, the Council sought them for everyone across the term of the collective agreement with no real explanation other than an insistence that all Council members remain at the very top. That would lead to endless ratcheting. To repeat: the various compensation increases the Council proposes are also quite extraordinary when tallied up: they are without a single comparator from the current bargaining round.

[54] The Council asserts that the work its members perform is more challenging, complex and sophisticated and points out that none of these specific claims were persuasively challenged in the employer's submissions responding to the Fournier Affidavit. We accept, as have the Boards of Arbitration that proceeded us, that Council members perform their trades at the highest and most sophisticated level. The employer does not disagree with this but does not accept that Irving recruits are somehow far below par noting that they are quickly up and running, performing billable work in a matter of weeks. In our view, the truth of all this is not the issue before us because the fact of the matter is that the premium was negotiated for a singular purpose: job flexibility.

[55] The parties have experience in negotiating trades flexibility – the Self-Directed Team – SDT model, discontinued by the employer in 2014, was, according to the Council, a great success. The Council blamed the employer for abandoning this useful initiative. The employer disputes this characterization and points out that had it been a roaring success, it would not have been discontinued, and the fact was that it was, always, of limited value and scope (as, it asserts, the union knew).

[56] We reach no conclusion about any of this. We note that the employer was emphatically of the view that the SDT premium was completely different from that negotiated at Irving and had, more importantly, already been rolled into wage rates in an earlier arbitration award and there could, and should, be no additional premium awarded in these circumstances. We accept that it is more likely than not that the Irving rolled-in rate will survive the renewal of that collective agreement, but one cannot know this for certain. For present purposes, the more important information about the premium is that it was part of a collective bargaining trade.

[57] Experience in these matters leads us to readily conclude that changes to work rules regularly result in compensation increases. The conclusion is axiomatic that Irving paid for something of value to it. In any event, we have included in our award a provision – below – which potentially incentivizes the parties to consider this type of approach – SDT version 2.0 or otherwise – going forward to the extent it is in their shared interests to do so (discussed further below).

[58] We simply cannot accept that Irving is an appropriate comparator in the sense that its premium payments – negotiated for a specific purpose – should lead to a wage increase at a comparable employer. A wage-to-wage comparison between the employer and Irving indicates that Council members will, after the increases awarded here, be ahead of Irving, in some cases substantially so (if the trades flexibility premium is excluded). Total compensation must be part of any analysis, although we agree that a simple comparison of hourly rates may not be entirely satisfying as employees look at their pay stubs – their hourly rates – and compare them with their colleagues at the shipyard right next door, but that is not a reason to match the Irving rates (with the premium folded in). Likewise, we do not accept, as the employer argued, that SR-W is an appropriate comparator as wages there were suppressed by operation of legislation. Wages at SR-E should not be affected by outcomes at SR-W arising from wage restraint legislation that never applied to this bargaining unit. At the mediation there was

acknowledgement of SR-W issues requiring attention when that mediation/arbitration proceeds (scheduled in due course).

[59] The Irving premium has now been folded into that collective agreement. But the fact remains that it was a trade made in collective bargaining. In return for more money, management obtained extraordinary flexibility, (or at least that is what the record including the Outhouse Award indicates). There is no such arrangement here, and we cannot see how, in the circumstances it would be appropriate to replicate one part of this MOA/Outhouse Award but not the other. However, we take note that both parties indicated a desire to continue collaborative discussions directed at improving efficiency; getting ships out to sea as quickly as possible is how they put it. In these circumstances, we are of the view that it is appropriate in this case – which is clearly far from the norm – to include a premium re-opener should the parties reach agreement on efficiency improvements during the term but are unable to come to terms on its value. We have also included a wage reopener for the final year if the parties are unable to reach agreement.

[60] In sum, we are not persuaded that case has been made here for a market adjustment or for an above pattern increase based on any of the statutory or normative criteria. None of them justify it. The Council argues, unless the wages are adjusted as requested, that its members will begin to beat a path to Irving, and that it will begin to face challenges in recruiting apprentices. This forecast of a complete about face in the recruitment direction leading to Council members leaving their jobs at SR-E and joining Irving seems remote. As the employer observed, before the premium was put into place, it recruited from Irving, and after the premium was put into place, it recruited from Irving. It is not irrelevant to us that the Irving premium has been in place for some time with no apparent impact on the employer's staffing with Irving tradespeople continuing to make their way to it.

[61] The fact that Council members have always had the highest rates, is, likewise, not a reason, standing alone, to award the Council's requested above-CPA pattern proposal, which we note, in any event, far eclipses to a significant degree market adjustments sought and obtained in a handful of cases – modest, one time one year only – in the current round. For whatever this observation is worth, we are not familiar with any principle of interest arbitration that simply because a particular group of employees has always been the wage market leader, that that status, and existing

differentials with a comparator, must be maintained in perpetuity (especially when the comparator has received an adjustment for reasons that are completely unique to it as part of a singular collective bargaining trade).

[62] In our view, the statutory and normative factors must be engaged to rebut the conclusion that replication – the most important criterion of all – should not govern. At the very least, some of the statutory criteria must be appropriately applied and real demonstrated need established. There is nothing presented here, other than a desire to remain in top spot, that would justify departure from the pattern. Replication does not lead to it. Internal and external comparability does not lead to it. The state of Canada's economy does not lead to it, nor does the government's fiscal circumstances. None of this is to say that the Council members are not extremely valuable, and valued, employees, but that alone cannot lead to the award of the enormous increase that is being sought.

[63] Accordingly, we are awarding the CPA pattern for the first three years including the now normative $2500 lump sum but pensionable payment (with the fourth year to be negotiated by the parties, failing which we remain seized). We are also awarding the other improvements in collective agreement terms and conditions arrived at in the CPA over the course of the current round.

VIII. Award

A. **Term**

[64] As agreed by the parties, four years expiring on December 31, 2026.

B. Wages

Effective January 1, 2023: Increase to rates of pay: 3.50%
Effective January 1, 2023: Pay Line Adjustment: 1.25% pay line adjustment
Effective January 1, 2024: Increase to rates of pay: 3.00%
Effective January 1, 2024: Pay Line Adjustment: 0.50%
Effective January 1, 2025: Increase to rates of pay: 2.00%
Effective January 1, 2025: Wage Adjustment of 0.25%
Effective January 1, 2026: Remitted to parties. Board 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 SR-E group at the date of the issue of the arbitration award for the performance of regular duties and responsibilities associated with their positions.

C. Premium Re-opener

[65] If the parties agree on efficiencies during the term of this collective agreement but are unable to agree to on the value of those efficiencies for premium payment purposes, that matter may be remitted to the board for which we specifically remain seized.

D. Group 6 & 7

[66] Adjust all rates by .30¢ effective date of award.

E. Leaves

Add: Where leave may be granted at the discretion of the employer, this leave shall not be unreasonably denied.
Add: Three days paid leave in event of still birth.
Add: One day paid leave for aunts and uncles under bereavement leave provisions.
Add: Employer revised proposal awarded to add incapacity and layoff.
Add: Leave with Pay for FRR: extension to visit a family member near end of life.
Add: Leave with Pay for FRR: increase from 8 to 16 hours to attend an appointment with a legal or paralegal of financial or other professional.
Vacation Leave with pay: Employer's revised proposal awarded.
New: Two days leave with pay for traditional Indigenous practices.
New: Three days leave without pay for traditional Indigenous practices.

F. Article 9

Overtime

Amend: 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."

G. Article 10

Vacation Carryover

Employer revised proposal awarded.

H. Article 15

Overtime Meal Allowances

Add:

d. Meal allowances under this clause shall not apply to an employee who has obtained authorization to perform overtime work at the employee's residence.

I. Article 17

Travel

This is a very complex matter and requires further discussion. Council proposal remitted to the parties. Board seized.

J. Medical Certificate

[67] Where a medical certificate is requested by the employer, the employee will be reimbursed for the cost of the certificate, with a $35 limit, upon provision of acceptable proof, for periods of absence of three consecutive days or less.

K. Article 23

Dirty Work

Council proposal awarded.

L. Memorandum on Implementation of the Collective Agreement

[68] Employer proposal awarded.

Conclusion

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

April 8, 2025.

"William Kaplan"

William Kaplan, Chair of the arbitration board

I partially dissent. Partial Dissent Attached.

J.D. Sharp, Treasury Board Nominee

I dissent. Dissent Attached

Steven Barrett, Bargaining Agent Nominee

Dissent of Treasury Board Nominee

Interest arbitration is increasingly acting as a substitute for real collective bargaining in the Core Public Administration. Rather than acting as a Court of last resort, there is legitimate concern that interest arbitration will be leveraged to supplant true collective bargaining. To understand which party benefits disproportionately from interest arbitration, simply look at which party triggers that process. It is significant and instructive that it is almost exclusively unions who trigger interest arbitration. The reason is equally simple - they obtain greater gains through interest arbitration than they would if they had to risk strike or lockout.

This Dissent is not an attack on the conclusions reached by Arbitrator Kaplan, an experienced and highly respected adjudicator of issues across the spectrum of Canadian labour relations. Rather, this Dissent addresses the broken interest arbitration system that may hasten the end of good faith collective bargaining and lead to unsustainably expensive public services. The norms and expectations created by the interest arbitration system and resulting decisions are an issue that merit further consideration.

The Interest Arbitration System

The bargaining unit positions at issue are funded entirely by the Canadian taxpayer, the majority of whom earn less than the bargaining unit members. The union maintained an indefensible wage position from the start of collective bargaining until that position was submitted and rejected as part of this process. The union's wage demand alone represented an increase exceeding 30% over the four-year life of the Collective Agreement. The bargaining unit members in question earn more than all comparators, in both the public and private sectors, yet they demanded a wage increase of over 30%, plus other improvements which added to the overall cost. The cost increases are borne solely by the Canadian taxpayer.

Interest arbitration leads to unions maintaining indefensible positions long after they would cease to be issues at the bargaining table if the union and their members faced the prospects of a strike or lockout. Interest arbitration spares the union and its members from the harsh realities of a work stoppage in economic and human terms. Perhaps some of the many Irving Shipbuilding Inc. (ISI) employees who chose to leave ISI and commence work for this Employer sought, in part, to avoid the risk of strikes or lockouts and the potential impact on their families. They also enjoy the vastly greater benefits and pensions available which increases the advantage of their total compensation over private sector employers.

A strike or lockout is the ultimate exercise of leverage and test of resolve. The parties facing that prospect are forced to quickly determine which of their demands are "existential" issues when faced with curtailment of services and loss of pay. It is unlikely that this union would have maintained a demand for more than a 30% wage increase if the union required a strike and defence fund and their members had to bear the risk and cost of walking the picket line. These risks were already taken off the table for the union and its members through their triggering of the interest arbitration process and the unrealistically safe harbour which it provides.

Unions and their members get more from the interest arbitration process than they do from staying at the bargaining table until a deal is reached. They are rewarded for maintaining a lengthy list of expensive demands when it is readily apparent that the Employer cannot agree to those unjustified and unjustifiable demands. The union and

their members hope that they will achieve a positive outcome on at least some of those demands, and they usually do, which can then be leveraged across other comparable bargaining units in the Core Public Administration. This leads to a broken system and rewards intransigence. It is time for change. If parties had to bear the risk of a mandatory Final Offer Selection process when they choose to bypass the work necessary to bargain until a deal is reached, positions would narrow more quickly, and rationality may return to the bargaining process.

Arbitrator Kaplan has summarized the positions of the parties and the extent of the demands fully in the Award, but there are issues which merit further discussion from an Employer's point of view, commencing with the tests to be applied when arriving at a decision.

The legislated criteria set out at s. 148 of the *Federal Public Service Labour Relations Act* (the "Act") required to be considered by an Interest Arbitration Board are as follows:

Factors to be considered

148 In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:
·**(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 arbitration board 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.

It must be noted that the overarching principle, which is frequently referenced, but not explicitly included in the statutorily imposed criteria is the principle of replication. The Arbitration Board's mission is to render an award that resembles as closely as possible the outcome of free collective bargaining between the parties. This overarching criterion will be addressed later in this Dissent. However, stated simply, based on the Factors set out in the legislation, no wage or cost increase is justified in the case before this Board, nor can there be any increases justified if replication is the deciding factor.

Statutory Factors to be Considered

1.Recruitment and Retention

The first statutory criterion is a simple analysis as to whether the employer is having difficulty recruiting or retaining enough staff to meet the needs of the organization.

Arbitrator's Kaplan's conclusion on this element of the criteria is all that is required to eliminate it from consideration as a factor meriting any increases:

"*There are no recruitment and retention challenges at the employer, and no market increases can be justified on this basis. It must also be mentioned that on a total compensation basis council members are well ahead of their private sector comparators like Irving, not just on the fiscal side but also in terms of overall terms and conditions of employment. There is a reason why there are so few voluntary departures from the employer; recruitment is almost entirely in the exact opposite direction.*

Market adjustments are usually agreed upon, or awarded, to respond to real workplace recruitment and retention challenges in response to market realities establishing demonstrated need. The exact opposite is true here with uncontradicted evidence that Council members are not leaving their employer to go work at Irving (or anywhere else, for that matter, given the unchallenged job mobility statistics)."

Clearly, the recruitment and retention factor at s. 148(a) of the Act cannot be used to justify any wage increase for these bargaining unit members. The element of this Award that represents a *de facto* "market adjustment" finds no support in the submissions of the parties.

2.Comparability – External and Internal

The parties have an internal comparator available to them in this case that performs identical work for the same Employer. The employees of Ship Repair West perform the same work, on the same equipment under the same working conditions. The employees of the Employer in the case before this Board earn more than the employees of their direct, identical, internal comparator. Again, analysis of the factor of internal comparability cannot be used to justify any wage increase for these bargaining unit members.

The award highlights the impact of wage restraint legislation on the wages of the Ship Repair West bargaining unit members and thus discounts their use as a comparator. It is incongruous when individuals work for a government entity and then appear shocked when political decisions affect their employment and wages. There is no wage restraint legislation impacting private sector employers, yet the bargaining unit members do not flee the public service for those allegedly "greener pastures", such as ISI, the external comparator discussed below.

The external comparator identified by the union in this matter is Irving Shipbuilding Inc. (ISI), geographically located beside the Employer and performing largely similar work. The union spent a considerable amount of time attempting to distinguish the level of the work performed by ISI employees when examined against the work performed by their bargaining unit members. These submissions are of no consequence based on the uncontradicted evidence that ISI employees leave ISI to work at this Employer and are quickly able to contribute fully within the workplace. The bargaining unit members have been and are currently paid more than ISI's employees. A recent $3 per hour premium paid to ISI employees failed to reverse the recruitment and retention trend previously discussed, but more importantly, the premium was predicated on widespread flexibility gains for ISI that the Employer in this case did not seek and will not obtain from the Award. Arbitrator Kaplan's quote from the Decision of Arbitrator Outhouse with respect to his selection of ISI's final

offer over that submitted by the bargaining unit (in a Final Offer Selection process), makes clear the extent of the concession made by ISI's bargaining unit employees in exchange for the $3 premium.

The union made the argument that their members' wage superiority must be maintained for a public sector employer against any private sector comparators. Arbitrator Kaplan appropriately dismissed this position.

3.**Maintenance of Appropriate Compensation Relationships Between Classification Levels and Between Occupations Within the Public Service**

The pattern of wage increases proposed by the Employer in this case was followed in 27 of 30 public funded separate agency bargaining units, representing 97% of their employee population. The replication of this pattern maintains the appropriate relationships contemplated by the factors set out in s. 148(c) of the Act.

For reasons which will be discussed later, consideration of the statutory factors taken in isolation does not support any wage increase for the bargaining unit employees in the case before this board. However, the Employer gratuitously offered to replicate the pattern of wage increases and other improvements with this bargaining unit and that is the upper limit of any increase that can be justified for this group.

4.Establishment of Fair and Reasonable Compensation and Other Terms and Conditions of Employment Related to the Requirements of the Work Performed

The evidence that the bargaining unit members at ISI are fully capable of performing the work performed by the bargaining unit members of the Employer in this case is largely immaterial given that the bargaining unit members of this Employer earn higher wages than the comparable bargaining unit members of ISI. When total compensation between the two bargaining units is properly and necessarily considered, no arguments with respect to alleged lack of fairness or reasonableness in compensation remain viable.

5.State of the Canadian Economy and the Government of Canada's Fiscal Circumstances

The final factor set out in the legislation is a nod to an "ability to pay" requirement where the unique circumstances of a federal government with the ability to raise taxes is seemingly limitless and the national debt and the costs of servicing that debt are so high as to numb the casual reader into thinking "Will a little more debt really matter?" This type of thinking creates a third-world economy. A correction in thinking and approach is necessary, and this case, with its clear and unequivocal facts, is as good a place to start as any. A quick summary of the economic update makes the Employer's (and thus the Canadian taxpayer's) fiscal position clear:

1.The unemployment rate increased by more than 1.5% in less than 12 months and is forecasted to increase further.
2.Household debt remains at near record levels.
3.Consumer bankruptcies increased over 16% and business bankruptcies increased over 52% in a one-year period.
4.The public sector employee's pension has suffered over $155 Billion in actuarial losses in less than 15 years and those losses continue.

5.Servicing Canada's national debt in 2024-2025 will cost over $54 Billion, more than the cost of the Canada Health Transfer to the provinces.
6.Federal budgets have been and are forecasted to remain in deficit, with our national debt exceeding $1 Trillion.

This is not an economic picture or fiscal reality that supports wage increases. The uncertainty created by a looming trade war with the United States and the potential impact of tariffs also cannot be ignored. The tariffs will impact Canadians and Americans alike, increase costs for taxpayers, place tens of thousands of jobs (and the tax base) at risk, weaken North American competitiveness in the global economy and disrupt an incredibly successful trading relationship, perhaps forever.

Canada will not go bankrupt as a result of this Award, but it will take another step toward its economic downfall. One cancerous cell does not kill you, but that cell multiplies. The premise of the union's demands and the extras that they have achieved in this Award is that taxpayers can always fund more, whether deserved or not. Private sector employers must remain competitive, or they go out of business. Virtually all taxpayers want and are promised the same thing, more services at lower cost. Yet that has never happened.

There is no doubt or dispute that the bargaining unit employees in this case serve a vital role in our national defence system. But the economic realities are undeniable, and they are grim. In a system where real collective bargaining occurs without the safety net of interest arbitration, Canada's economic circumstances would warrant concessions on the part of the union, or at minimum, wage freezes.

Replication
It strains common sense and rationality to assert that any employer with a debt exceeding $1 Trillion, running annual deficits and facing the myriad grim economic indicators set out in the uncontradicted submissions of the Employer in this case, could accept a free collective bargaining result that yielded wage increases. That the Employer in this case offered anything at all is a tacit acknowledgement that they know that the interest arbitration system and its purported reliance on replication would never truly replicate what should happen at the bargaining table. This is further confirmation that the system of interest arbitration is broken and systemically, replication does not occur.

Arbitrator Kaplan considered and applied the factors set out in s. 148 of the Act. He also considered replication. His conclusion reads as follows:

"*In our view, the statutory and normative factors must be engaged to rebut the conclusion that replication – the most important criteria of all – should not govern. At the very least, some of the statutory criteria must be appropriately applied and real demonstrated need established. There is nothing presented here, other than a desire to remain in top spot, that would justify departure from the pattern. Replication does not lead to it. Internal and external comparability does not lead to it. The state of Canada's economy does not lead to it, nor does the government's fiscal circumstances. None of this is to say that the Council members are not extremely valuable, and valued, employees, but that alone cannot lead to an award of the enormous increase that is being sought.*"

And yet, the union has been awarded more than the Employer has offered. Not one statutory criterion has been satisfied by the union. Replication cannot lead to an

outcome that provides them with anything that increases costs, including wages. But they have achieved more, and Canadians will fund it.

Admittedly, the union did not achieve much better than the Employer's offer and Arbitrator Kaplan exercised restraint. But the union has been offered enough incentive to reward their intransigence such that there is no doubt that these parties will again engage in the costly and time-consuming process of interest arbitration to resolve their next collective agreement. For the simple and oft-repeated reason that the union did better from the interest arbitration process than they could have from real collective bargaining.

Amendments to Award

My comments on specific elements of the Award are as follows:
1.Wage increases commensurate with the pattern increases for the duration of the Collective Agreement, including the 4th year should be awarded. There is no indication that the pattern for the 4th year will change from the 2% increase already applicable to 96% of employees in the Group B bargaining units.

2.For reasons canvassed throughout this Dissent, there is no justification for the $0.30 increase to wages for all rates in Groups 6 and 7. No market or special adjustment can be justified in this case and there can be no other description applied to this cost increase.

3.There is similarly no need for a premium re-opener as there are no discussions contemplated between the parties regarding gaining additional efficiencies. ISI and their bargaining agent engaged in that exercise, these parties have not. Neither party raised efficiency discussions as a prospect that is on the horizon. This Collective Agreement will expire in approximately eighteen (18) months, no meaningful efficiency discussions would occur in that timeframe in any event.

J.D. Sharp,
Treasury Board Nominee

Council Nominee Dissent

I have carefully reviewed the Chair's reasons for deciding not to follow the longstanding pattern under which Ship-Repair East tradespersons have maintained hourly rates which significantly exceed the hourly rates paid at Irving Shipyard. The validity of this longstanding pattern has been consistently recognized and accepted by the bargaining agent and the employer through successive collective agreement renewals, and by respected third party arbitrators through the interest arbitration process.

Based on his reasons, it appears that the Chair places enormous stock in two factors that, in my respectful view, should carry limited, if any, weight given the history of this particular bargaining relationship.

First, the Chair points to the federal bargaining pattern. However, as the union convincingly demonstrated, this pattern has not been followed by this very employer where historical comparators or other factors warrant a higher increase. This includes firefighters represented by PSAC, who received a permanent additional 6% increase above and beyond pattern based solely on a comparison with their municipal comparators, and at those very municipal comparators which until this so-called pattern round the employer had not previously accepted. Additionally, border services received a 2.8 per cent permanent increase above and beyond pattern.

While the Chair suggests that this was in return for certain work rule efficiencies, the fact is that corrections officers then received the same beyond pattern increase, solely to keep them even with the border guards, and there is no suggestion that they achieved any efficiencies.

The union also pointed (including at paragraphs 71 to 72 of its brief) to various other above pattern increases voluntarily negotiated by Treasury Board, and while some relate to recruitment and retention, others simply relate to above pattern increases needed to maintain or achieve comparator patterns. These include removing or adding steps to the salary grid, including a substantial restructuring of the federal government lawyer salary grid resulting in an approximate 20 per cent plus net increase, far above pattern.

Notably, in all these cases, Treasury Board agreed to these above pattern increases without examining the various reasons that may or may not have resulted in the comparator receiving a higher wage rate or higher increase than would have if the pattern had been a constraining factor.

Second, the additional factor upon which the Chair has placed undue and excessive reliance is the asserted link between the three-dollar Irving salary increase (which results in Irving employees now receiving higher rates than those that would be paid to Ship Repair East tradespersons if pattern alone were followed) and a commitment on the part of the Irving bargaining agent to some degree of enhanced trade flexibility.

However, in previous bargaining and arbitration awards involving these parties, where Ship Repair East tradesperson have consistently received increases that maintain their significantly higher hourly rates in comparison with Irving, neither the parties nor arbitrators have looked behind the Irving rates in agreeing or deciding to maintain the higher rates for Ship Repair East.

As Arbitrator Norman recognized in 2005, the bargaining history to that point had consistently resulted in a "significant entry level wage premium as compared to the three shipyards in the Atlantic area": see *Federal Government Dockyard Trades and Labour Council East v Treasury Board*, unreported, September 16, 2005, Board File: 185-2-411 (Norman), at para 9.

More significantly, the longstanding recognition that the Ship Repair East wage advantage should be maintained was confirmed by Arbitrator Ready in his 2013 award: *Federal Government Dockyard Trades and Labour Council East v Treasury Board*, unreported, September 18, 2013, Board File: 585-02-46 (Ready).

In that case, Irving had agreed to pay higher wage rates to its tradespersons, because the federal government had made ship building commitments which extended to the Irving Shipyard. Even though these commitments did not directly apply to Ship Repair East, Arbitrator Ready held, to maintain the historic and longstanding wage relationship between Ship Repair East and Irving, that the Irving increases could not be confined to the federal pattern (as had been urged by Treasury Board). As Arbitrator Ready concluded at para 25 of his award:

> *"Of more relevance is the historic entry level wage advantage of Ship Repair-East over Halifax Shipyard; a local wage comparator of longstanding, noted by Arbitrator Norman in 2005 in Federal Government Dockyard Trades and Labour Council East and Treasury Board, (unreported), and that stands to be upset by higher wage rates flowing from the recent Federal Government ship-building commitments to Halifax, if Ship Repair—East was held to the pattern increase only."*

In other words, it did not matter to Arbitrator Ready **why** Irving received higher rates and higher increases; rather, it was the **mere fact** of those higher rates and increases that in turn compelled increases at Ship Repair East - above and beyond the federal pattern - to maintain the Ship Repair East differential.

I should add, in view of the Chair's comments about recruitment and retention, that Arbitrator Ready reached this conclusion notwithstanding his finding that there were no special recruitment or retention challenges at Shipyard East (see paras 22-23 of his award). In my view, while the Chair suggests that market adjustments are necessarily tied to recruitment and retention challenges, this has never been a prerequisite to maintaining a wage pattern where one group has historically been paid at a higher rate than another.

As a result, in my view, had replication been properly applied to bargaining history before use, there is no justification for Ship Repair East tradespersons – historically paid higher than their Irving counterparts – to now be paid less than their historically lower paid comparator. Yet, this is the result of the Chair's award, at least for the first three years of this collective agreement.

I should add that, in my view, the union's evidence, including by way of affidavit – and there was no rebuttal evidence from the employer – also lent further support to higher wage rates for its members, since the evidence overwhelmingly demonstrated (as has also been recognized by Arbitrator Ready in his 2013 award at paras 31-33) that, all things being equal, the work performed by Dockyard East tradespersons is

significantly more complex and sophisticated, requiring a higher overall degree of specialized skills, than that required at Irving.

In any event, the Chair's reliance on his characterization of the Irving three-dollar premium as a collective bargaining trade-off for enhanced flexibility ignores the reality that a similar trade-off had already been made at Ship Repair East when the self-directed teams model was negotiated over a decade ago. The fact that the employer discontinued this in 2014 cannot be held against the union or relied on to prevent them from maintaining their historic wage advantage.

Having expressed my concerns with the Chair's approach, I hasten to add that it is also apparent from the Chair's award that, despite his underlying rationale, the Chair has nonetheless awarded increases modestly higher than pattern, since he has directed an extra 30 cents per hour adjustment above and beyond pattern, at least for Levels 6 and 7.

What's more, while the Chair has imposed the federal pattern for the first three years, his award provides for a reopener in the fourth year of the collective agreement.

Together, these features of the Chair's award provide at least some recognition of the extent to which the pattern is not appropriate for these employees. As a result, when it comes to negotiating the year four increase, the employer would be wise to take this as a signal that more will have to be done in the direction of increasing the hourly rates for these employees, so that at the very least do not fall behind those at Irving over the life of this agreement, including as a result of taking into account the impact of the $3 dollar Irving increase.

One last point – under the award, the parties have been directed to continue negotiations over the labyrinth of the overly complex existing travel-related compensation rules. There can be no doubt of the need not only to simplify the existing rules but also to enhance their fairness, particularly given the adverse impact on employees of extended mostly overseas travel and the reality that the timing of travel largely lies within the control of the employer.

Steven Barrett,
Council Nominee