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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA, CHARITO HUMPHREYS, AND CHRISTOPHER GARDINER

Grievors

and

TREASURY BOARD (Department of Employment and Social Development)

Respondent

Indexed as
Public Service Alliance of Canada v. Treasury Board (Department of Employment and Social Development)

In the matter of a policy and individual grievances referred to adjudication

Before: Joanne Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Andrew Astritis and Kundera Provost-Yombo

For the Respondent: Andrea Baldy

Decided on the basis of written submissions, filed December 22, 2023, and January 26 and February 8, 2024.

REASONS FOR DECISION

I. Policy and individual grievances referred to adjudication

[1] The Public Service Alliance of Canada ("the Alliance" or "the bargaining agent") grieved the application Appendix K of its collective agreements for the Program and Administrative Services (PA) group with the Treasury Board ("the employer") that expired on June 20, 2018 ("the 2018 collective agreement"), and June 20, 2021 ("the 2021 collective agreement"). Note that since the texts of both agreements are similar, the singular "the collective agreement" is used in some parts of this decision, except when the differences between them are pointed out.

[2] The Alliance alleges that the employer incorrectly limits leave with pay for union business ("paid union leave") to a cumulative total of 3 months or 487.50 hours per fiscal year, contrary to the terms of the collective agreement.

[3] The Alliance also referred individual grievances on behalf Charito Humphreys and Christopher Gardiner ("the grievors") to the Federal Public Sector Labour Relations and Employment Board ("the Board") for adjudication. The grievors are employed by the employer and work for the Department of Employment and Social Development ("ESDC"). At the time they filed their grievances, Mr. Humphreys was the Alternate National Vice-President for the Canada Employment and Immigration Union ("CEIU"), a component of the Alliance, and Mr. Gardiner was the National Vice-President for Manitoba and Saskatchewan, CEIU.

[4] At the relevant time, their terms and conditions of employment were partially governed by the collective agreement. When they submitted requests for paid union leave that cumulatively exceeded 487.50 hours within 1 fiscal year, ESDC rejected them. They then took approved leave without pay ("LWOP").

[5] The employer denies that its actions contravene the collective agreement and states that it grants recoverable paid union leave for multiple periods, up to a total of 3 months or 487.50 hours per fiscal year, as set out in the collective agreement.

[6] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) permits the Board to "… decide any matter before it without holding an oral hearing." I have determined that the information before me

sufficiently addresses the matters placed in issue, and I have decided this case on the basis of the parties' written submissions.

[7] For the reasons that follow, all the grievances are allowed.

II. Collective agreement provisions

[8] Article 14 of the 2018 collective agreement addresses leave with or without pay for union business. The parties negotiated clause 14.14 of it to provide as follows:

14.14 *Effective January 1, 2018, leave granted to an employee under Article 14.02, 14.09, 14.10, 14.12 and 14.13 will be with pay; the PSAC will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by joint agreement.*	***14.14*** *À compter du 1er janvier 2018, les congés accordés à l'employé-e en vertu des paragraphes 14.02, 14.09, 14.10, 14.12 et 14.13 seront payés; l'AFPC remboursera à l'Employeur l'équivalent de la perte de salaire et des avantages sociaux de l'employé-e pour la période de congé payé autorisée, conformément aux modalités établies par l'entente conjointe.*

[9] Clauses 14.02, 14.09, 14.10, 14.12, and 14.13 address leave for union business, related to applications for certification and representations and interventions with respect to such applications; contract negotiation meetings; preparatory contract negotiation meetings; meetings of the board of directors, executive board meetings, and conventions; and representatives' training courses.

[10] The 2021 collective agreement updated and renumbered clause 14.14 (to 14.15) of the 2018 collective agreement without making substantive changes to it. The updated clause reads as follows:

14.15 *Leave granted to an employee under clauses 14.02, 14.09, 14.10, 14.12 and 14.13 will be with pay and the PSAC will reimburse the employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by joint agreement.*	***14.15*** *Les congés accordés à l'employé-e en vertu des paragraphes 14.02, 14.09, 14.10, 14.12 et 14.13 seront payés et l'AFPC remboursera à l'employeur l'équivalent de la perte de salaire et des avantages sociaux de l'employé-e pour la période de congé payé autorisée, conformément aux modalités établies par l'entente conjointe.*

[11] Appendix K of the 2018 collective agreement, entitled "Memorandum of Agreement with Respect to Implementation of Union Leave", provides as follows:

> ***Appendix K***
>
> ***Memorandum of Agreement with Respect to Implementation of Union Leave***
>
> *This memorandum is to give effect to an agreement reached between the Employer and the Public Service Alliance of Canada (the Union) to implement a system of cost recovery for leave for Union business.*
>
> *The elements of the new system are as follows:*
>
> • *Recoverable paid leave for Union business for periods of up to 3 months of continuous leave per year;*
>
> • *Cost recovery will be based on actual salary costs during the leave period, to which a percentage of salary, agreed to by the parties, will be added;*
>
> • *The Employer will pay for all administration costs associated with the operation of this system.*
>
> *The surcharge will be based on average expected costs incurred by the Employer for payroll taxes, pensions and supplementary benefits during the operation of the program as described above, calculated according to generally accepted practices.*
>
> *Notwithstanding anything else in this agreement, and as an overarching principle, it will not include costs for benefits that would otherwise be paid by the Employer during an equivalent period of leave without pay. The consequences of the implementation of clause 14.14 will be cost neutral for the Employer in terms of compensation costs, and will confer neither a substantial financial benefit, nor a substantially increased cost, on the Employer.*
>
> *A joint committee consisting of an equal number of Union and Employer representatives will be struck to resolve matters related to the implementation this new program, including, but not limited to, invoices, accounting and the manner of the transaction.*
>
> *The Joint Committee's principal work will relate to:*
>
> • *Determining an appropriate surcharge in recognition of the considerations identified in this document;*
>
> • *Establishing processes and the Employer's reporting requirements; and*
>
> • *Other considerations associated with implementation.*
>
> *If agreement cannot be reached on recovering costs against Union remittances, the Joint Committee will consider alternate means of cost recovery.*

> *The Joint Committee will be struck and convened within [sic] by February 15, 2017, and will complete its work by October 16, 2017, with implementation to be completed by the earliest feasible date as determined by the committee.*
>
> *In the event that the parties do not reach an agreement, the parties may seek the services of a mediator. Necessary consequential changes will be made to Article 14, effective January 1, 2018.*
>
> *The deadline for completion of work and implementation of this system may be extended by mutual consent of both parties to this agreement.*

[12] Appendix K is repeated in the 2021 collective agreement. The reference to clause 14.14 is renumbered as clause 14.15.

III. Summary of the submissions

A. For the Alliance and the individual grievors

[13] The Alliance's policy grievance states the following:

> *This is a policy grievance hereby submitted by the Public Service Alliance of Canada (PSAC) pursuant to s. 220 of the Federal Public Sector Labour Relations Act.*
>
> *The PSAC is grieving the employer's decision to limit leave without pay for Alliance business as it contravenes Article 14, Appendix K and all other relevant articles of the Collective Agreement, related legislation and policy.*

[14] The individual grievances allege that the employer contravened article 14 and Appendix K of the collective agreement when it capped their paid union leave at 3 months or 487.50 hours.

1. The purpose of Appendix K

[15] The Alliance submits that Appendix K replaced an earlier system of granting employees LWOP for union business by providing paid union leave for certain activities.

[16] LWOP interrupted the employees' regular pay, potentially generated overpayments, and resulted in different contribution rates for federal public service pension and benefit plans when an individual leave period exceeded three months. It also created issues within the Phoenix pay system, which automatically struck employees off strength when their LWOP exceeded five days.

[17] The Alliance's position is that with the implementation of Appendix K, paid union leave no longer triggers a change to contribution rates, interrupts an employee's pay, or causes the Phoenix pay system to strike an employee off strength. It makes the employer responsible for providing paid union leave for periods of up to three months of continuous leave. The bargaining agent is responsible for reimbursing the employer for that cost. It is a cost-neutral exercise for the employer.

2. The language of Appendix K

a. Leave for periods of up to three months

[18] Words in a collective agreement should be given their ordinary or normal meanings. The language of Appendix K provides for "… [r]ecoverable paid leave for Union business for periods of up to 3 months of continuous leave per year …".

[19] The use of the plural word "periods" confirms the parties' intent for an employee's entitlement to paid union leave for multiple periods of up to three months per year, provided that each period does not exceed three uninterrupted and continuous months. The collective agreement language reflects that intent.

b. Continuous leave

[20] The parties chose the term "continuous" as opposed to "cumulative" to define the leave. The *Cambridge Dictionary*, *Merriam-Webster Dictionary*, and *Oxford Dictionary* uniformly define "continuous" as "uninterrupted".

[21] Both "continuous" and "cumulative" appear elsewhere in the collective agreement, with a distinct meaning assigned to each word.

[22] To illustrate, the Alliance relied on clause 28.05 in the 2018 and 2021 collective agreements, which refers to overtime compensation. Under the heading "Additional provision (WP)", both collective agreements state that "… the employee shall be compensated at the rate of double (2) time for all hours continuously worked in excess of twenty-four (24) hours." This refers to work without interruption in the stated period.

[23] The Alliance noted that Appendix A-2 of the collective agreement refers to the situation of an employee appointed to a term position and receiving a pay increment after 52 weeks of cumulative service. Appendix A-2 states that "… 'cumulative' means

all service, whether continuous or discontinuous …". The Alliance argues that this demonstrates that for the limited purpose of Appendix A-2, the parties provided a definition of "cumulative" that includes both continuous and discontinuous service.

[24] Accordingly, if the parties intended periods of paid union leave to be considered cumulatively over the course of a fiscal year, then they would have chosen to use "cumulative" in Appendix K. However, they used "continuous", and the Board must conclude that the parties meant to use the word that they chose. Had they intended that employees would be entitled only to a total of three months of paid union leave, they could have expressed it as leave that is available for periods of up to three cumulative months per year, for three months per year, or for periods of up to three months in total per year. Instead, the language refers to periods of leave of up to three months and confirms that they had no such intent.

[25] The Alliance noted that the French version of the collective agreement refers to "… le congé payé récupérable pour activités syndicales est accordé pour des périodes pouvant totaliser jusqu'à trois (3) mois consécutifs par année …".

[26] The Alliance argued that "*consécutif*" must be translated as "consecutive". According to the *Cambridge English Dictionary*, *Merriam-Webster Dictionary*, and the *Oxford Dictionary*, "consecutive" means following one after another, without interruption, just as "continuous" does.

[27] According to the Alliance, the employer's action of capping paid union leave at a cumulative total of three months per year is an improper interpretation of the word "continuous" to mean "cumulative", and it is inconsistent with the clear meaning of the collective agreement and intention of the parties.

[28] The choice of a three-month limit for periods of continuous paid union leave addresses the implications of the *Public Service Superannuation Act* (R.S.C. 1985, c. P-36; *PSSA*), the Public Service Health Care Plan, the Public Service Dental Care Plan, and the Disability Insurance Plan, which call for different contribution rates by employees and the employer when an individual period of leave extends beyond three consecutive months. For example, under s. 5.3(1) of the *PSSA*, when an employee's leave without pay exceeds three consecutive months, the employee then becomes solely responsible for the employee and employer pension contribution portions if they elect to continue to contribute.

[29] The Alliance concludes its submission by stating that the parties intended Appendix K to facilitate leave for union business, avoid interruptions in pay, and mitigate pay issues caused by the Phoenix pay system. They wanted to avoid further administrative problems with pension legislation and benefit plans. That fits with the intention of clauses 14.14 and 14.15 of the 2018 and 2021 collective agreements respectively to grant paid union leave, subject to the Alliance reimbursing the employer the salary and benefit costs.

[30] The employer's decision to impose a limit on paid leave for union business effective January 1, 2018, was inconsistent with Appendix K and the parties' intent.

B. For the employer

1. The purpose of Appendix K

[31] The employer agreed with the Alliance that the parties intended clause 14.14 (now 14.15) and Appendix K to counteract pay-system issues and provide stability for federal government employees involved in union activities for short periods. Appendix K defines the parameters of the agreed cost-recovery provisions for leave for union business.

[32] The employer noted that the grievors are full-time employees working 37.5 hours weekly. Consistent with Appendix K and the collective agreement, when read as a whole, the employer now grants recoverable leave for multiple periods of paid union leave not to exceed a total of 3 months or 487.50 hours per fiscal year.

[33] Before Appendix K was adopted, an employee requested LWOP for union business, and the employer approved it as such. The bargaining agent reimbursed the employee directly for the period of LWOP.

[34] Depending on the timing of the employee's leave request and length of the leave period, an overpayment might have been generated, or the employee might have been temporarily struck off due to the requirements of the *Employment Insurance Act* (S.C. 1996, c. 23).

2. The language of Appendix K

[35] On its face and in context, Appendix K's provisions reflect the parties' intention to cap the annual number of hours of paid leave for union business. An employee is

entitled to paid union leave for multiple periods not exceeding 3 months or 487.50 hours each fiscal year. The words of Appendix K define the parameters of the cost-recovery agreement.

[36] The employer argued that the Alliance's submission overlooks the language of Appendix K that provides for "… up to 3 months of continuous leave per year …". "Up to" indicates a maximum value, equal to or less than the stated value of three months. The phrase "… up to 3 months of continuous leave per year …" indicates that the maximum value is restricted for the specified period of a year.

[37] The employer stated that the use of "continuous" should be considered in the context of its use elsewhere in the collective agreement. The phrase "continuous leave" must be given the meaning provided in the *Directive on Terms and Conditions of Employment* ("the *Directive*"). It defines "continuous employment" as "… one or more periods of service in the public service, as defined in the Public Service Superannuation Act, with allowable breaks only as provided for in the terms and conditions of employment applicable to the person."

[38] Accordingly, "periods", as used in Appendix K, can be taken over one or more periods of time.

[39] Ignoring "per year" would lead to absurd results. For example, if an employee took an unlimited number of periods of paid union leave, it could create the onerous responsibility for the employer to staff their position during their absences.

[40] Concerning the French text of the collective agreement, the employer notes the phrase "*pouvant totaliser*" to support its interpretation that the total of the periods of paid union leave cannot exceed 3 months per year. In both the English and French versions, the use of "continuous" or "*consécutifs*" clarifies the maximum length of time for which a federal government employee can take paid union leave, which is 3 months of continuous leave or 487.50 hours per year.

3. Rectification

[41] Alternatively, the Board's authority extends to the equitable remedy of rectification to correct an error in drafting Appendix K. The use of "continuous" was incorrect, and it does not reflect the parties' intention. Collective agreements with all other bargaining agents either never contained that language or changed "continuous"

to “cumulative”, to reflect the parties’ intention when they introduced the cost-recovery system.

[42] If continuous employment includes allowable breaks, then “continuous”, as it appears in Appendix K, could be interpreted to include multiple periods. If that is not clearly stated, then the Board has the authority to correct the error, to reflect the parties’ true intention, which was the remedy for pay issues for employees who were absent from the workplace for short periods of union leave.

[43] In subsequent negotiation rounds, the language in all non-Alliance collective agreements was corrected. The Alliance is the only bargaining agent that will not agree to the correction.

[44] Further, the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) restricts the amount of pensionable LWOP for registered pension plans such as the Public Service Pension Plan. When LWOP, other than sick leave without pay, reaches a career maximum of five years, it cannot continue to be credited as pensionable service.

[45] Finally, not limiting the paid union leave to three months per year would provide sick leave and annual leave entitlements to employees on paid union leave that are not available generally to employees on LWOP. The leave entitlements would be at the employer’s cost and would be inconsistent with the cost-neutral intention described in clause 14.14 (14.15) and Appendix K.

IV. Analysis

[46] This matter involves a policy grievance filed by the Alliance, along with individual grievances. Section 220(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*”) provides the right for the Alliance to file a policy grievance with the Board. It provides as follows:

220 (1) *If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral*	***220 (1)*** *Si l’employeur et l’agent négociateur sont liés par une convention collective ou une décision arbitrale, l’un peut présenter à l’autre un grief de principe portant sur l’interprétation ou l’application d’une disposition de la convention ou de la décision relativement à l’un*

award as it relates to either of them or to the bargaining unit generally.	*ou l'autre ou à l'unité de négociation de façon générale.*

[47] Section 209(1)(a) of the *Act* permits the Board to hear an individual grievance involving the interpretation of a collective agreement provision, provided that as set out in s. 209(2), the bargaining agent agrees to represent the grievor in the adjudication proceedings, as the Alliance has done in this matter for the grievors.

[48] All the parties rely on the same, well-established principles of collective agreement interpretation to support their respective positions. In *Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLREB 30 at para. 84, the Board summarized them as follows:

> *[84] As outlined in authoritative sources such as* Brown and Beatty, *at paragraph 4:2100, and as recognized throughout the Board's case law, canons of interpretation such as the following guide this analysis: (1) the parties are assumed to have meant what they said, (2) the meaning and intent of the collective agreement is to be sought in its express provisions, (3) the words of a collective agreement must be given their grammatical and ordinary sense, (4) they must* [be] *read in their entire context, in harmony with the scheme of the collective agreement, and (5) when the same words reappear, they are to be given the same interpretation.*

[49] The core of the dispute rests in Appendix K. Each party maintains that its provisions are clearly stated. The question is whether Appendix K allows the employer to cap paid union leave when the cumulative total for an employee exceeds 3 months or 487.50 hours in a fiscal year, or whether periods of paid leave of up to 3 months may be taken throughout a fiscal year.

[50] For the reasons that follow, I have determined that the employer acted in breach of the terms of Appendix K. The plain and ordinary meaning of the words used in the collective agreement does not support the employer's decision to cap paid union leave when the equivalent of 3 months or 487.5 hours accumulates for an employee during one fiscal year.

1. The purpose of Appendix K

[51] Appendix K is entitled "Memorandum of Agreement with Respect to Implementation of Union Leave." The title contains no indication that union leave is restricted. Rather, as indicated in the first sentence of Appendix K, its purpose is "… to

give effect to an agreement reached between the Employer and the Public Service Alliance of Canada (the Union) to implement a system of cost recovery for leave for union business." It addresses the mechanism for cost recovery.

[52] Appendix K then refers to "… periods of up to 3 months of continuous leave per year." As discussed below, I do not view this as the imposition of a 3-month cap on union leave. Rather, I accept that the parties intended Appendix K to create a cost-neutral means of righting difficulties experienced when employees took LWOP for union business. Granting LWOP had presented issues such as contributions to pension and benefit plans, employees being struck off strength, and potential overpayments. Appendix K was intended to overcome those difficulties.

2. The language of Appendix K

[53] Appendix K provides for "… [r]ecoverable paid leave for Union business for periods of up to 3 months of continuous leave per year …".

[54] I start from the premise that the parties are assumed to have meant what they said.

[55] To assess the meaning of Appendix K and whether it imposes a cap on paid union leave, I have determined the following. The use of the plural "periods" makes it clear that paid union leave is available for more than one period. That said, the individual periods may be "up to 3 months" in duration.

[56] As noted above, there are many and varied purposes for union leave, some of which are set out in clauses 14.02, 14.09, 14.10, 14.12, and 14.13 of the collective agreement. None of them suggests a 3-month cap on union leave. As the Alliance states in its submission, defining the length of periods of union leave as 3 months addressed issues of benefit entitlement that arose whether through the Phoenix pay system, legislation, or otherwise in earlier cases. However, as worded in Appendix K, I am not persuaded that it was intended to cap paid union leave at 3 months annually.

[57] The duration of each period of union leave is measured for the "continuous" or unbroken time from its start until it is interrupted. Contextually, this fits with the use of "continuous" elsewhere in the collective agreement, for example clause 28.05 (noted earlier in this decision). Notably, Appendix A-2 defines "cumulative" to include continuous and discontinuous service. This strongly suggests a definition that was

required to give meaning to Appendix A-2 but does not have general application to the entire collective agreement. The *Directive*'s definition of "continuous employment" does not help discern the meaning of "continuous" in the context in which it is used in Appendix K.

[58] On the face of the words used, there is no suggestion that discontinuous paid union leave is to be accumulated until it equals 3 months or 487.50 hours. As noted, in the unrelated provisions of Appendix A-2, the parties chose to use the word "cumulative" and provided a definition extending to both continuous and discontinuous service. Had the parties intended a special meaning for "continuous" in Appendix K, it rested with them to provide it.

[59] The phrase "per year" does not alter the plain and ordinary meaning of "periods" or "continuous" to create a maximum cumulative entitlement per year. Deciding otherwise would oblige me to overlook the use of the plural "periods" and the description of those periods as "continuous".

[60] The parties referred to the French text of the collective agreement. Again, it refers to the plural by providing for "… des périodes pouvant totaliser jusqu'à trois (3) mois consécutifs par année …". The wording contemplates more than one period of paid union leave and clearly states that no individual period may exceed three months.

[61] The employer also referred to the Board's decision in *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55 at para. 27, to support its view that "… a benefit that has a monetary cost to the employer must be clearly and expressly granted under the collective agreement …". Given that Appendix K provides for cost recovery, I find no evidence of an unmet monetary cost to the employer.

[62] As for leave, employees continue to accrue it during paid union leave. The collective agreement provides for the reimbursement of salary only and does not address leave entitlements. However, failure to expressly address it provides no avenue for the Board's intervention. The parties to the collective agreement are knowledgeable and experienced. They presumably considered the implications for the accrual of leave in their negotiation of Appendix K. It was foreseeable, and to consider otherwise would be purely speculative.

[63] To conclude, if the parties intended paid union leave to be capped at 3 months per year, they were obliged to state it plainly. They did not. The collective agreement is clear in permitting multiple periods of up to 3 months of paid union leave during any year.

[64] It follows that the rejection of the grievors' paid union leave exceeding 487.50 hours annually, which appears to date from as early as 2018, was a contravention of the provisions of Appendix K of the collective agreement.

3. Rectification

[65] The employer argued that allowing multiple three-month periods of paid union leave during the course of a fiscal year would result in an absurd result and suggested that the Board should rectify the collective agreement language.

[66] Rectification is an equitable remedy. It is described as follows in the majority decision of the Supreme Court of Canada in *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56 at para. 12:

> *[12] If by mistake a legal instrument does not accord with the true agreement it was intended to record — because a term has been omitted, an unwanted term included, or a term incorrectly expresses the parties' agreement — a court may exercise its equitable jurisdiction to rectify the instrument so as to make it accord with the parties' true agreement. Alternatively put, rectification allows a court to achieve correspondence between the parties' agreement and the substance of a legal instrument intended to record that agreement, when there is a discrepancy between the two. Its purpose is to give effect to the parties' true intentions, rather than to an erroneous transcription of those true intentions (Swan and Adamski, at §8.229).*

[67] The Board is a statutory tribunal. Its jurisdiction is defined by statute; it has no inherent jurisdiction. Equitable remedies, such as rectification, are not generally available to it.

[68] Even if the Board could consider the rectification of the collective agreement's language, evidence would be required to demonstrate that the impugned provisions of Appendix K were inconsistent with the parties' oral agreement, deviated from their true intention, and did not require the Board to speculate about their intentions. (See *Public Service Alliance of Canada v. NAV Canada*, 2002 CanLII 44896 (ON CA) at para.

44, citing *Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd.*, 2002 SCC 19.)

[69] Those requirements are not met in this case. There is no evidence that the parties reached an explicit or implicit understanding that was different from the one reflected in Appendix K. It was not demonstrated that the provisions deviate from the parties' true intention. Further, rectifying Appendix K as suggested would stray into conjecture and speculation and would supplant plainly worded terms in the absence of evidence of a mistake in the collective agreement. Accordingly, the foundation for rectification is not present.

[70] Further, s. 229 of the *Act* states this:

229 *An adjudicator's or the Board's decision may not have the effect of requiring the amendment of a collective agreement or an arbitral award.*	***229*** *La décision de l'arbitre de grief ou de la Commission ne peut avoir pour effet d'exiger la modification d'une convention collective ou d'une décision arbitrale.*

[71] The change that the employer seeks would result in a decision that would require amending the collective agreement language. It would impose the requirement to accumulate paid union leave to a maximum of three months per year. That would deviate from the unambiguous meaning of Appendix K's wording.

[72] The employer stated that the impugned phrase appeared in other collective agreements with other bargaining agents. Those parties subsequently agreed to change it. Beyond the employer's statement, no bargaining history was presented. If I accept as factual that other bargaining agents amended collective agreements to cap paid union leave at 3 months annual, I would have anticipated that the employer would have presented the bargaining history for those agreements. This said, the fact that the employer returned to renegotiate the provision for paid union leave with those bargaining agents supports the view that the correct place for a dispute about the future of Appendix K in this collective agreement is the bargaining table.

[73] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[74] The policy grievance is allowed. I declare that the employer contravened Appendix K, clause 14.14 of the 2018 collective agreement, and clause 14.15 of the 2021 collective agreement.

[75] The individual grievances are allowed.

[76] I order the employer to recalculate and pay any shortfall in the grievors' entitlement to paid leave for union business in accordance with those provisions, retroactive to January 1, 2018.

[77] I remain seized for 60 days from the date of this decision for any question relating to the calculation of the amounts due under this order.

April 25, 2025.

Joanne Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board